

## **AMENDMENT NO. 1 TO EMERGENCY TEMPORARY OCCUPANCY AGREEMENT**

This Amendment No. 1 to the EMERGENCY TEMPORARY OCCUPANCY AGREEMENT (the "Amendment"), between LVP FFI Austin LLC d/b/a Fairfield Inn & Suites Austin Northwest/Research Blvd, a Delaware limited liability company (the "Owner"), and the City of Austin, a Texas home-rule city and municipal corporation situated in Travis, Williamson, and Hays County, Texas (the "City" and together with the Owner the "Parties" and each individually a "Party").

**WHEREAS**, the Parties have entered into an EMERGENCY TEMPORARY OCCUPANCY AGREEMENT, dated November 12, 2020, the "Existing Agreement"); and

**WHEREAS**, the Parties hereto desire to amend the Existing Agreement on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

2. Amendment.

a. The Term of the Existing Agreement expires on April 12, 2021. The Parties agree to extend the Term through May 12, 2021, and, thereafter, City may extend the Term for up to two successive thirty-day terms in accordance with Section 2 of the Existing Agreement.

b. The first sentence of Section 3 (Early Termination) is hereby amended by changing the notice requirement from 14 to 10 days. The first sentence of section 3 will now read as follows:

**"The City may terminate this Agreement at any time by giving written notice to the Owner at least ten (10) days prior to the date when such termination shall become effective."**

3. Date of Effectiveness; Limited Effect. This Amendment will be effective on the date the last Party signs the Amendment (the "Effective Date"). Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing

Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement will mean and be a reference to the Existing Agreement as amended by this Amendment.

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

a. It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.

b. The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.

c. This Amendment has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

5. Miscellaneous.

a. This Amendment and all related documents are governed by, and construed in accordance with, the laws of the State of Texas, United States of America without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

b. This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

c. The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

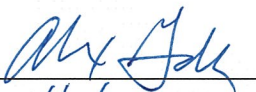
d. This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.

e. This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and

contemporaneous understandings, agreements, or representations and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.


CITY OF AUSTIN

By:   
Date: 4/8/2021

Name: Alex Gale

Title: Officer

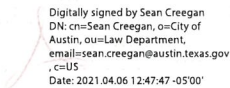
LVP FFI Austin LLC d/b/a Fairfield Inn & Suites Austin Northwest/Research Blvd.

By:   
Date: 4/8/2021

Name: Joseph E. Teichman

Title: Secretary

Approved as to Form

By Sean Creegan  


Digitally signed by Sean Creegan  
DN: cn=Sean Creegan, o=City of Austin, ou=Law Department, email=sean.creegan@austin.texas.gov, c=US  
Date: 2021.04.06 12:47:47 -05'00'

Name: \_\_\_\_\_

Title: Assistant City Attorney