

AMENDMENT NO. 1 TO EMERGENCY TEMPORARY OCCUPANCY AGREEMENT

Amendment No. 1 to the PRE-PURCHASE POSSESSION AGREEMENT, dated August 5, 2020 (the "**Amendment**"), KARVINS Hotels Inc., a Texas Corporation (the "**Seller**"), and the City of Austin, a Texas home-rule city and municipal corporation situated in Travis, Williamson, and Hays County, Texas (the "**Buyer**" and together with Seller, the "**Parties**," and each, a "**Party**").

WHEREAS, the Parties have entered into a PRE-PURCHASE POSSESSION AGREEMENT, dated May 12, 2020, the "Existing Agreement"); and

WHEREAS, the Parties hereto desire to amend the Existing Agreement on the terms and subject to the conditions set forth herein; and

WHEREAS, pursuant to Section 19(i) of the Existing Agreement, the amendments contemplated by the Parties must be contained in a written agreement signed by each Party

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

2. Amendments to the Existing Agreement.

a. The first "WHEREAS" clause is deleted in its entirety and replaced with the following:

"WHEREAS, the Parties have entered into a Purchase and Sale Agreement dated May 12, 2020, (the "Contract") for certain property set forth in Section 1(a) of the Contract (the "Property") providing that closing is to occur, subject to Buyer's right to extend, on or before September 9, 2020 (the "Closing"); and"

b. Section 4. (Payment) of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

"Payment.

Subject to the rights of termination, Buyer shall pay Seller a pre-closing occupancy fee for occupancy of the Property as follows (the "PCOF"):\$ 500,000.00 from May 18, 2020, to August 16, 2020, and \$5,500.00 per day for every day of occupancy from August 17, 2020 to September 16, 2020, and \$5,000.00 per day thereafter until Closing provided that Buyer will not pay a PCOF for the day Closing occurs."

The PCOF will include compensation for real property taxes, insurance, and all other charges incurred by the Owner during the Term.

The Buyer will pre-pay the PCOF in thirty-day increments provided that any days of occupancy that are pre-paid and will not be used because they fall on or after Closing will be

applied as a credit to the Purchase Price at Closing. However, none of the PCOF funds paid for any periods prior to Closing shall be applied toward the Purchase Price at Closing.”

c. As of the Effective Date, the Existing Agreement is hereby amended or modified by adding the following new sections immediately after Section 36:

“37. Contract Work Hours and Safety Standards Act.

a. The Owner shall not require or permit any laborer or mechanic employed by the Owner, in any workweek in which he or she is employed, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. In the event of any violation of the clause set forth in this section, the Owner shall be liable for the unpaid wages. In addition, the Owner shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

c. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable under this Agreement or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, by and between the City and the Owner, such sums as may be determined to be necessary to satisfy any liabilities of the Owner for unpaid wages and liquidated damages as provided in the clause set forth in this section.

d. The Owner shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Owner shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

38. Clean Air Act.

a. 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. § 7401 et seq.

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

c. 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.

39. Federal Water Pollution Control Act.

a. 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. 1251 et seq.

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

c. 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.

40. Suspension and Debarment

a. This contract 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's 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).

b. 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.

c. This certification is a material representation of fact relied upon by the City. 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 City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The Owner agrees to include a provision requiring such compliance in its lower tier covered transactions.

41. Byrd Anti-Lobbying Amendment. *Owner Certifies, and will submit to the City the Certification attached here as Attachment A, that it 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. Owner shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded to the City who in turn will forward the certification to the awarding agency."*

42. Access to Records. *The following access to records requirements apply to this contract:*

a. The Owner agrees to provide the City, 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 contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. 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.

c. The Owner agrees to provide the FEMA Administrator or his authorized representatives access to the Hotel.

d. In compliance with the Disaster Recovery Act of 2018, the City 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.

43. Compliance with Federal Law, Regulations, and Executive Orders. 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.

44. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Owner, or any other party pertaining to any matter resulting from the Agreement.

45. Program Fraud and False or Fraudulent Statements or Related Acts. The Owner acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Owner's actions pertaining to this contract."

b. As of the Effective Date, the Existing Agreement is hereby amended or modified by adding a new Attachment A, attached to this Amendment as "**Attachment A**".

3. Date of Effectiveness; Limited Effect. This Amendment will become effective on the date first written above (the "Effective Date"). Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the Existing Agreement as amended by this Amendment.

4. Miscellaneous.

a. This Amendment are governed by, and construed in accordance with, the laws of the State of Texas, United States of America without giving effect to the conflict of laws provisions thereof.

b. This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

c. The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

d. This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.

e. This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, this occupancy agreement has been executed by the parties hereto as of the date above.

CITY OF AUSTIN

By _____

Name: Alex Gale

Title: Officer, Office of Real Estate Services

KARVINS Hotels Inc., a Texas Corporation

By _____

Name:

Title:

Approved as to Form

By _____

Name: _____

Title: Assistant City Attorney

**Attachment A –
Required Byrd Anti- Lobbying Certification**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. 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.

2. 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. 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 section 1352, title 31, U.S. Code. 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.

5. The Owner, KARVINS Hotels Inc., a Texas Corporation , 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

KARVINS Hotels Inc., a Texas Corporation

By_____

Name:

Title: