

**PORT COMMISSION MINUTES**  
**November 12, 2009**

Be it remembered that a special meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held in the Central Fire Station Training Room, 645 Klondyke Road, in said city at 5:30 pm o'clock, on Thursday, November 12, 2009, and the same being the time and place fixed by the Port Commission in accordance with the Laws of Mississippi in relation to the holding of a special meeting.

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

There being a sufficient number of duly appointed commissioners present to constitute a quorum, the following proceedings were had and done.

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Commissioner Kies called the meeting to order whereupon; Commissioner Purchner made motion seconded by Commissioner Ehlers and unanimously carried to spread the notice of special meeting upon the minutes of this meeting in words and figures as follows:

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City of Long Beach

BOARD OF ALDERMEN  
Leonard G. Carrubba, Sr. - At-Large  
Gary J. Ponthieux - Ward 1  
Bernie Parker - Ward 2  
Kaye H. Couvillon - Ward 3  
Ronnie Hammons, Jr. - Ward 4  
Mark E. Lishen - Ward 5  
Carolyn J. Anderson - Ward 6



WILLIAM SKELLIE, JR.  
MAYOR

CITY CLERK  
TAX COLLECTOR  
Rebecca E. Schruoff

CITY ATTORNEY  
James C. Simpson, Jr.

STATE OF MISSISSIPPI  
COUNTY OF HARRISON  
CITY OF LONG BEACH

TO THE CHIEF OF POLICE OR ANY LAWFUL OFFICER OF THE CITY OF  
LONG BEACH, MISSISSIPPI:

GREETINGS:

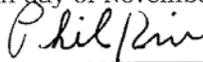
THIS IS TO COMMAND YOU TO NOTIFY Port Commission Members James Hancock, Vernon Ehlers, Barney Hill, Charles Purchner, Barbara Reed, Rod Rishel, Chuck Ryan, and David Marks, Port Attorney James C. Simpson, Jr., Minutes Clerk Stacey Dahl, and Harbormaster Calvin Poupart, all of the City of Long Beach, Mississippi, that a special meeting of the Long Beach Port Commission has been called and ordered to be held on Thursday, November 12, 2009, at 5:30 o'clock PM in the Fire Station Training Room, located in Central Fire Station, 645 Klondyke Road, in said City for the purpose of transacting important business of the Port Commission as follows:

To consider and take action on the following:

1. Lease Agreement; Blue Ridge Properties, LLC

And you are to have this Notice of Special Meeting then and there with the endorsement of its service on the above named officers and persons who could be found personally at least three (3) hours before the time and date fixed for the special meeting aforesaid.

WITNESS MY SIGNATURE, this  
9th day of November, 2009



Phil Kies, President

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STATE OF MISSISSIPPI  
COUNTY OF HARRISON  
CITY OF LONG BEACH

I, the undersigned Chief of Police of the City of Long Beach, Mississippi, hereby certify that I have served the within notice of Special Meeting of the Long Beach Port Commission of the City of Long Beach, Mississippi, by delivering a true and correct copy thereof personally to the following named persons at least three (3) hours prior to the time fixed for said special meeting, viz:

NAME OF PERSON SERVED	DATE	TIME
<i>Steve Dade</i>	11/9/09	2:30 pm
<i>[Signature]</i>	11/9/09	11:00
<i>[Signature]</i>	11/10/09	11:15
<i>Calvin Stovens</i>	11/10/09	11:25
<i>[Signature]</i>	11/10/09	11:25
<i>[Signature]</i>	11/10/09	11:30
<i>Alton Elden</i>	11/10/09	12:00
<i>[Signature]</i>	11/10/09	2:46
<i>[Signature]</i>	11/10/09	3:20
<i>Charles Furman Jr</i>	11/10/09	3:47
<i>[Signature]</i>	11/11/09	8:00

*[Signature]*  
Wayne McDowell, Police Chief

BY: *Kiser #36*  
Patrolman

\*\*\*\*\*

Commissioner Reed was preliminarily absent the meeting and arrived at 5:40 pm o'clock.

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There came on for discussion and review the Amended and Restated Lease Agreement by and between **The Long Beach Port Commission and Blue Ridge Properties, LLC** and the Assignment and Assumption of Lease by and among **Lookout Catering, LLC and Blue Ridge Properties, LLC**. Said Lease Agreement and Assignment and Assumption ordered spread upon the minutes of this meeting in words and figures as follows:

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**AMENDED AND RESTATED LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT (this "Lease") is made and entered into effective as of \_\_\_\_\_, 2009 (the "Effective Date") by and between the LONG BEACH PORT COMMISSION (hereinafter referred to as "Lessor") and BLUE RIDGE PROPERTIES 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 an Assignment of Lease between Lookout Catering, Inc. and Lessee dated \_\_\_\_\_ and recorded as instrument number \_\_\_\_\_ in the office of 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 Parcel "A". 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. The southern boundary of the Leased Premises shall be the mean high tide line wherever from time to time that line may be located.

The waterfront area specified in this lease shall retain public use benefit and public access specifically for moorage for transient vessels and walkway adjacent to such waterfront moorage which is to be constructed with funds from the Boating Infrastructure Grant Program, as pursuant to a Grant Agreement between the U.S. Fish and Wildlife Service and the State of Mississippi, Department of Marine Resources dated \_\_\_\_\_, of 2009, Agreement Number &-\_\_\_\_-\_\_\_\_, a copy of which is kept on file at the office of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the City of Long Beach.

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 Landlord, or using the land and area in the possession and/or control of Landlord to conduct a gaming operation in a structure not located on land and area in the possession and/or control of Landlord but which is located within legal limits 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.

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Section 1.3 Option. Lessor grants to Lessee an exclusive option to lease from Lessor the land owned by Lessor and described as Parcels "B" and "C" on the attached Exhibit "A", Parcel "B" to be used for parking constructed and maintained by Lessee, and Parcel "C" commonly known as the Chamber of Commerce property. Lessor shall obtain appraisals of the fair market value of rent for each of said Parcels "B" and "C", and upon receipt thereof shall notify Lessee of the fair market value of the rent 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 one or both of said parcels at the stated fair market value rent. Upon exercise of this option said parcel or 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. The cost of such appraisals shall be paid out of the prepaid rent paid by Lessee. 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 Parcels "B" and "C" 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. In the event Parcel "B" becomes a part of the Leased Premises, Lessee and Lessor agree to reserve an easement for public ingress and egress over and across Parcel "B" for the existing access road as shown on the attached survey.

**ARTICLE 2**  
**TERM AND OPTIONS**

Section 2.1 Term. The term of the Lease shall consist of an Initial Term of five (5) periods of five (5) years each (the "Initial Term"). The Initial Term shall commence on the date of final approval by the Board of Aldermen of the City of Long Beach (the "Commencement Date"). So long as Lessee has complied with all terms, covenants and conditions of this Lease as of the expiration of the Initial Term, Lessee shall have the option to extend the Lease for an additional term for five (5) periods of five (5) years each under the same terms and conditions of the Initial Term (the "Secondary Term"). The rental for the Initial Term and the Secondary Term shall be adjusted as provided elsewhere herein. Lessee shall exercise its options to renew for each additional five years period or term by sending at least sixty (60) days prior to the expiration of the then current period or term, as the case may be, a written notice to Lessor of Lessee's exercise of its option to renew. If Lessee fails to timely give such notice, then the option shall expire and the Lease shall be of no further force or effect at the end of the then current term.

**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. The Base Rent will be increased by three percent (3%) for each year of the Initial Term of this Lease. At the end of the Initial Term the Base Rent shall be redetermined by appraisal obtained by Lessor of the fair market value of the Leased Premises, and upon receipt thereof shall notify the Lessee of the fair market rental rate as determined by the appraiser. Lessee shall have Thirty (30) days from its receipt of the notice of fair market rental rate to exercise its option to renew the term of the Lease under the new Base Rent. In each year following the Base Rent adjustment date, the Base Rent shall increase by 3% for that year.

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

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during the Term (collectively, the "Non-Gaming Percentage Rent"). . For the purpose of verifying the Non-Gaming Percentage Rent, Lessee shall promptly provide to Lessor all sales tax returns of Lessee at the same time such sales tax returns are provided to the Mississippi State Tax Commission.

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, at the same time as periodic Mississippi State Sales Tax returns are due to be filed within thirty (30) days after the end of each calendar quarter

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 Ten Thousand Dollars (\$10,000.00) (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 the cost of the appraisals of Parcels B and C, and shall be non refundable in the event of termination of the Lease for any reason.

D. During the Initial 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 applicable legal limits 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 and through the remainder of the Secondary 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 two and one-half percent (2.50%) 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 applicable legal limits 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 to any period of time during which gaming operations have occurred.

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 for the uses described in Article 5 below 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

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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 Lessor's approval of the rendering of the proposed building. Lessee shall obtain a building permit from the City of Long Beach and commence actual construction of such building and permitted structure within sixty (60) days of final approval by Lessor of such plans and specifications and issuance of the building permit, and thereafter proceed with commercially reasonable diligence to complete such construction. This sixty (60) day commencement date is subject to any delay that may be caused due to the failure of permitting by any other governmental agency, State or Federal, which may be required. Notwithstanding anything in this paragraph to the contrary, construction shall be completed and the facility operating not later than December 31, 2010. Failure to have such facility operating by December 31, 2010 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 operating a restaurant, including as an incidental part thereof a bar or lounge area, and for incidental marine related purposes related thereto. Such operation may be a part of a gaming/entertainment operation as permitted by the Mississippi Gaming Commission and applicable law and for all incidental purposes related thereto. However, 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

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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. However, Lessor shall provide easements for the necessary utilities to service the improvements made by Lessee, should such easements be necessary.

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 and all material liens or encumbrances created or claimed by reason of transactions made by Lessee.

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 initial conduct of Lessee's intended business 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.

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.

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### 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 whatsoever, 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.

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 always 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, naming Lessor as additional insured, trade fixtures, equipment, merchandise and other personal property located upon the Premises, against any peril customarily covered by a standard flood, 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 to have Lessor included and named as a co insured on any such policy shall be considered 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.

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Section 9.3 Additional Named Insured; Act of Default.

- (A) All policies of insurance required hereby shall include Lessor as an additional named insured.
- (B) Failure to have Lessor included and named as an additional named insured on any such policy shall be considered an act of default.
- (C) Notwithstanding the provisions of Section 16 of this lease agreement, should such default continue for a period of ten days after notice of same by Lessor to lessee, Lessor may but is under no obligation to purchase insurance coverage to protect Lessor's interests only in the leased premises and its improvements, in which case the cost of such insurance shall be considered as additional rent due immediately from Lessee.
- (D) This lease shall terminate upon the expiration of thirty days from the date of such Notice of Default should Lessee fail to correct such omission or exclusion and have Lessor added as an additional named insured under all such policies.
- (E) Should any loss occur at a time when Lessor is not included as an additional named insured under Lessee's insurance policy Lessor shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss.

Section 9.4 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 9.5 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 9.6 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 City of Long Beach sign ordinances. 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.

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**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 by Lessor will only be with the approval of the intended Assignee by Lessor, and will be conditioned upon with the express assumption by such assignee or purchaser of all of the Lessee's obligations and liabilities hereunder. No request for approval of assignment or transfer of the lease or any interest therein or in Lessee will be allowed or effective unless Lessee is in all respects in compliance with all obligations hereof.

**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, freezings, 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, Lessor 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

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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.

**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 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 promptly 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 and complete such repair or restoration within 365 days of the date of casualty, or as quickly as is commercially reasonable to do. In the event of substantial destruction as provided herein such insurance proceeds as may be payable due to such destruction shall be first paid to any secured lien holders holding liens for funds advanced and used exclusively for the construction of the improvements located on the leased premises, and only to the extent of such advances.. After such payment to said secured lien holders the balance of insurance proceeds shall be paid in full to Lessor, but held by Lessor for the period of time within which Lessee has to elect to repair and restore the Leased Premises. If Lessee elects to repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty, Lessor shall reimburse Lessee's construction costs of such repair or restoration up to the amount of same or the amount of insurance payment made to Lessor, whichever is lesser..

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 any unusual delay in 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, such event or such casualty shall be considered to be Substantial Destruction.

**ARTICLE 15**  
**ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST**

Section 15.1 General. 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

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operations on the Leased Premises. No other debt of Lessee or any other person or entity shall be secured by mortgage, deed of trust, pledge, lien or otherwise against the Leased Premises except as first approved in writing by Lessor, and 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 incurred and used by Lessor exclusively on the Leased Premises as provided above. However, 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). Notwithstanding anything contained in this lease, no lien or encumbrance placed on the Leased Premises for whatever reason shall survive termination or cancellation of this Lease.

**ARTICLE 16**  
**DEFAULT OF LESSEE**

Section 16.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also 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 ten (10) 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 or insurance, and such failure shall continue for a period of thirty (30) 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.

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- 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 Should Lessee shall abandon any substantial portion of the Leased Premises and cease to pay the Rent. Assignment or subletting by Lessee shall be an act of default unless such assignment or subletting is first approved in writing by Lessor or unless otherwise permitted under this Lease under Section 15 hereof.
- 16.1.6 Lessee shall fail to have in effect or maintain insurance herein required on Leased Premises which includes Lessor as a named insured along with Lessee in which case the provisions of Article 9 shall apply.

Section 16.2 Remedies of Lessor. Except as otherwise provided herein, upon the occurrence of any act of default, Lessor shall provide written notice of such default to Lessee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Lessee shall have thirty days from the date of such notice to cure any default under the lease. Should Lessee fail to cure any default hereunder, 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 therefor; 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 demand any deficiency that may arise by reason of such re-letting.
- 16.2.3 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 within the same time period allowed for Lessee to cure any item contained in the Notice of Default.

Section 16.3 Operation of Lessee. It shall be considered an act of default if after the initial construction is complete and the restaurant to be located upon the Leased Premises opens, the restaurant or any replacement fails to operate for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial or Partial Destruction as described above.

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**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 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 leasehold property as public trust tidelands. Lessee must satisfy himself as to the status of any such claims, and Lessee's only relief or recourse in the event of such a claim or determination is cancellation hereof.

**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:

Long Beach Port Commission  
Post Office 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 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 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:

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Lessee:  
BLUE RIDGE PROPERTIES, LLC

With a copy to:

Lessor:

LONG BEACH PORT COMMISSION  
POST OFFICE BOX 929  
LONG BEACH, MS 39560

With copy to:

JAMES C. SIMPSON, JR.  
MONTGOMERY, BARNETT,  
BROWN, READ, HAMMOND & MINTZ, L.L.P.  
2310 19th Street  
Gulfport, Mississippi 39501

**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 or 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 conditioned, 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 reasonable attorneys' fees in connection therewith).

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

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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 not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Leased Premises and will, when requested by the property authorities, abate all nuisances at its own expense.

Section 19.13. Late Fee and Charges. Should Lessee fail to pay any amounts due hereunder when due 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, commencing as of the date such amounts were originally due..

Section 19.14 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





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Space Above Line For Official Use Only

<b>Instrument Prepared By and Return To:</b> BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC Attn: John Galloway, MS Bar No.4385 Whitney National Bank Building 1300 25 <sup>th</sup> Avenue, Suite 204 Gulfport, MS 39501 (228) 575-3000	<b>Grantor's Address:</b>	<b>Grantee's Address:</b>
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**ASSIGNMENT AND ASSUMPTION OF LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2009, (the "Effective Date") by and among Lookout Catering, LLC, a Mississippi limited liability company (the "Assignor") and Blue Ridge Properties, LLC, a Mississippi limited liability company (the "Assignee"). The Long Beach Harbor Commission, through its chairman, Phil Kies, and the City of Long Beach, Mississippi, through its mayor Billy Skellie, are parties to this Agreement solely for the purpose of consenting to paragraphs 3 and 4 set forth herein.

**RECITALS:**

WHEREAS, the Long Beach Harbor Commission, through its chairman, Phil Kies, and the City of Long Beach, Mississippi, through its mayor Billy Skellie, (collectively the "Lessor") acting in its capacity as lessor entered into 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"), and as assigned by that Assignment of Lease dated April 24, 2007, by and between CJS II, Inc. and Lookout Catering, LLC, a Mississippi limited liability company as lessee therein, and as extended by that certain Lease Extension and Secondary Term Agreement by and between Lessor and Assignor dated May 15, 2008, and recorded as Instrument #2008 6141D – JI with the Chancery Clerk (collectively, the "Lease"), all of which are attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, pursuant to the Lease, Lessor leased to CJS II, Inc. that certain real property more particularly described therein; and

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WHEREAS, CJS II, Inc. assigned the Lease to Assignor, and

WHEREAS, Assignor desires to assign all of its right, title and interest in and to the Lease to Assignee in accordance with the terms and conditions set forth herein; and

WHEREAS, Lessor has consented to the assignment of the Lease from Assignor to Assignee and required by the Lease.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignee and Assignor agree as follows:

1. Assignment. Assignor does hereby SELL, CONVEY, ASSIGN, TRANSFER and DELIVER to Assignee, and Assignee hereby purchases and accepts effective as of the Effective Date, all of Assignor's right, title and interest in, to and under the Lease.

2. Assumption. Assignee does hereby, effective as of the Effective Date (a) accept the foregoing assignments of Assignor's rights, title and interest in, to and under the Lease, and (b) from and after the Effective Date, assumes, undertakes and agrees to pay, perform, honor and discharge promptly when due all of Assignor's obligations as lessor pursuant to the Lease in accordance with their respective terms.

3. Consent to Assignment and Assumption of Lease, Release of Assignee. Lessor has consented to the transaction set forth herein conveying and assigning the Lease to the Assignee to the extent such consent is required under the Lease. The foregoing consent shall not be deemed to constitute Lessor's consent to any further assignment(s) or transfer(s) of the Lease requiring Lessor's consent pursuant to the terms of the Lease. The Lease does not require any payments to Lessor on account of the transaction set forth herein. Lessor agrees to release Assignee from any and all losses, actions, damages, claims and causes of action occurring prior to the Effective Date and any and all losses, actions, damages, claims and causes of action, arising out of or relating in any way to the tenancy of Assignor under the Lease whether known or unknown.

4. Release of Assignor. Effective as of the Effective Date, Lessor hereby relieves and releases the Assignor and its affiliates, parents and subsidiaries from all of its liabilities and obligations under the Lease. In no event shall this Agreement be construed as granting or conferring upon the Assignor or the Assignee any greater rights than those contained in the Lease nor shall there be any diminution of the rights and privileges of the Lessor under the Lease, nor shall the Lease be deemed modified in any respect. It is specifically understood that Lessor is a party to this Agreement specifically to grant the consent and release and set forth in paragraph 3 and 4 and for no other purpose and, notwithstanding anything to the contrary contained in this Agreement, is not bound by any terms, provisions, representations or warranties contained in this Agreement and is not obligated to Assignor or Assignee for any of the duties and obligations contained therein.

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5. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery; (b) reputable overnight delivery service with proof of delivery; (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested; or (d) legible facsimile transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Assignor:       **Lookout Catering, LLC**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (facsimile)

If to Assignee:       **Blue Ridge Properties, LLC**  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_ (facsimile)

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered forty-eight (48) hours after mailing as provided above. Any notice or other document sent by facsimile (with electronic confirmation of receipt) shall be deemed fully delivered when transmitted if transmitted prior to 5:00 pm, otherwise on the next business day. Any notice or other document delivered by reputable overnight courier shall be deemed delivered as of the next business day after delivery to such overnight courier.

6. Amendments. This Agreement shall not be amended except by a written instrument making specific reference to this Agreement signed by each of the parties hereto.

7. Governing Law. This Agreement shall be governed by the laws of the State of Mississippi, without giving effect to choice of law principles thereof that would cause the application of the laws of any other jurisdiction.

8. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and representatives.

9. Headings. The subject headings or captions of the paragraphs in this Agreement are inserted for convenience of reference only and shall not affect the meaning, construction or

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interpretation of the any provisions contained herein. All capitalized terms defined herein are equally applicable to both the singular and plural forms of such terms.

10. Counterparts. This Agreement may be signed in multiple counterparts, with each counterpart having the same force and effect as if this single instrument were executed by each of the parties hereto and delivered (including by facsimile) to the other party.

11. Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

13. Subsequent Action. If at any time after the date hereof the Assignee or Assignor will consider or be advised that any instruments of conveyance, assignments, filings, assurances or any other actions that are necessary or desirable to vest, perfect or confirm the sale, transfer, assignment, conveyance and delivery of the Lease to the Assignee, or otherwise to carry out this Agreement, the Assignor or Assignee, as the case may be, shall execute and deliver all instruments of conveyance, filings, powers of attorney, assignments and assurances and take and do all such other actions and things as may be reasonably requested by the Assignee or Assignor, as the case may be, in order to vest, perfect or confirm the sale, transfer, conveyance and delivery of the Lease or otherwise to carry out the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

ASSIGNOR:

ASSIGNEE:

LOOKOUT CATERING, LLC  
a Mississippi limited liability company

BLUE RIDGE PROPERTIES, LLC  
a Mississippi limited liability company

By: \_\_\_\_\_  
Name: Robert Stinson  
Title: Managing Member

By: \_\_\_\_\_  
Name: James E. Levens, III  
Title: Managing Member

\_\_\_\_\_  
Robert Stinson Individually  
CJS, II, INC.

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

Robert Stinson, President

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**Lessor's Consent:**

**Long Beach Harbor Commission**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Long Beach, Mississippi**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, Robert Stinson, Managing Member of Lookout Catering, LLC, who acknowledged to me that he executed the foregoing instrument on the day and year therein stated, for and on behalf of said limited liability company, as its act and deed, after first being duly authorized so to do.

GIVEN under my hand and official seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, James E Levens, III, Managing Member of Blue Ridge Properties, LLC, who acknowledged to me that he executed the foregoing instrument on the day and year therein stated, for and on behalf of said limited liability company, as its act and deed, after first being duly authorized so to do.

GIVEN under my hand and official seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, Robert Stinson, Individually, and as President of CJS, II, Inc., who acknowledged to me that he executed the foregoing instrument on the day and year therein stated, individually and for and on behalf of said corporation, as its act and deed, after first being duly authorized so to do.

GIVEN under my hand and official seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Gulfport 383947v1

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Commissioner Rishel had a prior commitment and left the meeting at 6:20 pm o'clock.

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Commissioner Purchner had a prior commitment and left the meeting at 6:30 pm o'clock.

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**PORT COMMISSION MINUTES**  
**November 12, 2009**

After considerable discussion and review, Commissioner Ehlers made motion seconded by Commissioner Hancock to approve the aforesaid Amended and Restated Lease Agreement. The question being put to a roll call vote, the result was as follows:

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

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

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\*

After continued discussion, Commissioner Reed made motion seconded by Commissioner Hancock to approve the aforesaid Assignment and Assumption of Lease, subject to Blue Ridge Properties, LLC accepting the fair market values of parcels B and/or C. The question being put to a roll call vote, the result was as follows:

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

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

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Commissioner Rishel returned to the meeting at 7:10 pm o'clock.

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**PORT COMMISSION MINUTES**  
**November 12, 2009**

There being no further business allowed under the rules of this special meeting, Commissioner Hancock made motion seconded by Commissioner Rishel to adjourn until the next regular meeting in due course.

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APPROVED:

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PHIL KIES, PRESIDENT

DATE:

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ATTEST:

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STACEY DAHL, DEPUTY CITY CLERK