

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING</u> <u>PREMISES LOCATED AT</u> Holiday Inn Express 1250 Old Bayshore Highway, Burlingame, California
<u>OWNER'S FED. TAX. I.D. NO.</u> 47-4906161

Preamble THIS EMERGENCY OCCUPANCY AGREEMENT, made and entered into this 16th day of March, 2020 by and between

**GRM BAYSHORE PROPERTY OWNER, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

hereinafter called the Owner, without distinction as to number or gender, and

COUNTY OF SAN MATEO

hereinafter called 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 Burlingame, County of San Mateo, State of California, for use as a temporary COVID-19 quarantine facility and for other temporary purposes related to the County's response to the COVID-19 outbreak. The Premises are more particularly described as follows:

The entire Holiday Inn Express located at 1250 Old Bayshore Highway, Burlingame, CA, including all nonexclusive unobstructed parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities with the exception of any pool, sauna, spa or other aquatic facilities. The County shall have access to and use of the occupied premises set forth in this occupancy agreement 24 hours per day, seven (7) days per week, with no exceptions.

Term 2. The term of this occupancy agreement shall commence on March 20, 2020, and shall continue for ~~forty-five (45) days and thereafter~~ month to month, with such rights of termination as may be hereinafter expressly set forth.

3. The County may terminate this occupancy agreement at any time by giving written notice to the Owner at least ~~thirty (30)~~ **thirty (30)** days prior to the date when such termination shall become effective, subject to an initial term of forty-five (45) days. If the County fails to complete its move out ten (10) days prior to the end of the notice period, rent shall be paid for an additional thirty (30) day period. The ten (10) day early vacation is required to allow Owner to prepare the occupied premises for customary hotel business and restart any interruption in its franchise agreement. The County may also give notice of termination of this occupancy agreement if it never takes actual occupancy of the facilities after execution of this agreement, which termination shall be effective 21 days following the delivery of notice of the County's intention not to occupy, subject to a minimum term of forty-five (45) days. In no event shall this agreement extend beyond August 31,

2020, unless agreed to by the parties in a written addendum.

Rent

4. Rental payments shall be paid by the County at the monthly rate of seven hundred four thousand seven hundred dollars (\$704,700), which is calculated as \$162 per room per day for 145 rooms for a 30 day period, pro-rated for partial periods.

Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified, based on the actual number of days in the month. 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. Any holdover rent shall be at 105% of the rental payment.

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Notices

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

To the Owner: GRM Bayshore Property Owner, LLC

388 2ND Avenue

San Francisco, CA 94118

Phone No.: (415) 685-5962

Email: andreferrigno@gmail.com

To the County:

Michael Callagy, County Manager

400 County Center, 1st Floor

Redwood City, CA 94063

Phone No.: 650-363-4123

Email: mcallagy@smcgov.org

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

Rental payments shall be made payable to: GRM Bayshore Property Owner, LLC

and mailed to: 388 2ND Avenue

San Francisco, CA 94118

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

Parking

6. Parking spaces, upon commencement of the occupancy agreement, shall be unobstructed and completely accessible for County's use.

**Services,
Utilities, and
Supplies**

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

- A. Sewer, trash disposal, and water service (including both hot and cold water to the lavatories and disposal of wastewater), and heating, ventilation and air conditioning.
- B. Elevator (if any) service.
- C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for County's operations.

Any entry by an employee of Owner or its related party shall be subject to the approval of such employee to enter the premises. 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 County shall maintain the occupied premises in good repair.

Assignment and Subletting

9. The County shall not assign this occupancy agreement without prior written consent of the Owner, which shall not be unreasonably withheld, but shall in any event have the right to sublet the occupied premises. No change in use shall be permitted without Owner's consent, which may be withheld in its sole discretion.

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.

In the event the County 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 County 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 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.

Surrender of Possession

13. Upon termination or expiration of this occupancy agreement, the County 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 County has no control or for which Owner is responsible pursuant to this occupancy agreement. Pools, saunas, spas and other aquatic facilities on the premises shall remain in the control and the responsibility of Owner and County assumes no obligation to maintain the pools, saunas or aquatic facilities. Owner may retain such possession and control of these aquatic facilities to maintain their function and to enable them to be returned to regular use upon termination or expiration of the occupancy agreement.

Time of Essence, Binding upon Successors

14. 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

15. 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

16. Owner has approved the COI of Insurance and/or insurance requirements provided by the County and attached hereto as Schedule 1.

Applicable Laws

17. The 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 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 County's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the County shall indemnify, defend, and hold harmless any of these individuals against such liability. Where the County is found to be in breach of this provision due to the issuance or a government order directing the County to cease and desist any illegal action in connection with a hazardous substance, or to

remediate a contaminated condition caused by the County or any person acting under the County direct control and authority, the County 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. 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 the County and Owner for all efforts and expenses thereto.

Restoration of Premises

18. 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 the County shall remove such property when vacating the premises. County 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. County shall clean the premises in accordance with then current health and safety protocols established by public health officials for the intended use, immediately prior to vacating the premises.

Access

19. Owner shall allow the County or its agents to enter the premises as of 11:59AM on March 20, 2020, to stage and prepare the property for tenants, or other parties, or for any other purpose the County deems necessary.

Hotel Staff Compensation

20. Owner shall remain responsible for all payments due hotel staff during the term of this Occupancy Agreement.

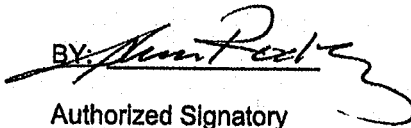
Operational Hand-off

21. Owner shall provide operational hand-off with instructions as needed and as of the occupancy agreement occupancy date of March 20, 2020, the hotel shall be completely vacated and no staff will be permitted to enter without prior authorization from the County.

IN WITNESS WHEREOF, THIS Occupancy Agreement has been executed by the parties hereto as of the dates written above.

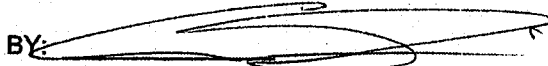
County of San Mateo

GRM Bayshore Property Owner, LLC

BY: 

Authorized Signatory

3-17-20

BY: 

Authorized Signatory

3-17-2020