

**SIXTH AMENDMENT
TO EMERGENCY AGREEMENT**

(Hotel Whitcomb)

THIS **SIXTH AMENDMENT TO EMERGENCY AGREEMENT** (this “**Amendment**”), is made and entered into as of September 1, 2022, by and between 1231 Market Street Owner L.P., a Delaware limited partnership (“**Hotel**”), and the City and County of San Francisco, a municipal corporation (“**City**”), acting by and through its Human Services Agency (the “**HSA**”), and with reference to the following facts and circumstances:

RECITALS

A. City and Hotel are parties to that certain Emergency Agreement, dated as of April 4, 2020 (the “**Emergency Agreement**”), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a four hundred fifty-nine (459) room hotel located at 1231 Market Street, in the City and County of San Francisco, commonly known as the “Hotel Whitcomb” (the “**Improvements**”), to further the public health and safety in connection with City’s response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020.

B. The Emergency Agreement was amended pursuant to that certain First Amendment to Emergency Agreement by and between City and Hotel, dated as of May 15, 2020 (the “**First Amendment**”), as further amended by that certain Second Amendment to Emergency Agreement by and between City and Hotel, dated as of July 27, 2020 (the “**Second Amendment**”), as further amended by that certain Third Amendment to Emergency Agreement by and between City and Hotel, dated as of August 28, 2020 (the “**Third Amendment**”), as further amended by that certain Fourth Amendment to Emergency Agreement, by and between City and Hotel, dated as of May 3, 2021 (the “**Fourth Amendment**”), and as further amended by that certain Fifth Amendment to Emergency Agreement by and between City and Hotel, dated as of March 1, 2022 (the “**Fifth Amendment**”, and together with the Emergency Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, the “**Agreement**”). The Fifth Amendment was entered into pursuant to San Francisco Board of Supervisors (the “**Board**”) Resolution No. 71-22, adopted March 1, 2022.

C. The Board adopted Resolution No. [REDACTED] on March [REDACTED], 2022 (the “**Resolution**”), to authorize the extension of the Booking Period from August 31, 2022, to **March 31, 2023**, and to increase the Compensation under the Agreement by Nine Million Five Hundred Ninety-Six Thousand, One Hundred Forty-Eight Dollars (\$9,596,148), from Seventy-Eight Million Nine Hundred Seventy-Two Thousand, One Hundred Seventy-Nine Dollars (\$78,972,179) to Eighty-Eight Million Five Hundred Sixty-Eight Thousand, Three Hundred Twenty-Seven Dollars (\$88,568,327).

D. City and Hotel now desire to enter into this Amendment to, among other things, (a) extend the Booking Period, (b) establish a baseline of current conditions at the Improvements, and (c) increase the Compensation, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this Amendment by this reference, the mutual covenants and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Hotel hereby agree as follows:

Section 1. Definitions. Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Section 2. Amendment of Agreement. The Agreement is hereby amended as follows:

(a) **Amendment of Section 2.1.** *Section 2.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“2.1 Term.

2.1.1. The term of this Agreement commenced on April 8, 2020, and will expire of its own accord on **March 31, 2023** (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. In accordance with Section 8.1.1, City may terminate this Agreement by providing at least sixty (60) days’ written notice to Hotel of such termination.

2.1.2. On the conditions set forth below, City shall have the right to extend the Booking Period on a month-to-month basis by providing no less than thirty (30) days’ prior written notice to Hotel; provided, that (i) in no event shall any extension extend beyond **August 31, 2023**, and (ii) any extension of the Booking Period beyond **March 31, 2023**, shall require the Executive Director of HSA to first obtain the approval of the San Francisco Board of Supervisors by ordinance waiving any applicable restrictions in the Municipal Code.”

(b) **Amendment of Section 3.3.1.** *The fourth sentence of Section 3.3.1 is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“In no event shall the amount of this Agreement exceed Eighty-Eight Million Five Hundred Sixty-Eight Thousand, Three Hundred Twenty-Seven Dollars (\$88,568,327).”

(c) **Amendment of Section 8.1.1.** *Section 8.1.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“8.1.1. (a) This Agreement shall expire of its own accord on the expiration of the Booking Period set forth in Section 2.1.

(b) City shall have the option, with not less than sixty (60) days’ written notice to Hotel, to terminate this Agreement for any reason. City may send the termination notice to Hotel at any time during the Booking Period. Within the notice, City will specify the termination date, which will be at least sixty (60) days after the effective date of the notice. For example, if City sends a termination notice to Hotel with an effective date of August 1, 2022, the Booking Period will terminate sixty (60) days thereafter (City’s last night of occupancy would be no earlier than September 29, 2022).

Notwithstanding the foregoing, in the event the City provides notice of termination and requires additional time to vacate the premises, then City shall provide a subsequent notice to Hotel and the date of termination shall be as set

forth in the subsequent notice, without penalty to City, provided that, notwithstanding any contrary provision contained in the Agreement, Compensation for the remainder of the occupancy shall be prorated such that City shall pay for each date of the extension.

For the avoidance of doubt, in the event City provides a sixty-day notice on August 1, 2022, with the termination date of September 29, 2022, and should City need an additional ten (10) days to fully vacate the Improvements, then upon subsequent notice from City to Hotel, the termination date will be extended by ten (10) days to October 9, 2022.

City agrees to use commercially reasonable efforts to provide more advanced notice of City's intent to vacate the Premises, to the extent it is practical or able to do so. Any notice provided by City in advance of the minimum sixty (60) days required under this Agreement will be considered "Advance Notice". Upon receipt of any Advance Notice, Hotel may submit to City a request for City to assess the feasibility of accelerating the termination period to occur at a mutually agreeable date earlier than the date specified in the Advance Notice; provided, however, that failure of either party to agree upon an earlier termination through the Advance Notice procedure will not be deemed an event of default under this Agreement."

(d) Amendment of Appendix B. *The following amounts within Section 1 of Appendix B "Maximum Not-to-Exceed Compensation" are hereby amended and fully incorporated into the Agreement:*

Maximum Not-to-Exceed Amount of Agreement

- a. **Total Not-to-Exceed Compensation: (\$88,568,327)**
- b. Not-to-Exceed Compensation without Reimbursable Amount: (\$49,394,367)
- c. Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in b.): (\$7,409,155)
- d. Not-to-Exceed Reimbursable Amount for Linens: (\$2,680,270) (\$2,465.75 per night)
- e. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E): (\$29,084,535) (459 x \$65 x 358 nights + 459 x \$55 x 729 nights)

Section 3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after "the date of this Amendment", and this Amendment shall not become effective until the later of the following dates: (a) the date City and Hotel have executed the Hotel Walkthrough and Confirmation of Current Baseline Condition, attached to this Amendment as **Exhibit A** and incorporated herein by this reference, and (b) the date of adoption of the Resolution by the Board.

Section 4. Reference. No reference to this Amendment is necessary in any instrument or document at any time referring to the Agreement. Any future reference to the Agreement will be deemed a reference to the Agreement, as amended by this Amendment.

Section 5. No Other Amendment; Entire Agreement. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. The Agreement as amended by this Amendment constitutes the entire agreement between City and Hotel with respect to the subject matter of the

Agreement and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment will control.

Section 6. Exhibits. The Exhibits attached hereto are incorporated into this Amendment by this reference.

Section 7. Applicable Law. This Amendment will be governed by, construed, and enforced in accordance with the laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Amendment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Amendment has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

Section 8. Further Instruments. The parties to the Agreement and this Amendment agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

Section 9. Counterparts; Electronic Signature. This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. The Parties may execute this Amendment by electronic signature.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Hotel and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

By: _____
Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

David Chiu
City Attorney

By: _____
Vincent L. Brown
Deputy City Attorney

HOTEL

1231 Market Street Owner L.P.,
a Delaware limited partnership

By: _____
Richard Froom
Authorized Signatory

Supplier ID: 0000039802

Exhibit A
HOTEL WALKTHROUGH
AND CONFIRMATION OF CURRENT BASELINE CONDITIONS
HOTEL WHITCOMB

Instructions

Complete this Hotel Walkthrough and Confirmation of Current Baseline Conditions before occupying the Hotel. Do not permit guests to enter the hotel until you have completed the “Current Condition” column, documenting any observed damage. Take pictures of all damage identified. Both the City and the Hotel must sign this form twice: Upon guest arrival and upon guest departure.

1. **Current Inventory Date:** _____ **Departure Inventory Date:** _____:
2. **Guest Room Number:** _____
3. **Public Space Description:** _____

Location	Current Condition Check Box if Damage Observed, Briefly Describe Damage, And Attach Photograph	Condition upon Departure Check Box if Damage Observed, Briefly Describe Damage, And Attach Photograph
a. Guest Room	<input type="checkbox"/> Carpet (identify stains / damage): _____ <input type="checkbox"/> Night Stand(s): _____ <input type="checkbox"/> Dresser: _____ <input type="checkbox"/> Desk: _____ <input type="checkbox"/> Upholstered Chair(s) _____ <input type="checkbox"/> Other Chair(s) _____ <input type="checkbox"/> Television	<input type="checkbox"/> Carpet (identify stains / damage): _____ <input type="checkbox"/> Night Stand(s): _____ <input type="checkbox"/> Dresser: _____ <input type="checkbox"/> Desk: _____ <input type="checkbox"/> Upholstered Chair(s) _____ <input type="checkbox"/> Other Chair(s) _____ <input type="checkbox"/> Television

	<hr/> <input type="checkbox"/> Bed(s) <hr/> <input type="checkbox"/> Bed Linen(s) <hr/> <input type="checkbox"/> Mattress / Box Spring <hr/> <input type="checkbox"/> Door(s) <hr/> <input type="checkbox"/> Wall(s)/Ceiling(s)(paint/wall paper/drywall) <hr/> <input type="checkbox"/> Lamps / Light Fixture(s) <hr/> <input type="checkbox"/> Floor Covering <hr/> <input type="checkbox"/> Windows (glass, curtains, etc.) <hr/> <input type="checkbox"/> Baseboard(s)/Molding(s) <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>	<hr/> <input type="checkbox"/> Bed(s) <hr/> <input type="checkbox"/> Bed Linen(s) <hr/> <input type="checkbox"/> Mattress / Box Spring <hr/> <input type="checkbox"/> Door(s) <hr/> <input type="checkbox"/> Wall(s)/Ceiling(s) (paint/wall paper/drywall) <hr/> Lamps / Light Fixture(s) <hr/> <input type="checkbox"/> Floor Covering <hr/> <input type="checkbox"/> Windows (glass, curtains, etc.) <hr/> <input type="checkbox"/> Baseboard(s)/Molding(s) <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>
b. Bath	<input type="checkbox"/> Sink/faucet (damage / in working condition?) <hr/> <input type="checkbox"/> Toilet	<input type="checkbox"/> Sink/faucet (damage / in working condition?) <hr/> <input type="checkbox"/> Toilet

	<hr/> <input type="checkbox"/> Tub/Shower (damage / in working condition?) <hr/> <input type="checkbox"/> Floor <hr/> <input type="checkbox"/> Bathroom Door <hr/> <input type="checkbox"/> Shower Door <hr/> <input type="checkbox"/> Shower Shelf <hr/> <input type="checkbox"/> Walls /Ceilings (paint/drywall repair) <hr/> <input type="checkbox"/> Countertop <hr/> <input type="checkbox"/> Towel Rack(s) <hr/> <input type="checkbox"/> Exhaust Fan / Light <hr/> <input type="checkbox"/> Mirror / Cabinet <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>	<hr/> <input type="checkbox"/> Tub/Shower (damage / in working condition?) <hr/> <input type="checkbox"/> Floor <hr/> <input type="checkbox"/> Bathroom Door <hr/> <input type="checkbox"/> Shower Door <hr/> <input type="checkbox"/> Shower Shelf <hr/> <input type="checkbox"/> Walls / Ceilings (paint /drywall repair) <hr/> <input type="checkbox"/> Countertop <hr/> <input type="checkbox"/> Towel Rack(s) <hr/> <input type="checkbox"/> Exhaust Fan / Light <hr/> <input type="checkbox"/> Mirror / Cabinet <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>
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<p>c.</p> <p>Closet</p>	<p><input type="checkbox"/> Door:</p> <hr/> <p><input type="checkbox"/> Wall</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>	<p><input type="checkbox"/> Door:</p> <hr/> <p><input type="checkbox"/> Wall</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>
<p>d.</p> <p>Public Space</p>	<p><input type="checkbox"/> Seating:</p> <hr/> <p><input type="checkbox"/> Floor Covering(s):</p> <hr/> <p><input type="checkbox"/> Window (glass, curtains, etc.):</p> <hr/> <p><input type="checkbox"/> Table(s)/Desk(s):</p> <hr/> <p><input type="checkbox"/> Light Fixture(s)</p> <hr/> <p><input type="checkbox"/> Counter Surface(s)</p> <hr/> <p><input type="checkbox"/> Kitchen Equipment</p> <hr/> <p><input type="checkbox"/> Laundry Equipment</p> <hr/> <p><input type="checkbox"/> Door(s)</p> <hr/> <p><input type="checkbox"/> Wall(s)/Ceiling(s)</p> <hr/> <p><input type="checkbox"/> Baseboard(s)/Molding(s)</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>	<p><input type="checkbox"/> Seating:</p> <hr/> <p><input type="checkbox"/> Floor Covering(s):</p> <hr/> <p><input type="checkbox"/> Window (glass, curtains, etc.):</p> <hr/> <p><input type="checkbox"/> Table(s)/Desk(s):</p> <hr/> <p><input type="checkbox"/> Light Fixture(s)</p> <hr/> <p><input type="checkbox"/> Counter Surface(s)</p> <hr/> <p><input type="checkbox"/> Kitchen Equipment</p> <hr/> <p><input type="checkbox"/> Laundry Equipment</p> <hr/> <p><input type="checkbox"/> Door(s)</p> <hr/> <p><input type="checkbox"/> Wall(s)/Ceiling(s)</p> <hr/> <p><input type="checkbox"/> Baseboard(s)/Molding(s)</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>

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DEPARTURE CONDITION DOCUMENTED

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HOTEL

By: _____

By: _____

Date: _____

Date: _____