

STATE OF Kentucky

EMERGENCY TEMPORARY OCCUPANCY AGREEMENT

<u>TEMPORARY OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT</u> Residence Inn South 2688 Pink Pigeon Pkwy Lexington, KY 405
<u>OWNER'S FED. TAX. I.D. NO. OR SOCIAL SECURITY NO.</u> 47-2049512
<u>STATE AGENCY</u> Lexington-Fayette Urban County Government

Preamble

THIS TEMPORARY OCCUPANCY AGREEMENT (this "Agreement"), made and entered into this 7th day of April 2020 by and between

HIT PORTFOLIO I MISC TRS, LLC

hereinafter called the "Owner," without distinction as to number or gender, and the Lexington-Fayette Urban County Government, a political subdivision of the Commonwealth of Kentucky, hereinafter called the "LFUCG." **This Agreement is entered into pursuant to the Governor's State of Emergency Proclamation and the Mayor's Declaration of Emergency both dated March 6, 2020, in response to COVID-19, and KRS Chapter 39A and 39B, and is directly related to that emergency and necessary for the preservation of public health and safety. To the extent applicable, the provisions of 2 CFR 200, Appendix II are incorporated herein by reference as if fully stated.**

WITNESSETH

Description

1. The Owner hereby authorizes LFUCG and LFUCG hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of Lexington, County of Fayette, State of Kentucky, and more particularly described as follows:

Thirteen rooms on the first floor of the Residence Inn South Hotel located at 2688 Pink Pigeon Pkwy Lexington KY 40509 (the "Hotel") as outlined in red on the attached Exhibit "A" aerial site plan, consisting of one (1) page, dated [Insert date], said Exhibit "A", hereby being incorporated into this Agreement, and including certain nonexclusive unobstructed parking spaces contiguous to the subject hotel building that are part of the Hotel and owned by Owner, and including all furnishings, fixtures and equipment located such rooms, but excluding the following areas or items: fitness center, pool, spa, provided, however, that LFUCG may request and the Hotel shall provide additional rooms on an as-needed basis . Such premises that may be occupied pursuant to this Agreement are sometimes referred to herein as the "Occupied Space", the "premises" or the "occupied premises" and the foregoing excluded areas are sometimes referred to herein as the "Excluded Areas".

The LFUCG 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. The LFUCG shall have no right to use or enter the Excluded Areas at any time without the prior written consent of Owner in its sole discretion.

Term

2. The term of this Agreement shall commence on April 7, 2020 (the "Commencement Date"), and shall expire at 11:59 p.m. on the date that is 90 after the Commencement Date, with such rights of termination as may be hereinafter expressly set forth (the "Initial Term"). The Initial Term of this Agreement will be automatically extended for successive periods of thirty (30) days each, unless either Owner or LFUCG elects not to so extend by giving thirty (30) days prior written notice to the other party.

Early Termination

3. The LFUCG may terminate the Initial Term of this Agreement at any time by giving written notice to the Owner at least fifteen (**15**) days prior to the date when such termination shall become effective. The Owner may terminate this Agreement at any time by giving written notice to the LFUCG at least thirty (30) days prior to the date when such termination shall become effective. If LFUCG fails to complete its move out and comply with all actions required under this Agreement in connection with expiration or earlier termination of this Agreement and remains in the premises, additional consideration shall be paid and prorated on a thirty (30) day month in accordance with section 4, based on the actual number of days LFUCG occupies the premises following the effective date of termination.

Consideration

4. A fee for use of the Occupied Space shall be paid by the LFUCG to Owner, from legally available funds, on the first day of each month during said term as follows:

THE DAILY RATE FOR PURPOSES OF THE ABOVE CALCULATIONS IS BASED ON \$95.00 PER DAY PER OCCUPIED UNIT.

Payments due under this section for any period of time less than one month shall be determined by prorating the monthly payment herein specified based on a thirty (30) day month. Payments 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.

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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: HIT Portfolio I MISC TRS, LLC
2688 Pink Pigeon Parkway
Lexington, KY 40509
Attn: General Manager **Phone No.:**
Hotel No.: 859-263-9979
Email:

With a copy to the Manager:

Crestline Hotels & Resorts, LLC
3950 University Drive, Suite 301
Fairfax, VA 22030
Attention: Law Department **Phone No.:** 571-529-6100
Hotel No.: 859-263-9979
Email:

To the LFUCG :

Pat Dugger Director Emergency Management
115 Cisco Rd
Lexington KY 40504
Phone No.: 859-280-8060
FAX No.:
Email: Patd@lexingtonky.gov

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
LFUCG AND PREMISES ADDRESS

Consideration and other payments due hereunder shall be made payable to:

_____ and mailed to: _____

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 that are part of the occupied premises, upon the Commencement Date, shall be unobstructed by Owner and its agents and completely accessible for LFUCG's use.

**Services,
Utilities, and
Supplies**

7. Owner, including through a third party that Owner has engaged to manage or operate the Hotel ("Manager"), at Owner's sole cost and expense, during the term of this Agreement shall furnish or cause to be furnished the following services, utilities, and supplies to the area occupied by LFUCG, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, etc. which LFUCG shares with other users, 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 LFUCG operations.
- D. Such other services, policies and procedures as more fully set forth in Exhibit B.

**Repair and
Maintenance**

8. During the term of this Agreement, the LFUCG shall maintain the occupied premises and all furnishings, fixtures and equipment therein in good repair and condition at LFUCG's sole cost and expense. In addition, the LFUCG agrees that it will follow the reasonable directives of Owner and Manager representatives regarding the maintenance of the Hotel and furnishings, fixtures and equipment therein during the term of this Agreement.

**Assignment
and
Subletting**

9. The LFUCG shall not assign this Agreement or any of its rights or obligations hereunder or sublet the Occupied Space without the express prior written consent of Owner. If Owner gives its consent to any assignment or subletting, LFUCG shall at all times remain fully responsible and liable for compliance with all of LFUCG's obligations under this Agreement.

Destruction

10. If the occupied premises are destroyed in whole or in part by fire or other casualty, this Agreement shall terminate.

**Surrender of
Occupancy**

11. Upon termination or expiration of this Agreement, the LFUCG will peacefully surrender to the Owner the occupied premises in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof and damage by fire or other casualty over which LFUCG has no control. LFUCG shall ensure, at no cost to Owner, that all its employees, guests, and invitees have completely vacated the Hotel prior to the termination of this Agreement.

If the LFUCG fails to surrender the occupied premises to Owner on the date and in the condition required hereby or by any other provision of this Agreement and to take all other actions required by this Agreement in connection with termination, LFUCG shall be liable for all costs incurred by Owner (or third parties under contract with the Owner) to repair or restore the occupied premises to the required condition or to satisfy such other obligations. LFUCG's liability under this section shall survive the expiration or earlier termination of the Agreement.

**Time of
Essence,
Binding upon
Successors**

12. Time is of the essence of this Agreement, and the terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns to the respective parties hereto, subject to the restrictions on assignment and subletting hereunder. If more than one person or entity has executed this

Agreement as "LFUCG" or as "Owner", the obligations of such persons or entities hereunder will be joint and several with respect to the applicable party.

No Oral Agreements

13. It is mutually understood and agreed that no alterations or variations of the terms of this 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

14. LFUCG shall be required, and hereby agrees, to procure and maintain at all times during the term of this Agreement (or during any other period in which LFUCG is present at the Hotel or conducting any activities or operations relating to the Agreement) insurance coverage of the following types, which may be satisfied through self-insurance:

a. Workers Compensation insurance in full satisfaction of applicable laws and Employers Liability insurance as required by law.

b. Commercial General Liability (CGL) insurance with a limit of coverage not less than \$2 million each occurrence covering liability arising from independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract.

c. If the LFUCG or LFUCG subcontractors' scope of work under this Agreement requires or involves the ownership, maintenance or use of an auto, Commercial Auto Insurance with a limit of insurance not less than as required by statute each accident covering "any auto" whether owned, scheduled, leased, hired or other.

d. At LFUCG's option, insurance covering LFUCG's personal property, it being understood and agreed that neither Owner nor Manager shall be liable for any damage to or loss of personal property sustained by LFUCG, whether or not it is insured, even if such loss is caused by the negligence of any such parties.

This insurance shall apply as primary with respect to any other insurance or self-insurance available to Owner. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than A-/VII. Failure to maintain the required insurance may result in termination of the Agreement at Owner's option. By requiring insurance herein, Owner does not represent that coverage and limits will be adequate to protect LFUCG. The requirements contained herein shall not be construed in any manner to relieve or limit LFUCG's indemnification obligations for any loss or claim arising out of the Agreement.

The LFUCG unconditionally waives on behalf of itself and its insurers all rights against Owner and Manager, each of their affiliates, and the agents, officers, directors, and employees of each of them, for recovery of damages to the extent these damages are covered by its insurance, regardless of deductibles, if any. Prior to the Commencement Date or commencement of any activity contemplated under the Agreement, whichever is earlier, the LFUCG shall furnish Owner with certificates of insurance providing evidence of compliance with the above requirements. Thirty (30) days' written notice shall be given to Owner prior to the cancellation or any material change to the insurance required pursuant to this provision.

The LFUCG shall require that any permitted assignee and any contractor and/or subcontractor performing any work in the Occupied Space maintain policies of insurance satisfying the requirements imposed upon the LFUCG under this Agreement, including, but not limited to, the requirement that such policies shall name the **Hotel Owner, Marriott International, Inc. and Crestline Hotels & Resorts, LLC** as additional insureds.

**Hazardous
Substance**

15. State agrees that it will comply with all applicable laws existing during the term of this 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 LFUCG's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, LFUCG shall indemnify, defend, and hold harmless any of these individuals against such liability. Where LFUCG is found to be in breach of this provision due to the issuance of a government order directing LFUCG to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by LFUCG or any person acting under State's direct control and authority, LFUCG shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by Owner or any of its affiliates, successors, principals, employees, or agents in connection with or in response to such government order.

**Restoration of
Premises**

16. Upon termination of this Agreement, Owner agrees that the equipment installed by LFUCG shall be and remain the property of LFUCG, and LFUCG shall remove such property when vacating the premises. State shall restore the Occupied Space, to the condition as originally received by LFUCG and existing prior to the installation of any of LFUCG's property, including, without limitation, restoration and repair of all surfaces, floors, walls, ceilings, including restoring damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces, and including restoration and repair of all furnishings, fixtures and equipment. State shall clean the premises per the then current health and safety protocols established by public health officials during the term and immediately prior to vacating the premises. If the Occupied Space is used by any persons diagnosed with or suspected to be infected with COVID-19 (the "coronavirus"), then LFUCG shall clean the premises according to then current medical grade sanitization standards. Such medical grade sanitization by LFUCG shall receive the approval of the relevant local, state, and federal health authorities certifying that the Occupied Space was properly cleaned and is safe to reopen to the general public.

LFUCG shall provide certification to the Owner that the Occupied Space was vacant for a minimum of ten (14) calendar days prior to being returned to Owner. Cleaning and sanitization procedures performed in anticipation of restoring the premises for Owner can occur during this ten-day period.

**Operational
Hand-off
Taxes**

17. INTENTIONALLY DELETED.

18. Owner is solely responsible for all tax liabilities with respect to the Hotel except that LFUCG shall be responsible for payment of any applicable sales and occupancy taxes. Owner will honor any available tax exemptions for which Occupant qualifies, provided that Occupant properly completes and timely provides all documentation required by the applicable jurisdiction to substantiate said exemption.

**No Tenancy;
Relief from
Eviction Laws**

19. In no event will this Agreement be deemed or construed to run with the land or create any tenancy or other permanent possessory rights on the part of LFUCG or its invitees. This Agreement does not create any recordable interest and will not be recorded in any land records. No tenancy and/or eviction laws, regulations, rules, requirements, processes and proceedings ("Eviction Laws") shall be applicable with respect to the use of the Hotel by LFUCG and its invitees hereunder. LFUCG shall waive the applicability of all Eviction Laws with respect to the Hotel and ensure that any and all other applicable government entities, agencies, instrumentalities, subdivisions or other bodies of any regional, local or other governments waive any such Eviction Laws. In the event any individual is claiming tenancy rights, then LFUCG, at LFUCG's sole cost

and expense, shall take all such necessary actions to remove such individual from the premises prior to expiration or termination of the Agreement.

Permitted Use

20. LFUCG may use the Occupied Space solely for the housing of first responders, and for no other purpose.

State's Operations

21. LFUCG will be solely responsible for providing the resources necessary for conducting its operations and activities at the Occupied Space, including without limitation providing all necessary staffing and providing for the safety and security of its invitees, and LFUCG is responsible for the costs of its operations. LFUCG, at its sole cost and expense, during the term of this Agreement shall furnish all consumable items used at the Occupied Space including food and beverages, amenities, fuel, cleaning materials, printed materials, and other similar items as well as all non-consumable items including all china, glassware, linens, silverware, uniforms and other similar items. Any alcoholic beverages stored at the Hotel will not be used or accessed by LFUCG, its employees, guests, or invitees. LFUCG shall ensure that its operations and activities at the Occupied Space at all times comply with this Agreement and all applicable laws and regulations.

Licenses & Permits (including Liquor Licenses); Zoning

22. The Owner shall, at the Owner's sole cost and expense, be responsible to maintain all licenses, permits, or other similar authorizations required for operations in effect as of the Commencement Date of this Agreement. This obligation shall include renewal (or cooperating with LFUCG for the renewal, as applicable) of any permits for the premises that expire or need to be renewed during the term of this Agreement. LFUCG shall comply with (or obtain the necessary waivers of) all zoning requirements for its operation on the premises during the term of this Agreement.

In addition, LFUCG guarantees and will work with any other government agencies and instrumentalities, whether state or local, that have jurisdiction over the Hotel to ensure that LFUCG's occupancy of the Occupied Space will not in any way affect the liquor license (if any), certificate of occupancy, zoning permits or exceptions, or any other licenses, permits, or approvals for the Hotel or the property on which the Hotel is located in effect as of the Commencement Date, and that any issues with the foregoing will be tolled during the duration of LFUCG's occupancy. LFUCG shall ensure that all licenses or permits (including the liquor license, if any) required for the operation and management of the Hotel as a hotel or transient lodging establishment shall be reinstated or continue in full effect after the expiration or termination of this Agreement without cost or expense to Owner.

Liens

23. LFUGC agrees to keep the Occupied Space, the Hotel and all equipment and property of Owner or Manager free and clear of any and all liens for work performed or materials furnished to or at the request of LFUGC.

Alterations

24. LFUGV shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement to) the Occupied Space or other portions of the Hotel without the prior written consent of Owner in its sole discretion.

No Use of Names

25. State agrees not to use the name of the Hotel, the name of Owner or its affiliates, the name of Manager or its affiliates, or any other trade names, trademarks, service marks, or other intellectual property of Owner (or its affiliates), or of the Manager (or its affiliates), or any variation of any of the foregoing, without the express written approval of Owner and Manager, which may be given or withheld in their the sole discretion of Owner or Manager.

Limitation of Liability

26. Neither Owner, Manager, nor any of their respective affiliates, nor any of the other Indemnified Parties, shall be liable for damage to any equipment or other property of LFUCG or for injury to State's employees, invitees or any other person on, in or about the Occupied Space from any cause, whether in or about the Occupied Space or elsewhere in the Hotel. It shall be LFUCG's sole obligation, at its sole risk and cost, to protect, safeguard and insure against all damage or injury to any such persons or property. Further, the Owner and Manager Parties shall under no circumstances be liable for any special, incidental, punitive, exemplary or consequential damages.

Remedies

27. In the event of any breach of the terms of this Agreement by LFUCG, Owner shall be entitled to pursue any and all legal and equitable rights and remedies permitted by applicable law.

Relationship of Parties

28. The relationship between Owner and LFUCG is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency or tenancy.

Survival of Covenants

29. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

Entire Agreement

30. This Agreement and all attachments sets forth the entire agreement and understanding between the parties concerning the subject matter of the Agreement, and supersedes any and all prior oral or written agreements between the parties relating to that subject matter.

Governing Law

31. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, not including the choice of law provisions thereof.

Counterparts; Electronic Signatures

32. This Agreement may be executed in any number of duplicate originals and each duplicate original will be deemed to be an original. This Agreement may be executed in any number of counterparts, each of which constitutes an original, and all the counterparts together constitute one and the same Agreement. Electronic copies of this Agreement and signatures thereon will have the same force, effect and legal status as originals.

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EXHIBIT B

HOTEL SERVICES, POLICIES AND PROCEDURES:

- Hotel Manager will not provide any housekeeping service to any individual guest/group during the term of this Agreement. Hotel Manager will only clean rooms upon check out once LFUCG has completed the cleaning required by Paragraph 16.
- Hotel public/common areas (i.e., lobby, gym, business center, and [INSERT OTHER COMMON AREAS] areas will be closed during this time.
- There is no current food or beverage service at the Hotel. LFUCG, at its sole cost and expense, during the term of this Agreement shall supply all food and beverages needed to conduct its operation, pursuant to Paragraph 21.
- The LFUCG guests will need to leave their trash bins outside their guest room door to be picked up weekly on Fridays.
- Soiled linens shall be placed in the trash bag provided by Hotel and left outside of the guest room once a week on Thursdays for pick-up. Hotel Manager will provide clean linens and new amenities outside of the guest room door once a week on Thursdays.
- Hotel Manager's associates are not to enter the guest room except for a fire/life safety event.
- LFUCG guests should use side entrances to enter/exit the Hotel.
- LFUCG guests must self-isolate in their rooms to the maximum extent possible and avoid the Hotel lobby, front desk, and other public areas. Failure to do so will be considered grounds to request that certain LFUCG guests no longer stay at the Hotel.

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

Crestline Hotels & Resorts, d/b/a
Residence Inn South Lexington, as agent for
HIT PORTFOLIO I MISC TRS, LLC

STATE OF KENTUCKY

[LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

[NAME]
[NAME]

By Linda Horton
[NAME], AUTHORIZED SIGNATORY

By [Signature]
[NAME], AUTHORIZED SIGNATORY

Date _____

Date 4/17/20