

**RESOLUTION NO. 63-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
APPROVING THE FIRST AMENDMENT OF THE LEASE AGREEMENT BETWEEN THE  
CITY OF PACIFICA AND THE PACIFICA SPINDRIFT PLAYERS FOR PREMISES LOCATED  
AT 1050 CRESPI DR (COMMONLY KNOWN AS THE PACIFICA SPINDRIFT THEATER).**

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**WHEREAS**, the City of Pacifica owns property located at 1050 Crespi Drive (“Property”);  
and

**WHEREAS**, the Pacifica Spindrift Players (PSP) currently lease a building on the  
Property (also known as the Spindrift Theater and formerly known as the Pacifica Cultural Arts  
Center) (“Building”); and

**WHEREAS**, PSP has leased the Building from the City since 1994, the current lease  
agreement was entered into on January 1, 2015 (the “Lease”) with an initial term for five years  
and an additional five-year option, which will expire December 31, 2024; and

**WHEREAS**, the current Lease does not include the parking lot on the Property as part of  
the leased space and the Lease specifically prohibits PSP from conducting certain activities on  
the Property outside of the Building; and

**WHEREAS**, due to COVID-19 pandemic, the Pacifica Spindrift Players are not able to  
produce its typical 7-show season of theatrical productions inside and has therefore submitted to  
the City a Temporary COVID-19 Outdoor Activities Application as part of the Temporary COVID-19  
Outdoor Activities Program established pursuant to Emergency Order No. 2020-02 (and amended  
by Emergency Order No. 2020-04); and

**WHEREAS**, the Temporary COVID-19 Outdoor Activities Program allows businesses  
within the City to conduct outdoor commercial activity for a temporary period during the Local  
Emergency due to COVID-19; and

**WHEREAS**, the Application submitted by PSP indicated that PSP proposed, as the outdoor  
business activities, a series of outdoor theatrical readings in the parking lot on the Premises, to be  
held over eight (8) weekends in August, September and October, 2020 (the “Outdoor Activities”);  
and

**WHEREAS**, in order to obtain the Outdoor Activity Agreement, PSP must obtain the City’s  
consent to use the Temporary Use Area for the Outdoor Activity; and

**WHEREAS**, the City desires to implement an amendment to the Lease Agreement with  
PSP to allow for temporary usage of the parking lot for the Outdoor Activities.

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

1. The City Council hereby approves the First Amendment to the Lease Agreement between the City of Pacifica and the Pacifica Spindrift Players, attached hereto.
2. The City Manager is hereby authorized to execute the 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.

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**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the 12<sup>th</sup> day of October 2020, by the following vote:

**AYES**, Councilmembers: Martin, Beckmeyer, Vaterlaus, Bier, O'Neill.

**NOES**, Councilmembers: n/a

**ABSENT**, Councilmembers: n/a

**ABSTAIN**, Councilmembers: n/a

*Deirdre H Martin*

Deirdre H Martin (Oct 15, 2020 12:54 PDT)

Deirdre Martin, Mayor

ATTEST:

*Sarah Coffey*

\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

*Michelle Marchetta Kenyon*

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

# EXHIBIT A

## FIRST AMENDMENT TO LEASE

**THIS FIRST AMENDMENT TO LEASE** (this “**Amendment**”) is made and entered into as of October 12, 2020 (the “**Effective Date**”), by and between the **CITY OF PACIFICA**, a municipal corporation of the State of California (“**Landlord**” or “**City**”), and **PACIFICA SPINDRIFT PLAYERS**, a California non-profit corporation (“**Tenant**”).

## RECITALS

- A. Landlord is the owner of certain property located at 1050 Crespi Drive, Pacifica, California 94044 (“**Property**”). Pursuant to that certain Lease Agreement entered into as of January 1, 2015 (the “**Lease**”), Landlord currently leases to Tenant and Tenant leases from Landlord the building located on the Property (“**Building**”), an approximately 7,463 contiguous square foot building commonly known as the Pacifica Spindrift Theater, together with Improvements (if any) as described in Section 9.1 of the Lease (collectively, the “**Premises**”).
- B. Pursuant to the Lease, the Premises does not include the parking lot on the Property, and the Lease specifically prohibits Tenant from conducting certain activities on the Property outside of the Premises.
- C. As a result of the COVID-19 pandemic, Tenant is not currently able to produce its typical 7-show season of theatrical productions inside the Building, and Tenant has therefore submitted to the City a Temporary COVID-19 Outdoor Activities Application (the “**Application**”), seeking to obtain authorization for outdoor activities pursuant to an Outdoor Activities Encroachment Agreement (the “**Outdoor Activity Agreement**”) to present a series of outdoor theatrical readings, to be held over eight (8) weekends in August, September and October, 2020, as further described in the Application and in Appendix 1; the Application and Appendix 1 are attached to this Amendment collectively, as **Exhibit A** (the “**Outdoor Activity**”). Tenant seeks to perform the Outdoor Activity in a portion of the parking lot on the Property, as depicted on **Exhibit B**, attached hereto (the “**Temporary Use Area**”). A copy of the Outdoor Activity Agreement is attached hereto as **Exhibit C**.
- D. In order to obtain the Outdoor Activity Agreement, Tenant must obtain Landlord’s consent to use the Temporary Use Area for the Outdoor Activity. Landlord is willing to consent to Tenant’s use of the Temporary Use Area for the Outdoor Activity under the terms and conditions of this Amendment, and Tenant is willing to agree to use the Temporary Use Area for the Outdoor Activity pursuant to the terms and conditions of this Amendment.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Permit to use Temporary Use Area for Outdoor Activity**. As of the Effective Date and continuing until the earlier of: (a) the date that the Outdoor Activity Agreement is terminated; or (b) the date Landlord terminates Tenant’s use of the Temporary Use Area as is Landlord’s right as set forth in this paragraph (the “**Term of Temporary Use**”), Landlord permits Tenant to use the Temporary Use Area for the Outdoor Activity, as part of the Premises, so long as Tenant uses the Temporary Use Area in accordance with the terms and conditions of this Amendment. Landlord has the absolute right to revoke Tenant’s use of the Temporary Use Area at any time for any reason, in Landlord’s sole and absolute discretion.

2. **Use of the Temporary Use Area.** Tenant shall use the Temporary Use Area only for the Outdoor Activity and at all times in accordance with the terms and conditions of this Amendment and the Outdoor Activity Agreement, including but not limited to compliance with the all of the orders, directives and guidelines of San Mateo County, the State of California order regarding COVID-19.
3. **Temporary Use Area is Part of the Premises during the Term of Temporary Use.** During the Term of Temporary Use, the Temporary Use Area shall be deemed a part of the Premises under the Lease, and all provisions, and terms and conditions of the Lease regarding the Premises shall apply as equally to the Temporary Use Area as they do to the Premises. To the extent necessary to effectuate the Temporary Use, Landlord temporarily waives the restrictions on Tenant set forth in Rules 13 and 16.6 of the Rules and Regulations set forth in Exhibit C to the Lease.
4. **Insurance.** In addition to Tenant's obligations under Section 6 of the Lease, Tenant shall procure commercial general liability insurance coverage (occurrence form) for the Temporary Use Area, and Tenant shall provide Landlord with an additional insured endorsement attached to the certificate of insurance, naming Landlord as an additional insured on the commercial liability insurance policy.
5. **Spindrift School of Performing Arts (SSPA).** Tenant shall obtain a written acknowledgment from SSPA, acknowledging that Tenant has the right to use the Temporary Use Area pursuant to this Amendment.
6. **Tenant's Obligations after Each Performance and at the End of the Temporary Use Term.** Within twelve (12) hours of the end of each performance, Tenant shall clear the Temporary Use Area of all furniture, equipment, debris and other materials, except the stage, to allow for complete unobstructed access to the parking lot on the Property. At the end of the Temporary Use Term, Tenant shall remove any markings, signs, the stage and any other evidence of the Outdoor Activity to comply with the terms of Section 9.5 of the Lease with regard to the Temporary Use Area.
7. **Landlord's Rights.** Landlord reserves and maintains all rights, power and authority Landlord has pursuant to the terms of the Lease, including but not limited to Landlord's rights under the Indemnity provisions of Section 7 of the Lease, and all rights, powers and authorities it has as a landlord and as a municipal corporation under applicable law.
8. **Miscellaneous.**
  - 8.1 This Amendment and the Outdoor Activity Agreement set forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease, unless specifically set forth in this Amendment.
  - 8.2 Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. The capitalized terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.
  - 8.3 Submission of this Amendment by Landlord is not an offer to enter into this Amendment but rather is a solicitation for such an offer by Tenant. Landlord shall not be bound by this



Amendment until Landlord has executed and delivered the same to Tenant.

- 8.4 Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment. Tenant agrees to indemnify and hold Landlord and the Landlord Entities harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment.
- 8.5 This Amendment and the Lease shall be construed as a whole in order to effectuate the intent of the parties to amend the Lease in the manner specified in this Amendment. All provisions of the Lease that are affected by this Amendment shall be deemed amended regardless of whether or not specified in this Amendment. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control.
- 8.6 Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury (“**OFAC**”); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: “List of Specially Designated Nationals and Blocked Persons.” If the foregoing representation is untrue at any time during the Term of the Lease, an Event of Default under the Lease will be deemed to have occurred, without the necessity of notice to Tenant.
- 8.7 Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that as of the date of this Amendment, the Premises have not undergone inspection by a “Certified Access Specialist” (“**CASp**”) to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code Section 55.53. Landlord hereby discloses pursuant to California Civil Code Section 1938 as follows: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” Landlord and Tenant hereby acknowledge and agree that in the event that Tenant elects to perform a CASp inspection of the Premises hereunder (the “**Inspection**”), such Inspection shall be (a) performed at Tenant’s sole cost and expense, (b) limited to the Premises and (c) performed by a CASp who has been approved or designated by Landlord prior to the Inspection. Any Inspection must be performed in a manner which minimizes the disruption of business activities on the Property, and at a time reasonably approved by Landlord. Landlord reserves the right to be present during the Inspection. Tenant agrees to: (i) promptly

provide to Landlord a copy of the report or certification prepared by the CASp inspector upon request (the “**Report**”), (ii) keep the information contained in the Report confidential, except to the extent required by Law, or to the extent disclosure is needed in order to complete any necessary modifications or improvements required to comply with all applicable accessibility standards under state or federal Law, as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with applicable Laws or accessibility requirements (the “**Access Improvements**”). Tenant shall be solely responsible for the cost of Access Improvements to the Premises or the Building necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by Law, which Access Improvements may, at Landlord’s option, be performed in whole or in part by Landlord at Tenant’s expense, payable as Additional Rent within ten (10) days following Landlord’s demand.

- 8.8 This Amendment may be executed in counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Amendment and transmitting the signatures by facsimile or email. The parties agree and intend that a signature communicated by facsimile or email shall bind the party so signing with the same effect as though the signature were an original signature.

*[Signatures on following page]*

IN WITNESS WHEREOF, Landlord and Tenant have entered into and executed this Amendment as of the Effective Date.

**LANDLORD:**

CITY OF PACIFICA, a municipal corporation of California

By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

Approved as to Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

Attest

By: \_\_\_\_\_  
Sarah Coffey, City Clerk

**TENANT:**

SPINDRIFT PLAYERS, a California non-profit corporation

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

APPLICATION AND APPENDIX 1



CITY OF PACIFICA
TEMPORARY COVID-19 OUTDOOR ACTIVITIES APPLICATION

1. Business Identification.

Business Name (Permittee): Pacifica Spindrifft Players
Mailing Address: 1050 Crespi Drive, Pacifica CA 94044
Business Address:
Phone Number: (650) 359-8002
Email: cat@pacificaspindrifftplayers.org
Other Contact Information: (203) 927-1444 (cell #, Board President Cat Imperato)

2. Type of Business. Check one:

- Restaurant
Retail
Other, please describe: Theater

3. Proposed Encroachment into Public Right-of-Way. Businesses seeking to encroach into the Public Right-of-Way for purposes of conducting Outdoor Activities in compliance with State and County orders, check one or more if applicable to your operations:

- Outdoor Dining
Outdoor Retail Display
Outdoor Food Sales
Outdoor Retail Sales
Other, please describe: Outdoor staged reading - theatrical performance
Not applicable

4. Is Permittee the owner of the property where proposed outdoor activity will be conducted?

- Yes
No
If response to above question is no, has Permittee obtained written authorization (including but not limited to written agreements, licenses, and/or leases) to use said private property for proposed outdoor activity?
Yes
No

5. Proposed Outdoor Activities. Please provide the following information on separate attachment:

- (1) a description of the Business,
(2) proposed outdoor activities,
(3) a description of all improvements, structures and/or materials to be used to facilitate outdoor activities,
(4) description of area in which proposed outdoor activities will take place along with a drawing, map or other visual depiction showing said area, improvements, structures and/or materials to be placed in said area.

6. Requested Start Date of Outdoor Activities: 8/8/2020
7. Proposed Duration of Outdoor Activities: 2-3 months (pending weather/licensing)

8. Permittee will be required to enter into a written agreement ("Temporary COVID-19 Outdoor Activities and Encroachment Agreement") to be eligible to engage in Outdoor Activities. The City reserves the right to amend the form of the Temporary COVID-19 Outdoor Activities and Encroachment Agreement to provide additional requirements and/or standards, if appropriate.

## Pacifica Spindrift Players

### CITY OF PACIFICA TEMPORARY COVID-19 OUTDOOR ACTIVITIES APPLICATION

#### Appendix 1: Proposed Outdoor Activities

(1) Description of Business: Pacifica Spindrift Players (PSP) is a nonprofit, volunteer-run community theatre organization founded in Pacifica in 1958 which typically produces a full 7-show season of fully staged theatrical productions for Pacifica and the surrounding communities each year.

(2) Description of the Outdoor Activity: At this stage of the COVID-19 pandemic, it's clear that live indoor theatre will be unsafe for both performers and patrons for the foreseeable future. However, overwhelming scientific evidence indicates that outdoor activities are substantially safer than indoor activities in terms of COVID-19 transmission risk - particularly when paired with other risk-reducing interventions, like mandated use of face coverings, physical distancing, and frequent cleaning and reduced use of high-touch shared items.

In light of this evidence, as well as PSP's unique location within the middle of Oddstad Park - which provides both a large usable outdoor space within its parking lot, and copious densely wooded distance from the surrounding residential neighborhoods - Pacifica Spindrift Players proposes producing and presenting a series of outdoor staged theatrical readings, to be held over a series of 8 weekends in August and September of 2020. Each weekend, PSP would present 2 afternoon performances (one each on Saturday and Sunday) of a staged live reading of a classic or new play.

#### PROTECTIONS FOR PERFORMERS:

- PSP is proposing to produce a series of staged readings rather than fully staged performances, since staged readings allow the cast to remain seated for the duration of the performance, with on-stage movement limited to stage entrances and exits. Staged readings also allow

performers to avoid the close physical proximity often required for many traditionally blocked performances.

- Performers will carry their own seats on and off the stage (to avoid shared chair use), will place chairs on stage according to clear markings that keep all performers a minimum of 6 feet from any other performer, and will be mandated to wear face coverings at all times when not directly delivering their lines.
- Performers will be asked upon arrival for each performance about the presence of known symptoms of COVID-19 (currently listed by the CDC [here](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html) <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> and subject to change) as well as any known or suspected contact with COVID-19, and will have their temperature checked upon arrival at the theater.
- If any performer confirms the presence of possible COVID-19 symptoms, known or suspected exposure to COVID-19 in the previous 14 days, or is found to have a temperature of 100.00F or greater, they will be asked to remain at home and seek medical attention, and the theater will then provide an understudy to perform in their place.
- All rehearsals will be held remotely from individuals' homes via Zoom or another streaming platform, in order to further limit possible contact with and exposure to others.

#### PROTECTIONS FOR AUDIENCES:

- Performances staged outdoors in a space with ample free air flow reduces the risk of COVID-19 alone due to the role that air turbulence has in promoting the immediate dispersing of viral particles.
- Audience attendance will be capped at a maximum of 25 individual patrons.
- Seating areas will be clearly marked to keep all individual patrons (or small groups of patrons from single households or social bubbles) a minimum of 6-10 feet apart from all other patrons for the duration of the show.
- Patrons will be asked to bring their own chair or other seating structure - or will be offered the opportunity to purchase a personal folding chair to keep - in order to eliminate the risk of transmission through contact with shared seating.

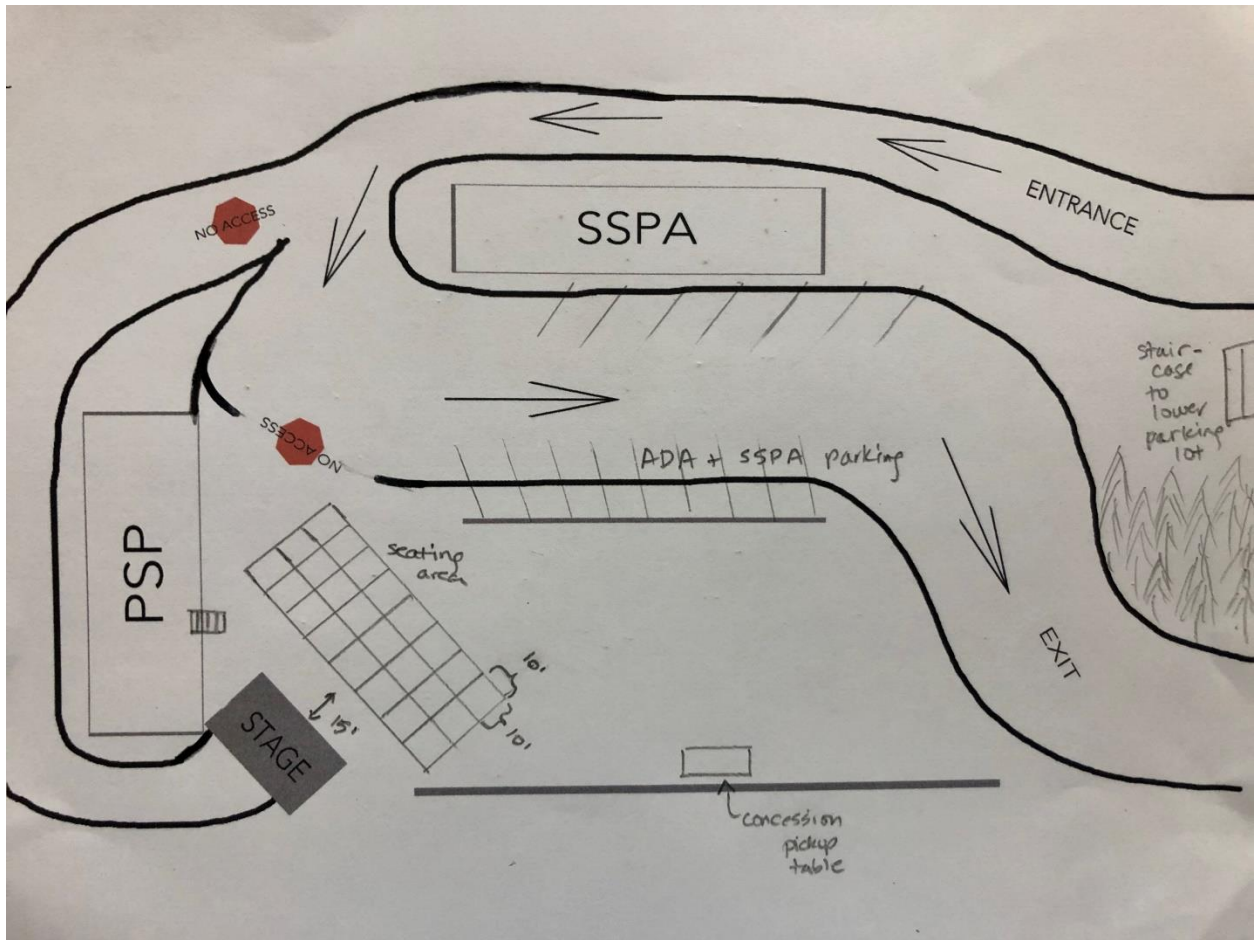
- All patrons, volunteers, and staff will be mandated to wear face coverings at all times while on premises, when not actively consuming food or beverage items (and then only when >6 feet from all other individuals outside their household or social bubble)
- Patrons will be screened individually for symptoms of or known exposure to COVID-19 upon their arrival at the performance (while checking in with the box office volunteer), and will be asked not to attend the performance if they respond affirmatively to either question.
- PSP's usual hospitality service (wherein food and beverages are sold at a table in the theater lobby) will be suspended. In its place, patrons will have the opportunity to purchase prepackaged refreshment and hygiene items (limited packaged snack and beverage items, individual bottles of hand sanitizer, and individual blankets) remotely via Square. No-touch pickup of these items will be coordinated by hospitality volunteers.

#### PROPOSED SITE DESIGN AND ASSOCIATED STRUCTURES

- A simple elevated wooden platform will be erected in the corner of the PSP/SSPA parking lot between the theater entrance and storage sheds (see diagram) to serve as a stage. Since the performances will be held in late afternoon in summer and early fall, and since this particular stage location allows for maximization of the site's natural sound amplification features, neither lighting nor sound equipment will be needed, and no other physical structures will be used.
- Since the stage is relatively small and the audience size will be capped at 25, over half of the parking lot will remain available for disabled and ADA accessible parking, as well as for use by the Spindrift School of Performing Arts (SSPA), while other patrons and all performers will be asked to park in the lot at the bottom of the hill (still within Oddstad Park). This design also allows free and open ingress and egress for both patrons and emergency responders if needed.

**EXHIBIT B**

**TEMPORARY USE AREA**





## EXHIBIT C

### OUTDOOR ACTIVITY AGREEMENT

#### TEMPORARY COVID-19 OUTDOOR ACTIVITIES AND ENCROACHMENT AGREEMENT

Outdoor Activities and Encroachment Agreement Between  
the City of Pacifica and Pacifica Spindrift Players

The City of Pacifica ("City") and Pacifica Spindrift Players, ("Permittee") enter into this Outdoor Activities and Encroachment Agreement ("Agreement") on this 2nd day of September, 2020.

**WHEREAS**, the City desires to allow Permittee to conduct certain outdoor activities in conjunction with its business located inside Oddstad Park at 1050 Crespi Drive ("Property") on a temporary basis until such time as the City rescinds Order No. 2020-02 or terminates the local emergency regarding COVID-19; and

**WHEREAS**, the City is the owner of the Property. Permittee currently leases the facility on the Property pursuant to the terms of a lease agreement dated January 1, 2020; and

**WHEREAS**, the parties desire to set forth the terms and conditions so as to allow the conduct of such outdoor activities on the Property.

**NOW THEREFORE**, the parties do hereby agree as follows:

- A. The following outdoor activities will be allowed to occur on the Property:

**Outdoor activities include installation of a temporary outdoor theater for outdoor performances fronting the Pacifica Spindrift Players building. Food sales in conjunction with the outdoor theater will take place during performances. (Collectively referred to as "Outdoor Activities")**

**The Outdoor Activities are more fully described in the attached description which is hereinafter incorporated by reference as Exhibit A.**

- B. This Agreement for the Outdoor Activities is conditioned upon the Permittee entering into an amendment to the lease agreement dated January 1, 2020 to permit use of the Property parking lot where the Outdoor Activities will take place as indicated in the attached letter from the City dated August 7, 2020 attached hereto and hereinafter incorporated by reference as Exhibit B.

- C. All Outdoor Activities shall be subject to the following conditions:

1. The Outdoor Activity use area shall be contiguous to commercial structures or walkways immediately adjacent to structures. Businesses on private property shall utilize outdoor space contiguous to their tenant space unless authorized by the landlord to use other space contiguous to commercial structures or walkways immediately adjacent to structures. Notwithstanding the foregoing, a landlord may designate an alternative location for consolidated outdoor dining of take-away meals provided all provisions of the County Health Orders are followed.

TEMP COVID-19 AGREEMENT WITH PACIFICA SPINDRIFT PLAYERS

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2. The Outdoor Activity area must remain clear of drive aisles and fire lanes necessary to provide adequate vehicular circulation and access by public safety vehicles in the event of a fire, medical, or other emergency.
3. A temporary accessible ramp from curb to Outdoor Activity area is required if a permanent ramp is not already available.
4. Accessible parking stalls, accessible van loading areas, and associated paths of travel shall not be impeded by Outdoor Activity.
5. Restaurants shall not be permitted to expand beyond pre-Covid-19 seating capacity.
6. No permanent item or structures shall be installed on the Outdoor Activities area.
7. The Outdoor Activities area must be sufficiently clear for ingress and egress and sufficient drive aisles and fire lanes as necessary to provide adequate vehicular circulation and access by public safety personnel and vehicles to the Outdoor Activities area in the event of a fire, medical, or other emergency.
8. All walkways and sidewalks shall maintain a four-foot clear path of travel at all times.
9. All Outdoor Activities conducted on private property must be done with written consent of property owner.
10. Permittee shall, at all times, comply with the following terms in operating the Outdoor Activities:
  - a) All Outdoor Activities shall be consistent with applicable State Guidelines, Executive Orders and County Health Requirements issued by the State and County in response to COVID-19 ("State and County Orders"). Outdoor Activities must, at all times, be operated in accordance with State, and County Orders, including but not limited to, health guidelines regarding number of patrons, disinfectants, table spacing, use of shared materials, staff hygiene, and social distancing.
  - b) All Outdoor Activities shall be done in compliance with all applicable, local, state and federal laws, including Americans with Disabilities Act. Any outdoor alcohol consumption shall be in compliance with the rules and regulations of the Department of Alcoholic Beverage Control and County Health Orders.
  - c) Hours of operation for Outdoor Activities shall not exceed the normal hours of operation for the corresponding business with which the outdoor use is associated.
  - d) Outdoor Activity use areas shall be maintained free of trash and debris.
  - e) No outdoor music or entertainment is permitted where the sound from the music or entertainment is amplified.

- f) Outdoor, low volume, acoustic performances, entertainment and cultural events, which may be permitted as part of the Outdoor Activity and shall be reviewed on a case by case basis in accordance with the then applicable City, State and County Health Orders and Guidelines. Any outdoor, low volume, acoustic performances, entertainment or cultural events, which are permitted as part of the Outdoor Activity shall terminate by 8:00 p.m.
  - g) No permanent item or structures shall be installed on City of Pacifica property. No permanent or temporary signage shall be affixed to any publicly owned structure, including but not limited to streetlights, benches, bus shelters, or similar appurtenances. Signage erected in violation of this provision is subject to immediate removal by the City of Pacifica.
  - h) The City of Pacific reserves the right to inspect all Outdoor Activities locations and require that operations cease or stipulate modifications to operations if found to not be in compliance with the requirements of this Agreement or State and County Orders.
  - i) If temporary canopies or tents are being utilized for Outdoor Activities, they must comply with fire requirements. Permits from the North County Fire Department are required for canopies or tents over 400 Sq Ft.
  - j) Outdoor cooking or grilling is not permitted.
- D. Permittee agrees to accept all responsibility for loss, including personal injury, wrongful death or damage to any person or entity and shall indemnify, hold harmless, and defend and release the City of Pacifica, its agents, employees and officials from and against any and all liability actions, claims, damages, costs, or expenses (collectively "Claims") which may be asserted by any person or entity, including Permittee, arising out of or in connection with the subject approval and Agreement, including without limitation the Permittee's outdoor activities. The City may, but is not obligated to, defend such Claims as City, in its sole discretion, determines appropriate, all at Permittee's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses of the City in connection with such proceeding. If the Permittee is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Permittee of any proceeding and shall cooperate fully in the defense.
- E. The City reserves the right to order the removal or relocation of the improvements made to conduct the Outdoor Activities in the public right-of-way and/or public easement area, at any time at Permittee's cost in the event same is required by the City and/or a Utility. Whether or not said removal or relocation is required shall be left to the unfettered discretion of the City and/or a Utility. Permittee hereby grants to the City the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the City and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation,

damages, or loss of income or business resulting from said removal. However, the City will be responsible for repairing any physical damage caused to Permittee's property by the City's but not a Utility's removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

- F. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including but not limited to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services, noise ordinances, alcoholic beverage sales and any orders issued by the Director of Emergency Services, including but not limited to Order No 2020-02.
- G. If Permittee's Outdoor Activities encroach into public right-of-way and/or a public easement, Permittee shall procure and maintain for the duration of this Agreement, and furnish proof of along with this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. A Permittee whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

Minimum Scope of Insurance. Permittee shall obtain and all times during duration of this Outdoor Activities Agreement maintain coverage at least as broad as:

- (a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).
- (c) Property insurance against all risks of loss to any tenant improvements or betterments.
- (d) Permittee shall maintain limits no less than:
  - (i) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - (ii) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
  - (iii) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Permittee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permittee.

(b) The Permittee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless prior approval is received from the City Attorney.

Liquor Liability Coverage.

If Permittee proposes to sell or serve alcohol as a part of a its Outdoor Activities, Permittee shall furnish, along with this Agreement, proof of a liquor liability coverage endorsement or policy.

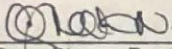
- H. Violation of Agreement. Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Agreement and/or Resolution No. 35-2020 (ratifying Emergency Order No. 2020-02) may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Resolution No. 35-2020.
- I. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Order No. 2020-02 and Resolution No. 35-2020 confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this

Agreement.

- J. Non-Transferable. This Agreement is non-transferable. Only the permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.
- K. Entire Agreement. This instrument, including the attached exhibits contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.
- L. Termination. This Agreement may be terminated by the City or Permittee at any time, upon written notice to the other party of the termination

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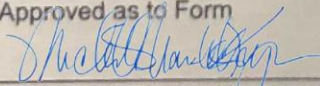
THE UNDERSIGNED AGREES THAT THE PROPOSED OUTDOOR ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

 - President, Executive Board      8/27/2020  
Permittee - Pacifica Spindrift Players      Date

\_\_\_\_\_  
City Manager, City of Pacifica      Date

Attest:

\_\_\_\_\_  
Sarah Coffey, City Clerk

Approved as to Form  
  
Michelle Marchetta Kenyon, City Attorney



## Exhibit A

### Pacifica Spindrift Players

#### CITY OF PACIFICA TEMPORARY COVID-19 OUTDOOR ACTIVITIES APPLICATION

##### Proposed Outdoor Activities

(1) Description of Business: Pacifica Spindrift Players (PSP) is a nonprofit, volunteer-run community theatre organization founded in Pacifica in 1958 which typically produces a full 7-show season of fully staged theatrical productions for Pacifica and the surrounding communities each year.

(2) Description of the Outdoor Activity: At this stage of the COVID-19 pandemic, it's clear that live indoor theatre will be unsafe for both performers and patrons for the foreseeable future. However, overwhelming scientific evidence indicates that outdoor activities are substantially safer than indoor activities in terms of COVID-19 transmission risk - particularly when paired with other risk-reducing interventions, like mandated use of face coverings, physical distancing, and frequent cleaning and reduced use of high-touch shared items.

In light of this evidence, as well as PSP's unique location within the middle of Oddstad Park - which provides both a large usable outdoor space within its parking lot, and copious densely wooded distance from the surrounding residential neighborhoods - Pacifica Spindrift Players proposes producing and presenting a series of outdoor staged theatrical readings, to be held over a series of 8 weekends in August and September of 2020. Each weekend, PSP would present 2 afternoon performances (one each on Saturday and Sunday) of a staged live reading of a classic or new play.

##### PROTECTIONS FOR PERFORMERS:

- PSP is proposing to produce a series of staged readings rather than fully staged performances, since staged readings allow the cast to remain seated for the duration of the performance, with on-stage movement limited to stage entrances and exits. Staged readings also allow

EXHIBIT A

Page 1 of 4

performers to avoid the close physical proximity often required for many traditionally blocked performances.

- Performers will carry their own seats on and off the stage (to avoid shared chair use), will place chairs on stage according to clear markings that keep all performers a minimum of 6 feet from any other performer, and will be mandated to wear face coverings at all times when not directly delivering their lines.
- Performers will be asked upon arrival for each performance about the presence of known symptoms of COVID-19 (currently listed by the CDC [here](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html) <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> and subject to change) as well as any known or suspected contact with COVID-19, and will have their temperature checked upon arrival at the theater.
- If any performer confirms the presence of possible COVID-19 symptoms, known or suspected exposure to COVID-19 in the previous 14 days, or is found to have a temperature of 100.00F or greater, they will be asked to remain at home and seek medical attention, and the theater will then provide an understudy to perform in their place.
- All rehearsals will be held remotely from individuals' homes via Zoom or another streaming platform, in order to further limit possible contact with and exposure to others.

#### PROTECTIONS FOR AUDIENCES:

- Performances staged outdoors in a space with ample free air flow reduces the risk of COVID-19 alone due to the role that air turbulence has in promoting the immediate dispersing of viral particles.
- Audience attendance will be capped at a maximum of 25 individual patrons.
- Seating areas will be clearly marked to keep all individual patrons (or small groups of patrons from single households or social bubbles) a minimum of 6-10 feet apart from all other patrons for the duration of the show.
- Patrons will be asked to bring their own chair or other seating structure - or will be offered the opportunity to purchase a personal folding chair to keep - in order to eliminate the risk of transmission through contact with shared seating.



- All patrons, volunteers, and staff will be mandated to wear face coverings at all times while on premises, when not actively consuming food or beverage items (and then only when >6 feet from all other individuals outside their household or social bubble)
- Patrons will be screened individually for symptoms of or known exposure to COVID-19 upon their arrival at the performance (while checking in with the box office volunteer), and will be asked not to attend the performance if they respond affirmatively to either question.
- PSP's usual hospitality service (wherein food and beverages are sold at a table in the theater lobby) will be suspended. In its place, patrons will have the opportunity to purchase prepackaged refreshment and hygiene items (limited packaged snack and beverage items, individual bottles of hand sanitizer, and individual blankets) remotely via Square. No-touch pickup of these items will be coordinated by hospitality volunteers.

#### PROPOSED SITE DESIGN AND ASSOCIATED STRUCTURES

- A simple elevated wooden platform will be erected in the corner of the PSP/SSPA parking lot between the theater entrance and storage sheds (see diagram) to serve as a stage. Since the performances will be held in late afternoon in summer and early fall, and since this particular stage location allows for maximization of the site's natural sound amplification features, neither lighting nor sound equipment will be needed, and no other physical structures will be used.
- Since the stage is relatively small and the audience size will be capped at 25, over half of the parking lot will remain available for disabled and ADA accessible parking, as well as for use by the Spindrift School of Performing Arts (SSPA), while other patrons and all performers will be asked to park in the lot at the bottom of the hill (still within Oddstad Park). This design also allows free and open ingress and egress for both patrons and emergency responders if needed.

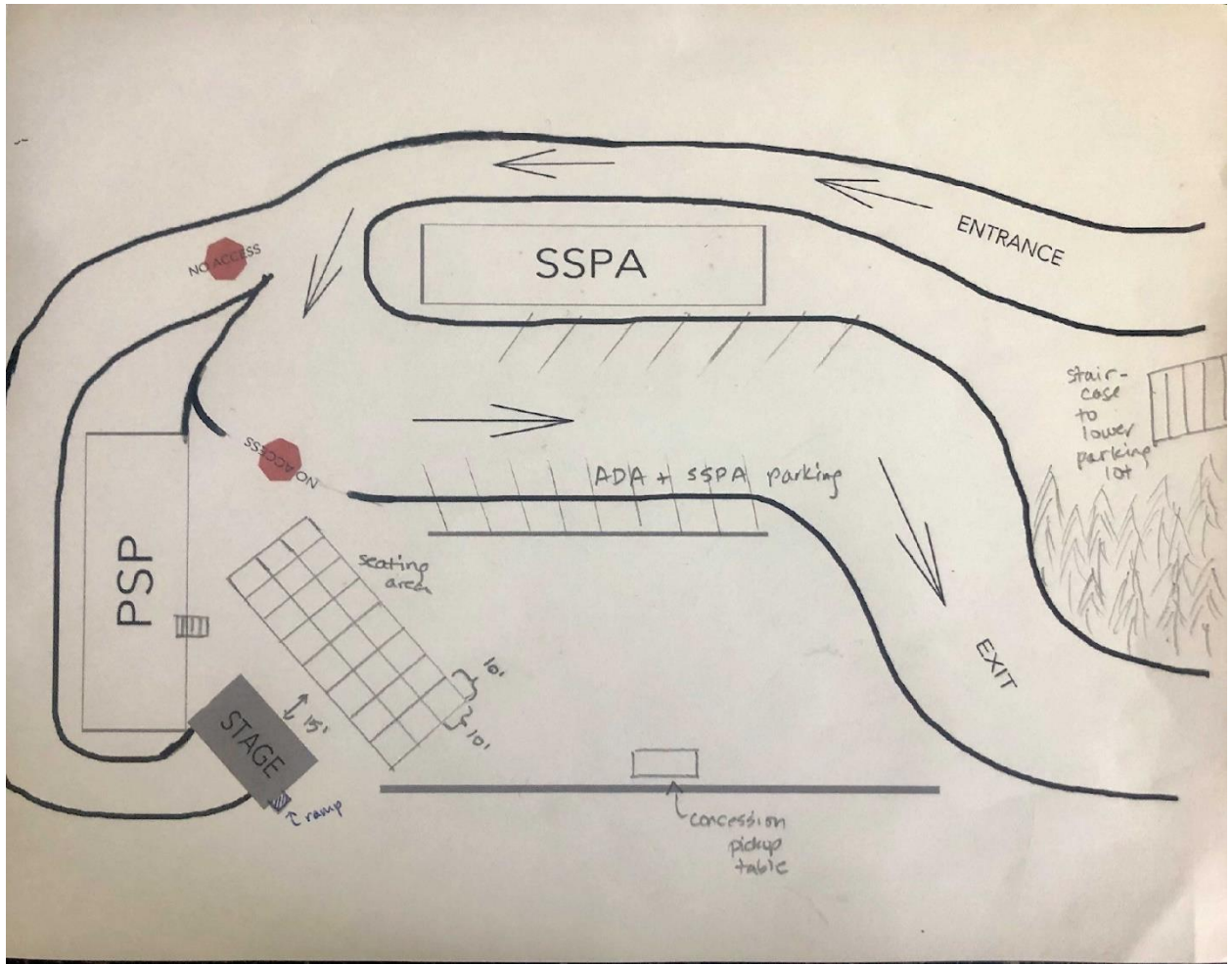


EXHIBIT B



Scenic Pacifica  
Incorporated Nov. 22, 1957

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**CITY OF PACIFICA**  
**Parks, Beaches and Recreation Department**  
170 Santa Maria Avenue • Pacifica, California 94044-2506  
[www.cityofpacifica.org](http://www.cityofpacifica.org)

**MAYOR**  
Deirdre Martin

**MAYOR PRO TEM**  
Sue Beckmeyer

**COUNCIL**  
Sue Vaterlaus  
Mary Bier  
Mike O'Neill

August 7, 2020

Pacifica Spindrift Players  
Attention: Cat Imperato, Board President  
1050 Crespi Drive  
Pacifica, CA 94044

Dear Ms Imperato

The City of Pacifica is in receipt of Pacifica Spindrift Player's ("Spindrift") Temporary COVID-19 Outdoor Activities Application, which is attached. Spindrift is seeking to produce and present "... a series of outdoor staged readings, to be held over a series of 8 weekends in August and September of 2020. Each weekend, PSP would present 2 afternoon performances (one each on Saturday and Sunday) of a staged live reading of a classic or new play," as further described in "Appendix 1: Proposed Outdoor Activities" of Spindrift's Application ("Outdoor Activity").

One of the requirements for the Temporary COVID-19 Outdoor Activities Program is that the applicant must obtain consent from the property owner to conduct the outdoor activity. Since Spindrift operates the theater on property owned by the City, the City must approve use of the property for the Outdoor Activity.

As you know, the City of Pacifica and Spindrift have a lease which allows Spindrift's use of the "Premises," as defined, which is dated January 1, 2015 ("Lease"). The Premises does not include the parking lot on the property at 1050 Crespi ("Property") and specifically prohibits certain activity to be conducted on the exterior of the Premises.

In order for the Spindrift to conduct the Outdoor Activity on the Property, the City will require that an amendment to the Lease be prepared and that Spindrift execute an amendment to the Lease to reflect use of the parking lot by Spindrift. The terms of the amendment would include the following:

- Include the parking lot as part of the Premises;
- Allow use of the parking lot for the Outdoor Activity, however, City reserves the right to revoke permission to utilize the parking lot for the Outdoor Activity at any time, for any reason;
- The use of the parking lot for the Outdoor Activity will be conducted at all times in accordance with the terms of the Outdoor Activity and Encroachment Agreement, including but not limited to, compliance with County Health Orders and State Orders and Guidelines relating to COVID-19;
- The City will temporarily waive Rules 13 and 16.6 of the Rules and Regulations identified in Exhibit C of the Lease until the Outdoor Activity Permit expires or the City terminates use of the Property for the Outdoor

EXHIBIT B

Page 1 of 2

Activity, whichever comes first. All other provisions of the Lease, including other Rules and Regulations and the terms of the Lease, shall remain unchanged and enforceable;

- Notwithstanding Spindrift's obligations under section 6 of the Lease (Insurance), Spindrift shall ensure insurance coverage is procured that specifically evidences liability coverage for the area of the proposed Outdoor Activity (parking lot). Spindrift shall provide certification/proof of endorsement naming the City as an additional insured;
- Use of the parking lot for the Outdoor Activity must be acknowledged in writing by Spindrift School of Performing Arts (adjacent tenant).
- Within 12 hours of a performance, the parking lot shall be cleared of equipment, debris, etc. to allow for complete access of the parking lot area on the Property.
- The City reserves all the rights and authorities reserved to it by the provisions of the Lease, including the Indemnity provision in Section 7, or those rights and authorities afforded by law.

If Spindrift agrees to the foregoing terms, please sign below. The City will then prepare a formal amendment to the Lease, which will include the foregoing terms and any other terms necessary to effectuate the purpose of the amendment, which will require approval by the City Council. In the meantime, the City will continue to process the Outdoor Activity and Encroachment Agreement, which may be issued, conditioned upon the execution and approval of an amendment to the Lease as discussed above.

Should you have any questions, please do not hesitate to contact me at [perezm@ci.pacifica.ca.us](mailto:perezm@ci.pacifica.ca.us) or 738-7381.

Sincerely,



Michael Perez  
City of Pacifica  
Director, Parks, Beaches and Recreation Department

cc: Kevin Woodhouse, City Manager

The signature below confirms that Spindrift has received, read and accepts the information and agrees to terms as outlined in this letter.



---

Cat Imperato, Board President  
PACIFICA SPINDRIFT PLAYERS







# For Signature: ResolutionNo63-2020\_Spindrift\_FirstAmendment\_LeaseAgreement-Approved

Final Audit Report

2020-10-15

|                 |  |
|-----------------|--|
| Created:        | 2020-10-15                                   |
| By:             | Sarah Coffey (coffeys@ci.pacifica.ca.us)     |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAoU5lq0bWn_cwsJ9C9s_1mzRO3bOiT1ZM |

## "For Signature: ResolutionNo63-2020\_Spindrift\_FirstAmendment\_LeaseAgreement-Approved" History

-  Document created by Sarah Coffey (coffeys@ci.pacifica.ca.us)  
2020-10-15 - 5:57:27 PM GMT- IP address: 68.65.68.29
-  Document emailed to Deirdre H Martin (martind@ci.pacifica.ca.us) for signature  
2020-10-15 - 5:58:06 PM GMT
-  Email viewed by Deirdre H Martin (martind@ci.pacifica.ca.us)  
2020-10-15 - 7:53:58 PM GMT- IP address: 192.129.0.4
-  Document e-signed by Deirdre H Martin (martind@ci.pacifica.ca.us)  
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-  Email viewed by Sarah Coffey (coffeys@ci.pacifica.ca.us)  
2020-10-15 - 8:36:52 PM GMT- IP address: 50.209.129.249
-  Document e-signed by Sarah Coffey (coffeys@ci.pacifica.ca.us)  
Signature Date: 2020-10-15 - 8:36:58 PM GMT - Time Source: server- IP address: 50.209.129.249
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2020-10-15 - 8:36:58 PM GMT