



LES W. BURKE °
ROB BLUE, JR.
EDWARD A. HUTCHISON, JR.
DOUGLAS L. SMITH +
NEVIN J. ZIMMERMAN
MICHAEL S. BURKE
JOY MARLER MASTERS ++
GRAHAM CLARKE °*+++ ♦
CLARK T. ROGERS
NATALIE A. MCSWANE
WILLIAM C. HENRY °**
SANDRA A. WILSON °
GREGORY J. PHILO
JESSICA L. STEWART
KELLIANNE C. BARKLEY

° OF COUNSEL
* ALSO ADMITTED IN GEORGIA
** ALSO ADMITTED IN NEW YORK
+ CERTIFIED CIRCUIT COURT MEDIATOR
++ L.L.M. IN TAXATION
+++ CERTIFIED FAMILY MEDIATOR
♦ BOARD CERTIFIED MARITAL &
FAMILY LAW ATTORNEY

June 2, 2021

City Commission
501 Harrison Avenue
Panama City, FL 32401

RE: Lease for Beach Drive PC Properties, LLC/Beach Drive PC Holdings, LLC

Dear Mayor and Commissioners:

The City Staff recommend leasing four (4) parcels of property owned by Beach Drive PC Properties, LLC and Beach Drive PC Holdings, LLC for the City to provide public functions and events for the Citizens of Panama City. The lease will be one (1) year.

The owner leased this property to the City last year around this same time and with the same terms.

The four (4) parcels are located at 430 West 5th Street, 113 West Beach Drive, 111 West Beach Drive and one other property located within the addresses listed but that does not have a separate address.

Sincerely yours,
BURKE BLUE

Nevin J. Zimmerman

CC: Mark McQueen, City Manager
Brandy Waldron, Interim City Clerk-Treasurer

Lease/Rental of Vacant Lot

Lease Agreement made on the 8th day of June, 2021, between Beach Drive PC Properties, LLC, a limited liability company organized and existing under the laws of the State of Florida, and Beach Drive PC Holdings, LLC, a limited liability company organized and existing under the laws of the State of Florida, referred to herein collectively as **Landlord**, and the City of Panama City, a municipal corporation organized and existing under the laws of the State of Florida, referred to herein as **Tenant**.

Whereas, Landlord is the sole owner of certain vacant land located at 430 West 5th Street (Parcel # 19511-000-000), 113 Beach Drive W (Parcel # 19508-000-000), 111 Beach Drive W (Parcel # 19507-000-000) and unaddressed Parcel # 19501-000-000, all in Panama City, Florida and more fully described in **Exhibit A** attached hereto, which it desires to lease to Tenant; and

Whereas, the parties desire to enter into a lease agreement to define their respective rights, duties, and liabilities concerning such a lease;

Now, therefore, for and in consideration of the mutual covenants contained in this agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Description of Premises and Purpose

Landlord hereby leases to Tenant, for the primary purpose of its employees, contractors, affiliates, and vendors to utilize the property for public events. Said property is hereafter referred to as *Premises*.

2. Term

The initial term of this Lease Agreement shall be for one (1) year, commencing on June 8, 2021, and ending on June 8, 2022. Landlord may terminate this Lease by providing ninety (90) days written notice to Tenant, but only after September 6, 2021. As used in this Lease Agreement, the expression term of this Lease Agreement refers to the initial term and to any renewal of this Lease Agreement as provided below.

3. Rent

Tenant agrees to use the premises for a public use only and to maintain the property in good condition, the value of which to be used as consideration and no rent to be paid to Landlord.

3. Lease Renewal

This lease is non-renewing.

4. Tenant further agrees that:

A. Condition of Premises: Upon the expiration of the Lease it shall return possession of the Premises in a condition better than its present, reasonable wear and tear excepted. Tenant shall commit no waste to the Premises.

B. Alterations: Tenant shall not make any material alterations to the Premises without Landlord's prior written consent. However, Tenant is permitted to make minor landscaping additions and deletions to the property.

C. Compliance with Law: Tenant shall comply with all building, zoning and health codes and other applicable laws for the use of said Premises.

5. Effect of Tenant's Holding Over

The failure of Tenant to surrender the Premises at the termination of this Lease Agreement, and the subsequent holding over by Tenant, with or without the consent of Landlord, shall result in the creation of a tenancy at will and the rent shall be \$100.00, plus sales tax, per month for each month that Tenant holds over as a penalty until such time as the premises are surrendered. This provision does not give Tenant any right to hold over at the expiration of the Term (as may have been heretofore extended) of this Lease, and shall not be deemed, the parties agree, to be a renewal of the Lease Term (as may have been heretofore extended), either by operation of law or otherwise.

- 6. Notices:** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, first-class postage prepaid, or electronic addressed as follows:

If for Tenant:

City of Panama City
Attn: Mark McQueen, City Manager
501 Harrison Ave
Panama City, FL 32401
Email: mmcqueen@pcgov.org

If for Landlord:

Beach Drive PC Properties, LLC
Beach Drive PC Holdings, LLC
PO Box 70
Douglasville, GA 30133
Email: 123florida@comcast.net

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

7. Subordination

This Lease shall be subordinate to all present or future mortgages against the Premises.

8. Indemnity

Tenant will indemnify and hold Landlord harmless from any liability for injury to or death of any person, including Tenant, or for damage to property arising from Tenant's using and occupying the Premises or from the act or omission of any person or persons, including Tenant, in or about the Premises with Tenant's express or implied consent. As of the execution of this Lease, Tenant will own a liability insurance policy for the Premises and will maintain such a policy during the term of this Lease. The Landlord must be listed as "Additionally Insured" on all policies. Certificates of Insurance indicating such policies are in force shall be provided to Landlord, without demand.

9. Rights and Remedies; Cumulative

In the event of the Tenant's default, Landlord, at its election, may exercise any one or more of the options referred to below upon the happening, or at any time after the happening, of any one or more of the following events, to wit:

- (a) Tenant's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Lease for a period of ten (10) days after written notice by Landlord;
- (b) Tenant's making an assignment for the benefit of creditors;

- (c) Tenant's bankruptcy or voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law;
- (d) Tenant's deserting, vacating or abandoning any portion of the Premises or attempting to mortgage, pledge or otherwise encumber in any way its interest hereunder;

In the event of any of the foregoing happenings, Landlord, at its election, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided or permitted by statute or general law at the same time or in subsequent times or actions:

- (1) Terminate Tenant's right to possession under this Lease and re-enter and retake possession of the Premises.
- (2) Declare this Lease to be terminated and ended and re-enter upon and take possession of the Premises whereupon all right, title and interest of Tenant in the Premises shall end.

No re-entry or retaking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a specific written notice of such intention is given to Tenant. Landlord's acceptance of labor to clear the premises following any event of default hereunder shall be construed as Landlord's waiver of such event. No forbearance by Landlord of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that Landlord may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by Landlord following repossession. Landlord shall take reasonable efforts to mitigate Tenant's damages, if any, by reletting.

If Tenant does not perform any covenant, agreement, term, provision or condition within this Lease (as may be hereafter amended or modified in writing) contained on Tenant's part to be performed, Landlord, in addition to any other rights and remedies or has under this Lease (as may be hereafter amended or modified in writing) or otherwise and without thereby waiving any such non-performance (or resulting default), may (but shall not be obligated to do so) perform the same on behalf of, for the account of and at the expense of Tenant without notice in a case of emergency (as not unreasonably determined by Landlord) and in any other case if such non-performance continues after ten (10) business days from the date that Landlord gives written notice to Tenant of Landlord's intention to do so. Invoices for all amounts paid by Landlord and all losses, costs and expenses incurred or paid by Landlord in connection with any such performance by Landlord pursuant to this particular paragraph, including, without limitation, all amounts paid and costs and expenses incurred by Landlord for any goods, property, material, labor or services provided, supplied, furnished or rendered, or caused to be provided, supplied, furnished or rendered, by Landlord to Tenant may be sent by Landlord to Tenant monthly or immediately, at Landlord's option, and shall be due and payable by Tenant to Landlord as Rent, plus any applicable taxes, within five (5) business days after the same are sent to Tenant by Landlord.

(4) **Remedies Upon Landlord's Default.** In the event that Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such material default shall continue for a period of thirty (30) calendar days after written notice to Landlord (or if such material default is incapable of being cured in a reasonable manner within thirty (30) calendar days then if Landlord has not commenced to cure the same within said thirty (30) calendar day period and thereafter diligently prosecutes the same to completion) and

Landlord shall not thereafter cure such material default, Tenant shall be entitled to exercise one or more of the following remedies at its election: (a) terminate this Lease; or (b) to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, in addition to all remedies otherwise provided in this Lease and otherwise available in law or equity under the laws of the United States or the State or Commonwealth in which the Premises are located.

(5) **Additional Tenant Remedies.** In addition to all of Tenant's other remedies hereunder, if Landlord defaults in the performance of any obligation imposed on it by this Lease pertaining to the Premises and does not cure such default within thirty (30) days after written notice from Tenant specifying the default (or does not within said period commence and diligently proceed to cure such default), Tenant, without waiver of or prejudice to any other right or remedy it may have, shall have the right, at any time thereafter, to cure such default for the account of the Landlord, and Landlord shall reimburse Tenant upon invoice for any amount paid and any expense or contractual liability so incurred. If Landlord fails to reimburse Tenant within ten (10) days after invoice, then Tenant shall have the right to offset the amount due thereunder, together with interest at 12% from the date of disbursement against all rent and other charges due from Tenant to Landlord under this Lease until Tenant has been completely reimbursed for its expenses. In the event of emergencies, or where necessary to prevent injury to persons or damage to property or to mitigate damages, Tenant may cure a default by Landlord before the expiration of the waiting period, but after giving such written or oral notice to Landlord's as soon as is practical under all of the circumstances.

(6) **Attorneys' Fees; Remedies.** In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the other party shall pay all reasonable attorneys' fees and other expenses incurred by the prevailing party enforcing such obligations and/or collecting such amounts, plus interest thereon. All remedies of Landlord and/or Tenant herein created or remedies otherwise existing at law or equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord and/or Tenant shall, as applicable, deem necessary.

(7) **JURY WAIVER.** THE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE DEMISED PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE.

(8) **Limitation on Damages.** Notwithstanding anything herein to the contrary, in no event shall Landlord or Tenant have the right to or be entitled to collect damages with respect to lost business opportunities, lost profits, business losses or any consequential, punitive or exemplary damages. Except as limited hereinabove, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

(9) **Waiver of Distraint.** Landlord hereby waives and relinquishes any and all rights or remedies against Tenant pursuant to any lien, statutory or otherwise that it may have against the property, goods or chattels of Tenant in or on the Premises.

The rights and remedies under this Lease are cumulative, and either party's using any one right or remedy will not preclude or waive that party's right to use any other. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

10. Governing Law

This Lease Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

11. Entire Agreement

This Lease Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease Agreement shall not be binding on either party except to the extent incorporated in this agreement.

12. Modification of Agreement

Any modification of this Lease Agreement or additional obligation assumed by either party in connection with this Lease Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

13. Assignment of Rights

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

14. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

15. Compliance with Laws

In performing under this Agreement, all applicable governmental laws, regulations, orders, and other rules of duly-constituted authority will be followed and complied with in all respects by both parties.

16. In this Agreement, any reference to a party includes that party's heirs, executors, administrators, successors and assigns, singular includes plural and masculine includes feminine.

[Signature Page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement granting a 60-day lease as of the date first above written.

Beach Drive PC Properties, LLC & Beach Drive PC Holdings, LLC

By: _____ (Signature)

Name: George R. Kingston

Title: Manager of both entities

STATE OF GEORGIA
COUNTY OF DOUGLAS

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **George R. Kingston** whose name as Manager of **Beach Drive PC Properties, LLC**, a Florida limited liability company and Manager of **Beach Drive PC Holdings, LLC**, a Florida limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he in such capacity and with full authority executed the same voluntarily for and as the act of said limited liability companies on the day the same bears date.

Given under my hand this the ____ day of June, 2021.

(SEAL)

Notary Public

My commission expires:

City of Panama City

By: _____ (Signature)

Printed Name: Greg Brudnicki

Title: Mayor

STATE OF FLORIDA
COUNTY OF BAY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Greg Brudnicki** whose name as Mayor of the **City of Panama City**, a Florida municipal corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she in such capacity and with full authority executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the ____ day of June, 2021.

(SEAL)

Notary Public

My commission expires:

Exhibit A

Aerial Photo of Parcel ID Numbers:

- 19511-000-000, 430 W. 5th St.
- 19501-000-000, No address
- 19508-000-000, 113 Beach Dr. W
- 19507-000-000, 111 Beach Dr. W

