

RESOLUTION NO. 24-22

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A COMMERCIAL LEASE AND PURCHASE OPTION WITH BEYOND THE SEA REALTY, LLC AND ODEH'S REALTY, LLC FOR PROPERTY LOCATED AT 17171 FIRENZO AVENUE, 200 ARNOLD ROAD, AND 204 ARNOLD ROAD.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Commercial Lease, with purchase option, between the City and Beyond The Sea Realty, LLC and Odeh's Realty, LLC, for the real property located at 17171 Firenzo Avenue, 200 Arnold Road, and 204 Arnold Road, in the initial amount of Five Thousand Five Hundred Dollars (\$5,500.00) per month for the first five-year term, in substantially the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 21st day of October, 2023.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

COMMERCIAL LEASE

BETWEEN

LANDLORD

AND

TENANT



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COMMERCIAL LEASE

THIS COMMERCIAL LEASE ("Lease") is made and entered into as of the 26 day of October, 2023 (the "Effective Date"), by and between BEYOND THE SEA REALTY, LLC and ODEH'S REALTY, LLC, (collectively "Landlord"), and THE CITY OF PANAMA CITY BEACH ("Tenant").

ARTICLE 1
REFERENCE PROVISIONS, PREMISES AND TERM

1.1 Fundamental Lease Provisions.

(a) Premises. The Premises are located at 17171 Firenzo Avenue, 200 Arnold Road, and 204 Arnold Road, Panama City Beach, Florida, and contain approximately .77 acres containing 1,333 square feet of office space, ("Premises"). See Exhibit "A" for the legal description.

(b) Term; Commencement Date. This Lease shall be binding upon the parties as of the Effective Date. The "Initial Term" shall be five (5) years and shall commence on November 1, 2023.

(c) Option to Renew. In the event Tenant is not in default of any provision of this Lease, Tenant shall have an option to renew the Lease for three terms of five (5) years (each an "Option Term") on the same terms and conditions, except for the Minimum Monthly Rent, which shall be as set forth below, upon giving Landlord prior written notice of the exercise of this option at least one hundred eighty (180) days before the expiration of the applicable Term including any Option Term (time being of the essence).

(c) Rent Commencement Date. The first installment of Minimum Rent shall be due, in advance, on the Commencement Date (the "Rent Commencement Date"). Each subsequent installment shall be due, in advance, on the first day of each month next ensuing after the Commencement Date.

(d) Payments by Tenant. The minimum monthly rent ("Minimum Monthly Rent") for the Term shall be payable commencing on the Rent Commencement Date in equal monthly installments, and shall be as set forth below. Also, in addition to the Minimum Annual Rent, beginning on the Rent Commencement Date, Tenant shall pay the Taxes (as calculated in Section 2.4), and Insurance (as calculated in Section 2.5), payable in such amounts as are indicated by Landlord, which amounts may be adjusted by Landlord from time to time.

<u>Year</u>	<u>Minimum Rent/Month</u>
1-5	\$5,500.00
6-10	\$6,050.00
11-15	\$6,655.00
16-20	\$7,320.50

(e) Security Deposit. Upon execution of this Lease, Tenant shall deposit with Landlord an amount equal to \$10,000.00 (the "Security Deposit").

(f) Permitted Use. Tenant shall use the Premises only for the operation of any valid municipal purpose and for no other purpose without the prior written consent of Landlord.

(g) Notice Addresses.

If To Tenant:	City of Panama City Beach 17007 Panama City Beach Parkway Panama City Beach, Florida 32413 Attn: Drew Whitman, City Manager
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If To Landlord:

Beyond The Sea Realty LLC
50 Boulevard
Hastbrouck Heights, NJ 07604
Attn: Ayman Odeh

1.2 Lease of Premises: Term. This Lease, and Tenant's use of the Premises, shall be subject to all easements and restrictions of record, and shall also be subject to the provisions contained in any leases or any other agreements already in existence between Landlord, its successors and assigns, and third party tenants of any portion of the Premises. The Term shall commence on the Commencement Date (as defined in Section 1.1(b)).

1.3 Right of First Refusal. If at any time during the term of this Lease, Landlord intends to sell any of the Premises or at the end of the final Option Term, Tenant shall have the first right to purchase the Premises under the terms set forth below (the "Right of First Refusal").

(a) In the event that Landlord delivers to Tenant notice of Landlord's intent to sell any or all of the Premises (a "Notice of Intent to Sell"), Tenant shall have 30 days from the receipt of the Landlord's Notice of Intent to Sell to provide Landlord with a written notice of Tenant's intent to purchase the Premises ("Notice of Purchase").

(b) In the event that Tenant has fully performed all of its obligations throughout the Term of this Lease, including all Option Terms, Tenant may 30 days prior to expiration of the final Option Term provide Landlord with a written notice of Tenant's intent to purchase the Premises ("Notice of Purchase").

(c) In the event that Tenant delivers a Notice of Purchase, then the terms of the purchase and sale shall be as set forth in a Purchase and Sale Agreement in a form approved by the Florida Association of Realtors and the Florida Bar with such changes and omissions as the parties may agree. The Purchase Price shall be two million (\$2,000,000) dollars plus closing costs.

ARTICLE 2
RENT AND OTHER CHARGES

2.1 Minimum Annual Rent. Tenant shall pay to Landlord (without previous demand therefor and without any diminution, abatement, set off or deduction whatsoever) the Minimum Annual Rent (as provided in Section 1.1(d)), in lawful money of the United States of America, in equal consecutive monthly installments, in advance, on the first (1st) day of each and every calendar month throughout the Term.

2.2 Late Penalty. If any payment due under this Lease has not been received by Landlord on or before the tenth (10th) calendar day of the month in which it is due, a late charge of five percent (5%) of the amount of such overdue payment may be charged.

2.3 Security Deposit. Tenant has deposited as security for the performance by Tenant of the terms, covenants and conditions of this Lease the amount set forth in Section 1.1(e). Landlord may use, apply or retain (without liability for interest) during the Term all or any part of the Security Deposit for any amount which Landlord may expend by reason of Tenant's default with respect to any of the terms, covenants and conditions of this Lease except for payment of rent. In the event Tenant complies with all of the terms and conditions of this Lease, the Security Deposit shall be refunded to Tenant at the expiration of the Term.

In the event of a sale of the Premises or assignment of this Lease by Landlord to any person other than a mortgagee, Landlord shall have the right to transfer the Security Deposit to its vendee or assignee and thereafter shall have no liability therefor.

2.4 Taxes. To the extent any are assessed by virtue of Tenant's operations on the Premises being strictly for municipal purposes, Tenant shall pay to Landlord, as additional rent, the "real estate taxes," as defined in Section 7(b), which shall be billed by Landlord, and paid by Tenant.

Tenant shall also pay before delinquency any and all taxes, assessments, fees or charges, and any and all sales, gross income, rental, business occupation or other taxes, levied or imposed upon Tenant's operations in

the Premises and any personal property or similar taxes levied or imposed upon Tenant's trade fixtures, furnishings, equipment, stock in trade, leasehold improvements or other personal property located in or on the Premises.

Tenant acknowledges that, to the extent such tax is applicable and assessed against Landlord, Tenant shall be required to pay the State of Florida sales and use tax which is measured by the Rent payable by Tenant under this Lease on a monthly basis, which amount shall be remitted by Tenant to Landlord on a monthly basis with payments of Minimum Annual Rent and Landlord shall thereupon remit the same to the State of Florida. Landlord will determine the amount of such tax which is payable by Tenant and will advise Tenant in writing of the same during the Lease Term, as the same may be adjusted from time to time as such tax is imposed by the State of Florida.

2.5 Insurance.

(a) Property Insurance. Tenant shall obtain and maintain Commercial General Liability Insurance, Property Insurance, and such other insurance of such types and in such amounts as Landlord may determine necessary and advisable with respect to the Premises. Tenant shall be responsible for payment of the premium for the Commercial General Liability Insurance and Property Insurance for the Premises.

(b) Tenant's Insurance. Tenant shall obtain on or before the Commencement Date and maintain in force at all time during the Term, the following insurance coverage:

(i) Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit, and \$2,000,000 general aggregate inclusive of contractual liability coverages;

(ii) All-risk property and casualty insurance including, without limitation, all personal property, leasehold improvements installed by Tenant, inventory, decorations, plate glass, trade fixtures, fixtures, equipment and machinery of Tenant in, at or about the Premises, written at the full replacement value;

(iii) Worker's Compensation Insurance as required by law; and

(c) All of the aforesaid insurance, except the Worker's Compensation Insurance, shall be written as primary and non-contributory policies in the name of Tenant, with Landlord (and its designees) as additional insureds and loss payees (with respect to all-risk property and casualty), and shall be written on a form by one or more insurance companies satisfactory to Landlord by companies licensed to do business in the state in which the Premises are located. Such insurance may be carried under a blanket policy covering the Premises and any other of Tenant's other property. Tenant shall be solely responsible for payment of premiums for such insurance. The minimum limits of the commercial general liability policy of insurance shall in no way limit or diminish Tenant's liability hereunder. Each policy or certificate shall be deposited with Landlord by Tenant as required under this Lease. If Tenant shall fail to perform any of its obligations under this section, Landlord may, but shall not be required to, perform the same, and the cost shall be deemed additional rent payable within ten (10) days of demand.

(d) Tenant's Contractor's Insurance. Tenant shall require any contractor of Tenant performing work in the Premises to carry and maintain, at no expense to Landlord, the following insurance:

(i) Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit, and \$2,000,000 general aggregate;

(ii) Comprehensive Automobile Liability Insurance with a limit of not less than \$1,000,000 per occurrence for personal injury or death, and \$500,000 for property damage; and

(iii) Worker's Compensation Insurance as required by law.

2.6 Utility Charges and Dumpster Service. At all times throughout the Term, Tenant shall pay on or before the due date, any and all charges for sewer, telephone, electricity, gas, heat, steam, hot and/or chilled water, air conditioning, ventilating, lighting systems, and other utilities supplied to the Premises. Landlord shall have no liability to Tenant for disruption of any utility service, and in no event shall such disruption constitute constructive eviction or

entitle Tenant to an abatement of rent or other charges. Unless Landlord elects to provide dumpsters and trash pickup for tenants, Tenant shall be responsible for its own dumpster and trash removal.

2.7 Short Period. If the Term commences or terminates on a date other than the first or last day of a calendar month or calendar year, then Tenant shall pay Landlord a pro rata portion of the Minimum Annual Rent for that partial calendar month or calendar year, calculated on a thirty (30) day calendar month, or a three hundred and sixty-five (365) day calendar year, respectively.

ARTICLE 3 USE OF THE PREMISES

3.1 Purposes. Tenant shall use the Premises subject to and in accordance with any and all rules, regulations, laws, ordinances, statutes, and requirements of all governmental authorities, and Tenant's insurance carrier. Tenant's use of the Premises shall be subject at all times during the Term to reasonable rules and regulations now and hereafter adopted by Landlord not in conflict with any of the express provisions herein. Landlord or its representatives shall have the right to enter the Premises during any business day with prior written notice (and in an emergency at all times) during the Term.

3.2 Signs, Awnings and Canopies. Tenant may erect and maintain such suitable signs as it in its sole discretion may deem appropriate to advertise the Premises. The parties acknowledge that the Premises contain one lighted sign (the "Billboard") which shall at all times be included in this Lease and be under the control of Tenant. Tenant may use the Billboard to display any message it deems suitable for its Permitted Use in its sole discretion.

ARTICLE 4 REPAIRS AND MAINTENANCE

4.1 Tenant agrees that during the term of this lease that it will, at its own expense, maintain and keep the premises and landscaping, in good state of repair and condition and shall be responsible for all maintenance of the leased premises and the foundation, including but not limited to the plumbing, electrical, heating and air conditioning system. In addition, Tenant shall maintain the exterior of the building, the roof and outdoor advertising sign located on the premises. Landlord has no responsibility for the maintenance of any portion of the leased premises during the term of the initial lease or any renewal thereof. Maintenance shall be the sole responsibility of the Tenant at its sole expense

ARTICLE 5 DAMAGE, DESTRUCTION OR CONDEMNATION OF THE PREMISES

5.1 Damage or Destruction. If all or any part of the Premises shall be damaged or destroyed by fire, accident or other casualty, the Minimum Annual Rent payable hereunder shall be abated to the extent that the Premises shall have been rendered untenable and for the period from the date of such damage or destruction to the date it is rendered tenable. Should Tenant reoccupy a portion of the Premises during the period any restoration work is taking place and prior to the date same is made completely tenable, Rent allocable to such portion shall be payable by Tenant from the date of such occupancy.

(a) If the Building or the Premises shall be damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) so as to require (determined in the Landlord's reasonable discretion) an expenditure by Landlord of more than fifty-one percent (51%) of the full insurable value of the Building, or if the Premises are completely destroyed or so badly damaged that, in Landlord's reasonable opinion, repairs to the Premises cannot be commenced within one hundred twenty (120) days or completed within three hundred sixty-five (365) days from the date of the damage or destruction, then in either such case, Landlord may terminate this Lease by giving Tenant written notice within one hundred twenty (120) days after the date of the casualty, specifying the date of termination of this Lease. In such event, Tenant shall forthwith quit, surrender and vacate the Premises without prejudice, subject however, to Landlord's rights and remedies against Tenant as of the date of termination or as to those rights which survive such termination. In the event of termination, the Rent payable hereunder shall be abated from the date of damage or destruction.

(b) If all or any portion of the Premises are damaged by fire or other casualty and if Landlord has not elected to terminate this Lease, Landlord shall, within sixty (60) days after such occurrence, repair or rebuild the Premises or such portion to its condition immediately prior to the Commencement Date. Tenant may terminate this Lease by giving written notice to Landlord, if Landlord has not commenced the required repairs within ninety (90) days or has not restored and/or rebuilt the Premises as herein provided within three hundred sixty-five (365) days from the date of such damage or destruction. Landlord shall not be obligated to expend in such repair or rebuilding any sums greater than one hundred fifty percent (150%) of the proceeds of any insurance policy required to be carried by Landlord under this Lease or for Landlord's benefit plus the amount of any deductible under such policy.

(c) Landlord shall not be obligated to pay any damages, compensation, or claim for inconvenience, loss of business, or annoyance arising from any casualty, or repair or restoration of any portion of the Premises or of the Building pursuant to this Article.

5.2 Condemnation.

(a) If the Premises, or any portion, or a portion of the Building are taken by a condemning authority under the right of eminent domain so as to render the Premises or remaining portion thereof untenable for Tenant's occupancy and intended use, then either party may terminate this Lease as of the date of such taking. Upon such termination, both parties shall be relieved of any obligation hereunder.

(b) If a portion of the Premises or the Building are taken by eminent domain and the Premises, in Tenant's reasonable opinion, remains tenable for Tenant's use as intended, this Lease shall continue in full force, except that Rent shall be reduced in proportion to the amount that the square footage taken bears to the total square footage of the Premises prior to such taking. Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations to the Premises to constitute the portion of the Premises not taken a complete architectural unit.

(c) Landlord and Tenant agree to equitably allocate any award between Landlord and Tenant. Tenant shall be entitled to receive the value of Tenant's leasehold interest and compensation for Tenant's trade fixtures installed on the Premises by Tenant at Tenant's expense and Tenant's moving and relocation expenses.

ARTICLE 6 DEFAULT

6.1 Default by Tenant.

(a) Event of Default. All of the following shall constitute an "Event of Default" hereunder:

(i) Tenant fails to (A) make any payment of money pursuant to this Lease, and such monetary default continues to exist in full or in part at the expiration of ten (10) days after the due date thereof, or (B) perform any other term, covenant, condition, provision, or agreement of this Lease, and such non-monetary default continues to exist at the expiration of ten (10) days after the date of written notice from Landlord to Tenant;


(ii) Tenant ceases operations and/or the Premises are abandoned, vacated, or destroyed by Tenant, its employees or agents;

(iii) Tenant performs (or causes to be performed) any unauthorized construction at the Premises;

(iv) any assignment or subletting of this Lease in violation of Section 8.5; or

(v) in the event that Tenant becomes bankrupt, insolvent or files any debtor proceeding, takes or has taken against Tenant any petition of bankruptcy; takes action or has action taken against Tenant for the appointment of a receiver for all or a portion of Tenant's assets, files a petition for a corporate reorganization; makes an assignment for the benefit of creditors, or if in any other manner Tenant's interest hereunder shall pass to another by operation of law (any or all of the occurrences in this Section shall be deemed a default on account of bankruptcy for the purposes hereof and such default on account of bankruptcy shall apply to and include any Guarantor of this

Lease), then Tenant shall be in default hereunder and Landlord may, at its option and without further notice to Tenant, terminate this Lease or exercise any other right or remedy for a default by Tenant hereunder. If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), then Tenant as a debtor in possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (A) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder, (B) compensates or provides adequate assurance that Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults, and (C) provides adequate assurance of performance during the fully stated Term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this Lease as set forth hereinabove shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, and (2) the assumption of this Lease will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required, unless Tenant shall have paid and be current in all payments of utilities or other charges therefor.



6.2 Remedies. Upon the occurrence of any Event of Default, Landlord shall be entitled to (i) apply the Security Deposit, specified in Section 1.1(e), (ii) re-enter the Premises and remove all persons and all or any property therefrom, and repossess the Premises, together with all additions, alterations and improvements (in connection therewith, Tenant agrees that if it fails to remove any items of personal property within any applicable grace period, Tenant shall be deemed to have waived and forfeited all of its rights with respect to its personal property and Landlord may sell, remove or otherwise dispose of Tenant's personal property in any manner Landlord sees fit, (iii) repair, alter, remodel, and/or change the character of the Premises as it may deem fit, (iv) relet at any time all or any part(s) of the Premises, (v) terminate this Lease and/or Tenant's right of possession immediately or at any time thereafter; provided that such termination shall not release Tenant from any of its obligations contained in this Lease and/or Tenant's right of possession, including without limitation, those for the balance of the Term then in effect at the time of such default; or (vi) cure the default and assess against Tenant the cost of curing the default, together with an administrative charge of ten percent (10%) thereof and Costs of Reletting (as defined in Section 7(a)) as additional rent, which shall be paid to Landlord within five (5) days after Tenant's receipt of a bill therefor; or (vii) collect all sums past due hereunder and accelerate all current and future Rent and other monetary obligations making them immediately due and payable; or (viii) modify the Term of this Lease to a tenancy terminable at any time thereafter by Landlord upon not fewer than thirty (30) days notice to Tenant; all of which remedies shall be cumulative with each other upon Landlord's election thereof and all other remedies available to Landlord at law or in equity. The exercise by Landlord of any right granted in the sentence immediately preceding shall not relieve Tenant from the obligation to make all rent payments, and to fulfill all other covenants required by this Lease, at the time and in the manner provided herein. Tenant shall pay Landlord the Costs of Reletting upon demand by Landlord. Any excess rent or amounts received by Landlord from reletting the Premises as a result of the default of Tenant shall remain the sole property of Landlord. Landlord shall not be required to relet the Premises or otherwise mitigate or minimize Tenant's loss as a result of Tenant's default.

Landlord's failure to take advantage of any default or breach of covenant on the part of Tenant shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of Landlord to insist upon the performance by Tenant of any term, covenant or condition hereof, or to exercise any rights given it on account of any such default. A waiver by Landlord of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed, a waiver of any breach or any term, covenant, or condition of this Lease. No act or omission by Landlord, its employees, or agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless it is in writing and signed by Landlord.

6.3 Default by Landlord. If (a) Landlord shall breach any warranty or fail to perform any covenant required to be performed by Landlord under this Lease and such breach or failure shall continue for a period of thirty (30) days after receipt by Landlord of written notice from Tenant, (b) Landlord shall fail to pay any sums due to Tenant, and such failure shall continue for a period of ten (10) days after receipt by Landlord of written notice from

Tenant, or (c) there is an emergency of which Tenant has given Landlord notice and that threatens persons or property located within the Premises, then in addition to Tenant's other rights set forth elsewhere in this Lease, at law, or in equity, Tenant may cure any such default or breach of warranty of Landlord, and perform any covenants which Landlord has failed to perform (only to the extent reasonably necessary to cure such default), and any reasonable sums expended by Tenant in curing such default or breach of warranty and performing such covenants shall be paid by Landlord to Tenant immediately upon demand and may be offset by Tenant against future rentals.

ARTICLE 7
DEFINITIONS

(a) **"Costs of Reletting"** shall mean any and all reasonable costs and expenses incurred by Landlord for any repairs, changes, alterations, and improvements to the Premises, brokerage commissions, attorney's fees, advertising, any customary free rent periods or credits, tenant improvement allowances, take-over lease obligations, and other customary, necessary, or appropriate economic incentives required to enter leases with replacement tenant(s), and costs of collecting rent from such replacement tenant(s).

(b) **"Real Estate Taxes"** shall mean any and all taxes and assessments (special or otherwise of every kind and nature) levied or assessed against the Premises (land, buildings and improvements, as the same may be enlarged or reduced from time to time), and other taxes arising out of the use and/or occupancy of the Premises (including without limitation, rent taxes if in lieu of ad valorem real estate taxes) imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Premises (including without limitation, expenses directly incurred by Landlord in contesting the validity of, seeking a reduction in, or seeking to prevent an increase in any such tax(es) or assessment(s)), but shall exclude franchise, capital stock, estate, or inheritance taxes personal in nature to Landlord.

ARTICLE 8
OTHER PROVISIONS

8.1 **Liability of Landlord.** In the event of sale of the building or leasehold interest or an assignment of this Lease, Landlord shall be entirely relieved of all obligations hereunder. It is specifically understood and agreed that Landlord shall have no personal liability in respect to any of the terms, covenants or conditions of this Lease.


8.2 **Waiver of Claims** Landlord shall not be liable for, and Tenant waives any and all claims against Landlord for, damages to persons or property sustained by Tenant, its employees, or agents resulting from the Premises, or any equipment or appurtenances becoming out of repair, or resulting from any accident or occurrence in or about the Premises, or resulting directly or indirectly from any act or neglect of any third person, firm, or corporation.

Tenant releases Landlord (and anyone claiming through or under Landlord) from any liability or responsibility to Tenant (or anyone claiming through or under Tenant by way of subrogation or otherwise) for any loss or damage to the property of Tenant caused by fire or other perils against which Tenant is provided (or should have been provided had Tenant obtained the insurance required under this Lease) protection by insurance required to be maintained under this Lease (whether or not Tenant actually maintains such insurance). Any insurance obtained by Landlord or Tenant shall recognize this Section 8.2 and contain an appropriate waiver of subrogation clause.

8.3 **Damage to Property or Persons.** Landlord shall not be liable for any injury or damage to persons, property, or interior of the Premises resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, or leaks from any part of the Premises or from the pipes, appliances, or plumbing works, or from the roof, street, subsurface, or from any other place, or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such injury or damage caused by (a) any person(s) on the Premises, (b) occupants of property adjacent to the Premises, (c) the public, or (d) operations in the construction of any private, public, or quasi-public work. Notwithstanding anything contained herein to the contrary, Landlord shall not be responsible for damage or loss of property of Tenant kept or stored on the Premises, no matter how caused.

8.4 Assignment or Subletting.

(a) Tenant acknowledges and agrees that the restrictions set forth in this Section 8.4 have been freely entered into and that Landlord would not have entered into this Lease without Tenant's consent to the terms of this Section 8.4. Tenant shall not assign, transfer, or sublease all or any part of its interest in the Premises without Landlord's consent, which will not be unreasonably withheld. Landlord may consider, in addition to any other statutory or common law tests in respect to withholding of consent, as relevant in determining whether to give its consent the following factors, it being acknowledged and agreed to by Tenant that such factors are deemed to be reasonable grounds for Landlord to use to determine whether to grant its consent and that such determination shall be at Landlord's sole discretion: (i) financial strength of the proposed subTenant/assignee must be at least equal to that of the existing Tenant; (ii) business reputation of the proposed subTenant/assignee must be in accordance with generally acceptable commercial standards; (iii) use of the Premises by the proposed subTenant/assignee must be identical to the use permitted by this Lease; (iv) managerial and operational skills of the proposed subTenant/assignee must be at least equal to those of the existing Tenant; (v) use of the Premises by the proposed subTenant/assignee will not violate or create any potential violation of any laws, rules, regulations, or ordinances; (vi) any such transfer will not detrimentally affect the Premises or Landlord's interest therein; (vii) any such transfer will continue to provide a fair balance of customer traffic and attraction to the Premises; and (viii) use of the Premises will not violate any other agreements affecting the Premises or Landlord. In the event of any permitted assignment or subletting, Landlord shall be entitled to receive fifty percent (50%) of all sums accruing to Tenant as the result of such assignment or subletting in excess of the rent (including the Minimum Annual Rent) then being paid by Tenant under this Lease.

 (b) Notwithstanding any permitted transfer, assignment, subletting, or encumbrance, Tenant shall at all times remain fully responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. The giving of Landlord's consent to a transfer, assignment, subletting, or encumbrance shall not be deemed to permit any subsequent transfer, assignment, subletting, or encumbrance without Landlord's written consent. Any assignment or subletting without Landlord's consent shall be void, and shall constitute an "Event of Default" hereunder which, at the option of Landlord shall result in the termination of this Lease or exercise of Landlord's other remedies hereunder. The terms of such consent shall be binding upon any person holding by, under, or through Tenant. Any transfer of this Lease from the Tenant by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Lease. In the event that Tenant hereunder is a corporation, an unincorporated association, or a partnership, the transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate in excess of forty-nine (49%) percent shall be deemed an assignment within the meaning of this Section 8.4 and shall require Landlord's consent. Any permitted transfer, assignment, subletting, or encumbrance shall be subject to all the terms, conditions of this Lease, and the term of any such subletting shall expire on or prior to the date of termination of this Lease; provided, however, that any renewal or other options contained in this Lease shall not continue and shall be null and void as of the effective date of such permitted assignment or transfer. Upon any "Event of Default" as herein defined, if the Premises or any part thereof have been further transferred, assigned, or sublet, Landlord, in addition to any other remedies herein provided or provided by law, may at its option collect directly from such transferee, assignee, or subtenant all rents becoming due to Tenant and apply such rent against any sums due to Landlord from Tenant hereunder. No such collection shall constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder.

(c) Notwithstanding the foregoing provisions of Section 8.4(a) and (b), provided Tenant shall not then be in default hereunder, in the event Tenant is a publicly traded company, this Lease may be assigned at any time without the consent of Landlord (but upon at least thirty (30) days prior written notice to Landlord) to any corporation or other entity into which, or with which, Tenant may be merged or consolidated, or to any corporation which shall purchase all or substantially all of the assets of Tenant on condition that:

(i) such successor shall have acquired all or at least 95% of the assets, and assumed all of the liabilities, of the assignor, and shall have total assets and total net worth (certified to by an independent certified public accountant) at least equal to the total of the assets and total net worth, respectively, as of a date twelve (12) months prior to the date of the assignment, of the assignor:

(ii) the assignee shall at all times use the Premises only for the purposes set forth in this Lease;


and



(iii) the transaction shall be made for a good faith operating business purpose, and not to evade compliance with the preceding provisions of this Section 8.4.

(d) Landlord shall have the right to assign any of its rights and obligations under this Lease, whereupon Landlord shall be relieved of, and such assignee shall succeed to and be liable for, all obligations of Landlord hereunder. Landlord shall further have the right, at Landlord's option, to take over any and all subleases or any part thereof upon an Event of Default and succeed to all rights and privileges and any sums held by Tenant under said subleases.

8.5 Surrender of the Premises and Holding Over. At the expiration or earlier termination of the tenancy hereby created or upon the exercise by Landlord of its right to re-enter the Premises without terminating this Lease, Tenant shall (a) immediately surrender the Premises in the same condition as the Premises were in as of the Commencement Date, reasonable wear and tear excepted, and damage by unavoidable casualty except to the extent that the same is covered by Landlord's fire insurance policy with extended coverage endorsement, (b) surrender all keys for the Premises to Landlord at the place then fixed for the payment of rent, and (c) inform Landlord of all combinations of locks, safes, and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease. If Tenant shall default in so surrendering the Premises, then Tenant's occupancy subsequent to such expiration, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy-at-sufferance and in no event from month-to-month or from year-to-year, and it shall be subject to the same terms, covenants, and conditions of this Lease, except that the Minimum Annual Rent shall be two (2) times the amount payable in the last year of the immediately preceding Term, and no extension or renewal of this Lease shall be deemed to have occurred by such holding over.

 Prior to the expiration or sooner termination of this Lease, Tenant shall remove any and all trade fixtures, equipment, and other unattached items which Tenant may have installed, stored, or left in the Premises or elsewhere on the Premises, including without limitation, counters, shelving, show cases, chairs, and unattached movable machinery purchased or provided by Tenant and which are susceptible to being moved without damage to the building in which the Premises is located. Tenant shall repair any damage to the Premises caused by its removal of such fixtures and movables. In the event that Tenant does not make such repairs, then Tenant shall be liable for and agrees to pay the Landlord's costs and expenses in making such repairs, together with an amount equal to ten percent (10%) of such costs and expenses to cover Landlord's overhead in making such repairs for Tenant. Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air-conditioning, equipment, floor coverings (including without limitation, wall-to-wall carpeting), walls or ceilings, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Landlord, nor shall Tenant remove any fixtures or machinery that were furnished or paid for by Landlord (whether initially installed or replaced). The Premises shall be left in a broom-clean condition. If Tenant shall fail to remove its trade fixtures or other property as provided in this Section 8.5, then such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and at the option of Landlord shall become the property of Landlord, or at Landlord's option may be removed by Landlord at Tenant's expense, or placed in storage at Tenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Landlord or revert to Landlord, if not sold.

8.6 Successors and Assigns. Subject to the restrictions set forth in Section 8.4, this Lease shall bind and inure to the benefit of each party and its successors and assigns.


8.7 Notices. Whenever notice shall or may be given to either of the parties by the other, each such notice shall be by prepaid certified mail or prepaid overnight delivery service (e.g., Federal Express or UPS Next Day Air), return receipt requested, at the respective addresses of the parties as contained in Section 1.1(g) or to such other party or address as either party may from time to time designate in writing to the other. Any notice under this Lease shall be deemed to have been given on the date on which such delivery is accepted or refused.

8.8 Additions, Alterations and Renovations by Landlord. Landlord, in its sole discretion, shall hereafter have the right to renovate the Premises, erect additional structures, add stories to existing buildings, or otherwise alter the size (diminution or addition of land and/or buildings), configuration, or aesthetics of the Premises and Tenant hereby consents thereto and to the performance of work necessary to effect the same and any inconvenience caused thereby; provided that such work shall be performed in a commercially reasonable manner. Tenant acknowledges the right of Landlord to remove existing signage (exterior and/or other signage within a proximity to the storefront so as

to affect implementation of construction by Landlord), consents to possible business interruption during construction by Landlord, and agrees to fabricate and install, at Tenant's sole cost and expense, new exterior signage according to Landlord's then existing Sign Criteria in the event of a facade renovation. The design, material, and performance of necessary work therefor shall be in the sole unrestricted discretion of Landlord.

8.9 Additions and Alterations by Tenant. Tenant shall not, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, make or cause any single addition, alteration, or improvement to the Premises which exceeds the total cost of \$15,000. Notwithstanding the foregoing, Tenant shall not make or cause any alterations, improvements, or additions in or to the Premises that would affect the roof or structural systems of the building in which the Premises are located. Interior painting or redecoration shall not require Landlord's consent. Landlord consents to Tenant's use of the City of Panama City Beach standard exterior and interior building design and identification as commonly used on City of Panama City Beach properties provided such use and design shall comply with Applicable Codes. Notwithstanding the foregoing the Landlord acknowledges that the Tenant intends to make significant alterations to the Premises to prepare it for use as a component of the City of Panama City Beach. Tenant would not enter this Lease without being allowed to make these alterations and Landlord is willing to allow the alterations to induce Tenant to enter into this Lease. These alterations shall be deemed consented to by the Landlord, and Tenant shall not be required to restore the Premises to original condition at the end of the Lease Term but may return the Premises in its altered condition after removal of Tenant's trade fixtures.

8.10 Hazardous Waste. Landlord warrants and represents to Tenant that, to Landlord's knowledge as of the date hereof, Landlord has complied with, and will continue to comply with, all federal, state, and local environmental laws, rules, regulations, and statutes applicable to the Premises or the use thereof.



Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors, or invitees, except for such Hazardous Material as is necessary to Tenant's business provided that Tenant has notified Landlord it will be bringing upon, keeping, or using such Hazardous Material on or about the Premises. Any Hazardous Material permitted on the Premises as provided in this Section, and all containers therefor, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state, and local laws or regulations applicable to this Hazardous Material.

Tenant shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by the Landlord, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Premises or elsewhere, or (b) the condition, use, or enjoyment of the building or any other real or personal property.

As used herein, the term "Hazardous Material" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (c) any oil, petroleum products, and their by-products; and (d) any substance that is or becomes regulated by any federal, state, or local law, code, ordinance, or regulation.

Tenant hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Premises by the Tenant, and the Tenant shall give immediate notice to the Landlord of any violation or potential violation of the provisions of this Section. Tenant shall defend, indemnify and hold harmless, Landlord from and against any claims, demands, penalties, fines, liabilities settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultants' fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the soil, water, vegetation, building, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to that Hazardous Material; (c) any lawsuit brought or threatened, settlement reached, or government order relating to that Hazardous Material; or (d) any violation of any laws applicable thereto. The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

8.11 Entire and Binding Agreement. This Lease contains the entire agreement between the parties with respect to the Premises. Any modification to this Lease must be written and executed by both parties.

8.12 Provisions Severable. If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable, then the remainder of this Lease shall be legal, valid, and enforced to the fullest extent permitted by law.

8.13 Captions. The captions contained herein are for convenience and reference purposes only and shall not be deemed as part of this Lease or construed as in any manner limiting or amplifying the terms, covenants, conditions, and provisions of this Lease to which they relate.

8.14 Non-Waiver. Failure of Landlord in any situation to insist upon strict adherence to any provision or rule contained in this Lease shall not serve as or be construed as a future waiver of any provision or rule by Landlord.

8.15 Inability to Perform. If either party is delayed or prevented from any of its obligations under this Lease by reason of strike, labor troubles, or any other cause whatsoever beyond such party's control, then the period of such delay or such prevention shall be deemed added to the time provided herein for the performance of any such obligation.

8.16 Prevailing Party. In the event either party hereto institutes legal action or proceedings arising out of or in any way connected with this Lease, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs incurred in connection therewith.

8.17 Rent. Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Annual Rent, additional rent or otherwise, shall constitute rent for the purposes of Section 502(b)(7) of the Bankruptcy Code, 11 U.S.C. et seq.

8.18 Quiet Enjoyment. Tenant shall peaceably and quietly hold and enjoy the Premises for the Lease Term without interruption by Landlord or any person or persons claiming by, through or under Landlord, subject, nevertheless to Landlord's dispossession rights pursuant to the default provisions of this Lease and except to the extent specifically otherwise provided in this Lease. In the event that Landlord's possession shall terminate as a result of foreclosure by a mortgagee or otherwise, Tenant's possession of the Premises shall not be disturbed as long as Tenant has fulfilled all of its obligations under the terms of this Lease.

8.19 Interpretation of Lease. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party who drafted this Lease. If any words or phrases in this Lease have been eliminated, no inference shall be drawn from their elimination.

8.20 Authority to Sign. If Tenant is a corporation, each person executing this Lease on behalf of Tenant hereby covenants, represents, and warrants that Tenant is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the State of Florida (evidence thereof to be supplied to Landlord) and that each person executing this Lease on behalf of Tenant is an officer of Tenant duly authorized to execute, acknowledge, and deliver this Lease (a resolution to that effect to be supplied to Landlord).

8.21 Time is of the Essence. Time is of the essence with respect to the performance of each and every term, covenant, condition, and provision of this Lease.

8.22 Governing Law. This Lease is being executed and delivered in the State of Florida and shall be governed, construed, and enforced in accordance with the laws of that State.

8.23 Radon Gas. Pursuant to F.S. 404.056(8), Tenant is hereby notified that radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

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IN WITNESS WHEREOF, Landlord and Tenant, acting by and through their duly authorized general partner and/or officer, have duly executed this Lease as of the dates set forth below, each acknowledging receipt of an executed copy hereof.

Landlord:

Beyond The Sea Realty LLC
~~Oden's Realty LLC~~

Mohvit Asaad

Witness

[Signature]

Witness

By: Ayman Oden [Signature]

Name:

Title: President

Date: October 19, 2023

Tenant: City of Panama City Beach

[Signature]
a Municipal Corporation

Henry White

Witness

Lynne Farrow

Witness

By: Drew Whitman

Name:

Title: City Manager

Date: 10-26-23

[Signature]

EXHIBIT A

Legal Description of Premises

TO BE ATTACHED

