

**HOTEL OCCUPANCY AGREEMENT  
BETWEEN  
THE  
THE CITY OF COSTA MESA  
AND  
NICO HOSPITALITY LLC DBA SUNSET INN**

THIS HOTEL OCCUPANCY AGREEMENT (the "Agreement") is made and entered into as of the 8th day of September, 2021 ("Effective Date"), by and between NICO HOSPITALITY LLC, a California limited liability company DBA SUNSET INN ("Sunset Inn") and the CITY OF COSTA MESA, a municipal corporation ("City"). Sunset Inn and City are individually referred to as "Party" and collectively as "Parties."

**WITNESSETH:**

WHEREAS, Sunset Inn is the owner of the hotel facility located at 2100 Newport Blvd., Costa Mesa, CA and all appurtenances thereon known as Sunset Inn (the "Property"); and

WHEREAS, the City desires to use rooms at the Property on an as-needed basis for the purpose of temporarily sheltering individuals experiencing homelessness (each invitee of the City shall hereinafter be individually referred to as a "City Guest" or "City Invitee" and collectively the "City Invitees"); and

WHEREAS, Sunset Inn desires to permit City to utilize rooms at its Property for the requested purpose (any rooms utilized pursuant to this Agreement will be collectively referred to herein as the "Rooms"); and

WHEREAS, Sunset Inn and City desire to execute this Agreement to set forth their rights, obligations, and liabilities relating to City's use of the Property.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the Parties hereby agree as follows:

**1.0. COMPENSATION**

City agrees to pay Sunset Inn the rates set forth below, plus any standard and applicable fees and taxes, for any guest room that City reserves for a City Invitee. Payment shall be made at the time a reservation is made by City. Sunset Inn's annual compensation shall not exceed Six Thousand Dollars (\$6,000.00).

<b>Effective Date-September 30, 2021</b>	
<b>Room Type</b>	<b>Rate</b>
1 king bed	\$129.99/night
2 queen beds	\$129.99/night

<b>October 1, 2021-February 28, 2022</b>	
<b>Room Type</b>	<b>Rate</b>
1 king bed	\$99.99/night
2 queen beds	\$99.99/night

March 1, 2022-June 30, 2022	
Room Type	Rate
1 king bed	\$109.99/night
2 queen beds	\$109.99/night

The Parties agree that the foregoing rates are for single or double occupancy of the Rooms. City agrees that Sunset Inn may charge City an additional fee of Twenty Dollars (\$20.00) per additional City Guest in a room, up to a maximum of four (4) City Guests per room.

The Parties further agree that if this Agreement is extended, room rates for the period of July 1, 2022 through September 30, 2022 shall not exceed One Hundred Twenty-Nine Dollars and Ninety-Nine Cents (\$129.99) per night for the room types specified above.

**2.0. TERM**

The term of this Agreement shall commence on the Effective Date and continue through June 30, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Thereafter, this Agreement may be extended by four (4) additional one (1) year periods upon written agreement of the parties.

**3.0. TERMINATION**

Either Party may terminate this Agreement by giving the other Party seven (7) days' written notice.

**4.0. USE**

The City will use the Property to provide temporary shelter for individuals experiencing homelessness. The City shall use the Property in a careful, safe, and proper manner in accordance with all applicable laws, statutes, treaties, rules, orders, ordinances, regulations, and requirements, including, but not limited to, those pertaining to health, healthcare, safety or the environment.

City agrees that any and all illegal activity, including, but not limited to, drug use, is not permitted and the Property, and any City Guest determined to have engaged in any illegal activity will be immediately removed from the Property by the City.

Sunset Inn shall make available to City and City Invitees for their use all normal and standard hotel operation functions, including, but not limited to, sewer, trash, and water services, including both hot and cold water to the lavatories, elevator service, if any, electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, pool, pool area, and pool equipment, if any, and housekeeping and laundry services, as further detailed herein.

**5.0. HOUSEKEEPING; CARE AND SURRENDER OF ROOMS**

5.1. Housekeeping. Sunset Inn shall perform standard housekeeping services to rooms utilized by City Invitees in accordance with Sunset Inn's normal housekeeping schedule, provided that such services shall be provided no less than once every three (3) days.

5.2. Surrender of Rooms. City shall return each room occupied by a City Guest to Sunset Inn in the same condition it was in at the commencement date of such occupancy, ordinary wear and tear excepted. City agrees to be responsible for any unreasonable wear and tear caused to the Rooms, including

reasonable costs incurred to repair same, which repairs and which costs shall be agreed upon by City and Sunset Inn.

**6.0. ACCEPTANCE OF FACILITIES**

Sunset Inn makes no warranty or representation of any kind whatsoever regarding the condition of the Property or its fitness for City's use, or any use. City accepts and agrees to use the Property in its current "as-is" condition, without any obligation of Sunset Inn to perform or pay for any improvement thereto.

**7.0. ALTERATIONS, ADDITIONS, IMPROVEMENTS**

Sunset Inn reserves the right to alter, change, or work on the Property during the term of this Agreement, provided that such modifications do not materially impair or affect City's use of the Property as contemplated herein.

City shall not make any permanent alterations, additions, or improvements to the Property. City shall not change, alter, or otherwise cause the existing physical contours, features, and improvements of the Rooms, including but not limited to furniture arrangements, to be altered without prior written approval from Sunset Inn.

**8.0. NO INTEREST IN PROPERTY**

City understands and agrees that this is not a lease agreement. No tenancy is established by this Agreement and City shall have no interest in the Property as a result of this Agreement or City's use of the Property.

**9.0. ENTRY BY SUNSET INN**

City shall permit Sunset Inn to enter into and upon the Rooms at all reasonable hours to inspect the same, and make any repairs deemed necessary by Sunset Inn, provided that, prior to entering any Rooms, Sunset Inn shall contact the City's Representative, and coordinate such entry with the City's Representative.

**10.0. REPRESENTATIVES**

City and Sunset Inn have designated the following representatives to act on their behalf in the administration of this Agreement. Each Party's representative may issue all consents, approvals, and directives on behalf of that Party. City's Representative and Sunset Inn's Representative shall coordinate with one another in the administration of this Agreement.

City's Representative: Susan Price, Assistant City Manager  
(714) 754-5099  
susan.price@costamesaca.gov

Sunset Inn's Representative: Minesh Patel, Owner  
(949) 642-2670  
tutarukar@aol.com

Either Party may change their designated representative by providing written notice to the other Party.

## 11.0. INSURANCE

11.1. Minimum Scope and Limits of Insurance. Sunset Inn shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Sunset Inn agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Sunset Inn for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

11.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- a. Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Sunset Inn pursuant to its contract with the City; products and completed operations of Sunset Inn; premises owned, occupied or used by Sunset Inn; automobiles owned, leased, hired, or borrowed by Sunset Inn."
- b. Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- c. Other insurance: "Sunset Inn's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- d. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- e. Sunset Inn's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

11.4. Certificates of Insurance. Sunset Inn shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City.

11.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Sunset Inn may be held responsible for payments of damages to persons or property.

**12.0. INDEMNIFICATION**

To the fullest extent permitted by law, Sunset Inn agrees to defend, with counsel approved by City, indemnify, and hold harmless City, its elected officials, officers, agents, employees and volunteers from and against any and all claims, actions, proceedings, damages, liability and expense allegations, loss, cost, and any judgment or settlement paid, arising from the negligence or willful misconduct of, and/or violation of any applicable law, statute, treaty, rule, order, ordinance, regulation, or requirement, including, but not limited to, those pertaining to health, healthcare, safety or the environment, by Sunset Inn, its owners, employees, agents, personnel and/or subcontractors. The indemnity obligations of Sunset Inn include, without limitation, Sunset Inn's obligation to indemnify City for all attorneys' fees, other professional fees, and costs incurred by City in connection with the enforcement of the provisions contained in this Section. City may, at its option, require Sunset Inn to assume City's defense in any action covered by this Section, with legal counsel approved by City.

**13.0. GENERAL PROVISIONS**

13.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

13.2. Notices. Except as set forth herein, any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail. Notwithstanding the foregoing, communications relating to the day-to-day performance of this Agreement may be sent by e-mail.

**IF TO SUNSET INN:**

Nico Hospitality LLC dba Sunset Inn  
2100 Newport Blvd.  
Costa Mesa, CA 92627  
Attn: Minesh Patel

**IF TO CITY:**

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Susan Price

Either Party may change its address for notices by giving notice in writing to the other Party.

13.3. Independent Contractor Relationship. Sunset Inn is an independent contractor and will have sole authority to control and direct the details of its performance and activities. Neither Party will be an employee of the other Party under the meaning or application of any federal or state law, including but not limited to unemployment insurance or workers' compensation laws, and will not be entitled to any of the benefits of an employee of the other Party. Further, neither Party has the authority to act as an agent of the other Party and will not hold themselves out as such.

13.4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the Parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

13.5. Attorneys' Fees. In the event that litigation is brought by any Party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

13.6. Public Records Act Disclosure. Sunset Inn has been advised and is aware that this Agreement and all reports, documents, information and data furnished or prepared by Sunset Inn pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in California Government Code section 6254.7, and of which Sunset Inn informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

13.7. Force Majeure. In the event of damage or destruction of the Property by any act of God, fire, national or local calamity, strike, labor dispute, civil disturbance, accident, epidemic, act or regulation of any public authority, interruption in or delay of transportation services, or any event of any other kind or character whatsoever, whether similar or dissimilar to the foregoing events, which shall render the practicable fulfillment by Sunset Inn of its obligations under this Agreement impossible, this Agreement shall be null and void and Sunset Inn shall be released of all responsibility hereunder and shall not be held responsible by City for any resulting damage. In the event of any such occurrence or threat thereof, Sunset Inn shall have the right in its discretion to suspend or terminate any use by City of the Rooms, to cause the Rooms to be vacated, or to take such action for such duration as Sunset Inn in its sole discretion deems necessary or appropriate. In such event, the time table for vacating of the Rooms will be set by Sunset Inn.

13.8. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Sunset Inn and City and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

13.9. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

13.10. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or

question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

13.11. Amendments. Only a writing executed by the Parties hereto or their respective successors and assigns may amend this Agreement.

13.12. Waiver. The delay or failure of either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

13.13. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any Party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both Parties agree to substitute such provision(s) through good faith negotiations.


13.14. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

13.15. Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties hereto are formally bound to the provisions of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**NICO HOSPITALITY LLC DBA SUNSET INN**

  
Minesh Patel  
Owner

Date: 9/15/21

**CITY OF COSTA MESA**

  
Carol Molina  
Purchasing Officer

Date: October 7, 2021

ATTEST:

  
Brenda Green  
City Clerk




Date: 10/11/2021

APPROVED AS TO FORM:

  
Kimberly Hall Barlow  
City Attorney


Date: 9/30/21

APPROVED AS TO CONTENT:

  
Susan Price  
Assistant City Manager

Date: 9/28/21

APPROVED AS TO PURCHASING:

  
Carol Molina  
Finance Director

Date: October 7, 2021