

**PORT COMMISSION
SEPTEMBER 28, 2009**

Be it remembered that a recess meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the Central Fire Station Training Room, 645 Klondyke Road, in said city on Monday, September 28, 2009, at 4:30 p.m. o'clock, and the same being the time, date, and place fixed by order of the Port Commission recessing the meeting from Thursday, September 24, 2009.

There were present and in attendance on said commission the following named persons: Commission President Phil Kies, Vice President James Hancock, Secretary Barbara Reed, Commissioners Vernon Ehlers, David Marks, Chuck Ryan, Charles Purchner, Harbormaster Calvin Poupart, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioners Steve Nicosia and Rod Rishel.

The meeting was called to order and discussion was held regarding the amended and restated lease agreement by and between the Long Beach Port Commission and Lookout Catering, LLC.

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Secretary Barbara Reed and Port Attorney James C. Simpson, Jr., were preliminarily absent the meeting and arrived at 4:40 p.m.

Deputy City Clerk Stacey Dahl left the meeting at 5:45 p.m., whereupon Commissioner Barbara Reed notated the actions of the commission in her capacity as the elected secretary of the Port Commission.

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In depth discussion and review continued regarding the aforesaid agreement; whereupon Commissioner Hancock made motion seconded by Commissioner Marks to approve the **Amended and Restated Lease Agreement by and between the Long Beach Port Commission and Lookout Catering, LLC**, incorporating the changes discussed and attaching the legal description. Said lease agreement, **prior to changes and attachment**, ordered spread upon the minutes of this meeting in words and figures as follows:

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RESTATED LEASE AGREEMENT This formatting is according to the new guidelines for recording in Chancery Clerk

THIS AMENDED AND RESTATED LEASE AGREEMENT (this "Lease") is made and entered into; effective, the _____ day of _____, 2009 by and between by and among the following:

LONG BEACH PORT COMMISSION (hereinafter referred to as "Lessor"), **the CITY OF LONG BEACH COMMISSION** (hereinafter referred to as "the City") and **LOOKOUT CATERING, LLC** a Mississippi limited liability company (hereinafter referred to as "Lessee").

WHEREAS, the parties have entered into a lease and amendments thereto identified as that certain Corrected Lease Agreement by and between Lessor and CJS II, Inc. dated September 18, 2000, and recorded in Book 1516 at Page 274; re-recorded in Book 1522 at Page 85 and further re-recorded as Instrument #2007 37540 - JI with the Chancery Clerk of the First Judicial District of Harrison County, Mississippi (the "Chancery Clerk"), as assigned by that Assignment of Lease dated April 24, 2007, by and between CJS II, Inc. and Lessee and as extended by that certain Lease Extension and Secondary Term Agreement by and between Lessor and Lessee dated May 15, 2008, and recorded as Instrument #2008 6141D - JI with the Chancery Clerk, and

WHEREAS, the parties wish to amend and restate the prior lease and amendments thereto for the purpose of convenience and clarity, it is therefore agreed as follows:

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants herein contained and for other good, lawful and valuable consideration given and received by each of the parties to be bound hereby, the parties agree as follows:

ARTICLE 1 GRANT

Section 1.1 Land and Building. Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, that certain portion of land owned by Lessor, described fully by the survey and property description attached hereto as Exhibit "A" (hereinafter referred to as the "Leased Premises"). The Leased Premises consists of land area upon which a building is to be constructed, designated on Exhibit "A" as "Area A" and water area over or upon which boat docking facilities may be constructed, designated on Exhibit "A" as "Area B". Lessee shall have reasonable access to the roadways of the Port of Long Beach for egress and ingress and to the areas between the Leased Premises to accommodate Lessee's operations.

Section 1.2 Exclusive Gaming Rights. Lessor grants to Lessee the exclusive right to conduct or participate in a lawful gaming operation for five (5) years from the Effective Date hereof on land and area in the possession and/or control of Lessor, or using the land and area in the possession and/or control of Lessor to conduct a gaming operation in a structure not located on land and area in the possession and/or control of Lessor but which is located no more than eight hundred feet (800') from the mean high-water line (as defined in Section 29-15-1, MCA) of the waters within the State of Mississippi in accordance with Section 87-1-5, MCA, as amended. Upon expiration of the five (5) year exclusivity period, Lessee shall retain the right to conduct or participate in a lawful gaming operation as set forth herein on a non-exclusive basis.

Section 1.3 Option. Lessor grants to Lessee an exclusive option to lease from Lessor the land owned by Lessor and described as Areas "C" and "D" (Area "D" commonly know as the Chamber of Commerce property) on the attached Exhibit "A". Lessor shall obtain appraisals of the fair market value of rent for each of said Areas "C" and "D", and upon receipt thereof shall notify Lessee of the fair market value of the rent

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for each as determined by such appraisals. Lessee shall have thirty days from the date of notification from Lessor of the fair market value rent at which the parcels will be offered within which to exercise its option to rent such parcels at the stated fair market value rent. **Upon exercise of this option said parcels shall be rolled into this Lease, with the exception of rent amount, and all provisions of this Lease shall apply to said parcels as appropriate.** In the event Lessee chooses not to exercise this option or fails to notify Lessor in writing of its intent to exercise this option in writing within thirty days of the date of notification as stated above, such option right shall expire. Notwithstanding anything in this Lease to the contrary, in the event the Lessee shall decline to exercise its option to rent the parcels described as Areas "C" and "D" at the fair market value rent at which they are offered, Lessee shall have the option to terminate the Lease without further obligation of either party to the other, **but without refund of the prepaid rent.**

ARTICLE 2 TERM AND OPTIONS

Section 2.1 Term. The primary term of this Lease shall be six (6) years. The term shall commence on the date of final approval by the Board of Aldermen of the City of Long Beach (the "Commencement Date"), and expire six (6) years thereafter (the "Primary Term"). So long as Lessee has complied with all terms, covenants and conditions of this Lease, as of the expiration of the Primary Term, Lessee shall have the option to extend the Lease for nine (9) renewal periods of five (5) years each under the same terms and provisions of the Lease (the "Renewal Terms"), except that the rental for each of the leased Parcels shall be redetermined for each option period at Fair Market Value. For exercise each such Renewal Term, Lessee shall send, at least sixty (60) days prior to the end of such Renewal Term or Primary Term, as the case may be, a written notice to Lessor of Lessee's exercise of such Renewal Term. If Lessee fails to timely give such notice of exercise of its option, then the option shall have expired and be of no force and effect.

ARTICLE 3 RENT

Section 3.1 Rent. Lessee shall pay Lessor rent for the Leased Premises as follows:

A. **Base Rent.** Lessee shall pay to Lessor base rent of One Thousand Three Hundred Five & no/100 Dollars (\$1,305.00) per month (the "Base Rent"), payable in advance on the first day of each month for Area "A" as shown on Exhibit "AA". Should Lessee exercise its option right provided in Section 1.3 above, the base rent shall be increased by the fair market value rent amounts as stated for each of Areas "C" and "D". The Base Rent will be increased by three percent (3%) for each year of the Primary Term of this Lease and any extensions beyond the Primary Term as provided herein.

B. **Non-Gaming Percentage Rent.** In addition to the Base Rent, Lessee shall pay Lessor as additional percentage rent calculated annually an amount equal to two percent (2 %) of the annual gross sales of between \$750,000 and \$1,250,000 generated from any commercial, non-gaming operations located on the Leased Premises during the Term, and an amount equal to four percent (4%) of the annual gross sales of over \$1,250,000 from any commercial, non-gaming operations located on the Leased Premises during the Term (collectively, the "Non-Gaming Percentage Rent"). Lessee shall pay the Non-Gaming Percentage Rent to Lessor for each calendar quarter, or portion thereof for the beginning or end of the Term, within thirty (30) days after the end of each calendar quarter. For the purpose of determining the Non-Gaming Percentage Rent, Lessee shall provide to Lessor at the time such non-gaming percentage rent is tendered all applicable sales tax returns provided to the State of Mississippi such that such rent may be verified.

C. **Pre-Paid Rent.** Lessor acknowledges receipt from Lessee of pre-paid base rent and Non-Gaming Percentage Rent, as applicable, in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Pre-Paid Rent"). The Pre-Paid Rent shall be credited dollar for dollar towards Lessee's liability for base rent and Non-Gaming Percentage Rent from the Commencement Date, and shall be **non refundable in the**

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event of termination of the Lease for any reason.

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D. For the first twenty-five (25) years of the Term and in addition to the Base Rent and the Non-Gaming Percentage Rent, Lessee will also to pay Lessor as additional percentage rent an amount equal to two percent (2%) of the annual gross gaming revenues derived from any gaming operations of Lessee located on the Leased Premises, and from any gaming operations of Lessee located on land adjacent to the Leased Premises and within eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1, MCA) of the waters within the State of Mississippi in accordance with Section 87-1-5, MCA, as amended, but in no event less than Five Hundred Thousand Dollars (\$500,000) per year. From and after the beginning of the twenty-sixth (26th) year and through the fifty-first (51st) year of the Term and in addition to the Base Rent and the Non-Gaming Percentage Rent, Lessee shall pay Lessor as additional rent percentage rent an amount equal to three percent (3.00%) of annual gross gaming revenues derived from any gaming operations of Lessee located on the Leased Premises, and from any gaming operations of Lessee located on land adjacent to the Leased Premises and within eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1, MCA) of the waters within the State of Mississippi in accordance with Section 87-1-5, MCA, as amended, but in no event less than Five Hundred Thousand Dollars (\$500,000) per year (collectively, the "Gaming Percentage Rent", and the Base Rent, the Non-Gaming Percentage Rent and the Gaming Percentage Rent shall be referred to collectively as the "Rent"). Lessee shall pay the Gaming Percentage Rent to Lessor for each calendar quarter, or portion thereof for the beginning or end of the Term, within thirty (30) days after the end of each calendar quarter. This provision applies only to continuous gaming operations and not to any period of time during which gaming operations have been interrupted.

Section 3.2 Payments. All Rent shall be payable at Lessor's place of business or at such other place as Lessor may designate in writing.

Section 3.3 Other Items. It is the intention of Lessor and Lessee that the Rent herein specified shall be net to Lessor in each year during the Term of this Lease, that all costs, expenses, taxes charges and obligations of every kind relating to the Leased Premises, including, but not limited to the costs of maintaining and repairing the Leased Premises, which may arise or become due during the Term of this Lease shall be paid by Lessee, and that Lessor shall be indemnified by Lessee against such costs, taxes, expenses, charges and other obligations.

**ARTICLE 4
CONSTRUCTION, ALTERATIONS AND EQUIPMENT**

Section 4.1 General. Lessee shall, at its sole cost and expense, construct a building on the Leased Premises having a minimum total investment including the development of plans, specifications, surveys and construction of not less than \$750,000.00. Lessee shall submit a rendering of the proposed building within 30 days of the Effective Date of this Lease. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state and local governmental and public bodies and agencies having jurisdiction over the performance of such construction work. Lessor shall cooperate with Lessee's efforts in obtaining all governmental consents, approvals and permits, provided all costs thereof shall be paid by Lessee.

Section 4.2 Initial Construction. Prior to initial construction, final building plans and specifications shall be submitted to Lessor for approval. Provided such plans and specifications are in substantial conformance with the drawings, renderings and/or plans furnished by Lessee as set forth in Section 4.1, such approval shall not be unreasonably withheld or delayed.

Section 4.3 Failure to Submit Plans, Commence Construction or Complete Construction. Lessee shall submit final building plans and specifications for approval to Lessor within ninety (90) days from the Effective Date hereof. Lessee shall apply for a building permit from the City of Long Beach within thirty (30) days of final approval of such

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plans and specifications by Lessor. Lessee shall commence actual construction of such building and permitted structure within thirty (30) days of issuance of the building permit and thereafter proceed with uninterrupted commercially reasonable diligence to complete such construction. Lessee's building shall be completed and open for business to the public not later than December 31, 2010. Failure to do any of the above within the stated time periods shall constitute a default hereunder and grounds for termination of this restated Lease. If Lessee is unable to obtain a building permit for whatever reason within one hundred eighty (180) days of the Effective Date, same shall be considered an act of default.

Section 4.4 Mechanics or Workman's Liens. Lessee shall (1) keep the Leased Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Lessee, and (2) at all times fully protect and indemnify Lessor against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Lessee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Lessor a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Lessee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Lessor, Lessor shall keep the Leased Premises free of same, indemnify Lessee, furnish Lessee with a bond and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Lessee aforesaid.

ARTICLE 5 USE

Section 5.1 General. Lessee shall only use the Leased Premises for the purpose of conducting a restaurant, including as an incidental part thereof a bar or lounge area, and for incidental marine related purposes related thereto (e.g., catering and office). Lessee shall not use the Leased Premises in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body. It is the intention of the parties that the Leased Premises may be used in connection with a gaming establishment, but that no actual gaming activities shall be conducted or permitted south of U.S. Highway 90.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Leased Premises are accepted by Lessee in their present condition. Except as otherwise provided herein, Lessee shall at all times during the Term of this Lease and at its own expense keep the Leased Premises, the air-conditioning and heating system, electrical systems and all other systems and fixtures and all equipment thereon used in connection with the Leased Premises in good order, condition and repair, and shall make all repairs thereto, ordinary and extraordinary, that may be required during the Term hereof. Lessee shall indemnify and save harmless Lessor against and from any loss, costs, damage and reasonable expenses arising out of or in connection with Lessee's use of the Leased Premises, or any part thereof.

Section 6.2 Lessor's Obligation. Lessor shall have no obligation to maintain the building on the Leased Premises.

Section 6.3 Lessee's Obligation. Lessee shall, as its sole cost and expense and as required by this Lease, maintain, repair and replace the items comprising the building on the Leased Premises, including but not limited to, foundation, roof, structure, gutters and downspouts, exterior walls, interior walls and structural portions of the building to be constructed upon the Leased Premises, and all wiring, plumbing, sprinkler system, pipes, conduits and other utilities which service the building and the Premises. Lessee shall deliver the Leased Premises to Lessor on the expiration or termination of this Lease in good repair and condition, reasonable wear and tear excepted, and free and clear of any

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and all liens or encumbrances of whatever kind or sort.

Section 6.4 Repair and Maintenance. Lessee shall, as its own expense, make all repairs and replacements to all improvements constructed by Lessee on the Leased Premises which may be from time to time become necessary, including but not limited to repairs to the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Leased Premises. All such repairs and replacements shall be made promptly, as and when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Lessee to make such repairs or replacements, Lessor may, but shall not be required to, make such repairs and replacements for Lessee's account, and the expense thereof shall constitute and be collectable as additional Rent; provided, however, Lessor must first give notice to Lessee to cure such default (i.e., make the repair) within a reasonable amount of time.

ARTICLE 7 UTILITIES

Section 7.1 Initial Connections. Lessor warrants to Lessee that the necessary mains and conduits in order that water and sewer facilities, electricity, telephone and other utilities necessary to Lessee's conduct of a restaurant business as represented to be restored on Area "A" of the leased premises are available for connection within the Leased Premises. It is understood that all service hereunder shall be furnished by public utilities and not by Lessor. In the event additional connections are needed for Lessee, Lessee shall be solely responsible for arranging and paying for such additions.

Section 7.2 Lessee's Obligations for Charges. Lessee shall be solely responsible for and shall promptly pay all charges, when due, for water, sewer, electricity, telephone and any other utility used upon or furnished to the Leased Premises. Lessee's obligation to pay for such utilities shall commence as of the Commencement Date.

ARTICLE 8 TAXES AND ASSESSMENTS

Section 8.1 Real Property Taxes. Lessee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Leased Premises.

Section 8.2 Personal Property Taxes. Lessee shall pay, prior to delinquency, any and all personal property taxes levied against Lessee's leasehold improvements, fixtures, equipment, furniture and other personal property located upon the Premises.

Section 8.3 Contests. Lessee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

ARTICLE 9 INSURANCE AND INDEMNITY

Section 9.1 Indemnification. Lessor shall not be liable to Lessee or Lessee's employees, agents or visitors, or to any other person whosoever, for any injury to person or damage to property in or occurring upon the Leased Premises or of any other person entering the Leased Premises under express or implied invitation of Lessee, or caused by the Leased Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Leased Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Lessor's negligence or misconduct or breach of its obligations hereunder) and Lessee agrees to carry property damage and general liability insurance as set forth in Section 9.2 below for the purpose of saving Lessor harmless to the extent of such coverage. Lessor specifically reserves and retains all immunities allowed to it as a political

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subdivision of the State of Mississippi, and nothing herein shall be considered a waiver of any such protections.

Section 9.2 (A) Property Damage Insurance. Throughout the Term of this Lease, Lessee shall maintain insurance coverage on the Premises, including fire, windstorm and flood insurance, naming Lessor as additional insured, in the full amount of the replacement value of the improvements, including building code requirements endorsement once such improvements are complete and appropriate builder's risk insurance during the period of construction of improvements. Such insurance value shall be increased (but never decreased) periodically to reflect the fair market replacement value of Premises. In the event the rate of the insurance on the said Premises is increased for any reason, Lessee shall pay the increased cost of the insurance at the time the premium notice is presented to Lessee.

Lessee shall, at all times during the Lease, maintain in effect a policy or policies of insurance covering Lessee's leasehold improvements, trade fixtures, equipment, merchandise and other personal property located upon the Premises, against any peril customarily covered by a standard fire and hazard insurance policy, including but not limited to damage resulting from sprinkler leakage, vandalism and malicious mischief.

Lessee shall deliver to Lessor copies of the certificates of insurance evidencing the existence in force of the policies of insurance described in this Paragraph 9. All of the policies of insurance required to be maintained hereunder shall be issued by an insurer licensed to do business within the state in which the Leased Premises are located. Each certificate shall provide that the insurance shall not be canceled or materially amended unless thirty (30) days' prior written notice of cancellation or amendment is given to the other party.

Failure at any time to have Lessor included as a named insured under any insurance policy required to be maintained under this lease shall constitute an act of default. Payment of any sums by any carrier of insurance required to be maintained hereunder for any loss to the leased premises or any improvements on the Leased premises to any payees pursuant to such coverage without Lessor being included as a co payee on such payment or without Lessor's prior written consent shall also constitute an act of default.

Section 9.2 (B) General Liability Insurance.

- (1) Lessee agrees to indemnify and save Lessor harmless from all claims for damages, to goods, merchandise, persons and other property in or upon the Leased Premises, and any platforms of Lessee, arising out of or occasioned by Lessee's use or occupancy, except such damages resultant from the negligence of Lessor, its agents, servants or employees, or caused by Lessor's failure to perform any of its obligations hereunder.
- (2) Lessee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Leased Premises, insuring Lessor, Lessor's beneficiaries and agents and the holders of any notes secured by a first mortgage or trust deed on the Leased Premises. Such insurance may be carried under a blanket policy covering the Leased Premises as well as other locations in which Lessee or any of its affiliated or subsidiary corporations or other entities may be interested. Lessee will promptly furnish Lessor with a certificate of said coverage, and all renewals thereof.

Section 9.3 Additional Named Insured. All policies of insurance required hereby shall include Lessor as an additional named insured. Failure at any time to have Lessor included as a named insured under any insurance policy required to be maintained

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under this lease shall constitute an act of default.

Section 9.3 Hazardous Use. Lessee will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk materially more hazardous, it being understood and agreed that the use of the Leased Premises in the proper and ordinary conduct of Lessee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.4 Waiver of Subrogation. Recognizing that Lessor is a governmental subdivision of the State of Mississippi, and thus to the extent but only to the extent allowed under law, Lessor and Lessee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Lessor and Lessee, as the case may be, their respective property, or to the Leased Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only; and Lessor and Lessee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Lessor and Lessee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting therefrom to pay such additional costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.5 Indemnification for Host Liquor Liability. Lessee will defend, indemnify, save free and hold harmless the Lessor for any action or damages, including attorney's fees and costs, resulting from a claim relating to host liquor liability.

**ARTICLE 10
SIGNS**

Section 10.1 General. With the prior approval of Lessor, which such approval shall not be unreasonably withheld or delayed, Lessee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Leased Premises which otherwise comply with applicable laws and the sign ordinance adopted by the City of Long Beach. Lessee's installation and removal of such sign shall be made in such manner as to avoid injury, defacement and structural overloading of the Leased Premises or other improvements.

**ARTICLE 11
ASSIGNMENT, SUBLETTING AND
RIGHT OF PURCHASE**

Section 11.1 General. Lessee may not assign this Lease, or any interest herein, or sublet the whole or any part of the Leased Premises, nor transfer majority interest or effective control of or interest in Lessee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Lessee without the prior written approval of Lessor. Any such approval given will only be with the approval of the intended Assignee, and with the express assumption by such assignee or purchaser of all of the Lessee's obligations hereunder. No assignment or transfer of the lease or any interest therein or in Lessee will be allowed unless Lessee is in all respects in compliance with all obligations hereof and no default is declared or remains uncured.

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ARTICLE 12 RIGHT OF ENTRY

Section 12.1 Right of Entry and Obligation to Make Repairs. Lessor reserves the right during the Term of this Lease to enter the Leased Premises at reasonable hours and with reasonable prior notice, and for the purpose of inspecting the Leased Premises and to make such repairs, additions, or improvements as Lessor may deem necessary for the protection and preservation of the improvements and Leased Premises; but Lessor is not bound to make any repairs whatever except as hereinafter stated, nor to be held liable for any damage in consequences of leaks, not for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, nor for any other defects about the building and Leased Premises, Lessee having examined the same and being satisfied therewith, but should such leaks, obstructions, freezing's, stoppages, or other defects about the building and Leased Premises occur during the Term of this Lease, or while Lessee is occupying the Leased Premises, then Lessee shall remedy the same promptly at Lessee's expense, unless Lessor by written instrument undertakes to do the same promptly. Lessee shall maintain the Leased Premises in good order and repair.

In the event that Lessee shall fail to make repairs as aforesaid, Lessor reserves the right to enter said Leased Premises at any time and make such repairs at the expenses of Lessee, which expenses shall be considered additional Rent. Lessor further reserves the right at any time within three (3) months prior to the expiration of this Lease to affix to any part of the Leased Premises and the leased building a notice for rent or sale of the same and may keep the said notice so affixed without hindrance or molestation by Lessee.

ARTICLE 13 CONDEMNATION

Section 13.1 Eminent Domain If, during any Term of this Lease, twenty-five percent (25%) or more of the Leased Premises is acquired or condemned by right of eminent domain for any public or quasi-public use or purpose, then either Lessor or Lessee may terminate this Lease upon written notice to the other, which termination shall be effective as of the date of such taking. In the event only a portion of the Leased Premises are taken, and thereafter neither Lessor nor Lessee elect to terminate this Lease, Lessee shall promptly and diligently repair the remaining Leased Premises to as near to their original condition as may be possible. The Rent, and any other charges due Lessor, shall be abated during the period of any restoration until such time as the Leased Premises have been completed and are ready for occupancy by Lessee, and shall be adjusted based upon the remaining area of the Leased Premises. Nothing herein shall prevent either Lessor or Lessee from prosecuting claims in any condemnation proceedings for the value of their respective interests. Lessor shall be first entitled to the condemnation award attributed to the real property, and Lessee for the taking of its fixtures and equipment, leasehold improvements, relocation expenses, goodwill, loss of business or other award not related to the value of the underlying real property.

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ARTICLE 14 CASUALTY

Section 14.1 Substantial Destruction. If the Leased Premises is substantially destroyed (50% or more of replacement cost) by fire or other casualty, or if said damage is to such extent that it reasonably appears rebuilding or repair cannot be completed within one hundred eighty (180) days of said casualty, Lessee shall give written notice thereof to Lessor within a reasonable time, not to exceed thirty days, and thereupon have the right to either (a) repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty, or (b) cancel this Lease effective as of the date of such casualty and return the Leased Premises to Lessor. Lessee shall give written notice of its election to Lessor within a reasonable time, not to exceed one hundred and eighty days (180) days of the date of such casualty. Should Lessee exercise its right to rebuild, this Lease shall remain in full force and effect and Lessee shall proceed with due diligence to repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty. Lessee shall commence repair and restoration of the building and structures on the Leased Premises to substantially the same or better condition as prior to such casualty within 365 days of the date of casualty, and substantially complete repair and restoration of the building and structures on the Leased Premises to substantially the same or better condition as prior to such casualty within 180 days on commencement of repair and restoration. Failure to do any of the above within the stated time periods shall constitute a default hereunder and grounds for termination of this restated Lease.

Section 14.2 Partial Destruction. In the event the Leased Premises should be damaged or destroyed by fire or other casualty, Lessee shall give written notice thereof to Lessor within a reasonable time, not to exceed seventy-two (72) hours. If the Leased Premises shall be damaged by fire or other casualty, but (1) not to such extent as to be substantially destroyed (50% or more of replacement cost) or (2) to such extent that rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Lessee shall proceed with reasonable diligence to rebuild and repair the Leased Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Leased Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third party approvals cannot be obtained within said time or if all infrastructure for required utilities remains unavailable to the Leased Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, in such event lessee may elect to treat such casualty as Substantial destruction and terminate this lease.

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ARTICLE 15 ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST

Section 15.1 General. With Lessor=s prior written consent, Lessee may encumber by mortgage, deed of trust or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all buildings, improvements, inventory, goods, equipment and personal property, placed by Lessee thereon as security for any indebtedness of Lessee incurred for the sole and exclusive purpose of providing or constructing improvements to or operations on the Leased Premises. No other debt of Lessee or any other person or entity shall be secured by pledge, lien or otherwise against the Leased Premises. In no case shall the leasehold interest and estate in the Leased Premises, or any building, improvements, inventory, goods, equipment or personal property placed or located by Lessee thereon be pledged, liened or secured for any debt not incurred for the sole and exclusive purpose of construction of improvements to or operations on the Leased Premises. The execution of any such mortgage, or deed of trust, or other instrument, or the foreclosure thereof, or any sale thereunder, either by judicial proceedings or by virtue of any power reserved in such mortgage or deed of trust, or conveyance by Lessee to the holder of such indebtedness, or the exercise of any right, of power, or privilege reserved in the mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions hereof provided the indebtedness owed by Lessee which is to be satisfied or reduced by any such mortgage, or deed of trust, or other instrument, or the foreclosure thereof, or any sale or the exercise of any right, of power, or privilege reserved thereunder was approved in advance by Lessor, and the funds or proceeds received pursuant to such indebtedness incurred were used by Lessor exclusively on the Leased Premises as provided above. In addition, such event shall be deemed as an assumption by the holder of such indebtedness personally of the obligations hereof. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve the Lessee from its liability hereunder. If Lessee shall encumber its leasehold interest or estate in the Leased Premises and if Lessee or the holder of the indebtedness secured by such encumbrance shall give notice to Lessor of the existence thereof and the address of such holder, than Lessor will mail or deliver to such holder, at such address, a duplicate copy of all notices in writing to which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions hereof; such copies shall be mailed or delivered to such holder, at the same time such notices are given to or served on Lessee. Such holder may, at its option, at any time before the rights of Lessee shall be terminated as provided herein, pay any of the rents due hereunder, or do any other act or thing required of Lessee by the terms hereof, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof, or to prevent the termination hereof; all payments so made, and all things done and performed by such holder shall have the same effect in force as though the same had been done and performed by Lessee, (e.g., any transfer or assignment of the Lessee's interest herein to any security holder is not a default of this Lease and said transfer need not be consented to by Lessor for validity if such security interest was properly approved in advance as required herein above and consistent with the requirements hereof related to use of proceeds for which such security interest was created or from which it resulted on the Leased Premises). Notwithstanding anything contained in any lien or security agreement, no lien or encumbrance placed on the Leased Premises for whatever reason shall survive termination or cancellation of this Lease.

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ARTICLE 16 DEFAULT OF LESSEE

Section 16.1 Events of Default. The following events shall be deemed to be events of default by Lessee under the Lease:

- 16.1.1 Lessee shall fail to pay any installment of the Rent and such failure shall continue for a period of thirty (30) days after the due date of such installment.
- 16.1.2 Lessee shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of Rent, and such failure shall continue for a period of sixty (60) days after Lessor's written notice thereof to Lessee.
- 16.1.3 Lessee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.
- 16.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee, provided, however, that no default shall occur under this Section 16.1.4 so long as Lessee continues to pay the Rent and is not otherwise in default under any other provision of this Lease).
- 16.1.5 Lessee shall abandon any substantial portion of the Leased Premises and cease to pay the Rent. Assignment or subletting by Lessee (in accordance with the terms hereof) shall not be considered an act of default provided such assignment or subletting is first approved in writing by Lessor.
- 16.1.6 Lessee shall fail to have in effect or maintain insurance herein required on the Leased Premises which includes Lessor as a named insured along with Lessee.

Section 16.2 Remedies of Lessor. Upon the occurrence of any of said events of default, Lessor shall have the option to pursue any one or more of the following remedies after giving written notice to Lessee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

- 16.2.1 Terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails so to do, Lessor may, without prejudice to any other remedy which it may have for possession or arrearage in Rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination, whether through inability to re-let the Leased Premises on satisfactory terms or otherwise.
- 16.2.2 Enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary; and Lessee agrees to pay to Lessor on

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demand any deficiency that may arise by reason of such re-letting.

16.2.3 Lessor agrees to use its best efforts to re-let the Leased premises for the original intended purposes hereof, but shall be under no obligation thereto.

16.2.4 Any Notice of Default provided to Lessee shall also be provided to any approved mortgage holder or other creditor who has an approved security interest pursuant to Article 15 herein. Any such approved creditor will have the right to cure the Lessee's default provided such default is cured within sixty (60) days of the Notice of Default.

Section 16.3 Operation of Lessee. The Lessee shall be in default of this Lease, if after the initial construction is complete and the restaurant opens, the restaurant or any replacement fails to operate for ninety (90) days consecutively, for any reason other than Substantial or Partial Destruction as described herein above.

ARTICLE 17 QUIET ENJOYMENT

Section 17.1 General. Subject to the provisions hereof, Lessor warrants and guarantees that it is the owner of the Leased Premises and that it has the full right and authority to enter into and perform this Lease and to grant the estate herein leased, and covenants and agrees that at all times during the term of this Lease, including any extension thereof, when Lessee is not in default hereunder Lessee's quiet and peaceful enjoyment of the Leased Premises and of all its rights, easements, appurtenances and privileges belonging or otherwise appertaining thereto shall not be disturbed or interfered with by Lessor or any person.

Section 17.2 Tidelands Exception: Lessor makes no warranties, either express or implied, regarding any claim or asserted claim to any portion of the Leased Premises or any uses or limitations on use of any part of the leased premises due to claims of such as public trust tidelands. Lessee must satisfy himself as to the status of any such condition or claims, and Lessee's only relief or recourse in the event of such an adverse claim or determination is cancellation hereof. No return or refund of any rents paid hereunder shall be allowed in any such event.

ARTICLE 18 RENT PAYMENT AND NOTICE

Section 18.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to Lessor shall be deemed to be complied with when and if the following steps are taken

18.1.1 All Rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to:

P.O BOX 929
LONG BEACH, MS 39560
or at such other address as Lessor may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith), and shall be deemed received only when actual collected funds are in the accounts of Lessor. In the event any check or instrument drawn by Lessee and delivered to Lessor as payment for any sum due hereunder

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is dishonored or refused payment, it shall be treated as if no payment had been made.

18.1.2 All payments required to be made by Lessor to Lessee hereunder shall be payable to Lessee at the address herein below set forth, or at such other address as Lessee may specify from time to time by written notice delivered in accordance herewith.

18.1.3 Any notice or document required or permitted to be delivered hereunder except rent payments shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested. Alternatively, notice may be delivered hereunder by successfully transmitted facsimile addressed to the parties hereto at the respective addresses set out opposite their names below, or such other addresses as they have theretofore specified by written notice delivered in accordance herewith:

Lessee:

With a copy to:

Lessor:

With copy to:

**ARTICLE 19
MISCELLANEOUS**

Section 19.1 Tax Credits. The parties agree that Lessee shall be entitled to any and all Investment Tax Credits, Rehabilitation Expenditure Tax Credits or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Lessee's work (See, Section 4.1 above) in the Leased Premises.

Section 19.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Lease nor in any way affect this Lease.

Section 19.3 Consent. Whenever the consent of either party is required to an action under the terms of this Lease, unless otherwise provided herein such consent shall not be unreasonably withheld nor delayed.

Section 19.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 19.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Lease and each of the parties agrees to indemnify the other against and hold it harmless from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of

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reasonable attorneys' fees in connection therewith).

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Section 19.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Lease, including the rights herein granted to terminate this Lease, shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Lessor and Lessee set forth herein be deemed both a covenant and a condition.

Section 19.7 Governing Law. This Lease shall be interpreted and construed under the laws of the State of Mississippi.

Section 19.8 No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, and neither the method of computation of rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of lessor and lessee.

Section 19.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 19.10 Entire Agreement Amendment. As of the execution hereof, this Lease contains all covenants and agreements between Lessor and Lessee exclusively relating in any manner to the rental, use and occupancy of the Leased Premises and the other matters set forth in this Lease. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect, and the covenants and agreements of this Lease cannot be altered, changed, modified or added to, except in writing signed by Lessor and Lessee. No renewal after this Lease terminates shall be binding on either party unless it be in writing and signed by the Lessor and Lessee.

Section 19.11 Severability. Any provision or provisions of this Lease which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

Section 19.12 Waste and Nuisances The Lessee agrees neither to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on said Premises and will, when required by the property authorities, abate all nuisances at its own expense.

Section 19.12. Late Fee and Charges. Should Lessee fail to pay any amounts due hereunder when due, from and after such amounts become ten (10) days delinquent, Lessor shall charge as late fees an additional one and one half percent (1.50%) as late charges of the outstanding balance due.

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Section 19.13 Proof of Payment. No set-off in the payment of the Rent herein shall be allowed unless signed by Lessor, its legal representative or assigns, and the proof of the payment of the Rent shall be on Lessee in all controversies.

Section 19.15 Time is the Essence. Time is of the essence with respect to all matters provided in this Lease.

Section 19.16 Tidelands. In the event any portion of the Leased Premises constitutes State Trust Lands and leased from the Mississippi Secretary of State or should In Lieu Payments be required to be paid to the Mississippi Secretary of State, all such payments shall be the sole responsibility of the Lessee and shall not be credited or offset against any sums due hereunder or otherwise act to reduce any payments due to Lessor hereunder.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be duly executed.

Date of Execution: _____

WITNESS OR ATTEST:

Lessor:
THE PORT COMMISSION OF THE
CITY OF LONG BEACH, MISSISSIPPI

By: _____
Its: Duly Authorized Agent

NOTARY PUBLIC

Date of Execution _____

WITNESS OR ATTEST:

Lessee:
Lookout Catering, LLC

By: _____
Its: Duly Authorized Agent

NOTARY PUBLIC

AND NOW COMES _____, Mayor of the City of Long Beach, Mississippi, who signs herein below acknowledging the approval of this Lease by the City of Long Beach, Mississippi Board of Aldermen.

Date of Execution: _____

WITNESS OR ATTEST:

Mayor

NOTARY PUBLIC

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The question being put to a roll call vote, the result was as follows:

Commissioner Ehlers	voted	Aye
Commissioner Purchner	voted	Aye
Commissioner Marks	voted	Aye
Commissioner Kies	voted	Aye
Commissioner Reed	voted	Nay
Commissioner Nicosia	voted	Absent, not voting
Commissioner Rishel	voted	Absent, not voting
Commissioner Hancock	voted	Aye
Commissioner Ryan	voted	Aye

The question having received the affirmative vote of a majority of the commissioners present and voting, the President declared the **motion carried**.

Commissioner Reed stated for the record that her negative vote was based upon desire to have a final and complete lease to vote on with the proper description attached. Commissioner Reed further stated her agreement that the verbal terms of the proposed lease have been negotiated adequately and thoughtfully over numerous meetings.

* * *

Upon continued discussion regarding the aforesaid lease and assignment, Commissioner Marks made motion seconded by Commissioner Hancock to approve an assignment document, contingent upon the agreement of all parties to the aforesaid Amended and Restated Lease Agreement.

The question being put to a roll call vote, the result was as follows:

Commissioner Ehlers	voted	Aye
Commissioner Purchner	voted	Aye
Commissioner Marks	voted	Aye
Commissioner Kies	voted	Aye
Commissioner Nicosia	voted	Absent, not voting
Commissioner Rishel	voted	Absent, not voting
Commissioner Reed	voted	Nay
Commissioner Hancock	voted	Aye
Commissioner Ryan	voted	Aye

The question having received the affirmative vote of a majority of the commissioners present and voting, the President declared the **motion carried**.

Commissioner Reed stated for the record that her negative vote was based upon the commission having not seen or read the aforesaid lease assignment.

The commission recognized Mr. Calvin Poupart for the harbormaster's report, at which time discussion was held regarding Mr. Poupart's desire to have the canopy reattached to the temporary harbormaster building.

* * *

Commissioner Ehlers left the meeting at 6:45 p.m.

* * *

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After brief discussion regarding the harbormaster building canopy, Commissioner Marks made motion seconded by Commissioner Kies and unanimously carried to allow the harbormaster to attach a twelve (12) foot canopy the length of the temporary building, extending to the west.

There being no further business to come before the commission at this time, Commissioner Hancock made motion seconded by Commissioner Purchner and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

PHIL KIES, PRESIDENT

DATE:

ATTEST:

STACEY DAHL, DEPUTY CITY CLERK