

STATE OF WASHINGTON  
COUNTY OF PACIFIC

**EMERGENCY TEMPORARY OCCUPANCY AGREEMENT**

<u>TEMPORARY OCCUPANCY AGREEMENT COVERING ROOMS LOCATED AT PREMISES</u> HEIDI'S INN 126 Spruce Street Ilwaco, WA 98624
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.</u> 81 46 27 585
<u>COUNTY AGENCY</u> Pacific County Health and Human Services Department

**I. PREAMBLE**

THIS TEMPORARY OCCUPANCY AGREEMENT (this "Agreement"), made and entered into this \_\_\_\_\_th day of 20, 2020 by and between Heidi's Inn (Hotel), Hereinafter called the Owner, and Pacific County Local Government hereinafter called County, and it's Departments, including Pacific County Health and Human Services Department, hereinafter called PCHHS.

1. The Owner hereby agrees to make certain facilities available to the County and the PCHHS. Under this Agreement, the Owner is making certain premises described below available to the County and PCHHS to provide assistance to vulnerable individuals during a time of crisis, and enters into this Agreement to further that goal. The Owner agrees to allow the County and PCHHS to pay for hotel rooms as needed.

**II. PARTIES and FACILITY**

**a. Owner**

<u>Legal Name:</u>	MILAD KASHKOUILI
<u>Address:</u>	135 TH PL Tigard OR 97223
<u>Point of Contact Name and Title:</u>	Bruce Fowler
<u>Email Address:</u>	milad@gmail.com
<u>Cell Phone/Pager:</u>	503 522 -1188

Address for Legal Notices (only if different from address above):

**b. The Premises**

<u>Address:</u> 126 Spruce Street ILWACO WA 98624
<u>Name of Premises:</u> Heidi's Inn
<u># of Units Available (rented individually):</u> 20
<u>Nightly rate per unit:</u> \$39 plus applicable taxes
<u>Facilities available to use at property:</u> 1 parking space for each rented unit, 1 parking space for Pacific County employees, access to laundry room, individual units as rented

**c. County**

<u>Legal name:</u> Pacific County / Health + Human Services Department
<u>Address:</u> 1216 W. Robert Bush Dr., PO Box 26, South Bend WA 98584
<u>Point of Contact Name and Title:</u> Jamie Graves-Hallam, Program manager
<u>Email Address:</u> jhallam@co.pacific.wa.us
<u>Work Phone:</u> 360-875-9343 ext. 2642
<u>Alternative Point of Contact Name and Title:</u> Katie Lindstrom
<u>Email Address:</u> klind@co.pacific.wa.us
<u>Work Phone:</u> 360-642-9300 ext. 2648 Cell: 360-214-6013
<u>Address for Legal Notices (only if different from address above):</u>

**III. TERM**

2. The County may request hotel rooms commencing on April 15, 2020 from the Owner. The Initial Term of this agreement will be automatically extended for successive periods of thirty (30) days each, unless either Owner or the County elects not to extend by giving seven (7) days written notice to the other party.

**IV. SERVICES RELATED TO AGREEMENT**

3. The following services listed below applies to this Agreement:

- a. Owner will not be responsible for meal service.
- b. Access points to and from guestrooms will be mandated by hotel management and must be followed.
- c. Guests will be limited to specific areas within the hotel as directed by hotel management.
- d. Only authorized guests are allowed in the guestrooms except for service providers or county employees delivering food, essential items, cleaning, laundry, or other essential services.
- e. Guests will not congregate in common areas of the hotel per the direction of hotel management.
- f. Personal Protective Equipment (PPE) will be sourced and provided to the hotel, if possible.
- g. No housekeeping services will be provided by Owner while guest occupies room as it will be done upon departure of guest. The County, PCHHS, or another service provider at the County's/PCHHS's discretion may clean occupied hotel rooms once vacated by a guest. Owner may request County/PCHHS allow Owner to clean rooms once a guest has vacated. If PCHHS/County and Owner agree to allow Owner to clean hotel rooms, County/PCHHS will pay an increased rate for the service as specified below in CONSIDERATION, Paragraph V.

## V. CONSIDERATION

4. A fee for use of the occupied rooms shall be paid by the PCHHS/County to the Owner, from legally available funds in an amount representing the consideration running to the Owner, said consideration having been fairly bargained for and exchanged between the parties:
  - a. Thirty-Five and 00/100 Dollars (\$35.00) per night per room plus applicable taxes (does not include cleaning of vacated rooms by guests) if rented on a monthly basis.
  - b. Forty and 00/100 Dollars (\$40) per night per room plus applicable taxes (does not include cleaning of vacated rooms by guests) if rented on a nightly or weekly basis.
  - c. If PPE is acquired for/by the hotel and the parties agree to allow hotel to clean rooms after a guest vacates, County/PCHHS will pay a one-time cleaning fee of \$100 per room once the room is vacated by a guest.

Payments due under this section for any period of time less than one month shall be determined by prorating the nightly and weekly payment herein specified based on the amount of days the room will be occupied. If a room is no longer needed, the County/PCHHS will pay for the room for an additional four (4) days after the room is vacated by a guest placed at the hotel by PCHHS/County. 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.

5. Consideration and other payments due hereunder shall be made payable to: \_\_\_\_\_  
 and mailed to: Zmg LLC 126 Spruce ST EAST ILWACO WA  
98620 PO Box 703

The address to which notices, payments, and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

## **VI. SERVICES, UTILITIES, AND SUPPLIES**

6. One parking space per rented unit must be available upon the date a room is rented, and shall be unobstructed by Owner and its agents and completely accessible for a guest's use. Owner will also provide one designated space for employees of the County/PCHHS, the County, or other service providers delivering items to guests.

7. Owner agrees to use commercially reasonable efforts to maintain contracts for basic critical utilities (electricity, gas, water/sewer, and HVAC) and other basic services contracts; provided, however, that all costs of the provision of such utilities and services during the term of this Agreement shall be at the Owner's sole cost and expense. In the event of failure by the Owner to furnish any of the above utilities in a satisfactory manner, PCHHS and the County may furnish the utilities and be reimbursed by Owner for the services.

## **VII. SURRENDER OF OCCUPANCY OF UNITS**

8. Upon termination or expiration of this agreement, PCHHS and the County will peacefully surrender to the Owner the occupied units 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 there was no control. Owner will be responsible for removing any individual who overstays in the property, but may request reimbursement for expenses from PCHHS or the County for any guest who remains unlawfully on the property.

When use of the occupied units and areas ends by PCHHS and the County, PCHHS and the County will perform the following tasks:

- Repair and Restore occupied areas to prior status
- Perform a deep cleaning and sanitation of all used areas

If the County/PCHHS fails to surrender the occupied units 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, the County and PCHHS shall be liable for all costs incurred by Owner (or third parties under contract with the Owner) to repair or restore the occupied units to the required condition or to satisfy such other obligations. Such amounts will be calculated based on replacement or repair at actual cash value of the personal property at the time the personal property was damaged and no longer usable. The County/PCHHS's liability under this section shall survive the expiration or earlier termination of the Agreement.

## **VIII. TIME OF ESSENCE, BINDING UPON SUCCESSORS**

9. Time is of the essence of this occupancy agreement, and the terms and provisions of this occupancy 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 "County", "PCHHS", or as "Owner", the obligations of such persons or entities hereunder will be joint and several with respect to the applicable party.

## **IX. NO ORAL AGREEMENTS**

10. 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.

## **X. RESTORATION OF PREMISES**

11. Upon termination of this agreement, PCHHS and County shall restore the Occupied Space, to the condition as originally received, reasonable wear and tear excepted. PCHHS and County shall clean the premises per the then current health and safety protocols established by public health officials and otherwise to the satisfaction of Owner and Manager, during the term and immediately prior to vacating the units.

## **XI. TAXES**

12. Owner is solely responsible for all property taxes with respect to the Hotel.

## **XII. NO TENANCY; RELIEF FROM EVICTION LAWS**

13. 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 PCHHS, the County, 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 PCHHS, the County, and its invitees hereunder. In the event any individual is claiming tenancy rights, then the Owner shall take all such necessary actions to remove such individual from the premises prior to expiration or termination of the Agreement, and shall be reimbursed by the County for reasonable costs and expenses associated with such removal up to \$2,000.

## **XIII. PERMITTED USE**

14. The County, and PCHHS may use the Occupied Units solely for the purposes of housing unsheltered or displaced individuals needing quarantine or isolation from the general public, and for no other purpose.

## **XIV. INDEMNIFICATION**

15. *Indemnification by Owner.* To the fullest extent permitted by law, the Owner agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the Owners, its employees, agents or volunteers or Owner's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the Owner's or its subcontractors' use of, presence upon or proximity to the property of

the COUNTY. This indemnification obligation of the Owner's shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the Owner's shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Owner's hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Owners are a material inducement to COUNTY to enter into the Contract, are reflected in the Owner's compensation, and have been mutually negotiated by the parties.

16. *Participation County – No Waiver.* The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Owner's indemnity obligations under the Contract.

17. *Survival of Contractor's Indemnity Obligations.* The Owners agrees all Owner's indemnity obligations shall survive the completion, expiration or termination of this Contract.

#### **XV. CONFLICTS OF INTEREST**

18. The County/PCHHS may, by written notice to the Owner terminate the right of the Owner to proceed under this contract for actions, policies, practices, or omissions to act that constitute a conflict of interest within the meaning of RCW chapter 42.18. This includes, but is not limited to prohibitions against offering County employees, directly or indirectly, anything of economic value from a Contractor or a potential contractor (and from subcontractors of the foregoing) in exchange for any official act or forbearance to act.

State and County employees are not permitted to receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value from any person, entity, corporation, partnership, or similar organization which has or is seeking to obtain a contractual, financial or other business relationship with the County or DSHS. This prohibition includes action by employees designed to benefit other persons in addition to or instead of the employee directly.

In the event this contract is terminated for a conflict of interest, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the County provided for in this section are in addition to any other rights and remedies provided by law

#### **XVI. LIENS**

19. PCHHS and the County agrees to keep the Occupied Units, 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 PCHHS and the County.

#### **XVII. ALTERATIONS**

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

#### **XVIII. TERMINATION DUE TO DESTRUCTION OF PROPERTY**

21. If the occupied premises are destroyed in whole or in part by fire or other casualty, this occupancy agreement shall terminate.

### **XIX. Relationship of Parties**

22. The relationship between Owner and PCHHS and the County is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency or tenancy, or any other fiduciary relationship between the Owner and the County or its agents or departments. Neither party may invoke or rely upon any provision of Title 59 RCW.

### **XX. ATTORNEY'S FEES/COST OF SUIT AND VENUE**

23. If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

a. Disputes. Differences between the Owner and the County, arising under and by virtue of this Contract, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due Owner shall be decided by the County's contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to Choice of Law, Jurisdiction and Venue.

b. Choice of Law, Jurisdiction and Venue. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

c. Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the County determine that the severed portions substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, the County may, in its sole discretion, terminate this Agreement.

## **XXI. ASSIGNMENT**

24. The County will not assign or sublet its rights or responsibilities under this Agreement without the written authorization of the Owner. Subject to the foregoing, and if assigned to a third-party, then the Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their successors and assigns.

## **XXII. NON-DISCRIMINATION**

25. The County will provide equal opportunity services and will not discriminate on the basis of race, color, national origin/language, creed/religion, sex, sexual orientation (including gender identity), disability or the use of service animal by a person with a disability, age, marital status, honorably discharged veterans, or military status.

## **XXIII. NON-COMPLIANCE WITH NON-DISCRIMINATION LAWS**

26. During the performance of this Agreement, the Owner shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further Contracts with the state. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **XXIV. SEVERABILITY**

27. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

## **XXV. TERMINATION FOR CONVENIENCE**

28. The County may terminate this Contract for Convenience, in whole or in part, upon seven (7) business days' written notice, the calculation of such period beginning on the third day after mailing. If this Contract is terminated for convenience, the County shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

## **XXVI. CONFIDENTIALITY**

29. 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.

30. Owner and its agents, staff, and personnel, agree not to reveal any personally identifying information about any individuals utilizing services under this agreement.

## **XXVIII. ENTIRE AGREEMENT**



31. 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.

#### **XXIX. PUBLIC RECORDS ACT**

32. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Owner are needed for the County to respond to a request under the Act, as determined by the County, the Owner agrees to make them promptly available to the County. If the Owner considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Owner shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Owner and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Owner (a) of the request and (b) of the date that such information will be released to the requester unless the Owner obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Owner fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Owner to claim any exemption from disclosure under the Act. The County shall not be liable to the Owner for releasing records not clearly identified by the Owner as confidential or proprietary. The County shall not be liable to the Owner for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Owner agrees to indemnify and, to the greatest extent legally possible, to hold harmless the County in any action by a third party due to the negligence, recklessness or intentional actions by the Owner relating to its performance of this contract. This includes any lawsuit filed by a third party for the County's allegedly improper release of confidential or proprietary information pursuant to a public records request.

#### **XXX. COUNTERPARTS, ELECTRONIC SIGNATURE**

33. 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 occupancy agreement has been executed by the parties hereto as of the dates written below.

OWNER  
HEIDI'S INN

PACIFIC COUNTY, WASHINGTON

Bruce E. [Signature]  
Authorized Representative

\_\_\_\_\_  
Authorized Representative  
Name:  
Title:

Manager  
(Title)

126 Spruce ST EAST  
(Address)

ILWACO WA 98624  
(Address)

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Marie Guernsey  
Clerk of the Board  
Date

\_\_\_\_\_  
Pacific County Prosecutor's Office WSBA#