

AMENDMENT NO. 2 TO EMERGENCY TEMPORARY OCCUPANCY AGREEMENT

This AMENDMENT NO. 2 TO EMERGENCY TEMPORARY OCCUPANCY AGREEMENT, dated July 30, 2020, (the "**Amendment**"), is by and between DBG Austin Hotel LLC (the "Owner"), and the City of Austin, a Texas home-rule city and municipal corporation situated in Travis, Williamson, and Hays County, Texas (the "City" and together with the Owner the "Parties" and each individually a "Party").

WHEREAS, the Parties have entered into an EMERGENCY TEMPORARY OCCUPANCY AGREEMENT, dated April 24, 2020 as amended by AMENDMENT NO. 1 TO EMERGENCY TEMPORARY OCCUPANCY AGREEMENT dated June 18, 2020, (collectively referred to as the "**Existing Agreement**"); and

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

WHEREAS, pursuant to Section 17 of the Existing Agreement, the amendment 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. As of the Effective Date, the Existing Agreement is hereby amended or modified as follows:

(a) Section 2. (Term) of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

"Term. The term of this Agreement shall commence on April 25, 2020 (the "Commencement Date"), and shall expire at 11:59 p.m. on September 30, 2020, with such rights of termination as may be hereinafter expressly set forth (the "Term")." The Term of this Agreement may be extended by the City for three successive one-month terms (the "Extension Terms") by sending written notice to the Owner on or before the 10th calendar day prior to the expiration of the Term or any Extension Term."

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

"a. Subject to rights of termination, a fee for the use of the Occupied Premises shall be paid by the City to the Owner, from legally available funds, as follows (the "Occupancy Fee"):

i. \$3,780 PER DAY FOR THE TERM;

a. \$22,680.00 FOR APRIL 25, 2020, THROUGH APRIL 30, 2020;

- b. \$117,180 PER MONTH FOR THE MONTHS OF MAY, JULY, and AUGUST, 2020 (\$3780 x 31 days);*
- c. \$113,400 PER MONTH FOR THE MONTHS OF JUNE AND SEPTEMBER 2020 (\$3780 x 30 days);*
- ii. \$3,780.00 PER DAY FOR ANY EXTENSION TERMS; and*
- iii. THE DAILY RATE FOR ANY PERIOD LESS THAN ONE MONTH SHALL BE \$3,780.00”*

3. Date of Effectiveness; Limited Effect. This Amendment will be 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, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement will mean and be a reference to the Existing Agreement as amended by this Amendment.

4. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

- (a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.
- (b) The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.
- (c) This Amendment has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

5. Miscellaneous.

- (a) This Amendment and all related documents 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 to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

(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, the Parties have executed this Amendment as of the date first written above.

CITY OF AUSTIN

By _____

Name: Alex Gale

Title: Interim Director

DBG Austin Hotel LLC

By  _____

Name: Arjun Demla

Title: Associate

Approved as to Form

By: _____

Name: Sean Creegan

Title: Assistant City Attorney