

EMERGENCY TEMPORARY OCCUPANCY AGREEMENT

**EMERGENCY TEMPORARY OCCUPANCY AGREEMENT COVERING PREMISES
LOCATED AT 10811 PECAN PARK BLVD, BUILDING 2, AUSTIN, TX 78750**

OWNER'S FED. TAX. I.D.

THIS EMERGENCY TEMPORARY OCCUPANCY AGREEMENT (the "Agreement"), made and entered into this 23rd day of December 2020 by and between Apple Pie Hotels, LLC d/b/a Candlewood Suites Austin NW Lakeline (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")

THIS AGREEMENT IS ENTERED INTO PURSUANT TO SECTION 418 OF THE TEXAS GOVERNMENT CODE, SECTION 122 OF THE HEALTH AND SAFETY CODE, GOVERNOR GREG ABBOTT'S STATE OF EMERGENCY PROCLAMATION DATED MARCH 13, 2020, AS AMENDED AND EXTENDED, MAYOR STEVE ADLER'S LOCAL STATE OF DISASTER DECLARATION DATED MARCH 6, 2020, AS AMENDED AND EXTENDED, AND INTERIM HEALTH AUTHORITY DR. MARK E. ESCOTT'S ORDERS RELATED TO NON-CONGREGATE HOUSING, AND IS DIRECTLY RELATED TO THAT EMERGENCY AND NECESSARY FOR THE PRESERVATION OF PUBLIC HEALTH AND SAFETY.

1. Premises.

a. The Owner hereby authorizes the City and the City hereby hires from the Owner "AS IS" every guestroom with appurtenances of the Candlewood Suites (the "Hotel") located at 10811 Pecan Park Blvd, Building 2, Austin, TX 78750 (the "Occupied Premises"), unlimited use of the Hotel's common areas and facilities, the Hotel's laundry facilities, and all furnishings, fixtures, and equipment located therein.

b. The City shall have access to and use of the Occupied Premises, the Hotel's common areas and facilities, the Hotel's laundry facility, and all furnishings, fixtures, and equipment located therein 24 hours per day, seven days per week with no exceptions. The City shall have no right to use or enter the Excluded Areas at any time without the prior written consent of Owner.

2. **Term.** The term of this Agreement shall commence within five days of City providing notice to Owner, which time period Owner may waive in its sole discretion, of its intent to commence this Agreement (the "Commencement Date"), and shall expire at 11:59 p.m. on the

date that is 30 days after the Commencement Date, 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 periods of thirty days each by sending written notice to the Owner on or before the 10th calendar day prior to the expiration of the Initial Term or any extension thereof (the "Extension Terms"). The Extension Terms shall automatically commence upon expiration of the Term or the previous Extension Term if City sends its notice to extend. Any Extension Term shall be on the same terms as set forth herein.

3. Early Termination. The City may terminate this Agreement at any time by giving written notice to the Owner at least ten days prior to the date when such termination shall become effective. If the City 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 day month in accordance with Section 4, based on the actual number of days the City occupies the Occupied Premises following the effective date of termination.

4. Consideration.

a. As consideration for the City's ongoing option to occupy the Hotel pursuant to Section 2, the City shall pay \$2000 to the Owner within ten days of the execution of this Agreement (the "Option Payment"). The Option Payment shall be deemed earned by the Owner and will not be refunded to the City under any circumstances.

b. Subject to early termination, City shall pay to Owner \$5,810 per day of actual occupancy for the Term and any Extension Term by check or wire transfer (the "Occupancy Fee").

c. Payment for the first thirty (30) days of the Term shall be issued to the Owner within ten business days of the City's notice to occupy pursuant to Section 2.

d. Payments due under this section for any period of time less than one month shall be paid at the Daily Rate. Payments shall be paid to Owner at the address specified below or to such other address as the Owner may designate by a notice in writing.

Checks Payable to – Apple Pie Hotels, LLC

Mailing address:

Rajesh Patel
134 Lakota Pass
Austin TX 78738

5. Conditions Precedent to City's Obligations. Any provision in this Agreement to the contrary notwithstanding, it is understood and agreed that the City's obligations under this Agreement are subject to the approval of this Agreement by the City Council. If approval of this Agreement is not obtained, this Agreement shall terminate and shall be of no further force and effect.

6. Notice.

a. All notices and correspondence herein provided to be given, or which may be given by either Party, 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:

Rajesh Patel

134 Lakota Pass

Austin, TX 78738

Phone No.: (512) 762-4862

Email: mira78745@gmail.com

With a copy to

the Manager: Traci Tovar

Candlewood Suites Austin NW Lakeline

10811 Pecan Park Blvd., Bldg. 2

Austin, TX 78750

Phone No.: 512-432-5122

Hotel No.: N/A

Email: austinhotels@gmail.com

To the City:

Alex Gale

Interim Officer

Office of Real Estate Services

City of Austin

P. O. Box 1088

Austin, Texas 78767

Phone No.: (512) 974-1416

Email: alex.gale@austintexas.gov

With a copy to:

Sean Creegan

Assistant City Attorney

P.O. Box 1088

Austin, TX 78767-1088

Phone No. 512-974-6461

Email: sean.creegan@austintexas.gov

b. 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.

7. Parking. Upon the Commencement Date, parking spaces that are part of the Hotel shall be unobstructed by Owner and its agents and completely accessible for City's use.

8. Services, Utilities, and Supplies.

a. During the Term, Owner, including through a third party that Owner has engaged to manage or operate the Hotel (the "Manager"), at Owner's sole cost and expense, shall furnish or cause to be furnished the following services, utilities, and supplies to the Hotel and the Occupied Premises:

- i. Sewer, normal trash disposal (excluding trash disposal from the Occupied Premises), and water service, including both hot and cold water to the lavatories.
- ii. Elevator service
- iii. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for City's operations.
- iv. Television and internet service
- v. Hotel operations and management, excluding laundry services but including without limitation:
 - 1. Phone reception and operator service to the Hotel and the Occupied Premises.
 - 2. Janitorial, repair, and maintenance service to the Hotel and the common areas thereof excluding the Occupied Premises.
 - 3. Guest room supplies – shampoo/conditioner, soap, lotion, toothpaste, toothbrush, deodorant, towels, sheets, pillows, comforter.

b. In the event the Owner fails to furnish any of the above services, utilities, and supplies in a satisfactory manner, the City may furnish the same and deduct the cost of furnishing the same from the Occupancy Fee.

c. The Owner is not obligated to provide alcoholic beverages.

d. The City will be responsible for providing security for the Occupied Premises.

9. Laundry Facilities. The Owner understands and agrees that the City or a City Representative may use the Hotel's laundry facilities to launder materials collected from Hotel guest rooms and materials brought to the Hotel from off-site locations.

10. Repair and Maintenance.

a. During the Term, the City shall maintain the interior of the guestrooms used by the City and all furnishings, fixtures, and equipment therein in as good order, condition, and

repair as existed when the City occupied them, except for reasonable ordinary use and wear thereof and damage by fire or other casualty over which City has no control.

11. Assignment and Subletting. The City 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, the City shall at all times remain fully responsible and liable for compliance with all of the City's obligations under this Agreement.

12. Destruction. If the Hotel or the Occupied Premises are destroyed in whole or in part by fire or other casualty, this Agreement shall terminate.

13. Surrender of Occupancy.

a. Upon termination or expiration of this Agreement, the City 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 City has no control. City shall ensure, at no cost to Owner, that all City's employees, guests, and invitees have completely vacated the Occupied Premises prior to the termination of this Agreement.

b. If the City fails to surrender the Occupied Premises to Owner in the condition required, the City 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. The City's liability under this section shall survive the expiration or earlier termination of the Agreement.

14. Binding upon Successors. 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 "City" or as "Owner", the obligations of such persons or entities hereunder will be joint and several with respect to the applicable party.

15. No Oral Agreements. 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.

16. Insurance.

a. The City is self-insured.

b. The City shall require that any permitted assignee and any contractor and/or subcontractor performing any work on or in the Occupied Premises (the "City Representative") maintain the following types of insurance:

- i. Workers Compensation insurance in full satisfaction of applicable laws and Employers Liability insurance with a limit not less than \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for disease. The policy shall include the following endorsements in favor of the City:
 1. Waiver of Subrogation, form WC 420304, or equivalent;
 2. 30 Day Notice of Cancellation, form WC 420601, or equivalent.
- ii. Commercial General Liability (CGL) insurance with a limit of coverage not less than \$1,000,000 each occurrence covering liability arising from independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The policy shall include the following endorsements in favor of the City:
 1. Additional Insured, form CG 2010, or equivalent
 2. 30 Day Notice of Cancellation, form CG 0205, or equivalent
 3. Waiver of Subrogation, form CG 2404, or equivalent
- iii. If the City Representative's scope of work under this Agreement requires or involves the ownership, maintenance or use of an auto, Business Auto Insurance with a combined single limit of insurance not less than \$1,000,000 per accident covering all owned, non-owned, and hired vehicles. The policy shall include the following endorsements in favor of the City:
 1. Additional Insured, form CA 2048, or equivalent
 2. 30 Day Notice of Cancellation, form CA 0244, or equivalent
 3. Waiver of Subrogation, form CA 0444, or equivalent

c. Owner shall maintain and shall require that any permitted assignee and any Manager, contractor and/or subcontractor performing any work on or in the Occupied Premises (the "Owner Representative") maintain the following types of insurance:

- i. Workers Compensation insurance in full satisfaction of applicable laws and Employers Liability insurance with a limit not less than \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for disease. The policy shall include the following endorsements in favor of the City:
 1. Waiver of Subrogation, form WC 420304, or equivalent;

2. 30 Day Notice of Cancellation, form WC 420601, or equivalent.

ii. Commercial General Liability (CGL) insurance with a limit of coverage not less than \$1,000,000 each occurrence covering liability arising from independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract.

The policy shall include the following endorsements in favor of the City:

1. Additional Insured, form CG 2010, or equivalent
2. 30 Day Notice of Cancellation, form CG 0205, or equivalent
3. Waiver of Subrogation, form CG 2404, or equivalent

iii. If the Owner or Owner's Representative's scope of work under this Agreement requires or involves the ownership, maintenance or use of an auto, Business Auto Insurance with a combined single limit of insurance not less than \$1,000,000 per accident covering all owned, non-owned, and hired vehicles. The policy shall include the following endorsements in favor of the City:

1. Additional Insured, form CA 2048, or equivalent
2. 30 Day Notice of Cancellation, form CA 0244, or equivalent
3. Waiver of Subrogation, form CA 0444, or equivalent

d. Insurance companies affording the coverage required above shall have an AM Best Rating of no less than B+/VII. The insurance coverages required above are required minimums and are not intended to limit the responsibility or liability of the Owner or Owner Representatives. Failure to maintain the required insurance may result in termination of the Agreement.

e. Owner and Owner's Representative shall furnish City with certificates of insurance providing evidence of compliance with the above requirements within three (3) days of City providing notice to commence the agreement. If City is not furnished with the required certificates of insurance within three (3) days, City may, at its sole and only discretion, extend the Commencement Date or terminate this Agreement.

f. City Representative shall furnish Owner with certificates of insurance providing evidence of compliance with the above requirements.

17. Hazardous Substances.

a. City 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. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of the Owner for

its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to the City's illegal storage, transportation, or disposal of any hazardous substance as determined by a court of competent jurisdiction.

b. Where the City is found to be in breach of this provision due to the issuance of a government order directing the City to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the City or any person acting under City's direct control and authority, City shall be responsible for all costs and expenses of complying with such order. In the event a government order is issued naming the City or the City incurs any liability during or after the term of this Agreement in connection with contamination which pre-existed the City's obligations and occupancy under this Agreement or which were not caused by the City, the Owner shall hold harmless, indemnify, and defend the City in connection therewith and shall be solely responsible as between the City and the Owner for all efforts and expenses thereto.

18. Restoration of Occupied Premises. Upon termination of this Agreement, Owner agrees that any equipment installed by the City shall be and remain the property of the City, and City shall remove such property when vacating the Occupied Premises. Except as otherwise provided in this Agreement, upon termination of this Agreement, City shall restore the Occupied Premises to the condition as originally received by the City and existing prior to the installation of any of the City's property (excluding normal wear and tear), including, without limitation, restoration and repair of all interior surfaces, floors, walls, ceilings, including restoring damaged floor tile and patching and repainting damaged interior wall surfaces to match adjacent existing surfaces, and including restoration and repair of all furnishings, fixtures and equipment. City shall clean the Occupied Premises per the then current health and safety protocols established by public health officials during the term and immediately prior to vacating the Occupied Premises.

19. Hotel Staff. Owner warrants that this Agreement will not impact the employment status of any hotel staff for the duration of this Agreement. Owner and/or its agents shall ensure that all hotel staff will receive the same compensation as they would otherwise have received absent any City occupancy, whether they are reassigned to another hotel or relieved of duty for the duration of the Agreement.

20. Taxes. Owner is solely responsible for all tax liabilities with respect to the Occupied Premises.

21. No Tenancy; Relief from Eviction Laws. 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 the City 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 Occupied Premises by the City and its invitees hereunder. The City shall waive

the applicability of all Eviction Laws with respect to the Occupied Premises. In the event any individual is claiming tenancy rights, then the City, at the City's sole cost and expense, shall take all such necessary actions to remove such individual from the Occupied Premises prior to expiration or termination of the Agreement.

22. Permitted Use. The City may use the Occupied Premises for COVID-19 related emergency housing, supportive housing, and support services.

23. Licenses & Permits (including Liquor Licenses); Zoning.

a. The Owner shall, at the Owner's sole cost and expense, be responsible to obtain and 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 the City for the renewal, as applicable) of any permits for the Occupied Premises that expire or need to be renewed during the term of this Agreement. The City shall comply with (or obtain the necessary waivers of) all zoning requirements for its operation on the Occupied Premises during the term of this Agreement.

b. The City will reasonably work with any other government agencies and instrumentalities, whether City or local, that have jurisdiction over the Hotel to ensure that the City's occupancy of the Occupied Premises 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 the City's occupancy. The City will further reasonably work with any other government agencies and instrumentalities to 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.

24. City Liability. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of the Owner for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

25. Liens. City agrees to keep the Occupied Premises and all equipment and property of Owner or Manager, located at the Occupied Premises and directly related to the operations thereof, free and clear of any and all liens for work performed or materials furnished to or at the request of City.

26. Alterations. City shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement to) the Occupied Premises without the prior written consent of Owner in its sole discretion.

27. No Use of Names. Except as is required by law or on a need-to-know basis, City 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.

28. Contract Work Hours and Safety Standards Act.

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

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

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

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

29. Clean Air Act.

a. The Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

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

c. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

30. Federal Water Pollution Control Act.

a. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

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

c. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

31. Suspension and Debarment

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Owner is required to verify that none of the Owner's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Owner must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the City. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

32. Byrd Anti-Lobbying Amendment. Owner Certifies, and will submit to the City the Certification attached here as Attachment A, that it has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other

award covered by 31 U.S.C. § 1352. Owner shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded to the City who in turn will forward the certification to the awarding agency.”

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

a. The Owner agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Owner which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Owner agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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

d. In compliance with the Disaster Recovery Act of 2018, the City and the Owner acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

34. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Owner will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

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

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

37. Remedies. In the event of any breach of the terms of this Agreement by the either Party, the non-breaching Party shall be entitled to pursue any and all legal and equitable rights and remedies permitted by applicable law.

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

39. Confidentiality. The terms of this Agreement will be kept confidential by the parties, except as disclosure may be required by law or on a need-to-know basis, without the written consent of the other party.

40. Survival of Covenants. 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.

41. Entire Agreement. This Agreement 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.

42. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of Texas, not including the choice of law provisions thereof.

43. Counterparts; Electronic Signatures. 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.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date the last Party signs the Agreement.

CITY OF AUSTIN
By Alex Gale
Name: Alex Gale
Title: Interim officer

APPLE PIE HOTELS, LLC
By Rajesh Patel
Name: RAJESH PATEL
Title: Managing Member

Approved as to Form

By Sean Creegan
Digitally signed by Sean Creegan
DN: cn=Sean Creegan, o=City of Austin,
email=sean.creegan@cityofaustin.gov, ou=City
of Austin, cn=Sean Creegan
Name: Sean Creegan
Title: Assistant City Attorney