

Document no. 22-D0697-1  
 10/05/2022 (13)  
 City Original

**CITY OF OCEANSIDE  
 PROPERTY USE AGREEMENT  
 WITH PACIFIC SUITES, INC.,  
 2008 HARBOR DRIVE NORTH, OCEANSIDE, CALIFORNIA**

THIS PROPERTY USE AGREEMENT ("Agreement"), dated October 5th, 2022 solely for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation ("CITY"), and PACIFIC SUITES, INC, a California corporation, doing business as Oceanside Marina Inn ("Pacific Suites"). Collectively referred to herein as "Parties."

**RECITALS**

WHEREAS, the Oceanside Small Craft Harbor District, herein called "DISTRICT," is the LESSEE under a ground lease with the CITY for the certain premises in the City of Oceanside, County of San Diego, State of California, commonly known as the Oceanside Harbor, herein referred to as "Harbor."

WHEREAS, DISTRICT and Pacific Suites are parties to a Facility Lease Agreement for the lease by Pacific Suites of the certain real property located at 2008 Harbor Drive North at the Oceanside Harbor and containing approximately 67 rooms and other hotel amenities, in the City of Oceanside, County of San Diego, State of California, commonly referred to as "Oceanside Marina Suites Hotel," herein referred to as "Hotel."

WHEREAS, the City and Harbor desire to improve the level of land and water based public safety services within the Harbor. In order to keep the Public Safety presence in the Harbor 24 hours a day, the CITY desires to enter into a one-year agreement with Pacific Suites for use of two (2) hotel suites one carport parking bay, and the non-exclusive use of three (3) parking spaces and the common area space at the Hotel.

NOW THEREFORE, the parties hereto in accordance with the terms, covenants, conditions and provisions contained herein, mutually agree as follows:

**SECTION 1: USES**

**1.01 Premises.** Pacific Suites hereby authorizes the CITY, in accordance with the terms, covenants, conditions and provisions of this Agreement, the exclusive use of Hotel Suites 159 and 160 and one (1) assigned dual covered parking bay with storage space ("Premises"). The assigned dual covered parking bay with storage is located two spaces north of the lobby. Suite 159 includes two (2) bedrooms, one (1) bathroom, living room, and kitchen and Suite 160 includes one (1) bedroom, one (1) bathroom, living room, and kitchen. Three unassigned parking spaces will be available to the CITY on a non-exclusive basis, available at the Hotel. The CITY will be issued three (3) parking passes for said spaces for use Sunday through Thursday of each week. During the weekends (Friday and

Saturday), the CITY will be required to park in a Harbor lot adjacent to Premises. The parking is first-come and first-served.

**1.02 Uses.** It is expressly agreed that the Premises shall be used by the CITY solely and exclusively for the purpose of temporary living quarters for Public Safety employees and storage of its vehicles, materials and equipment to facilitate Public Safety operations in the Harbor.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be one year commencing on the effective date ("Effective Date") of this Agreement. The term shall not commence until the Parties execute a memorandum confirming the Effective Date once it's determined. CITY will notify Pacific Suites of the date upon which it wishes to commence the use of the Premises, which shall be no less than ten (10) business days in advance thereof.

**2.02 Renewal Options.** CITY shall have the option to extend the term of this Agreement for one (1) additional one-year term under the terms and conditions of this Agreement provided the CITY is not in default of this Agreement. The Monthly Rent payments shall be calculated pursuant to Section 3.02 of this Agreement. CITY will provide Pacific Suites with 30 day written notice of their desire to extend the term of the Agreement. Written notice shall be provided by the CITY Real Estate Manager, and shall not require City Counsel approval.

In no event shall the term of the Agreement be extended in excess of one (1) one-year extension beyond the expiration of the term of this Agreement without the mutual written agreement by the Parties.

**2.03 Holdover.** Any holding over by CITY after expiration shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises by CITY after the expiration of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement, including Monthly Rent payments, shall continue in full force and effect.

## **SECTION 3: Property Use Payment**

**3.01 Property Use Payment.** CITY shall pay Pacific Suites the sum of **Eight Thousand Three Hundred Dollars (\$8,300.00)** per month as rent for the use of the Premises. Payment of rent shall be made in advance, without demand, on the first (1<sup>st</sup>) day of each month CITY occupies the Premises. The checks shall be payable to the order of Oceanside Marina Inn, and mailed to the following: 8888 Clairmont Mesa Blvd., Suite M, San Diego, CA 92123, Attention: Accounts Receivable

**3.02 Property Use Payment During Renewal Option.** Monthly Rent shall increase by three percent (3%) on the Anniversary date of this Agreement. CITY shall pay Pacific Suites **Eight Thousand Five Hundred and Forty-Nine Dollars (\$8,549.00)** per month as rent.

#### **SECTION 4: GENERAL PROVISIONS**

**4.01 Maintenance.** Pacific Suites at its sole cost, shall make all repairs necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition and in compliance with all applicable laws. CITY shall have no responsibility for maintenance of the Premises; however, CITY shall notify the Hotel management promptly should any issues with the Premises arise.

**4.02 Utilities.** Pacific Suites at its sole cost, shall provide and pay for all utilities on the Premises.

**4.03 Cleaning Services.** CITY will be responsible for all cleaning services within the Premises. CITY will not be provided with daily cleaning services that are normally provided to Pacific Suites guests. Upon request and at no additional cost to CITY, Pacific Suites shall provide CITY with fresh linens, this includes bath towels and bed sheets suitable for the Premises.

**4.04 Changes, Modifications or Alterations.** At CITY'S sole cost, CITY can make modifications to the covered parking bay assigned to the CITY that includes the installation of an electronic garage door, and additional electrical outlets to facilitate lighting within the covered parking bay. CITY shall provide Pacific Suites with details related to the modifications, and said modifications shall become the property of Pacific Suites upon termination of the Agreement.

**4.05 Taxes.** Pacific Suites shall not be subject to the City of Oceanside's Transient Occupancy Tax (TOT) for the use of the Premises for the term of this Agreement or any holdover period.

**4.06 Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**To DISTRICT:**

**City of Oceanside  
Property Management  
300 North Coast Highway  
South Building, Third Floor  
Oceanside, CA 92054  
Attention: Real Estate Manager**

**Email: [vgutierrez@oceansideca.org](mailto:vgutierrez@oceansideca.org)**  
**Phone: (760) 435-5014**

**To Pacific Suites:**

**Pacific Suites, Inc.**  
**8888 Clairmont Mesa Blvd., Suite M**  
**San Diego, CA 92123**  
**Attention: Justin Gittins**  
**Email: [JG@pacificsuitesinc.com](mailto:JG@pacificsuitesinc.com)**  
**Phone: 619-248-5813 or On Site Manager: 760-722-1561**

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

**4.07 Entire Agreement.** This Agreement comprises the entire integrated understanding between CITY and Pacific Suites concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to the CITY.

CITY shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties

hereto and their respective successors and assigns.

**4.08 Agreement Modification.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

**4.09 Regulations.** All use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules, regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

**4.10 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the CITY's duties be delegated, without the express written consent of Pacific Suites.

**4.11 Indemnity.** CITY shall indemnify and hold harmless the PACIFIC SUITES and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the CITY or its employees, agents, or others in connection with its use and occupation of the Premises under this Agreement, except only for those claims arising from the sole and active negligence or sole willful misconduct of the PACIFIC SUITES, its officers, agents, or employees. CITY indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the PACIFIC SUITES, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, CITY at its own expense shall, upon written request by the PACIFIC SUITES, defend any such suit or action brought against the PACIFIC SUITES, its officers, agents, or employees.

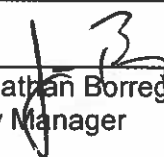
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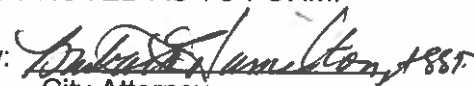
IN WITNESS WHEREOF the parties hereto do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed, by the authorized representatives of the parties having the ability to bind the parties to the terms and conditions contained herein, as of the day and year written above.

**City of Oceanside**

Date 10-6-22

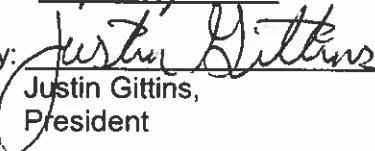
By:   
Jonathan Borrego,  
City Manager

APPROVED AS TO FORM:

By: , ASST.  
City Attorney

**Pacific Suites, Inc.**

Date 9/20/2022

By:   
Justin Gittins,  
President

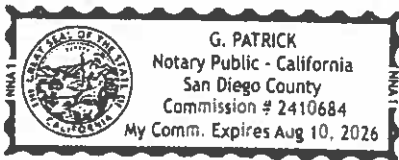
**CALIFORNIA ACKNOWLEDGMENT**

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of San Diego }  
On 09/20/2022 before me, G. Patrick, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Justin Gittins  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature G. Patrick  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Property Use Agreement

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer - Title(s): \_\_\_\_\_  Corporate Officer - Title(s): \_\_\_\_\_

Partner -  Limited  General  Partner -  Limited  General

Individual  Attorney in Fact  Individual  Attorney in Fact

Trustee  Guardian or Conservator  Trustee  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_ Signer is Representing: \_\_\_\_\_

**WRITTEN CONSENT IN LIEU OF ANNUAL MEETING  
OF THE SOLE DIRECTOR OF  
PACIFIC SUITES, INC.**

**April 20, 2018**

The undersigned, being the sole director of Pacific Suites, Inc., a California Corporation (the "Company"), acting pursuant to his authority to do so in accordance with Section 307(b) of the California General Corporation Law, does hereby waive notice and the holding of a meeting of the board of directors of the Company, and by written consent without a meeting, does hereby adopt the following resolutions as of this 20<sup>th</sup> day of April 2018, which shall have the same force and effect as if adopted at a duly convened meeting of the directors of the company after notice duly given:

**1. Ratification of Appointment of Officers of the Company**

**RESOLVED**, that the appointment of the following persons as officers of the Company is hereby ratified, approved and confirmed in all respects, effective as of the date set forth opposite such person's name, each to hold the office set forth opposite such person's name, subject to such person's earlier resignation, removal or death, from said effective date until the next annual meeting of the board of directors of the Company and the election and qualification of such person's successor, as provided in the Company's By-Laws, as amended from time to time:

| <u>Office</u>           | <u>Name</u>       | <u>Effective Date</u> |
|-------------------------|-------------------|-----------------------|
| Chief Executive Officer | Justin L. Gittins | April 20, 2018        |
| President               | Justin L. Gittins | April 20, 2018        |
| Chief Financial Officer | Justin L. Gittins | April 20, 2018        |
| Secretary               | Justin L. Gittins | April 20, 2018        |

**2. Authorization to Negotiate Lease Amendment**

**RESOLVED FURTHER**, that the undersigned sole director of the Company, having reviewed and approved the terms of the Non-Binding Proposal to extend the term that certain Facility Lease Agreement between The Oceanside Small Craft Harbor District, as lessor ("District"), and the Company, as lessee, dated as of February 4, 1998 (the "Marina Inn Lease"), attached hereto as Exhibit "A" (the "Lease Proposal"), hereby authorizes Justin L. Gittins, as the President and the Secretary of the Company, to enter into negotiations with the District to amend the Marina Inn Lease in accordance with the terms of the Lease Proposal, and to take all other actions and to do all other things as such officers deem necessary or appropriate in order to extend the term of the Marina Inn Lease in accordance with the Lease Proposal.

**3. Authorization to Perform and Pay for Sewer Repairs**

**RESOLVED FURTHER**, that the undersigned sole director of the Company has determined that it is in the best interests of the Company, based on the terms of the Lease Proposal and the District's good faith efforts to extend the term of the Marina Lease consistent therewith, and having reviewed the Contractor's Work Proposal and Cost Estimate of Arrow Pipeline Repairs ("Contractor") attached hereto as Exhibit "B" (the "Work Proposal") relating to those sewer and drain line repairs and installation of liner in piping as more particularly described in the Work Proposal (the "Work"), the undersigned sole director of the Company hereby authorizes Justin L. Gittins, as the President and the Secretary of the Company, to enter into a contract with the Contractor to perform such Work at the Company's cost and expense in accordance with such Work Proposal, and to take all other actions and to do all other things as such officers deem necessary or appropriate in order to complete the Work in accordance with the Work Proposal.

**4. Ratification of all Prior Actions by Officers**

**RESOLVED FURTHER**, in addition to those actions taken by the officers of the Company in accordance with that certain Unanimous Written Consent of the sole director of the Company dated January 31, 2018, all actions taken and things done by the officers of this Company since the last unanimous written consent of the sole director of the Company in lieu of an annual meeting, as the same appear of record or in the usual course of business to date, in good faith and in the reasonable belief that such actions were or would be in the best interests of this Company, including all such actions and elections by the director at all meetings, whether or not such meetings were properly called, whether or not a quorum was present, whether or not the director and officers were properly elected and qualified, and whether or not such actions and elections were otherwise irregular, be and the same hereby are confirmed, ratified and adopted as the acts and deeds of the Company.

**5. General Authority**

**RESOLVED FURTHER**, that the officers of the Company be, and hereby are, authorized and directed to execute and deliver all such instruments and documents and do all such other acts and things as such officers deem necessary or appropriate in order to carry out the intent and purposes of the foregoing resolutions.

**IN WITNESS WHEREOF**, the undersigned has set his hand hereunto as of the 20<sup>th</sup> day of April, 2018.

**SOLE DIRECTOR:**

  
Justin Gittins

**EXHIBIT "A"**

**APPROVED LEASE AMENDMENT PROPOSAL**