

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT:</u>
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:</u>
<u>TENANT:</u> County of Alameda

File No:

Preamble

THIS OCCUPANCY AGREEMENT, made and entered into this ____ day of June 2020 by and between

hereinafter called the Owner, without distinction as to number or gender, and the County of Alameda, acting by and through its Board of Supervisors, hereinafter called the County. **This Agreement is entered into pursuant to the Governor’s State of Emergency Proclamation dated March 4, 2020 , Executive Order N-25-20, the State of California’s “Project RoomKey” approved as FEMA-4482-DR-CA (COVID-19) in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety.**

Owner is the record owner of or authorized party to grant such rights concerning certain real property defined as the Premises herein situated in the County of Alameda, State of California and has the authority to grant the rights contained herein this Agreement to the County.

WITNESSETH

Description

1. The Owner hereby authorizes the County and the County hereby hires from the Owner those certain premises “AS IS” with appurtenances situated in the City of _____, County of Alameda, State of California, and more particularly described as follows:

The **(quantity of available rooms)** located at _____, _____, CA as outlined in red on the attached Exhibit A - Aerial Site Plan, consisting of one (1) page, dated _____, said Exhibit A, hereby being incorporated into this occupancy agreement, and including all parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities. The County shall have exclusive access to and use of the occupied premises set forth in this occupancy agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions.

Term

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

Early Termination

3. The County may terminate 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 County 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 County occupies the premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the County following the effective date of termination.

Rent and Invoicing

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

THE DAILY ROOM RATE SHALL BE AND 00/100 DOLLARS (\$.00) DURING THE TERM OF THIS OCCUPANCY AGREEMENT FOR OCCUPIED ROOMS THAT INCLUDE ADDITIONAL SERVICES AND MEAL DELIVERY AS DETAILED IN EXHIBIT B (“OCCUPIED ROOMS”).

THE DAILY ROOM RATE SHALL BE AND 00/100 DOLLARS (\$.00) DURING THE TERM OF THIS OCCUPANCY AGREEMENT FOR UNOCCUPIED ROOMS THAT DO NOT INCLUDE ADDITIONAL SERVICES AND MEAL DELIVERY AS DETAILED IN EXHIBIT B (“UNOCCUPIED ROOMS”).

RATE FOR ADDITIONAL MEAL PACKAGE SHALL BE AND 00/100 DOLLARS (\$.00) PER DAY WITH MEAL PACKAGES AND DELIVERY THE SAME AS DETAILED IN EXHIBIT B.

Owner shall maintain a daily log of Unoccupied Rooms and Occupied Rooms (“Daily Log”), including the check-in and check-out for each client per room. The Daily Log shall be transmitted to County each day at 3pm reflecting whether each room in the Premises was an Occupied Room or an Unoccupied Room. For purposes of reporting and rate, Occupied Room means one overnight stay with check out before 1pm the following day. Owner shall provide a monthly invoice to the County at the address below based on each Unoccupied Room and each Occupied Room corresponding to the Daily Log entries for each day of the month for which the invoice is being submitted in which each such Unoccupied Room or Occupied Room is billed at the corresponding rate above based upon daily usage. Payment shall be made within 30 calendar days of receipt of the invoice, unless the County notifies the Hotel that a dispute as to the invoice exists. In no event shall County be liable for interest or late charges for any late payments. Other than the rental payment for Unoccupied Rooms and Occupied Rooms, County shall not be responsible for any other payment to Owner under the terms of this Agreement.

Rent 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.

Invoices to County shall be sent via USPS with an email copy to:

Real Property Manager
Alameda County General Services Agency
1401 Lakeside Drive. 10th Floor
Oakland, CA 94612
Phone No. (510) 208-9511
Email: Rachel.Johnson@acgov.org

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:

repairs standard to the hotel's operations over the last year, prior to County's occupancy of the site.

H. Conference Rooms, if any.

All housekeeping/janitorial services, as well as linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials as detailed in Exhibit D.

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the County may furnish the same at its own cost; and, in addition to any other remedy the County may have, may deduct the amount thereof, including County'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 Owner shall maintain the occupied premises in good repair and tenantable condition. Notwithstanding any other provision of this Agreement, Owner warrants and represents the Premises shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 and California Title 24, as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any cost incurred to cause the Premises to comply with said Act shall be borne by Owner.

Assignment

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

Quiet Possession

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

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

It is understood and agreed that the County or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the County's request, the Owner shall immediately identify an appropriate route through the building to access the County

occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the County 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 County 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 County to implement such article.

Holding Over

15. In the event the County 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 thirty day (30) days termination by the County and otherwise on the terms and conditions herein specified, so far as applicable. If the County 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 County occupies the premises following the effective date of termination. Any

such payments for additional rent shall be limited to the actual number of rooms occupied by the County following the effective date of termination.

Surrender of Possession

16. Upon termination or expiration of this occupancy agreement, the County will peacefully surrender to the Owner the occupied premises in good order, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which County has no control or for which Owner is responsible pursuant to this occupancy agreement. Notwithstanding the foregoing, County's obligation to restore the premises shall be limited to and in accordance with paragraph 20.

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.

Hazardous Substance

19. County 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 a government order is issued naming the County or the County incurs any liability during or after the term of the occupancy agreement in connection with contamination which pre-existed the County's obligations and occupancy under this occupancy agreement or which were not caused by the County, Owner shall hold harmless, indemnify, and defend the County in connection therewith and shall be solely responsible as between County and Owner for all efforts and expenses thereto.

Restoration of Premises

20. Upon termination of this Occupancy agreement, Owner agrees that the equipment installed by the County shall be and remain the property of the County, and County shall remove such property when vacating the premises. At the end of the rental term, the County of Alameda will reimburse the owner a Fee not to exceed \$1,000.00 per occupied room for the actual replacement cost of beds and soft goods in the rooms and cleaning. This amount is due "Net 30" upon County's receipt of Owner's proof of payment for the goods and services which are anticipated to be within 30 days prior to end of the occupancy agreement in order for the hotel to be able to transition back to operating at capacity once the agreement ends. County's obligation to restore the premises to its condition prior to taking occupancy subject to the limits in paragraph 16 shall be limited to the terms of this paragraph 20.

Access

21. Owner shall allow County or its agents to enter the premises as of 7:00 A.M. on June _____, 2020, to stage and prepare the property for occupants, or other parties, or for any other purpose County deems necessary.

Indemnification and Insurance

22. The County agrees to indemnify and hold harmless the Owner in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which Owner may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the County, its employees, or any person or persons acting under the direct control and authority of the County or its employees, in connection with the County's occupancy of said premises under and during the term of this agreement and agrees to repair or pay for any damage proximately caused by reason of the County's use of said premises during the term of this agreement, except to the extent that any such damages suffered by Owner are the result of Owner's negligent or wrongful acts or the acts of any persons acting under or on behalf of the Owner and/or where the County is found to have no liability by reason of any immunity arising by

statute or common law in connection with the fulfillment of the County's constitutional and statutory public responsibilities.

Owner agrees to indemnify and hold harmless the County in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which County may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner or its employees, in connection with the County's occupancy of said premises under and during the term of this agreement except to the extent that any such damages or expenses suffered by County are the result of County's sole negligence. Owner specifically waives any claim to special or consequential damages it may have against County, including but not limited to claims concerning business reputation. Owner's defense and indemnity obligations under this paragraph shall not be limited by the policy limits of any policy of insurance.

Owner shall maintain in force at all times such policies of insurance as specified in Exhibit C, and shall abide by all of the terms and conditions of Exhibit C, which are incorporated by reference as if set forth in full herein.

For the term of this occupancy agreement, County shall self-insure or maintain, at its own expense, Comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single and aggregate limits for both bodily injury and property damage, personal injury, completed operations and products liability. County insures County's personal property located on or in the Premises.

- Taxes** 23. Owner is solely responsible for all tax liabilities, including property taxes.
- Exclusive Use** 24. Owner shall not rent or allow occupancy of any vacant rooms or facilities in the hotel during the term of the County's occupancy of the premises.
- Occupancy of Premises** 25. Owner and County understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of hotel rooms in exchange for access to or use of the Premises. Owner and County also understand that neither has entered into any contract with the occupants of the hotel rooms related to the use of the Premises within the meaning of California Civil Code section 1925. The occupants of the hotel rooms are not persons who hire any dwelling unit from Owner or County within the meaning of California Civil Code section 1940 and are not subject to the benefits of the California Civil Code or any other state statutes, rules, or regulations or local government rules, regulations or ordinances, that confer tenancy rights on the occupants.
- Remedies** 26. In the event of a breach by the Owner of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Owner of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Owner shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
- Conflict of Interest** 27. By executing this Agreement, Hotel certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the

California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Agreement.

FEDERAL PROVISIONS

Clean Air Act

28. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*

29. The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

30. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

31. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 *et seq.*

32. The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

33. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Debarment and Suspension Clause

34. This Occupancy Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Owner is required to verify that none of the Owner, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

35. The Owner must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

36. This certification is a material representation of fact relied upon by the County. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

37. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

38. Owners who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures

are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Owner] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Owner certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Owner understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

OWNER

By _____
Date _____

Procurement of Recovered Materials

39. In the performance of this Occupancy Agreement, the Owner shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

40. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

41. The Owner also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records

42. The following access to records requirements apply to this Occupancy Agreement:

- i. The Owner agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Owner which are directly pertinent to this Occupancy Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Owner agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Owner agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the County and the Owner acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- v. Owners understands and acknowledges that this occupancy agreement is a public record subject to disclosure under the California Public Records Act.

Department of Homeland Security Seal, Logo, Flags

43. The Owner shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders

44. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Owner will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government

45. The Federal Government is not a party to this Occupancy Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

46. The Owner acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Occupancy Agreement.

**Termination
for Cause**

47. If the contract value exceeds \$10,000, in addition to any right to terminate for convenience as described in the Agreement, the County may, after providing five days' written notice, terminate the Agreement for the Owner's failure to perform or observe any term, covenant, or condition of the Agreement.

HOTEL LABOR PROVISIONS

Employment

48. Owner shall offer employment to its regular full-time and part-time employees, and any former employees who were laid-off or discharged for lack of work between March 1, 2020 and the execution of this Agreement, for the duration of this Agreement. No employee may be compelled to accept employment or re-employment during the term of this Agreement, and no employee shall be required to forego any right to recall or otherwise applicable benefit as a result of declining to work pursuant to this Agreement. It is understood that the nature of the work offered during this period may vary from the normal operation of business, and therefore, any employee electing not to accept work shall be considered to have been laid off.

49. Whenever a new position opens at the Hotel during the term of this Agreement, Owner shall offer the position to employees laid off or discharged after March 1, 2020, and shall hire for the position according to seniority of hire date.

50. During the term of this Agreement, no employee shall be terminated except for just cause.

51. The Owner shall comply with all local, state and federal wage-and-hour and other employment standards laws covering employers in the hotel industry. The County shall have the right to audit the Owner for compliance with such wage-and-hour and other employment-standards laws.

52. The Owner shall provide health insurance for employees and their dependents at no cost to the employee, starting on day one of the County's occupancy of the hotel.

**Health &
Safety**

53. In the event a room is to be cleaned while it is occupied by a guest, Owner shall ensure that at least two employees are present to do so. Owner shall furthermore ensure that security personnel or a manager are readily accessible to provide assistance while such occupied rooms are being cleaned, and shall follow any local law requiring the provision of "panic buttons" or emergency contact devices to employees.

54. In the event that an employee has a reasonable concern that an assignment does not conform to Exhibit D and thus places their health and safety at risk, the employee may refrain from performing the assignment. No employee shall suffer retaliation from doing so. Owner shall ensure employees have read, understood and follow all safety provisions in Exhibit D, which will be updated from time to time.

55. Owner will comply with first with the March 31, 2020 Alameda County Health Order Section 13(h) and take all necessary and reasonable steps to ensure employees are in compliance with the order as it applies to Essential Businesses. As future Health Orders are released, Owner shall follow all applicable requirements. Owner shall take reasonable steps to ensure employees are able to remain at least six (6) feet apart from other hotel personnel and guests while they are performing their assigned work and during breaks, in addition to any other social distancing protocols required by state or local public health agencies. In no event shall any employee be required to work within six feet of, or in the same room as, an individual who is under quarantine or in isolation, or who has or is suspected to have COVID-19.

56. Owner will comply with all relevant CDC standards, as listed in Exhibit D of this Agreement.

Enforcement

57. Employees shall be considered third-party beneficiaries of the requirements set forth in Paragraphs 48-56.

**Labor Peace –
to ensure
uninterrupted
operation
during public
health
emergency**

58. The Owner shall enter into and shall remain a party to and in full compliance with a Labor Peace Agreement with any bona fide labor organization which requests one and which represents hotel employees in Alameda County. "Labor Peace Agreement" means an agreement that protects the County's proprietary interests in the efficient and uninterrupted operation of the Property during the public health emergency by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicable business.

OPTION TO ACQUIRE PROPERTY

**Option to
Acquire
Property**

59. Option to Acquire Property. Owner hereby grants to County the right and option, but not the obligation, for the County of Alameda, to acquire fee title to the Property from Owner ("Option"), upon terms and subject to conditions set forth in this Agreement during the Option Term (as hereinafter defined). County will provide Owner written notification of the exercise of the Option not less than thirty (30) calendar days prior to the Option Expiration (as hereinafter defined).

- i. **Option Term.** For purposes of this Agreement, the term "Option Term" shall mean the period beginning on the effective date of this Agreement and ending upon the County's termination of this Agreement.
- ii. **Exercise of Option.** The Option herein can only be exercised by County's execution and delivery of a written exercise of Option to Owner at any time during the Option Term. The County Board of Supervisors must approve of the County's execution and delivery of a written exercise of Option to Owner to be provided any time prior to the end of the Option Term. The Option to acquire the Property may be exercised to provide for a closing date on or after the termination of this Agreement.
- iii. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be equal to the fair market value of the Property as determined by an appraisal conducted and approved by the County. The appraisal obtained by County shall comply with Part 3, commencing with Section 11300 of Division 4 of the California Business and Professions Code, the California Code of Regulations, Title 10, Section 3701, and the most recent version of the Uniform Standards of Professional Appraisal Practice.
- iv. **Conveyance of Property.** If the County elects to exercise the Option, the transfer of fee title to the Property shall be in accordance with the terms and conditions of that certain Property Acquisition Agreement by and between County and Owner, acting by and through the, the substantive form of which has been agreed to by and between the Parties as set forth in Exhibit E (the "PSA Form") attached hereto, and incorporated herein by this reference. In accordance with the terms of the Form PSA, the Property shall be conveyed to County by Owner free and clear of liens and encumbrances by a grant deed, subject only to approved conditions of title.
- v. **Escrow.** In accordance with the terms of the PSA Form, the conveyance of the Property shall be handled through escrow to be selected by the County within seven (7) calendar days after the County's exercise of the Option.
- vi. **Memorandum of Option to Purchase.** (Intentionally Omitted)

vii. **Additional Agreements.** The Parties acknowledge and agree that if County exercises the Option, additional agreements will be needed in furtherance of the acquisition of the Property. The Parties agree to promptly obtain all necessary approvals and execute and deliver such papers, documents and instruments and perform all acts reasonably necessary or proper to effectuate the acquisition of the Property by the County.

viii. **Authorization, Approvals, Binding Nature.** Any agreement executed by the County to effectuate the acquisition of the Property in accordance with this Option shall have no force and effect and is not binding on the County of Alameda until and unless it is approved by the Board of Supervisors.

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

COUNTY OF ALAMEDA

Approval Recommended

By _____
RICHARD VALLE
President, Board of Supervisors
County of Alameda, State of California

OWNER

Date _____

Approved as to Form
DONNA ZEIGLER
COUNTY COUNSEL

By _____

By _____
NAME OF AUTHORIZED PERSON,
Title
Company name

Date _____

By _____

Date _____

Exhibit A
Aerial Site Plan

Must be one page. Must be dated, This is an aerial site plan including all parking spaces contiguous to the subject hotel building. Can be Google Earth Picture. Update page 1 of this agreement with the date of this Exhibit.

Exhibit B

Additional terms to follow.

- Detail of 3 meals per day, delivered to the closed door of the room. Considerations will include:
 - Menu, if available
 - Hot/cold
 - Diet and religious restrictions
- Any other additional hotel services not listed elsewhere in this document

**EXHIBIT C
COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease
D	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). Auto policy shall contain, or be endorsed to contain additional insured coverage for the County. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". 7. CANCELLATION OF INSURANCE: Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the Notices provisions, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. 	

Exhibit D

Health and Safety Requirements for Housekeeping and Hotel Staff*

Sanitation of Rooms Between Guest Departure and Arrival

In addition to standard room cleaning procedures usually followed by the hotel provider between guest departures and arrivals, hotel staff will take the following additional cleaning measure for room cleaning between guests:

- All cleaning shall be performed in alignment with guidelines as set forth in the California State Department of Public Health and CalOSHA's publication, "COVID-19 INDUSTRY GUIDANCE: Hotels and Lodging", most recent release date of May 6, 2020 and all updates issued thereafter and incorporated as procedure herein.
- Personal protective equipment and training of housekeepers will be provided in alignment with guidelines available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- Owners shall ensure compliance with social distancing protocol as required and updated by the local health official and as first introduced in the 3/31/20 Alameda County Health Order Section 13(k).
- Owner shall ensure that employees are provided break rooms in compliance with social distancing protocols that avoid congregate settings.
- Owner shall ensure that employees are practicing social distancing while performing all functions.

Sanitation of Guest Rooms During Guest Stays

Guests will be provided cleaning supplies at the beginning of their stay to maintain cleanliness of their own rooms, and informed of their responsibility to maintain cleanliness of their rooms. Hotel staff will not enter the guest rooms during guest stays. Meals will be left for guests outside of their door according to the established meals schedule, and guests should leave dishes and uneaten food outside of their doors for collection, along with any bagged trash and recycling that needs to be disposed of. Any towels and linens that the guest would like to be laundered may be left outside their door every third day in single-use, sealed bags within an established laundry pickup schedule every 3 days, to be exchanged for a clean set of towels and linens.

*County reserves the right to modify these requirements as necessary to conform to any changes to rules, regulations, guidance or advice from public health officials.

Exhibit E

Purchase and Sale Agreement (PSA) Form

REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2020 ("Effective Date"), by and between (hotel ownership info here) and the COUNTY OF ALAMEDA, a political subdivision of the State of California ("Buyer").

RECITALS

For good and valuable consideration the sufficiency and receipt of which is hereby acknowledged and in consideration of the respective agreements hereinafter set forth, it is mutually agreed as follows:

1. Property Included in Sale. Seller hereby agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, the following:
 - (a) That certain real property located at (hotel address) (Assessor Parcel No: (hotel parcel #,) and more particularly described in Exhibit A attached hereto ("Real Property")
 - (b) All rights, privileges and easements appurtenant to the Real Property including without limitation all minerals, oil, gas and other hydrocarbon substances on the Real Property, as well as all development rights, air rights, water, water rights and water stock relating to the Property and any easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property.
 - (c) All improvements and fixtures located on the Real Property including without limitation that certain ___ story building as well as any and all other structures presently located on the Real Property, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Real Property, such as heating, ventilating and air conditioning systems and facilities used to provide any utility services, refrigeration, garbage disposal, recreation or other services on the Real Property (collectively, "Improvements").
 - (d) Personal property ("Personal Property") of Seller located on or in the Real Property and Improvements described in Exhibit B attached hereto.
 - (e) All of the interest of Seller in any intangible personal property now or hereafter owned by Seller and used in the ownership, use and operation of the Real Property, Improvements and Personal Property including without limitation the right to use any trade style or name now used in connection with the Real Property (for use in conjunction with the Real Property only) and

any contract or lease rights, agreements, utility contracts or other rights relating to the ownership, use and operation of the Property, as defined below.

All of the items referred to in Subsections (a), (b), (c), (d) and (e) above are hereinafter collectively referred to as the "Property."

2. Deposit

(a) Within five (5) days of the Effective Date, Buyer shall deposit (**Amount to be determined herein "TBD"**) (\$**TBD**) ("the Initial Deposit") into an escrow to be opened with Old Republic Title Company ("Escrow") in Oakland, which, together with any other amounts deposited by Buyer into Escrow, shall be placed in an interest-bearing account with a federally insured bank, with interest credited to Buyer. The Initial Deposit shall be refunded to Buyer in the event the Escrow does not close for any reason, except as provided in subsection (b) below; however, should Escrow close as provided herein the Initial Deposit shall be applied to the Purchase Price as described in Section 3.

(b) Upon removal of the conditions to closing as described in Section 5, the Initial Deposit shall become non-refundable, shall be applied to the Purchase Price as described in Section 3, (**purchase price**) and No/100 Dollars (\$**TBD**) ("Purchase Price"), which consists of the following:

- a. Deposit: \$ **TBD**
- b. Purchase Balance : \$**TBD**

(b) Payment of the Purchase Balance. The Purchase Balance of \$**TBD** shall be deposited into the Escrow Account by Buyer in cash upon satisfaction of all the terms and conditions of this Agreement by both parties.

3. Due Diligence Period.

(a) Buyer shall have a period of time to inspect the Property and all documents associated with the Property ("Due Diligence Period").

(b) The Due Diligence Period will begin upon the execution of this agreement by the President of the Alameda County Board of Supervisors, the "Effective Date", and will end at 5:00 p.m. (Pacific Time) Seven (7) days thereafter.

(c) Seller shall timely provide Buyer access to the Property and deliver all reports, documents, records, operating statements and other due diligence materials with respect to the Property in Seller's possession to the extent the same are reasonably required to evaluate the Properties including, but not limited to, reports concerning the presence of hazardous materials, asbestos, or lead-based paint (collectively "Documents"). If any Document or access to the Property is not timely delivered to

Buyer, the Due Diligence period may be extended by Buyer by written notice to Seller.

4. **Inspection and Reports.**

- (a) The parties acknowledge the need for Buyer to undertake due diligence and inspections by its own employees or third parties. Buyer shall have the right during the Due Diligence Period to inspect, and arrange for third party inspections of the Property, including its physical, environmental and seismic condition, code compliance and suitability for Buyer's purposes.
- (b) Seller shall work with Buyer to provide prompt access to all areas of the Property and promptly obtain any additional information requested so that all areas can be inspected, including by not limited to the following:
 - i. General building condition
 - ii. Structural condition
 - iii. Roof
 - iv. Mechanical, electrical and plumbing systems
 - v. Life safety systems
 - vi. Toxic, hazardous or contaminated substance matters
 - vii. Accessibility items
 - viii. Soil condition
 - ix. Any other inspections or investigations as deemed reasonable and necessary by Buyer
- (c) Buyer or its employees or third party consultants shall not engage in any invasive investigation or invasive inspection, including, without limitation, any so-called Phase II environmental investigation without obtaining Seller's prior written consent as to the scope of such invasive testing, which consent shall not be unreasonably withheld and which consent shall be deemed to have been given by Seller unless Seller responds to any written request for such consent within two (2) business days of Buyer's request therefor. Seller's consent shall not be withheld to any Phase II environmental testing which is specifically recommended by Buyer's Phase I environmental site assessment for the Property. If the purchase is not completed for any reason Buyer shall restore any portion of the property altered or damaged as a direct result of Buyer's inspections.
- (d) All of the inspections and reports completed for Buyer pursuant to this paragraph shall be at Buyer's sole expense.

5. **Conditions Precedent.** Buyer's obligation to purchase the Property is subject to the following conditions (the "Conditions Precedent") being met and the written verification, by

Buyer that each Condition Precedent is satisfied and/or removed on or before the end of the Due Diligence Period:

- (a) Property Condition. Buyer's acceptance of the condition of the Property. This shall include the right of physical inspections to the property and the following, each of which is subject to specific written verification by Buyer :
 - i. Physical Inspection of the Property, including testing as otherwise set forth in this agreement, and acceptance of the condition.
 - ii. Seller shall provide a list identifying the location of all of hazardous materials, asbestos, or lead-based paint present on the Property. Seller shall also provide all documentation, including but not limited to reports concerning the presence at any time of hazardous materials, asbestos, or lead-based paint present on the Property at any time.

- (b) Documentation, Reports and Records. Buyer's review and approval of the following documentation, reports and records related to the Property.
 - i. Title Reports and Documents:
 - 1. A current preliminary title report on the Property accompanied by copies of all documents referred to in the preliminary title report.
 - 2. Copies of all unrecorded, existing or proposed easements, covenants, restrictions, agreements and other documents which affect title to the Property and which would be binding upon Buyer after the Closing and which are not disclosed by the preliminary title report of which Seller has knowledge, or, if Seller is not aware of any such documents, a certification of Seller that, to the best of Seller's knowledge, no such documents exist.
 - 3. To the extent one exists, Seller's most current survey of the Property and Improvements by a licensed surveyor or civil engineer.

 - ii. Property Operations. Buyer's review and approval of documentation, reports and records concerning Property and its operations including the following:
 - 1. Verification that most recent property taxes are paid.
 - 2. The building operating expenses for the past five (5) years. At the request of Buyer, Seller shall promptly provide any documentation in Seller's possession and those within Seller's ability to obtain related to the operating expenses, including copies of invoices, billings, payments of the expenses and charges to tenants for review and approval. Seller will provide a list of any such documents it is aware of but cannot or has not provided to Buyer.
 - 3. Tenant billings and summaries for the operating expenses for the immediate 12 months preceding exercise of the Option to Purchase.
 - 4. Service contracts related to any item on and being transferred with the Property (for example HVAC, Elevator and Fire/Sprinkler System Service Agreement).

5. Certificates of Occupancy, warranties and other contracts or documents of significance to the Property.
 6. Building permits and certificates of occupancy. (Originals or certified copies shall be provided by Seller by close of escrow.)
 7. The as-built plans and specifications for each building and all Improvements which is either in Seller's possession or Seller is able to obtain by reasonable means including, but not limited to, obtaining plans from the local building and planning department search.
 8. Any and all as-built plans and specifications for the Property, of the structural, roof, mechanical, electrical, plumbing and life safety condition of the Property.
- iii. Improvements. Seller shall provide the following for review by Buyer:
1. Verification that there are no amounts due and owing on any Improvement, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Property, such as heating, ventilating and air conditioning systems and facilities used to provide any utility services, refrigeration, garbage disposal, recreation or other services on the Property and that all such Improvements will pass to Buyer free and clear.
 2. Any and all as-built plans and specifications for the Property, of the structural, roof, mechanical, electrical, plumbing and life safety condition of the Property.
- iv. Regulatory Restrictions. Buyers review and approval of all zoning, land use, environmental and building or construction laws and regulations, plans and policies restricting or otherwise affecting the use, occupancy or other enjoyment of the Property for Buyer's purpose. Seller shall provide Buyer with copies of any relevant documents in its possession or the possession of its agents.
- (c) Title. Buyer's review and acceptance of conditions to title of the Property.
- i. Prior to the expiration of the Due Diligence Period, Buyer will notify Seller in writing of any title exceptions which are not acceptable to Buyer.
 - ii. Not later than one (1) business day after receipt of Buyer's notice, Seller shall notify Buyer in writing of Seller's election whether or not to cure (at Seller's sole expense) any title exceptions which are not acceptable to Buyer. Seller's failure to respond shall be deemed an election by Seller not to cure any such title exceptions.
 - iii. If Seller elects not to cure, the due diligence period shall be extended by 15 days and Buyer shall have 15 days from notice, or the deemed election, by Seller, to notify Seller of its election to either (1) accept any title exceptions which Seller has not elected to cure or (2) terminate this Agreement. Buyer's failure to respond within the 15 days period shall be deemed an election by Buyer to accept any such title exceptions.

- iv. Notwithstanding the foregoing, Seller shall cause any deed of trust recorded in connection with Seller's financing of the Property to be removed at Seller's sole expense at the Closing.
 - v. Notwithstanding the foregoing, Seller must remove all judgment liens prior to Closing.
- (d) Property Occupants. Buyer's review and approval of all documents, reports and records concerning occupants of the Property including:
- 1. Verification that there are no current tenancies, including any holdovers.
 - 2. All leases pertaining to tenancies ending within the last 3 years.
 - 3. A list of any occupants of the Property without a written lease or permission to occupy.
- (e) Personal Property. Buyer's review and approval of all Personal Property described in Exhibit B. Seller shall also remove all personal property not specifically identified on Exhibit B and any identified in Exhibit B that has been requested in writing to be removed by Buyer. Seller shall contact Buyer when all identified personal property is removed so that remaining personal property can be inspected and removal or personal property can be approved.
- (f) Seller shall provide Buyer with each of the documents identified above (other than those items described in clause (b)(iv) Regulatory Restrictions, which shall be Buyer's responsibility, except for those in the possession of Buyer or its agents.) for Buyer's review and approval. Seller shall provide all documents to Buyer within five (5) calendar days of execution of this Agreement.
- (g) If any of the conditions or obligations contained in this Sections 6 are not satisfied, Buyer shall have the right at its election either to (1) extend Seller's time to perform any or all of the conditions, (2) waive the condition in question and proceed with the purchase or, (3) terminate this Agreement. In the event Buyer elects to terminate the Agreement, Buyer shall pay any title and escrow charges, the Initial Deposit shall be returned to Buyer along with any interest earned, and neither party shall have further rights or obligations under this Agreement except for those obligations which expressly survive the termination of this Agreement and, if Buyer has made any deposit, it will be returned in full to Buyer.

6. Title to the Property.

(a) At the Closing, Seller shall convey to Buyer marketable fee simple title to the Real Property, all rights, privileges and easements appurtenant thereto and to the Improvements by a duly executed and acknowledged grant deed in a form acceptable to Buyer. Evidence of delivery of marketable fee simple title shall be the issuance of an American Land Title Association Extended Coverage Owner's Policy ("ALTA"), in the full amount of the Purchase Price by Old Republic Title Company, insuring fee simple title to the Real Property, Improvements and

appurtenant rights, privileges and easements to Buyer, subject only to such exceptions as Buyer shall approve pursuant to Section 5 above. Such policy shall provide full coverage against mechanics' or materialmen's liens arising out of the construction of any of the Improvements and shall contain such special endorsements as Buyer may reasonably require.

(b) At the Closing, Seller shall transfer title to the Personal Property by a bill of sale ("Bill of Sale") in the form as Exhibit C attached hereto.

7. Closing.

(a) The Closing shall occur seven (7) calendar days after the satisfaction or waiver of the conditions in Section 5. The Closing may be extended by mutual agreement in writing by both parties.

(b) At or before Closing, Seller shall deliver to Buyer the following:

(i) Grant deed conveying to Buyer the Real Property, Improvements and all rights, privileges and easements appurtenant thereto as required by this agreement.

1. The Property shall be free and clear of all liens, encumbrances, assessments, easement and taxes, except (A) real property taxes and assessments for the fiscal year in which escrow closes (subject to pro rations) and (B) easements or rights of way over the land portion of the Property for public or quasi-public utilities or public street purposes and (C) such other items as Buyer approves in writing.
2. Notwithstanding any other provision in this Purchase and Sale Agreement, Seller must remove all judgment liens on the subject Real Property before Closing

(ii) Bill of Sale covering the Personal Property and any apparatus, equipment or appliances which are a part of the Improvements in the form attached hereto as Exhibit C.

(iii) A Certificate from the Secretary of State or other appropriate government official of the State of California that as of the Closing there are no filings against Seller in the office of the Secretary of State or other government official under the California Uniform Commercial Code which would be a lien on the items specified in the Bill of Sale (other than such filing, if any, as are being released at the time of Closing);

(iv) Originals or copies of the Service Contracts;

(v) Assignment of Service Contracts in the form attached hereto as Exhibit D;

(vi) Originals or copies of building permits and certificates of occupancy for the Improvements;

(vii) Closing statement in form and content satisfactory to Buyer and Seller; and

(viii) Any other documents, instruments or agreements called for hereunder which have not been previously delivered.

(c) Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(d) Seller and Buyer shall each deposit such other instruments as are reasonably required by the Escrow or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

(e) Real property taxes and assessments, water, sewer and utility charges, amounts payable under the Service Contracts, annual permits and/or inspection fees (calculated on the basis of the period covered) and other expenses normal to the operation and maintenance of the Property shall be prorated as of the Closing on the basis of a 366-day year.

(f) The following charges shall be allocated as follows::

(i) Title fees shall be paid by Buyer

(ii) Escrow fees shall be paid by Buyer

(iii) Documentary County Transfer Tax shall be paid by Buyer

(iv) City Transfer Tax shall be paid by Buyer

(v) Recording Fees shall be paid by Seller as Buyer is exempt from Recording Fees; in addition, Seller shall pay all fees required to remove deeds of trust and any and all judgment liens. Finally, if Seller needs to clear other items from title, Seller pays those recording fees and all related costs.

(g) Seller is solely responsible for payment of any and all broker's commission. Buyer is self-represented. Buyer and Seller acknowledge that, except as set forth here, as the sole responsibility of Seller, no broker's commission or finder's fee is payable in connection with this transaction; and each indemnitor agrees to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind whatsoever arising from or connected with any broker's or finder's fee or commission or charge claimed to be owed to any person arising from the indemnitor's conduct with respect to this transaction, other than the commissions authorized in this Section.

8. Representations and Warranties of Seller. Seller hereby represents, warrants and covenants the following, each of which shall be true in all respects as of the Effective Date and as of the date of Closing and shall survive Closing:

(a) To the best of Seller's knowledge, all physical, structural and mechanical systems, including without limitation the plumbing, heating, air conditioning, electrical and life safety systems are in good operating condition and repair.

(b) To the best of Seller's knowledge, there is no existence of asbestos, PCB transformers or other toxic, hazardous or contaminated substances and/or underground storage tanks in, on or about the Property except for such toxic or hazardous substances which are customarily maintained upon and within buildings similar to the Property for the purpose of ordinary use, maintenance and repair.

(c) To the best of Seller's knowledge, there are now and at Closing shall be no condition existing with respect to the use and operation of the Property that violates or is not in full conformance with any applicable ordinance, regulation or code of any federal, state, county or municipal department, board, body, agency, office or other governmental authority, including any applicable law, ordinance, regulation or code presently enacted but with prospective application.

(d) Except as disclosed in writing to Buyer, Seller does not have any knowledge of any condemnation, zoning or other land use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use and operation of the Property, nor has Seller received notice of any special assessment proceedings.

(e) The survey, mechanical and structural plans and specifications, other reports, certificates of occupancy, warranties and all other contracts or documents delivered to Buyer pursuant to this Agreement or in connection with the execution hereof are true and correct copies.

(f) Except as otherwise disclosed in writing to Buyer, Seller has no knowledge of any lawsuits or legal action that is or are threatened or pending that are likely to have a material, adverse or other detrimental effect on the Property.

(g) To the best of Seller's knowledge, all water, sewer, gas, electric, telephone and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are connected pursuant to valid permits.

(h) All documents executed by Seller which are to be delivered to Buyer at Closing are and at the Closing shall be duly authorized, executed and delivered by Seller, are and at the Closing shall be legal, valid and binding obligations of Seller, are and at Closing shall be sufficient to convey title (if they purport to do so) and do not and at the Closing shall not violate any provisions of any agreement to which Seller is a party or to which it is subject.

(i) To the best of Seller's knowledge, Seller has disclosed all facts relevant to Buyer's use and operation of the Property in the normal manner in which similar properties in the area are operated.

(j) During the Escrow period, Seller shall not enter into any new lease, or option to lease, or extension of an existing lease, or any other contract or agreement pertaining to the Property, unless Seller shall first send to Buyer for approval a copy of the document it proposes to sign, and Buyer approves of the document in writing.

(k) Except as previously disclosed by Seller to Buyer in writing, there are no tenants or other occupants on the Property, there are no current leases and as to any past lease there are no offsets or concessions owed to any tenant.

9. No Back-Up Offers. Seller shall not enter into any other agreements to sell the Property as long as this Agreement is in force.

10. Liquidated Damages. IF, BEFORE THE CLOSE OF ESCROW, BUYER REFUSES WITHOUT CAUSE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT WITHIN 3 BUSINESS DAYS AFTER WRITTEN DEMAND FROM SELLER ON BUYER SO TO DO, THEN BUYER SHALL BE DEEMED IN DEFAULT UNDER THIS AGREEMENT. THE PARTIES RECOGNIZE THAT SELLER WILL INCUR EXPENSE IN THE CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THAT THE PROPERTY WILL BE REMOVED FROM THE MARKET AT A TIME WHEN ITS SALE IS CRITICAL TO SELLER'S INTERESTS; FURTHER, THE PARTIES RECOGNIZE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE DAMAGE TO SELLER CAUSED BY THE BREACH BY BUYER OF THIS AGREEMENT AND THE FAILURE OF THE CONSUMMATION OF THIS AGREEMENT OR THE AMOUNT OF COMPENSATION SELLER SHOULD RECEIVE AS A RESULT OF BUYER'S DEFAULT. THEREFORE, BUYER AND SELLER AGREE THAT IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, SELLER'S DAMAGES SHALL BE FIFTY THOUSAND DOLLARS (\$50,000.00). RECEIPT BY SELLER OF FIFTY THOUSAND DOLLARS (\$50,000.00), EITHER BY THE RETENTION OF FIFTY THOUSAND DOLLARS (\$50,000.00) FROM THE INITIAL DEPOSIT, AS DEFINED HEREIN, SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OR DEFAULT BY BUYER UNDER OR IN CONNECTION WITH THIS AGREEMENT AND SHALL BE INSTEAD OF ANY OTHER MONETARY RELIEF OR ANY OTHER RELIEF TO WHICH SELLER MAY OTHERWISE BE ENTITLED BY VIRTUE OF THIS AGREEMENT AT LAW OR IN EQUITY.

SELLER'S INITIALS

BUYER'S INITIALS

11. Indemnification. Each party hereby agrees to indemnify the other party and hold it harmless from all costs, expenses, penalties, damages and losses including without limitation reasonable attorneys' fees and expenses resulting from any misrepresentations or breach of warranty or breach of covenant made by such party in this Agreement or in any document, certificate or exhibit given or delivered to the other pursuant to or in connection with this Agreement.

12. Loss by Fire or Other Casualty; Condemnation. In the event that prior to Closing the Property or any part thereof is destroyed or materially damaged or if condemnation proceedings are commenced against the Property, Buyer shall have the right, exercisable by giving written notice of such decision to Seller within seven (7) business days after receiving Seller's written notice of such damage, destruction or condemnation proceedings, to terminate this Agreement in which case neither party shall have any further rights or obligations hereunder. If Buyer elects to accept the Property in its then condition, all proceeds of insurance or condemnation awards payable to Seller by reason of such damage, destruction or condemnation shall be paid or assigned to Buyer. In the event of non-material damage to the Property, which damage Seller is unwilling to repair or replace, Buyer shall have the right, exercisable by giving written notice within seven (7) business days after receiving Seller's written notice of such damage, either to:

(a) terminate this Agreement as provided hereinabove in this Section 12, or

(b) accept the Property in its then condition and proceed with the purchase, in which case Buyer shall be entitled to a reasonable reduction of the Purchase Price to the extent of the cost of repairing or replacing such damage. For purposes of any repairs or replacements under this Subsection 11(b), the Closing may be extended, at Buyer's election, for a reasonable time to allow such repairs or replacements to be made.

13. Possession. Possession of the Property shall be delivered to Buyer at Closing; provided, however, that Seller shall afford authorized representatives of Buyer reasonable access to the Property for the purposes of satisfying Buyer with respect to the representations, warranties and covenants of Seller contained herein and with respect to satisfaction of any conditions precedent to the Closing.

14. Maintenance of the Property. Between the Seller's execution of this Agreement and Closing, Seller shall:

(a) Maintain the Property in good order, condition and repair, reasonable wear and tear excepted, and otherwise operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property;

(b) Refrain from performing any grading or excavation, construction or removal of any Improvements or making any other change or improvement upon or about the Property;

(c) Refrain from creating or incurring or suffering to exist any mortgage, lien, pledge or other encumbrances in any way affecting the Property or title without Buyer's prior written approval;

(d) Refrain from committing any waste or nuisance upon the Property;

(e) Observe the use, possession and management of the Property and not execute, extend or otherwise further encumber the Property with contracts, including without limitation equipment maintenance or service contracts beyond the Closing, unless such contracts or agreements are first approved in writing by Buyer; and

(f) Timely make all repairs, maintenance and replacements of equipment or improvements and otherwise operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property.

15. Access to the Property and Buyer's Inspections. The parties acknowledge the need for Buyer to undertake due diligence and inspections by its own employees or third party construction companies, architects, engineers and other consultants. In that regard, the parties agree as follows:

(a) Seller agrees to grant Buyer or Buyer's representative access to the Property during regular business hours from Monday to Friday.

(b) Buyer will be granted full access within three (3) business days after execution of this Agreement by both parties, and continuing through the full due diligence period, to inspect and investigate including the following matters:

- (i) General building condition;
- (ii) Structural condition;
- (iii) Roof;
- (iv) Mechanical, electrical and plumbing systems;
- (v) Life safety systems;
- (vi) Toxic hazardous or contaminated substance matters;
- (vii) Accessibility items;
- (viii) Soil condition; and
- (ix) Any other inspections or investigations as deemed reasonable and necessary by Buyer.

(c) The parties further acknowledge that certain of these investigations may be invasive to the Property. Buyer shall advise Seller in advance of what invasive investigations, inspections, tests and the like that it desires to undertake. To the extent that this transaction is not consummated and escrow does not close, Buyer shall restore the Property to the condition prior to the invasive investigations, inspections and tests.

16. Survival. All warranties, covenants, and other obligations described herein shall survive delivery of the grant deed.

17. Time of the Essence. Time is of the essence of all times and dates set forth in this Agreement.

18. Exhibits. All exhibits attached hereto are incorporated herein by reference.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements whether oral or written. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it shall be effective.

20. Public Notice. Buyer may, at its sole option and expense, cause to be recorded with the Alameda County Recorder a Notice of Contract, in a form reasonably acceptable to Seller, upon execution by both parties of this Agreement.

21. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

23. Merger of Prior Agreements. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

24. Interpretation. Words used in the singular number shall include the plural, and vice-versa and any gender shall be deemed to include each other gender. The captions and headings of the Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

25. Notices. Any and all notices required or permitted under this Agreement or by law shall be given in writing either by personal service, overnight delivery by a reputable delivery company or by registered or certified mail, postage prepaid, and return receipt requested, or by facsimile transmission with a confirmation copy to be sent by mail. Any such notice shall be effective as of the date it is transmitted and mailed or delivered, if transmitted by facsimile transmission on or before 5:00 p.m. Pacific Time; or on the following day if transmitted after 5:00 p.m. Pacific Time. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To Seller:

HOTEL NAME HERE

To Buyer:

County of Alameda
c/o Willie Hopkins, Director
General Services Agency
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612-4305
Facsimile No. 510/208-9711

Copy to:
Real Property Management
General Services Agency
County of Alameda
1401 Lakeside Drive, 6th Floor
Oakland, CA 94612-4305
Facsimile No. 510/268-5374

Second Copy to:
Andrew Massey
Deputy County Counsel
Office of the County Counsel
1221 Oak Street, Ste. 450
Oakland, CA 94612
Facsimile: 510/272-5020

26. Continuation and Survival of Representations and Warranties. All agreements, representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of Closing, shall be deemed to be material and shall survive the execution and delivery of this Agreement and the delivery of the grant deed and transfer of title. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in connection with the transaction contemplated hereby shall constitute representations and warranties hereunder.

27. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

28. Further Assurances. Seller and Buyer agree to execute such additional documents and take such actions as may be reasonable and necessary to carry out the provisions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SELLER
HOTEL NAME HERE

Signature

Name

Date

Title

BUYER
COUNTY OF ALAMEDA,
A political subdivision of the State of California

Date

President, Board of Supervisors
County of Alameda, State of California

APPROVED AS TO FORM:
DONNA R. ZIEGLER
COUNTY COUNSEL
County of Alameda, State of California

By: _____

LIST OF EXHIBITS

Exhibit A: Real Property Description

Exhibit B: Schedule of Personal Property

Exhibit C: Form of Bill of Sale

Exhibit D: Assignment and Guaranty of Service Contracts

Exhibit E: Form of Grant Deed

EXHIBIT A

REAL PROPERTY
(LEGAL DESCRIPTION OF THE PROPERTY)

EXHIBIT B

PERSONAL PROPERTY

**(ANY PERSONAL PROPERTY THAT WILL CONVEY WITH THE SALE. IF NONE, SHOULD
BE NOTED AS SUCH.)**

EXHIBIT C

WARRANTY BILL OF SALE

(THIS ONLY APPLIES IF PERSONAL PROPERTY IS BEING TRANSFERRED. IF NO CONVEYENCE OF PERSONAL PROPERTY THIS SHOULD BE BLANK OR STRICKEN)

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, **HOTEL NAME HERE** (“Seller”) does hereby sell, transfer and convey to the COUNTY OF ALAMEDA, a political subdivision of the State of California (“Buyer”), the following personal property which Seller warrants to be free and clear of all encumbrances, to wit:

The personal property itemized on Schedule 1 attached here to and incorporated herein by this reference.

Seller does hereby covenant with Buyer that the undersigned is the lawful owner of such personal property and that the undersigned has good right to sell the same as aforesaid and shall warrant and defend the title thereto unto Buyer, its successors and assigns, against their claims and demands of all persons whomsoever or entities whatsoever.

DATED as of this ____ day of _____, 2020

SELLER:

HOTEL NAME HERE

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT C
BILL OF SALE FOR PERSONAL PROPERTY
(ONLY USED IS PERSONAL PROPERTY WILL CONVEY. IF NONE, SHOULD BE NOTED
AS SUCH.)

SCHEDULE 1

PERSONAL PROPERTY

**(A LIST OF THE SERVICES CONTRACT THAT GOES WITH CONVEYANCE OF
PERSONAL PROPERTY. IF NONE, SHOULD BE NOTED AS SUCH.)**

EXHIBIT D

ASSIGNMENT AND GUARANTY OF SERVICE CONTRACTS (FOR THE PERSONAL PROPERTY THAT CONVEYS, IF APPLICABLE.)

THIS ASSIGNMENT AND GUARANTY (“Assignment”) is made and entered into as of this ____ day of _____, 2020, by _____ (“Assignor”), to the COUNTY OF ALAMEDA, a political subdivision of the State of California (“Assignee”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns and transfers to Assignee all of its right, title, claim and interest in and under:

A. All of the service contracts listed in Schedule 1 attached hereto and incorporated herein by reference; and

B. Any intangible property now or hereafter owned by Assignor in connection with the real property described in Schedule 2 or any improvements or personal property located thereon, including without limitation the right to use any trade style or name now used in connection with the real property and any agreements, utility contracts or other rights relating to the ownership, use or operation of the real property.

ASSIGNOR AND ASSIGNEE FURTHER AGREE AND COVENANT AS FOLLOWS:

1. Assignor covenants that the service contracts described in Schedule 1 are in full force and effect and there exist no defaults thereunder, nor any acts or events which with the passage of time or the giving of notice could become defaults thereunder, on the part of either party thereto.

2. Assignor shall indemnify and hold Assignee harmless from any and all cost, liability, damage or expense, including without limitation reasonable attorneys’ and expenses, originating prior to the date hereof and arising out of the service contracts described in Schedule 1.

3. Assignee shall indemnify and hold Assignor harmless from any and all cost, liability, damage or expense, including without limitation reasonable attorneys’ fees and expenses, originating subsequent to the date hereof and arising out of the service contracts described in Schedule 1.

4. In the event of any litigation between Assignor and Assignee arising out of the obligations of Assignor under this Assignment, the losing party shall pay the prevailing party’s costs and expenses of such litigation, including without limitation reasonable attorney’s fees and expenses.

5. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of Assignor and Assignee.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR

HOTEL

Signature

Name

Date

Title

ASSIGNEE

COUNTY OF ALAMEDA,

A political subdivision of the State of California

President, Board of Supervisors
County of Alameda, State of California

Date

APPROVED AS TO FORM:

DONNA R. ZIEGLER

COUNTY COUNSEL

County of Alameda, State of California

By: _____
Deputy

EXHIBIT D

SCHEDULE 1

SERVICE CONTRACTS

(CONTRACTOR DETAILS/CONTACT INFO/CONTRACT DOCUMENTS FOR SERVICE CONTRACTS THAT WILL CONVEY. IF NONE, SHOULD BE NOTED AS SUCH.)

EXHIBIT D

SCHEDULE 2

REAL PROPERTY

(TRADEMARKS, COPYRIGHTS, ETC. IF NONE, SHOULD BE NOTED AS SUCH.)