

RESOLUTION NO. 02-2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING THE FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE
CITY OF PACIFICA AND STEPHEN JOHNSON PHOTOGRAPHY FOR THE PREMISES
LOCATED AT 1220-C LINDA MAR BOULEVARD (LOCATED IN THE PACIFICA CENTER
FOR THE ARTS FACILITY).**

WHEREAS, City is the owner of the property located at 1220 Linda Mar Boulevard, Pacifica, California, depicted on Exhibit A attached hereto (“Premises”); and

WHEREAS, Stephen Johnson Photography has leased the Premises located on this property for 17 years, functioning as an upscale photography studio, gallery and teaching facility; and

WHEREAS, the City and Stephen Johnson Photography wish to amend the current lease to allow for the continuation of an offset to rent via photographic services through the final year of the lease; and

WHEREAS, the City desires to implement a First Amendment to the Lease Agreement with Stephen Johnson Photography for use of the Premises.

**NOW, THEREFORE, THE PACIFICA CITY COUNCIL HEREBY RESOLVES AS
FOLLOWS:**

1. The City Council hereby finds that the First Amendment to the Lease is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), under Section 15301 as a Class 2 Categorical Exemption as there will be no expansion of previous use beyond that existing at the time of the City’s determination.
2. The City Council hereby approves the First Amendment to the Lease Agreement between the City of Pacifica and Stephen Johnson Photography, attached hereto.
3. The City Manager is hereby authorized to execute the First Amendment to the Lease Agreement in the form attached hereto as Exhibit A, with minor revisions that may be approved by the City Manager and City Attorney, and to execute any other necessary documents to effectuate the terms of the First Amendment to the Lease Agreement and take all steps necessary to carry it into effect.

• • • • •

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 10th day of January, 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstyk, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.



Mary K. Bier (Jan 20, 2022 08:48 PST)

Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Pacifica, County of San Mateo, State of California, described as follows:

PARCEL I:

Being a portion of the lands described in Parcel I of the Deed from Armando Barsotti, et al., to Sterling Terrace Corporation, recorded November 16, 1953 in Volume 2499 of Official Records at Page 245, Records of San Mateo County, described more particularly as:

BEGINNING at the Southwesterly corner of Lot 8, Block 5, all as shown on that certain map entitled, "TRACT NO. 700, LINDA MAR NO. 11, SAN MATEO COUNTY, CALIFORNIA", recorded December 9, 1954 in Volume 40 of Maps at Pages 39 and 40, Records of San Mateo County, said point also lying on the Southerly line of above mentioned Parcel I in the Deed from Barsotti to Sterling; thence leaving said Point of Beginning, and said Linda Mar No. 11, and running along said Southerly line of lands of Sterling, North 74° 01' 30" West 210.03 feet to the most Westerly corner of said lands of Sterling, said Westerly corner also lying on the common boundary of said lands of Sterling and the lands described in the Deed from Gabriel and Frances Malavear, to C.J. Grieder, recorded November 26, 1952 in Book 2332 of Official Records at Page 577, Records of San Mateo County, thence leaving said Westerly corner along said common boundary North 33° 45' 15" East 745.30 feet to the Southwesterly line of Linda Mar Boulevard, said line also being the boundary of said Linda Mar No. 11; thence leaving said common boundary of Grieder and Sterling along the Southwesterly line of said Linda Mar Boulevard and said boundary of Linda Mar No. 11, as shown on said Map of Linda Mar No. 11, Easterly on a curve to the right from a tangent bearing South 34° 43' 46" East with a radius of 830 feet, a central angle 2° 43' 46", an arc length of 39.54 feet; thence tangent to the last mentioned curve South 32° East 36.52 feet, thence tangent to the last mentioned course on a curve to the left having a radius of 435 feet, a central angle of 17° 52' 02", an arc length of 136.65 feet; to the most Northerly corner of Lot 1, block 5, as shown on said map of Linda Mar No. 11; thence leaving said Southwesterly line of Linda Mar Boulevard and continuing along said boundary of Linda Mar No. 11, South 33° 44' 15" West 615.13 feet to the Point of Beginning.

PARCEL II:

BEGINNING at a point in the Northwesterly boundary line of the lands shown on the Map of part of The San Pedro Rancho forming the Mahoney Interest filed June 25, 1879 in book "A" of Maps at Page 56, and a copy entered in Book 1 of Maps at Page 25, said point being distant North 29° 45' West 956.40 feet and North 34° 45' East 475.46 feet from an iron pipe set in the most Southerly corner of Lot 12 shown on the Map above mentioned; thence leaving said Northwesterly boundary line, North 45° 24' West 328.06 feet; thence North 34° 45' East 810.31 feet to the Southwesterly line of San Pedro Valley Road; thence along the Southwesterly line of San Pedro Valley Road, South 45° 26' East 269.01 feet and South 27° 45' East 65.57 feet to the

Exhibit A

above mentioned Northwesterly boundary line of the lands shown on the Map above mentioned; thence along the last mentioned line, South 34° 45' West 790.28 feet to the point of beginning.

EXCEPTING THEREFROM property conveyed by deed from C. J. Grieder, et ux., to County of San Mateo, dated October 28, 1954 and recorded in the office of the County Recorder, San Mateo County on January 21, 1955 in Book 2730 of Official Records at page 86, described as follows:

BEGINNING at a point which is the most Northerly corner of said tract of land; thence from said point of beginning along the Northwesterly line of said tract South 33° 44' 15" West 30.36 feet; thence leaving said Northwesterly line South 55° 59' 45" East 22.46 feet; thence on the arc of a curve to the right, tangent to the last mentioned course, said curve having a radius of 830.00 feet and a central angle of 21° 15' 59" a distance of 308.07 feet to the Southeasterly line of said tract; thence along said Southeasterly line North 33° 44' 15" East 12.24 feet to the Northeasterly boundary line of said tract which line is also the Southwesterly line of the Pedro Valley Road, County Road No. 61; thence along the Northeasterly line of said tract North 28° 45' 45" West 65.57 feet and North 46° 26' 45" West 269.01 feet to the point of beginning.

PARCEL III:

Being a portion of the lands described in the Deed from Emilio P. Lombardi to John G. Castagnetto and Esther Castagnetto, his wife, recorded April 15, 1949 in Book 1649 of Official Records of San Mateo County at Page 150 (85745-H), more particularly described as follows:

BEGINNING at a point on the Southeasterly boundary line of the subdivision as shown on the Map entitled, "TRACT NO. 693 LINDA MAR NO. 9, SAN MATEO COUNTY, CALIFORNIA", which Map was filed in the office of the Recorder of the County of San Mateo, State of California on July 21, 1954, in Book 39 of maps at Pages 38 and 39, said point being distant thereon South 33° 44' 15" West 8.73 feet from the most Southerly corner of Lot 40, Block 4, as said Lot and Block are designated on the above mentioned Map of Linda Map No. 9; thence from said point of beginning along said Southeasterly boundary line and its

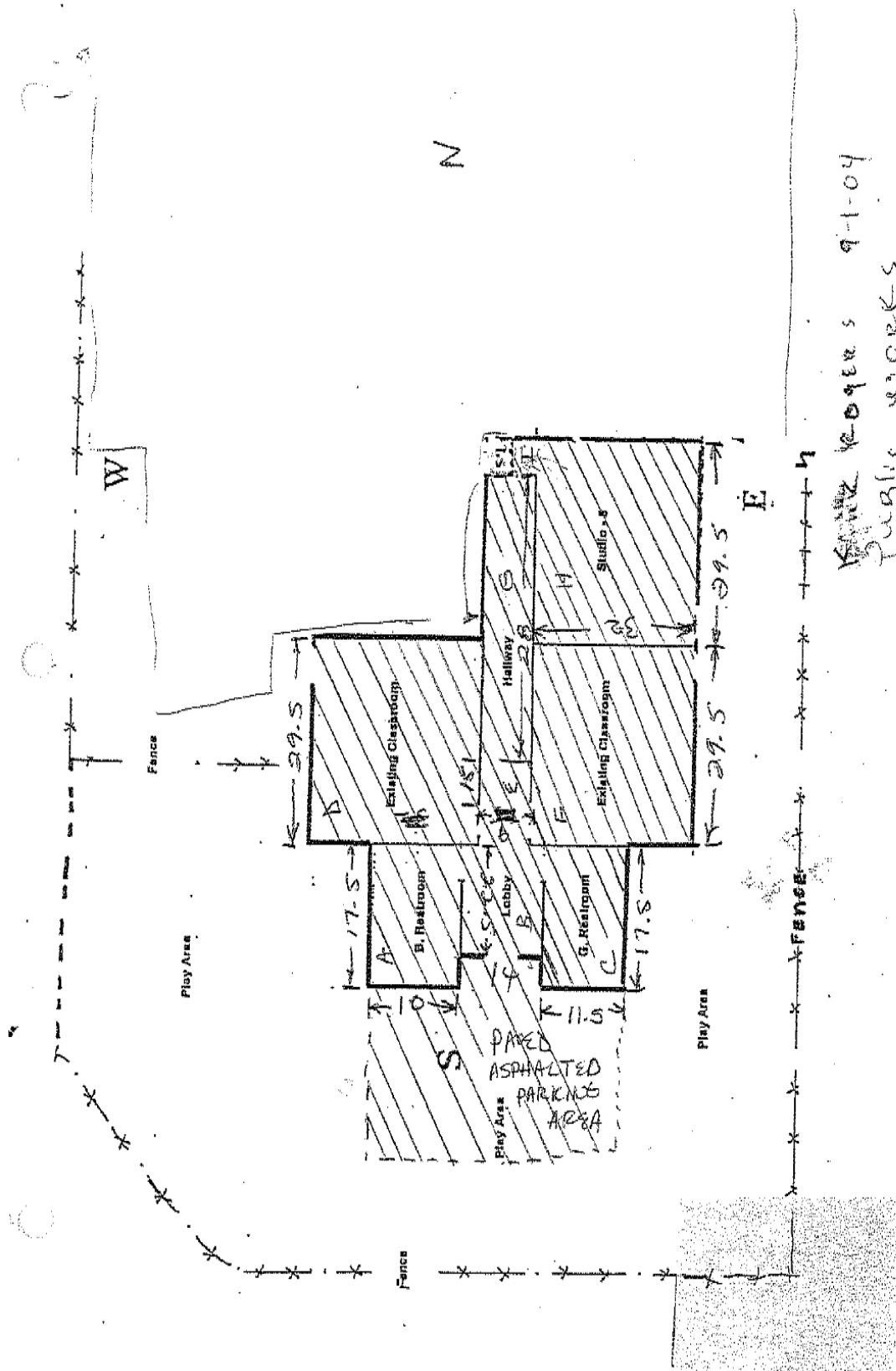
prolongation Northeasterly North 33° 44' 15" East 243.16 feet to the Southwesterly line of that certain 3.0911 acre tract of land conveyed to Laguna Salada Elementary School District by Deed dated March 10, 1955 and recorded August 19, 1955 in Book 2860 of Official Records of San Mateo County at Page 218 (78660-M); thence Southwesterly along said Southwesterly line South 74° 01' 30" East 10.50 feet; thence leaving said Southwesterly line South 33° 44' 15" West 245.47 feet; thence North 61° 21' 15" West 10.04 feet to the point of beginning.

A.P. No.: 023-281-130

JPN 023 028 281 13 A

Exhibit A

EXHIBIT "A"



KIMBERLIE ROGERS 9-1-04
Public works



© 2014 Google

Google earth

Imagery Date: 2/23/2014 37°34'57.84" N 122°29'12.63" W elev 90 ft eye alt 441 ft

1993

EXHIBIT A

FIRST AMENDMENT TO TENANT LEASE

By and Between

CITY OF PACIFICA
a municipal corporation of the State of California
(“Landlord”)

And

STEPHEN JOHNSON PHOTOGRAPHY
a sole proprietorship
(“Tenant”)

Dated: November 1, 2021

This First Amendment to Tenant Lease (this “First Amendment”) is made and entered into effective as of November 1, 2021 (“Effective Date”) by and between the City of Pacifica, a municipal corporation of the State of California (“Landlord”) and Stephen Johnson Photography, a sole proprietorship wholly owned by Stephen Johnson, an individual (“Tenant”).

Section 1. Subsection 3.2 of that certain Lease Agreement, dated as of October 28, 2019 (“Lease Agreement”), by and between Landlord and Tenant, is amended to read as follows:

“3.2 Base Rent; Rent. The monthly Base Rent for the Initial Term shall be Two thousand seventy nine dollars and 35/100 cents (\$2,079.35), for a total of Twenty four thousand nine hundred fifty two dollars and 20/100 cents (\$24,952.20) per year

3.2.1 Base Rent Adjustment for Photographic Services Rendered. During the Initial Term and each Extended Term, a portion of the Base Rent shall be adjusted based on professional photographic services rendered by Tenant to Landlord reducing the Base Rent by a total amount of twelve thousand dollars (\$12,000) per year (“Base Rent Adjustment”).

(i) The Tenant shall render the photographic services based on the hourly rates and Terms of Use identified in Exhibit C, attached hereto and hereinafter incorporated by reference (“Photographic Services”). Landlord shall request specific Photographic Services from time to time either through a written or verbal request to Tenant and Tenant shall provide those Photographic Services to Landlord in the manner and timeframe requested by Landlord.

(ii) Tenant shall perform the requested Photographic Services in a timely and professional manner and Tenant shall, at Landlord’s request, provide an accounting of Photographic Services rendered to determine the amount of Photographic Services rendered for the period requested.

(iii) Tenant shall at all times provide the Photographic Services as an independent contractor and shall at no time be considered an employee, volunteer or agent of the Landlord.

(iv) Except to the extent caused by Landlord's sole or active negligence, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by Tenant’s Photographic Services, including, without limitation, any personal injury, death, property damage, caused or alleged to have been caused by Tenant’s Photographic Services, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to personal injury,

death or property damage sustained by third parties caused or alleged to have been caused by Tenant's obligations under this Lease to provide Photographic Services. Tenant's obligations under this Section 3.2 shall survive the expiration or earlier termination of this Lease.”

3.2.2 Intentionally omitted.

3.2.3 Intentionally omitted.

3.2.4 Landlord may terminate the Base Rent Adjustment during the Initial Term or any Extended Term, if the Landlord, in its sole discretion, determines that the Photographic Services are unsatisfactory or unnecessary, and may terminate the Base Rent Adjustment upon providing thirty (30) days written notice to Tenant. If Landlord terminates the Base Rent Adjustment pursuant to this provision Tenant shall receive a Base Rent Adjustment for those photographic services rendered up to the written notice date and commence paying the full Base Rent on the first day of the month following said written notice unless otherwise identified. Tenant shall also have the option to terminate the Agreement pursuant to Section 19.1 upon written notice from Landlord of termination of the Base Rent Adjustment.

Section 2. Subsection 3.4 of the Lease Agreement is amended to read as follows:

“3.4 Base Rent Annual Increase. Beginning on the commencement of the Extended Terms, if any, the Base Rent for the ensuing twelve (12) month period shall be as follows:

3.4.1 First Extended Term: \$2,120.93 per month for a total of \$25,451.24 per year.

3.4.2 Second Extended Term: \$2,143.35 per month for a total of \$25,720.20 per year.

Section 3. Exhibit C to the Lease Agreement shall be replaced in its entirety with the Exhibit C attached hereto.

Section 4. Except as otherwise amended herein, all terms and conditions of the Lease Agreement, including Exhibits attached thereto shall remain in full force and effect.

[Signatures are set forth on following page.]

IN WITNESS WHEREOF, the parties have executed this First Amendment to Tenant Lease as of January 10, 2022.

LANDLORD:

CITY OF PACIFICA, a municipal corporation of the State of California

ATTEST:

By: _____
Kevin Woodhouse, City Manager

By: _____
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon, City Attorney

TENANT

STEPHEN JOHNSON PHOTOGRAPHY

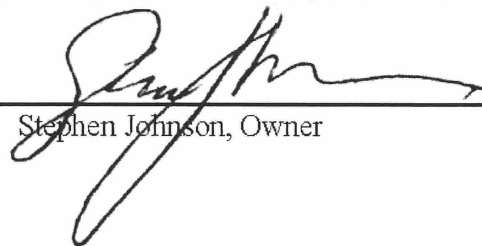
By:  _____
Stephen Johnson, Owner

Exhibit C

PHOTOGRAPHIC SERVICES

In accordance with

- 1) Create and organize a portfolio of photographs (all photographs provided in digital format)
- 2) Create new aerial photograph* of the City of Pacifica
- 3) Aerial photographs of shopping districts (Approximately 11-12 shopping districts)
- 4) Various Photographs depicting various scenes occurring within the City of Pacifica:
 - Events/crowds in City of Pacifica
 - Various recreational activities in City of Pacifica
 - Dining/relaxing in City of Pacifica
 - Shopping in City of Pacifica
 - Photographs of essence/highlights of various neighborhoods (Fairmont East and West, Manor, Sharp Park, Fairway East and West, Rockaway, Vallemar, Linda Mar, Park Pacifica, Pedro Point, etc.
 - Photographs of different coastal areas (Cliffs at north end of City, bluffs along Esplanade, Sharp Park sea walls, Sharp Park levee, Mori Point, Rockaway, Linda Mar beach) (possibly taken from a boat**)
 - Photographs of City Facilities
 - Photographs of City services in action such as Parks, Beaches and Recreation, Public Works, Police, Fire, etc.
 - Pictures of Palmetto revitalization
 - Photographs as requested by City staff
- 5) From time to time Tenant may provide a selection of photographs and City staff may select individual photographs for City Driven Use, subject to Terms of Use of Photographs at the “per photograph” Rate identified below, which amount shall be credited against the Base Rent Adjustment for Photographic Services Rendered as described in Section 3.2.1.
- 6) Photography Workshops to City Staff

Rates

Photography Services- \$125/hour

Workshop Services-\$1,250/day

Per Photograph-\$100

Terms of Use of Photographs

- 1) Tenant grants to Landlord a perpetual, non-exclusive license to use the photographs taken and provided to Landlord pursuant to the Agreement and this Exhibit C for any “City Driven Use.” “City Driven Use” shall mean any use which is determined by the Landlord, in its sole discretion, to be for appropriate City purposes. Revocation of said license and termination of the Landlord’s

use of the photographs shall only occur if the photographs are utilized for something other than a City Driven Use.

2) Landlord may not intentionally manipulate the content of any photographs provided as part of the Photographic Services.

3) Landlord will make efforts to give photo credit to Tenant when possible and practicable.

4) Landlord will make efforts to preserve the metadata contained within the photographs provided to City as part of the Photographic Services.

5) Landlord shall not be liable for any failure of a third party to comply with these Terms of Use and any failure of a third party to comply with these Terms of Use shall not result in a revocation of the Landlord's license to use of the photographs.

6) Landlord shall not sell any photographs provided as part of the Photographic Services to any third party for a profit.

*Aerial photographs shall be billed at hourly rate and costs relating to rental of an airplane or helicopter shall be additional and negotiated with the City of Pacifica in advance.

**Photographs taken by a boat shall be billed at the hourly rate and costs relating to rental of a boat shall be additional and negotiated with the City of Pacifica in advance.









For Signature: ResolutionNo02-2022_StephenJohnsonPhotographyLeaseAgreement_FirstAmendment

Final Audit Report

2022-01-20

Created:	2022-01-19
By:	Sarah Coffey (scoffey@pacifica.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyrcxK5AeY7TtMkDFVtn7wFW7GOGti9FX

"For Signature: ResolutionNo02-2022_StephenJohnsonPhotographyLeaseAgreement_FirstAmendment" History

-  Document created by Sarah Coffey (scoffey@pacifica.gov)
2022-01-19 - 11:37:44 PM GMT
-  Document emailed to Mary K. Bier (mbier@pacifica.gov) for signature
2022-01-19 - 11:38:16 PM GMT
-  Email viewed by Mary K. Bier (mbier@pacifica.gov)
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-  Document e-signed by Mary K. Bier (mbier@pacifica.gov)
Signature Date: 2022-01-20 - 4:48:14 PM GMT - Time Source: server
-  Document emailed to Sarah Coffey (scoffey@pacifica.gov) for signature
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-  Email viewed by Sarah Coffey (scoffey@pacifica.gov)
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-  Document e-signed by Sarah Coffey (scoffey@pacifica.gov)
Signature Date: 2022-01-20 - 4:53:01 PM GMT - Time Source: server
-  Agreement completed.
2022-01-20 - 4:53:01 PM GMT