

COUNTY OF SANTA BARBARA

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT:</u>
1920 STATE STREET, SANTA BARBARA, CA 93101
<u>OWNER'S FED. TAX. I.D.:</u>
<u>TENANT AGENCY:</u> County of Santa Barbara

File No:

EL-

Preamble

THIS OCCUPANCY AGREEMENT, made and entered into this day of April 26, 2021 by and between **PARADISE HOTELS, INC., dba ORANGE TREE INN, 1920 STATE STREET, SANTA BARBARA, CA 93101** hereinafter called the Owner, without distinction as to number or gender, and the County of Santa Barbara, acting by and through the Director of General Services, hereinafter called the County. This Agreement is entered into pursuant to the County Board of Supervisor's December 15, 2020 delegation of authority to the General Services Director to negotiate and execute Real Property contractual agreements and leases that involve the license, lease, or acquisition of property that is necessary for the purpose of managing the County's response to the COVID-19 pandemic, the President's March 13, 2020 National Emergency Declaration and his March 22, 2020 Major Disaster Declaration for California beginning on January 20, 2020; the Governor's State of Emergency Proclamation dated March 4, 2020; guidance issued by the California Department of Public Health that includes the need to practice social distancing; the Local Emergency Proclamation made by the County of Santa Barbara Director Emergency Services on March 12, 2020 and ratified by the County Board of Supervisors on March 17, 2020; the County of Santa Barbara's Proclamation of a Local Health Emergency on March 12, 2020, ratified by the County Board of Supervisors on March 17, 2020; Santa Barbara County Code Chapter 12; and Executive Orders N-25-20 and N-33-20, in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety.

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 Santa Barbara, County of Santa Barbara, State of California, and more particularly described as follows:

The Orange Tree Inn property located at, APN 025-372-015 and more commonly known as **1920 STATE STREET, SANTA BARBARA, CA 93101**, as depicted on the attached Exhibit "A", and 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 occupy a fluctuating number of rooms, up to 45, and pay for rooms based on the actual daily occupancy. The County shall have exclusive access to and use of the occupied premises and the lobby as set forth in this occupancy agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions.

The County is executing this Occupancy Agreement in order to support its efforts to respond to the COVID-19 epidemic in a manner consistent with the above-referenced Emergency Proclamations and Orders and to provide emergency shelter and housing for specified members of the public during this period of emergency. All provisions of this Occupancy

Agreement shall be read and construed in a manner that is consistent with this stated purpose.

Term

2. The term of this occupancy agreement shall commence on April 26, 2021, and shall continue month to month, with such rights of termination as may be hereinafter expressly set forth.

Early Termination

3. The County or Owner may terminate this occupancy agreement at any time, with or without cause, by giving written notice to the other at least thirty (30) days prior to the date when such termination shall become effective. County and Owner may agree on a shorter notice period, which will be based on a prorated daily room rate.

Rent

4. Rental 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 ONE HUNDRED AND 00/100 DOLLARS (\$100.00) DURING THE TERM OF THIS OCCUPANCY AGREEMENT.

Owner shall provide a monthly invoice to the County at the address below based on each room occupied, multiplied by the number of days actually occupied in that month, and then multiplied by the daily room rate. Rental 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 to: **GENERAL SERVICES DEPARTMENT
SANTA BARBARA COUNTY
105 E. ANAPAMU STREET, ROOM 108
SANTA BARBARA, CA 93101**

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:

**ORANGE TREE INN
ATTN: CONRAD PERRY
1920 STATE STREET, SANTA BARBARA, CA 93101**

Phone No.: 805-708-8088

Hotel No.: _____

Email: conrad@treeinns.com

To the County:

**COUNTY OF SANTA BARBARA
GENERAL SERVICES**

**105 E. ANACAPA STREET
SANTA BARBARA, CA 93101**

Phone No. (805) 568-2625

FAX No. (805) 568-3414

Email: EOCLogs@countyofsb.org

**ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
COUNTY OF SANTA BARBARA AND PREMISES ADDRESS**

Rental warrants shall be made payable to: **ORANGE TREE INN**

and mailed to: **ORANGE TREE INN**
ATTN: CONRAD PERRY
1920 STATE STREET, SANTA BARBARA, CA 93101

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 and provided at no additional cost.

**Services,
Utilities, and
Supplies**

7. Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions including but not limited to 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., if any:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- 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.
- D. Linen/terry and laundry services not less than one time every 7 days.
- E. Vacuum cleaner shall be provided for guests to vacuum their own rooms.
- F. Standard hotel toiletries shall be provided for all guests.
- G. Smoking is permitted on the hotel balconies.

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.

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.

8. County, at County's sole cost and expense shall:

A. Contract with Big Green or similar janitorial service to provide standard hotel janitorial service for the bathrooms not less than one time every 7 days, and to clean/sanitize the room and bathroom upon checkout of County guests.

**Repair and
Maintenance**

9. During the term of this occupancy agreement, the Owner shall provide on-call maintenance services and maintain the occupied premises in good repair and tenantable condition.

Assignment

10. The County shall have the ability to assign this Occupancy Agreement to other state, local or federal government agencies or non-profit organizations without Owner's consent. Furthermore, the County shall have the ability to permit and allow specified members of the public to occupy the Premises as part of the County's response to the COVID-19 outbreak.

Quiet Possession

11. 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

12. 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

13. 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

14. 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**

15. 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 County to implement such article.

Holding Over

16. In the event the County fails to complete its move out or otherwise remains in possession of any portion of the Premises after the expiration or noticed termination date of the Occupancy Agreement term, or any extension or renewal thereof, this Occupancy Agreement shall be automatically extended on a month to month basis, for a maximum of two months. In the event the County exceeds two extensions, the room rate shall increase 25% to One Hundred and Twenty-Five Dollars (\$125.00) during the term of this occupancy agreement. 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 based on the rental amounts described in Section 4 above and limited to the actual number of rooms occupied by the County following the effective date of termination. The terms of this Occupancy Agreement will continue to apply as to the premises occupied until the County vacates.

**Surrender of
Possession**

17. 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.

**Time of
Essence,
Binding upon
Successors**

18. 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**

19. 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

20. Owner understands and agrees to the following:

County is self-insured for any general, automobile and/or professional liability losses up to \$500,000 per occurrence. In addition, the County purchases Medical Malpractice and Excess Liability with limits in excess of \$5,000,000 and Workers' Compensation Insurance (statutory limits) through the CSAC Excess Insurance.

County will provide proof of insurance for its general/auto liability and workers' compensation coverage.

**Authority, a
joint power
authority.
Hazardous
Substance**

21. 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**

22. (a) 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. 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 per the current health and safety protocols established by public health officials, immediately prior to vacating the premises.

(b) Except for County's gross negligence or willful misconduct, the Parties mutually agree that in no event shall County be liable to damage to the Premises in an amount greater than \$200,000 for its use of the Premises during the term of this Occupancy Agreement. Furthermore, prior to filing any claim for such damage against the County, or instituting any suit in equity or law against the County related to this Occupancy Agreement, Owner shall make demand on the County, and County shall thereafter have the right to self-perform any necessary repairs, or to take any other remedial action, to the Premises.

(c) Owner agrees that in no event shall County be liable to Owner for any alleged damages to business reputation due to the use of Premises by County under this Occupancy Agreement.

Access

23. Owner shall allow County or its agents to enter the premises as of 7:00 A.M. on April 26, 2021 to stage and prepare the property for occupants, or other parties, or for any other purpose County deems necessary. County shall have the opportunity to inspect the premises and document any existing damages or defects, for which it shall not be held liable.

Indemnification 24. 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.

Taxes 25. Owner is solely responsible for all tax liabilities, including property taxes.

Exclusive Use 26. 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. No room that is kept vacant pursuant to this Section shall be considered occupied for purposes of calculating the rent that County owes to Owner pursuant to this Agreement.

Occupancy of Premises

27. 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 they have not entered into any agreements with the occupants of the hotel rooms related to the use of the Premises. 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

Orders of State or Local Public Health Officials; Executive Orders

28. County and Owner mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Occupancy Agreement that Parties to this Occupancy Agreement cannot presently predict. County and Owner mutually acknowledge and agree that this Occupancy Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like ("Official Actions"), and if the provisions of any such Official Actions materially impact the terms of this Occupancy Agreement, the provisions of those Official Actions shall govern.

In the event that such Official Actions make occupancy and/or use of the Premises by County under this Occupancy Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to Owner in the manner described herein, and County and Owner mutually agree that this Occupancy Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding rent to due to Owner pro-rated from the date of the Official Action, along with all other remaining sums due to Owner, within thirty (30) calendar days from the date of that Official Action.

Governing Law; Venue

29. In the event of a dispute between the Parties to this Occupancy Agreement regarding or related to the terms and provisions contained herein, County and Owner mutually agree that the sole venue for any such dispute shall be the Superior Court of the County of Santa Barbara, and that the terms and provisions of this Occupancy Agreement shall be interpreted under the laws of the State of California.

Mutual Drafting; Opportunity to Consult Counsel

30. County and Owner mutually represent and warrant that they have each had the opportunity to be represented by counsel of their choice in negotiating this Occupancy Agreement, and therefore this Occupancy Agreement shall be deemed to have been negotiated and prepared at the joint request, direction and construction of the Parties, at arm's length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to either Party, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Occupancy Agreement.

Severability 31. In the event any parts of this Occupancy Agreement are found to be void, the remaining provisions of this Occupancy Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

Counterparts 32. This Occupancy Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

Remedies 33. Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under the Occupancy Agreement, at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

FEDERAL PROVISIONS

Clean Air Act 34. 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.

35. 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.

36. 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 37. 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.

38. 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 State Water Resources Control Board, the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

39. 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 40. 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).

Owner represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Owner agrees that neither Owner nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Occupancy Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.

41. 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.

42. 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.

43. 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)

44. Owners who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. 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.

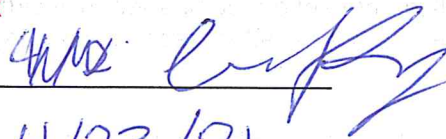
C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

4/23/21

Procurement of Recovered Materials

45. 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.

46. 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>

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

Access to Records

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

- i. The Owner agrees to provide the County, the State, 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. The Owner agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of:
(a) the date of termination or expiration of this Agreement or (b) the date County

makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Owner agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

Department of Homeland Security Seal, Logo, Flags

49. 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

50. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Owner shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Owner's failure to so comply shall constitute a material breach of this contract. Owner agrees to include the foregoing clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Owner acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements. The Owner agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

No Obligation by Federal Government

51. 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, Owner, or any other party pertaining to any matter resulting from the contract. Owner agrees to include this clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

52. 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.

MBE/WBE Requirements

53. The County intends to seek reimbursement from FEMA. Accordingly, the Owner shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises,

Incorporation of Uniform Administrative Requirements

and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- F. If subcontracts are to be let, Owner shall take the affirmative steps listed in 2 CFR 200.321.

54. The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Owner shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the FEMA terms and conditions.

55. Notice. The primary purpose of this clause is to obtain prompt reporting of COUNTY conduct that OWNER considers to constitute a change to this contract. Except for changes identified as such in writing and signed by COUNTY, the OWNER shall notify the COUNTY in writing promptly, within five (5) calendar days from the date that the OWNER identifies any Government conduct (including actions, inactions, and written or oral communications) that the OWNER regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the OWNER, the notice shall state

- A. The date, nature, and circumstances of the conduct regarded as a change;
- B. The name, function, and activity of each Government individual and OWNER official or employee involved in or knowledgeable about such conduct;

- C. The identification of any documents and the substance of any oral communication involved in such conduct;
- D. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- E. The particular elements of contract performance for which OWNER may seek an equitable adjustment under this clause, including:
 - What line items have been or may be affected by the alleged change;
 - What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- F. OWNER'S estimate of the time by which COUNTY must respond to OWNER notice to minimize cost, delay or disruption of performance.

56. Continued Performance. Following submission of the required notice, OWNER shall diligently continue performance of this Agreement to the maximum extent possible in accordance with its terms and conditions as construed by the CONTRACTOR.

57. COUNTY Response. COUNTY shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, COUNTY shall either --

- A. Confirm that the conduct of which OWNER gave notice constitutes a change and when necessary direct the mode of further performance;
- B. Countermand any communication regarded as a change;
- C. Deny that the conduct of which OWNER gave notice constitutes a change and when necessary direct the mode of further performance; or
- D. In the event the Contractor's notice information is inadequate to make a decision, advise OWNER what additional information is required, and establish the date by which it should be furnished and the date thereafter by which COUNTY will respond.

58. Equitable Adjustments.

- A. If the COUNTY confirms that COUNTY conduct effected a change as alleged by the OWNER, and the conduct causes an increase or decrease in the OWNER cost of, or the time required for, performance of any part of the work under this Agreement, whether changed or not changed by such conduct, an equitable adjustment shall be made --
 - i. In the contract price or delivery schedule or both; and
 - ii. In such other provisions of the Agreement as may be affected.
- B. The Agreement shall be modified in writing accordingly. The equitable adjustment shall not include increased costs or time extensions for delay resulting from OWNER'S failure to provide notice or to continue

performance as provided herein.


59. In the event COUNTY determines, in its sole discretion, that Owner is not in compliance with the terms and conditions set forth herein, COUNTY or the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- A. Wholly or partly suspend or terminate the Agreement. Require payments as reimbursements rather than advance payments;
- B. Withhold authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- C. Require additional, more detailed financial reports;
- D. Require additional project monitoring;
- E. Require OWNER to obtain technical or management assistance;
- F. Establish additional prior approvals; or
- G. Take other legally available remedies.

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

"OWNER"

**PARADISE HOTELS, INC., dba ORANGE TREE INN
CONRAD PERRY**

By: 
Name: Conrad Perry
Date: 4/23/21

COUNTY OF SANTA BARBARA SIGNATURES

ATTEST:

MONA MIYASATO
CLERK OF THE BOARD

By: _____

COUNTY OF SANTA BARBARA:

DocuSigned by:
Janette D. Pell

Janette Pell
Director of General Services
County of Santa Barbara

Date: 4/23/2021 | 7:23 AM PDT

APPROVED AS TO FORM
MICHAEL C. GHIZZONI
COUNTY COUNSEL

DocuSigned by:
Teresa Martinez
By: _____
Teresa Martinez, Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

DocuSigned by:
Betsy Schaffer
By: _____
Deputy

APPROVED:

DocuSigned by:
Kelly Hubbard
By: _____
Director, Office of Emergency Management

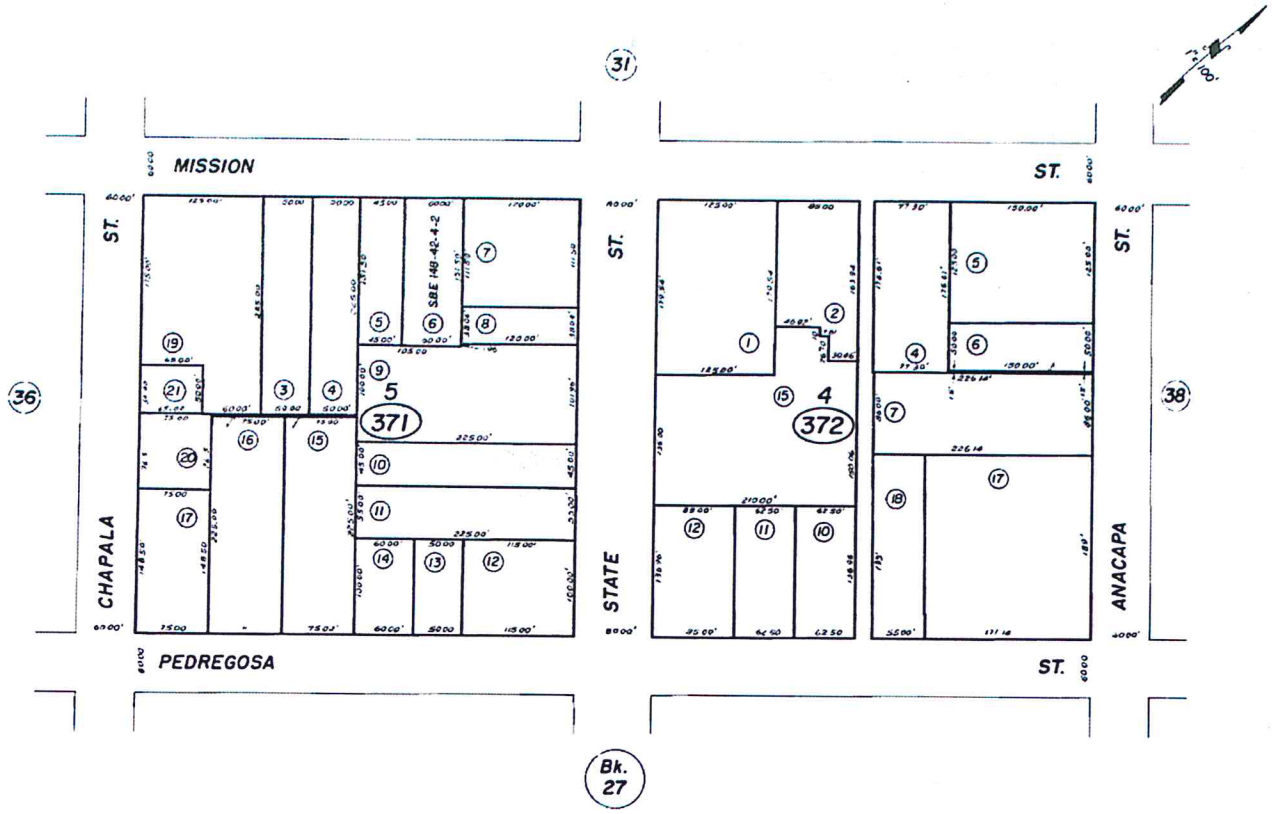
APPROVED:

DocuSigned by:
Ray Aramatorio
By: _____
Risk Manager

EXHIBIT A

PUEBLO LANDS

25-37



Bk. 27

Assessor's Map Bk.25 -Pg.37
County of Santa Barbara, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

LP/34 372 00 9 03 1076 17 1 12