

**PORT COMMISSION MINUTES  
FEBRUARY 10, 2015**

Be it remembered that a Special Meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, in said City at 4:00 o' clock p.m. on Tuesday, February 10, 2015, and the same being the time, date, and place fixed by order of the Port Commission President in accordance with the Laws of Mississippi in relation to the holding of a special meeting.

There were present and in attendance on said Commission and at the meeting the following named persons: Commission President Phil Kies, Vice President Susan Nicolais, Secretary Don Deschenes, Commissioners Roger Ladner, Barney Hill, Stan Snodgrass, John Casey, Joseph P. Yott, Sr., Vernon Ehlers, Harbormaster Bill Angley, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

There being a quorum sufficient to transact the business of the Port Commission, the following proceedings were had and done.

\* \* \* \* \*

Commissioner Ehlers made motion seconded by Commissioner Deschenes 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  
Kelly Griffin - Ward 3  
Ronnie Hammons, Jr. - Ward 4  
Mark E. Lishen - Ward 5  
Alan Young - Ward 6



WILLIAM SKELLIE, JR.  
MAYOR

CITY CLERK  
TAX COLLECTOR  
Rebecca E. Schuff

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 Roger Ladner, Vernon Ehlers, Barney Hill, Stan Snodgrass, John Casey, Susan Nicolais, Joseph Yott, Sr., Don Deschenes, Port Attorney James C. Simpson, Jr., Minutes Clerk Stacey Dahl, and Harbormaster Bill Angley, 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 Tuesday, February 10, 2015, at 4:00 o'clock PM at the Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue 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. Amendment and Restated Lease Agreement; Blue Ridge Properties, LLC
2. Sub Lease; Blue Ridge Properties, LLC, Landlord and ORC, LLC, Tenant

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  
6th day of February, 2015

Phil Kies, President

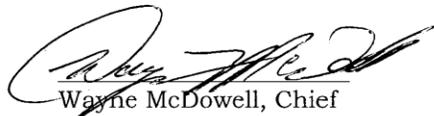
201 Jeff Davis • P.O. Box 929 • Long Beach, MS 39560 • 863-1556 • FAX 865-0822  
[www.cityoflongbeachms.com](http://www.cityoflongbeachms.com)

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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
Stacy Dahl	2/6/15	4:30 p.m.
Barney Hill	2/10/15	11:30 AM
Vernon Ehlers	2/10/15	11:45 AM
Mrs. Stan Sandgrass	2/10/15	12:45 pm
John [unclear]	2/18/15	email 1:16 pm
[unclear]	2/9/15	" 7:35 pm
John Desobere	2/10/15	email 7:32 AM
[unclear]	2/9/15	email 10:03 AM
Ryan Nicolais	2/9/15	" 10:43 AM
[unclear]	2/9/15	" 1:37 pm

  
Wayne McDowell, Chief

BY:   
Patrolman

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There came on for consideration Amendment #7 to the Lease Agreement by and between the Long Beach Port Commission ("Lessee") and Blue Ridge Properties, LLC, ("Lessor"), amending the operation date of the facility. After considerable discussion, Commissioner Ehlers made motion seconded by Commissioner Hill and unanimously carried to approve the **Seventh Amendment to Amended and Restated Lease Agreement**, as follows:

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STATE OF MISSISSIPPI  
COUNTY OF HARRISON  
FIRST JUDICIAL DISTRICT

**SEVENTH AMENDMENT TO AMENDED AND  
RESTATED LEASE AGREEMENT**

THIS SEVENTH AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT (this "Amendment") is made and entered into 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"), and to be considered effective as of the date of approval hereof by the Governing Authorities of the City of Long Beach (the "Effective Date").

RECITALS:

WHEREAS, the parties have previously entered into, and six times amended an AMENDED AND RESTATED LEASE AGREEMENT with an effective date of February 11, 2010, such agreement being recorded March 1, 2010 as Instrument Number 2010 1735-D-J1 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District; and

WHEREAS, due to delays caused by weather and other matters, construction operations on Lessee's proposed building, it is recognized and acknowledged between the parties that an accommodation of construction schedules between the parties is deemed in the best interests of the project; and

WHEREAS, in order to accomplish same, the parties wish to again amend said AMENDED AND RESTATED LEASE AGREEMENT for such purpose, so it is therefore agreed as follows:

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WITNESSETH:

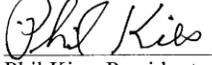
NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants herein contained and for other good, lawful and valuable consideration given and received by each of the parties to be bound hereby, the parties agree that Section 4.3 of the AMENDED AND RESTATED LEASE AGREEMENT as referenced above shall be amended to read as follows:

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 **May 15, 2015**. Failure to have such facility operating by **May 15, 2015** shall be considered an act of default. In addition to any other remedies allowed hereunder for default, Lessee shall pay the sum of \$100.00 per day as liquidated damages to Lessor for each day beyond May 15, 2015 that the facility is not open for business and operating.

All other provisions, terms and conditions of the **AMENDED AND RESTATED LEASE AGREEMENT** as previously amended shall remain unchanged, and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed as of the Effective Date hereof.

LONG BEACH PORT COMMISSION, Lessor

By:   
Phil Kies, President

BLUE RIDGE PROPERTIES, LLC, Lessee

By:   
Mary Ann McArthur

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Its: Manager

AND NOW COMES WILLIAM SKELLIE, JR., and 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: 2/10/15

WITNESS OR ATTEST:

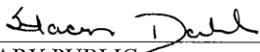
  
Rebecca Scruff, City Clerk

CITY OF LONG BEACH

  
William Skellie, Jr., Mayor

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this 10<sup>th</sup> day of Feb, 2015, within my jurisdiction the within named William Skellie, Jr., personally known to me to be the Mayor, and Rebecca Scruff, personally known to me to be the City Clerk of the CITY OF LONG BEACH, MS, who acknowledged that they executed the above and foregoing SEVENTH AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT as the act and deed of said City, on the date and for the purposes therein stated, being first duly authorized to so do.

  
NOTARY PUBLIC

My Commission Expires:  
12/5/15



**PORT COMMISSION MINUTES  
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STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this 10<sup>th</sup> day of Feb, 2015, within my jurisdiction the within named Phil Kies, personally known to me to be the President of the LONG BEACH PORT COMMISSION, who acknowledged that he executed the above and foregoing SEVENTH AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT as the act and deed of said Long Beach Port Commission, on the date and for the purposes therein stated, being first duly authorized to so do.

Stacey Dahl  
NOTARY PUBLIC

My Commission Expires:

12/5/15



STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this 10<sup>th</sup> day of Feb, 2015, within my jurisdiction the within named Jimmy Levens, personally known to me to be the MANAGER/MEMBER of the BLUE RIDGE PROPERTIES, LLC., who acknowledged that he executed the above and foregoing SEVENTH AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT as the act and deed of said Long Beach Port Commission, on the date and for the purposes therein stated, being first duly authorized to so do.

Stacey Dahl  
NOTARY PUBLIC

My Commission Expires:

12/5/15



**PORT COMMISSION MINUTES  
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There came on for discussion the Building Lease Agreement by and between Blue Ridge Properties, LLC ("Landlord") and ORC, LLC ("Tenant").

Upon discussion, Commissioner Ladner made motion seconded by Commissioner Nicolais and unanimously carried to acknowledge said lease agreement, as follows:

**BUILDING LEASE AGREEMENT**

**EXECUTION COPY**

For and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this Building Lease Agreement ("Lease") is made and entered by and between Landlord and Tenant (as hereinafter defined) as of the \_\_\_\_ day of February, 2015. This Lease is being executed by Landlord, in accordance with that certain Lease Agreement, as amended and restated, with the Long Beach Port Commission, a copy of said lease is attached hereto as Exhibit "B" and fully incorporated herein by reference. The parties acknowledge that this lease was drafted by the landlord.

**ARTICLE 1**

**Definitions and Basic Provisions**

**1.1 Definitions and Basic Provisions.** Unless the language or context of this Lease clearly indicates that a different meaning is intended, the following words and terms shall have the meaning set forth opposite thereof:

- (a) "Landlord": Blue Ridge Properties, LLC
- (b) Landlord's address: PO Box 779  
Long Beach, MS 39560
- (c) "Tenant": ORC, LLC
- (d) Tenant's address: [will furnish]
- (e) "Building": That certain restaurant building consisting of approximately 6,000 leasable square feet located on Parcel "A" and "B" of land within the Long Beach Harbor, Long Beach, MS. as shown on Exhibit A attached to this lease.
- (f) "Demised Premises": Approximately 6,000 square feet of restaurant space including the space directly underneath the restaurant space. Final square footage will be determined when building plans are complete. Also Parcel B as shown on Exhibit A to the Building Lease Agreement.
- (g) Address of Demised Premises: Parcel "A" and "B" of land within the Long Beach Harbor, Long Beach, MS.
- (h) "Initial Term": Commencing on May 1, 2015, unless the Port Commission directs otherwise, and continuing for 5 years thereafter, until the "Expiration Date" of April 30, 2020, unless extended herein by the provisions of Article 4. ORC will

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assume Utilities beginning March 1, 2015.

- (i) "Extended Term(s)": As defined and described in Article 4 hereof.
- (j) "Minimum Average Rental": \$100,000 per year average during initial term  
If the Tenant fails to pay Landlord the Minimum Average Rental amount for five (5) years in a row, Landlord has the right to terminate this agreement. Force major clause
- (k) "Insurance": Landlord will be responsible for builder's risk/construction insurance in the amounts as required in Section 6.4 herein. During the initial and any extended terms of this Building Lease Agreement, Landlord, at its sole costs and expense, shall obtain and maintain additional building insurance which shall include liability, fire, wind and flood insurance. Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant Tenant will be responsible for contents insurance covering FF&E, liability etc. as described in Article 15 hereof.
- (l) "Security Deposit": Security Deposit equal to \$6,000 due upon execution of lease.
- (m) "Percentage Rent": Tenant shall pay the following Percentage Rent per month beginning at the start of restaurant operations:
- 7% of monthly gross sales less than \$166,667
  - 10% of monthly gross sales greater than \$166,667 but less than \$250,000
  - 11% of monthly gross sales greater than \$250,000 but less than \$333,333
  - 12% of monthly gross sales greater than \$333,333

Rent shall be paid by the 10<sup>th</sup> of the following month and shall be determined by promptly providing Landlord with all sales tax returns of Tenant at the same time such sales tax returns are provided to the Mississippi Department of

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Revenue. Upon request of the Landlord, Tenant shall make all books and records available for review and inspection to substantiate the monthly gross sales reported by the Tenant. force major clause

Landlord shall pay the Port Commission the Base Rent and Non-Gaming Percentage Rent in accordance with Article 3 of the Lease Agreement attached as Exhibit B Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant.

- (n) "Permitted Use": Restaurant and/or Bar
- (o) "Trade Name": Oyster Reef Club
- (p) "Gaming": as defined and described in Article 23 hereof.
- (q) "Buyout": as defined and described in Article 23 hereof.
- (r) "Ad Valorem Tax Adjustment": Landlord expects to receive from the city and county an ad valorem tax exemption on the value of the improvements to the property for a period of seven years. Landlord shall pay all ad valorem taxes for the Initial Term and any extensions thereof.

**ARTICLE 2**

**Granting Clause; Quiet Enjoyment**

2.1 Granting Clause. Landlord hereby leases to Tenant, and Tenant hereby accepts and leases from Landlord, the Demised Premises, to have and to hold for the Initial Term and any Extended Term(s), all upon the terms and conditions set forth in this Lease.

2.2 Quiet Enjoyment. Subject to the terms and provisions of this Lease, Landlord agrees that, if Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, at all times during the Initial Term and any Extended Terms, have and enjoy exclusive and quiet possession of the Demised Premises free from ejection by Landlord or anyone acting under Landlord.

**ARTICLE 3**

**Security Deposit; Rental**

3.1 Security Deposit. Tenant shall not be entitled to any interest or other return on the Security Deposit. The Security Deposit may be held by Landlord or Landlord's agent in any

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manner that Landlord deems appropriate, including, without limitation, in accounts co-mingled with other funds. The Security Deposit may be used by Landlord to pay for all or any part of any amounts for which Tenant is liable hereunder. If Tenant has complied with all of the terms and provisions of this Lease, then, within thirty (30) days of the expiration or termination of this Lease, Landlord shall refund the unused portion of the Security Deposit to Tenant.

3.2 Rental. Commencing and accruing from the Commencement Date, the calendar year starts for the calculation of the Minimum Average Rental. Tenant shall pay Rental to Landlord in monthly installments in the amount specified in Section 1.1 above. The first (1<sup>st</sup>) such monthly installment shall be due and payable thirty (30) days after the start of restaurant operations, per the Commencement Date specified in Article 1. Subsequent installments shall be due and payable on or before the first (1<sup>st</sup>) day of each succeeding calendar month during the Initial Term and any Extended Term(s). Rental for any partial calendar month shall be pro-rated based on the number of days in such month falling during the Initial Term or any Extended Term, as applicable subject to a force major clause

3.3 Late Fee. In the event that the first (1<sup>st</sup>) payment of Rental is not received or any subsequent Rental is not received by Landlord by the tenth (10<sup>th</sup>) day of the applicable month in which it is due, Tenant shall, for each late Rental, pay a late fee in the amount of two hundred fifty dollars (\$250.00) for each month that the Rental (and any applicable late fees) have not been paid in full. Such late fee(s) shall automatically accrue and become due and payable in accordance with the terms of this section. Landlord's acceptance of any late fees from Tenant shall not in any way prejudice, preclude or otherwise affect any other rights or remedies of Landlord under this Lease or applicable laws subject to a force major clause

3.4 Default Late Fee. Unless a different amount is expressly set forth elsewhere in this Lease, interest at a rate of one point five percent (1.5%) per month shall accrue on any and all amounts due from Tenant to Landlord hereunder which are not paid when due. Such interest shall accrue from that date that any unpaid amount becomes due, and shall continue to accrue until the unpaid amount (along with all accrued interest) has been paid in full. Landlord's acceptance of any such interest from Tenant shall not in any way prejudice, preclude or otherwise affect any other rights or remedies of Landlord under this Lease or applicable laws subject to a force major clause .

3.5 Independent Obligation; Additional Rental. Tenant's obligation to pay Rental and other amounts due under this Lease are independent, absolute and unconditional. Further, any charges, fees or other amounts of any sort due from Tenant to Landlord under this Lease (including, without limitation, CAM Payments, Tax Payments and Insurance Payments) shall constitute additional rental (collectively, "Additional Rental").

**ARTICLE 4**

**Extended Terms**

4.1 Extended Terms. Provided that Tenant is not in default under this Lease, Tenant shall have the option to extend the term of this Lease after the Initial Term for three (3) additional extended terms of five (5) years each (individually, "Extended Term" or collectively, "Extended

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Terms”) by giving Landlord written notice of Tenant’s intent to exercise such option at least sixty (60) days prior to the end of the Initial Term or the then-current Extended Term, as applicable. All provisions of this Lease shall remain effective and unchanged during any Extended Term, except for the amount of the Minimum Average Rental of \$100,000, which shall increase 1.5% each year during the Extended Terms.

4.2 Expiration if No Extension. In the event that Tenant does not exercise its option to extend the term of this Lease in accordance with the preceding section, this Lease shall automatically expire and terminate at the end of the Initial Term or the then-current Extended Term, as applicable.

**ARTICLE 5**

**Use and Care of Premises**

5.1 Permitted Use. Unless Tenant obtains Landlord’s prior written authorization to the contrary, the Demised Premises shall be used only for the Permitted Use specified above. Such authorization shall not unreasonably withheld.

5.2 No Increase in Insurance. Tenant shall not use or permit use of the Demised Premises in a manner which would increase any insurance premiums on the Demised Premises or the Building or invalidate any insurance policy carried on the Demised Premises or the Building if not pre-approved by the Landlord.

5.3 Compliance with Regulations. Tenant shall, at its own cost and expense, obtain all necessary licenses and/or permits required to conduct its business at the Demised Premises, and shall comply with all applicable laws, ordinances, requirements, orders, directions, rules and other regulations of any governmental authorities having jurisdiction over the Demised Premises or the conduct of Tenant's business.

5.4 Restrictions. Tenant shall not conduct within the Demised Premises any fire, auction, bankruptcy, going-out-of-business, lost-our-lease or similar sale. Tenant shall not operate within the Demised Premises any wholesale, outlet, cooperative, surplus or second-hand store. Tenant shall not permit any objectionable or unpleasant odors to emanate from the Demised Premises. Tenant shall not permit any unreasonable loud music, announcements or other noises of any sort to be audible from outside of the Demised Premises. Except as otherwise provided herein, Tenant shall not permit any advertisements or other such items to be visible from outside of the Demised Premises. Tenant shall not place any tables, chairs, advertising devices or any other item of any sort on any sidewalk, driveway or otherwise outside of the Demised Premises, other than the outside special events area directly under the restaurant building. Tenant shall not in any way create a nuisance or otherwise cause or permit any act or omission which, in Landlord’s reasonable determination, (i) interferes with other tenants in the Building, (ii) interferes with the proper operation and management of the Building, or (iii) detracts from the quality or reputation of the Building. Tenant shall abide by such rules and regulations applicable to the Building and/or the Demised Premises as Landlord may issue from time to time, possibly including, without limitation, the designation of specific areas where the vehicles of Tenant, Tenant’s

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employees, Tenant's vendors and Tenant's customers may park. Additional signage will be made available on Highway 90.

5.5 Use and Care; Conduct of Business. Tenant shall continuously occupy the Demised Premises and operate its business therein on a full-time basis. Except during normal and reasonable periods for repairing, cleaning and decorating, Tenant shall keep the Demised Premises open to the public for business with adequate and competent (defined term) personnel in attendance on all normal business days and during all normal business hours. Tenant shall operate its business in a reputable manner. Tenant shall maintain all displays, including window displays, in a neat, clean and attractive condition. Tenant shall maintain all of the Demised Premises in an well-kept, neat, safe, clean and attractive condition. Tenant shall not in any way damage the Demised Premises or create or permit any dangerous condition. Tenant will use the Demised Premises in a normal, prudent manner, and will prevent any abuse thereof or damage thereto.

**ARTICLE 6**

**Landlord Work; Tenant Work; Signage**

6.1 Landlord Work. Landlord shall construct the Building substantially in accordance with its plans, specifications and design as more fully set forth in the attachment hereto entitled "Landlord's Work". Further, Landlord may, in its discretion, expand or reduce the size of the Building or build additional structures in connection therewith. Landlord will construct the Demised Premises in the form of a cold, dark shell, along with only those certain improvements specified in the attachment (collectively, the "Landlord Work"). Upon the substantial completion of the Landlord Work, Landlord will deliver the Demised Premises to Tenant (the "Delivery Date"). All costs associated with the Landlord Work, including architectural and engineering fees, shall be the sole responsibility of Landlord. Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant

In the performance of the "Landlord's Work", Landlord, at its sole cost and expense, shall perform its work and comply with all governmental laws including, without limitation, the Americans with Disabilities Act, ordinances, orders, and regulations affecting the Demised Premises and affecting the use and occupancy thereof, which are now in force or which hereafter may be in force. Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant.

6.2 Tenant Work. Within fourteen (14) days of the Delivery Date, Tenant shall complete an inspection of the Demised Premises to determine compliance of Landlord with Landlord's Work. After the completion of the inspection and the completion of any Landlord Work necessary to comply with the plans and specifications, Tenant shall then begin its build-out and improvement of the Demised Premises (collectively, the "Tenant Work") as defined in the attachment hereto

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entitled "Tenant's Work". After Tenant begins the Tenant Work, Tenant shall diligently continue the Tenant Work until it is fully and properly completed. Tenant shall not allow the Tenant Work to interfere with the Landlord Work or the construction of the Building. By commencing the Tenant Work, Tenant shall be deemed to have accepted the Demised Premises in its then-current condition and acknowledged that Landlord has fully and properly completed the Landlord Work. The Tenant Work shall be completed in a good and workmanlike manner in compliance with all applicable laws, rules and regulations. If requested by Landlord from time to time, Tenant will immediately furnish Landlord with lien waivers from all contractors and subcontractors performing work in connection with Tenant Work. All costs associated with the Tenant Work, including architectural and engineering fees, shall be the sole responsibility of Tenant. Upon the completion of the Tenant Work, Tenant agrees to promptly obtain a Certificate of Occupancy for the Demised Premises.

6.3 Roof Perforations. Tenant shall obtain Landlord's written consent prior to causing or permitting any perforation, conduits, punctures or holes of any sort in the roof of the Demised Premises. Further, such perforations shall be completed by contractors of Landlord's selection and in accordance with any other requirements of Landlord.

6.4 Insurance; Liability. Prior to the commencement of the Tenant Work, Tenant shall procure (i) an appropriate and sufficient Builder's Risk insurance policy insuring both Landlord and Tenant during Tenant's Work, (ii) a commercial general liability insurance policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate insuring both Landlord and Tenant against any liability which may arise in connection with the Tenant Work, and (iii) such other insurance which may be reasonably required by Landlord from time to time in connection with the Tenant Work. Tenant agrees to indemnify and hold harmless Landlord from and against any claim, loss, liability or damage. Further, if requested by Landlord, Tenant shall furnish certificates of insurance evidencing the insurance required hereby.

6.5 Signage. All signage or other items of Tenant which are visible from the exterior of the Building shall be in compliance with all applicable codes, ordinances, rules and regulations (of Landlord and any applicable governmental authority), and must be approved in advance by Landlord. Except as otherwise provided herein, all signage shall be created and installed by Tenant at Tenant's sole cost and expense.

**ARTICLE 7**

**Maintenance and Repairs; Alterations**

7.1 Maintenance and Repairs by Tenant. Subject only to the provisions of Section 7.2 below, Tenant shall promptly make or cause to be made all maintenance, repairs and replacements of the Demised Premises in good condition, order and repair, subject to ordinary wear and tear. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the regular maintenance, repair and/or replacement of all (only of which are contained in the Demised Premises) lighting, , (hardware and fixtures. All maintenance, repairs and replacements by Tenant shall be promptly completed in a good and workmanlike manner in compliance with all applicable laws, rules, regulations and

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manufacturer's recommendations. Tenant shall use new, first quality materials of the same or better quality as the materials used in the initial construction. Tenant agrees to indemnify and hold harmless Landlord from and against any claim, loss, liability or damage resulting from any maintenance, repairs or replacements undertaken by or on behalf of Tenant

7.2 Maintenance and Repairs by Landlord. Subject to the terms and provisions of this Lease, Landlord shall maintain and repair (i) the foundation of the Demised Premises including any footer, concrete, poll, post, or stanchion upon which the building rests or is supported, (ii) the structural integrity of the Demised Premises including any footer, concrete, poll, post or stanchion upon which the building rests or is supported, (iii) the roof of the Demised Premises, and (iv) the exterior walls of the Demised Premises (excluding any doors, door hardware, windows or glass); and (v) the sidewalks and parking lot within the Demised Premises. Upon the need for any repairs for which Landlord is responsible, Tenant shall immediately provide Landlord with written notice thereof. Notwithstanding anything to the contrary contained herein, Landlord shall not be responsible for any repairs arising out of any act or omission of Tenant or its customers, contractors, vendors, concessionaires, employees, licensees, sublessees, assignees or agents. Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant

Landlord will also assign 42 parking spaces in Parcel B for the sole and exclusive use by the Tenant and the Tenant's customers and Landlord will be solely responsible for the maintenance and repair of said parking spaces.

7.3 Alterations. Tenant shall not make any subsequent changes or alterations to the Demised Premises without Landlord's prior written consent, except for the installation of unattached, movable trade fixtures necessary for Tenant's business. Tenant agrees to indemnify and hold harmless Landlord from and against any claim, loss, liability or damage resulting from any alterations made by or on behalf of Tenant, whether or not Landlord consented to such alteration.

**ARTICLE 8**

**Landlord's Right of Access; Subsequent Disposition**

8.1 Right of Access; Locks. Landlord, himself and not an assigned employee shall have the right to enter upon the Demised Premises, as reasonably necessary, at any time for the purpose of inspecting, showing, repairing or protecting the same; provided, however, that, except in the event of an emergency, Landlord shall use reasonable efforts not to interfere with Tenant's business in the Demised Premises. Landlord shall be provided with keys to all door locks in the Demised Premises to be kept by the landlord in himself unlock for his sole use.

8.2 Subsequent Rental or Other Disposition. Landlord shall have the right to place and maintain "For Rent," "For Lease" or "For Sale" signs (or signs substantially similar thereto) in and about the Demised Premises during the last one-hundred twenty (120) days of the term of this Lease, whether it be during the Initial Term or any Extended Term.

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**ARTICLE 9**

**Utilities**

**9.1 Utility Charges.** Tenant shall timely pay all charges for electricity, water, gas, telephone service, sewage service, garbage and other utilities furnished to the Demised Premises.

**9.2 No Liability.** Landlord shall not be liable for any interruption whatsoever in any utility services furnished to the Demised Premises, unless such interruption is caused by Landlord.

**ARTICLE 10**

**Damages by Casualty; Restoration**

**10.1 Casualty and Restoration.** If, during the Initial Term or any Extended Term, the Building and/or Demised Premises (or the personalty or fixtures therein) are damaged or destroyed in whole or in part by fire or other cause, Tenant shall give Landlord immediate notice of such damage or destruction. If the Demised Premises are totally destroyed or partially destroyed to the extent that such partial destruction exceeds sixty percent (60%) of the replacement cost of the building and Tenant's contents thereof, then the Tenant may terminate this Lease, without penalty or any additional payment to Landlord, upon written notice to the Landlord within forty five (45) days of the date of said total or partial destruction of the Demised Premises. In such cases of total destruction or partial destruction exceeding sixty percent (60%), Tenant shall be entitled to all insurance proceeds from policies owned by Tenant, including, but not limited to, for insured furniture, fixtures, equipment, and other personalty. If the damage or destruction does not exceed 60% as herein stated, Landlord shall give written notice to Tenant and cause the prompt repair, replacement and rebuilding of the same to the extent of the Landlord Work, said Landlord work to be started no less than thirty (30) days following the date of the partial destruction if the necessary infrastructure is available and a permit for the work is issued by the city. With regard to the Demised Premises, Tenant shall, at its sole cost and expense, cause the prompt repair, replacement and rebuilding to the extent of the Tenant Work (collectively, the "Restoration"). The restored building, personalty and fixtures shall reflect the Demised Premises as originally constructed, updated to conform to the then-current design and specifications of Landlord or the current use at the time of the damage or destruction.

**10.2 Performance of Restoration.** The Restoration shall be performed in a good and workmanlike manner, in compliance with all applicable governmental requirements, and in compliance with all applicable requirements related to Landlord Work and Tenant Work set forth in Article 6 hereof.

**10.3 No Termination; Abatement.** During the Restoration, this Lease shall not terminate. If the Demised Premises are damaged or destroyed to an extent that Tenant is not reasonably able to operate its business, at the Tenant's sole and exclusive discretion, then Tenant shall, until the Restoration has been completed, be entitled to full abatement of Rental, including pro rata abatement of minimum average rental and percentage rent for abatement period.

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10.4 Right to Terminate. Notwithstanding anything to the contrary elsewhere in this article, if the Demised Premises are destroyed within the last twelve (12) months of the Initial Term or any applicable Extended Term, Landlord, in its sole discretion, may terminate this Lease upon written notice to Tenant within sixty (60) days of the subject casualty. For purposes of the previous sentence, "destroyed" shall mean that the Demised Premises are damaged to the extent that it cannot reasonably be used as it was used prior to the subject casualty, as determined by Landlord in its reasonable discretion. Upon the termination of this Lease pursuant to this section, Landlord shall be entitled to receive any insurance proceeds paid with respect to any damage to the Demised Premises and the Building, and Tenant shall be entitled to receive any insurance proceeds paid from policies owned by Tenant.

**ARTICLE 11**

**Eminent Domain**

11.1 Condemnation of Substantial Portion. If a Substantial Portion of the Building and/or the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall terminate and the Rental and other charges shall be abated during the unexpired portion of this Lease, effective on the date of physical possession by the condemning authority.

11.2 Condemnation of Less Than Substantial Portion. If less than a Substantial Portion of the Building and/or the Demised Premises should be taken as aforesaid, this Lease shall not terminate; provided, however, the Rental and other charges hereunder shall be reduced in proportion to the area taken, effective on the date of physical possession by the condemning authority. Following such partial taking, to the extent reasonably possible, Landlord, at its sole cost and expense, shall make all necessary repairs or alterations to the remaining portion of the Building and the Demised Premises to the extent of the Landlord Work, and Tenant, at its sole cost and expense, shall make all necessary repairs or alterations to the remaining portion of the Demised Premises to the extent of the Tenant Work.

11.3 Substantial Portion. For purposes of Sections 11.1 and 11.2 above, a "Substantial Portion" shall be deemed to have been taken if the taking of such portion prevents Tenant from operating its business in substantially the same manner as it did prior to such taking after the repairs and alterations described in the preceding section, as determined by Landlord in its reasonable discretion.

11.4 Awards. All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Demised Premises and/or the Building shall be the property of Landlord; provided, however, that Landlord shall have no interest in any award made for (i) Tenant's moving and relocation expenses, (ii) Tenant's business loss, (iii) loss of movable trade fixtures and/or personal property of Tenant, or (iv) other Tenant property.

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**ARTICLE 12**

**Liability of Landlord; Indemnification**

12.1 Limitation of Liability. Landlord shall not be liable to Tenant or to Tenant's employees, agents, invitees or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Demised Premises caused by Tenant, its employees, subtenants, assignees, invitees, vendors, contractors, licensees or concessionaires, or any other person entering the Demised Premises under express or implied invitation of Tenant, or arising out of the use of the Demised Premises by Tenant or the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations hereunder. Further, Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any loss, liability, expense or claim arising out of such damage or injury. Landlord shall not be liable to Tenant for any damage or injury to the persons, business (or any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Demised Premises, whether the damage or injury is caused by or results from any cause whatsoever, including, without limitation, (i) fire, steam, electricity, water, gas or wind, (ii) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, (iii) conditions arising on the Demised Premises or upon other portions of any building of which the Demised Premises is a part, or (iv) the presence or release of hazardous materials on, under or about the Demised Premises or liability under any environmental-related laws. Notwithstanding anything to the contrary contained in this section, the provisions of this section shall not exempt Landlord from any liability for its negligence or intentional and willful wrongful acts or the negligence or intentional acts of its employees, agents or contractors.

**ARTICLE 13**

**Assignment and Subletting**

13.1 Assignment by Tenant. Tenant shall not assign this Lease or sublet the Demised Premises without the prior written consent of Landlord or governing authority, if any, which consent may not be unreasonably withheld.

13.2 Sublease or Assignment by Landlord. Upon prior written approval of the Long Beach Port Commission, Landlord may sublease the whole or any part of the Demised Premises. Landlord may freely and without consent of Tenant transfer or assign its interest in this Lease and/or the Demised Premises, after which Landlord shall be released from any further obligations hereunder and Tenant shall look solely to such successor in interest of Landlord for the performance of Landlord's obligations hereunder. Any security given by Tenant to secure the performance of Tenant's obligations hereunder shall be assigned and transferred by Landlord to such successor in interest. Notwithstanding anything to the contrary elsewhere in this Lease, this Lease shall survive any sublease or assignment by Landlord of the whole or any part of the Demised Premises.

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**ARTICLE 14**

**Taxes**

14.1 Real Property Taxes. Landlord shall be liable for all ad valorem taxes, assessments and related charges imposed, assessed, or levied upon the Demised Premises, the Building or the land on which the Building is situated (collectively, "Taxes"). Landlord shall indemnify and save Tenant harmless from all fines, claims, demands, actions, proceedings, judgments, and damages (including court costs and attorney fees) of any kind and nature by anyone whatsoever arising or growing out of any breach or non-compliance or non-performance by the Landlord of this covenant

Upon the request of Tenant from time to time but not less than every three months, Landlord shall provide Tenant with proof of its compliance with the terms and provisions of this section.

14.2 Personal Property Taxes; Business Taxes. Tenant shall timely pay and discharge all taxes and other charges of any sort that shall, during the Initial Term and any Extended Term, be imposed, assessed, levied, or become a charge or lien upon any of Tenant's personal property and/or fixtures located in or about the Demised Premises. Tenant shall further timely pay and discharge any and all taxes and other charges of any sort as shall, during the Initial Term and any Extended Term, be imposed, assessed or levied upon Tenant's business located in the Demised Premises. Upon the request of Landlord from time to time, Tenant shall provide Landlord with proof of its compliance with the terms and provisions of this section.

**ARTICLE 15**

**Insurance**

15.1 Liability Insurance by Tenant. Tenant shall procure and maintain throughout the Initial Term and any Extended Term a policy or policies of comprehensive general liability insurance, at its sole cost and expense, insuring against all claims, demands, actions and/or occurrences arising out of or in connection with Tenant's use or occupancy of the Demised Premises, or by the condition of the Demised Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence. Such liability policy(s) shall name Landlord and the Long Beach Port Commission as additionally insured.

15.2 Casualty Insurance by Tenant. During the Initial Term and an Extended Term, Tenant shall, at its sole cost and expense, procure and maintain a policy or policies of casualty insurance covering its fixtures and personal property located in the Demised Premises for their full replacement cost. The casualty insurance policy(s) shall provide all-risk coverage, and shall insure against hazards normally covered by fire and extended coverage. All property of Tenant which is kept, stored, maintained or used in or about the Demised Premises shall be at the sole risk of Tenant.

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15.3 Other Insurance by Tenant. During the Initial Term and any Extended Term, Tenant shall, at its sole cost and expense, maintain a policy or policies of (i) insurance necessary to comply with all applicable Worker's Compensation and Occupational Disease laws; and (iii

15.4 Insurance..

15.5 Other Requirements. All policies of insurance required by this article shall be written by reputable insurers acceptable to Landlord, and shall provide such coverage, and contain such terms, as Landlord may require from time to time. Tenant shall obtain a written obligation from each insurer issuing a policy required by this article to notify Landlord in writing at least thirty (30) days prior to the modification or cancellation of any such policy. On or before the Commencement Date, Tenant shall provide Landlord with duly executed certificates of insurance evidencing the coverage required by this article. Further, at least thirty (30) days prior to the expiration of any policy required by this article, Tenant shall provide Landlord with duly executed certificates of insurance evidencing the renewal thereof.

15.6 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Landlord shall not be liable for any damages or losses of any sort for which Tenant is insured, regardless of cause or fault,

**ARTICLE 16**

**Default; Remedies**

16.1 Events of Default. The following events shall be deemed to be events of default by Tenant under this Lease (individually, "Event of Default" or collectively, "Events of Default"):

- (a) Tenant shall fail to pay any Rental installment or other monetary amount due hereunder, and such failure shall continue for a period of ten (10) days after the date on which such Rental installment or other monetary amount was initially due subject to a force major clause
- (b) Tenant shall fail to comply with any term, provision, covenant or agreement contained in this Lease, other than as described in Subsection (a) above, and Tenant shall not fully cure such failure within ten (10) days after receipt of written notice thereof to Tenant.subject to a force major clause
- (c) Tenant shall fail to vacate the Demised Premises at the end of the Initial Term or any Extended Term, as applicable.
- (d) Tenant shall do or permit to be done anything that creates a lien upon the Demised Premises, including, without limitation, a vendor's, mechanic's, laborer's or materialman's statutory or similar lien, which lien is not stayed or removed within sixty (60) days after the filing thereof.

Upon the occurrence of any Event of Default and only upon thirty (30) days written notice to Tenant, Landlord shall have the option to pursue any one (1) or more of the following remedies:

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- A. Landlord may enter upon and take possession of the Demised Premises (), and attempt to re-let the Demised Premises. If and when Landlord does re-let the Demised Premises, such amounts received by Landlord shall be applied toward any past due amounts owed by Tenant, and shall reduce such amounts accordingly; provided, however, that no such re-letting shall relieve Tenant of its obligations hereunder, including, without limitation, the obligation to pay Rentals and other amounts to Landlord.
- B. Landlord may terminate this Lease by written notice to Tenant, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and, if Tenant fails to do so, Landlord may enter upon and occupy the Demised Premises
- C. Landlord may exercise its rights under Article 17 hereof and sell the goods, wares, equipment, fixtures, furniture, improvements and/or other personal property of Tenant which the Tenant owns .
- D. Without notice or demand whatsoever, Landlord may pursue any one (1) or more remedy(s) available to it at law or in equity.

16.2 Pursuit of Remedies. Forbearance by Landlord to enforce one (1) or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default. The remedies set forth above are not exclusive of one another, and Landlord may pursue one (1) or more of such remedies, either alone, consecutively or simultaneously.

16.3 Other Expenses.

**ARTICLE 17**

**Landlord's Contractual Security Interest**

17.1 Landlord's Contractual Security Interest. To secure the payment of all Rental and Additional Rental, Landlord shall have, secondary to the purchase money lender, (in addition to any statutory liens) a valid security interest upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently, or which may hereafter be, situated on or in the Demised Premises, and all proceeds thereof. Such property shall not be removed from the Demised Premises without the prior written consent of Landlord until all Rental and Additional Rental then due to Landlord, or to become due to Landlord hereunder, shall first have been paid, and all of the covenants, agreements and conditions hereof shall have been fully complied with and performed by Tenant. Upon the occurrence of an Event of Default by Tenant, Landlord may, upon thirty (30) day written notice to the Tenant, in addition to any other remedies provided herein, enter upon the Demised Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated in the Demised Premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of such sale. Unless otherwise provided by law, and without intending to exclude any other method of providing reasonable notice, the

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requirement of reasonable notice shall be satisfied if such notice is given in the manner prescribed in this Lease at least seven (7) days before the time of the sale. In the event of any sale made pursuant to this section, the general description of the types of property to be sold shall be advertised in a daily newspaper published in the county in which the property is located for five (5) consecutive days before the date of the sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this section. Any surplus shall be paid to Tenant or as otherwise required by law. Any deficiencies shall be paid by Tenant forthwith to Landlord. Upon the request of Landlord, Tenant agrees to execute and deliver to Landlord a financing statement in a form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the Uniform Commercial Code (or corresponding state statute(s)). Notwithstanding anything to the contrary contained in this Lease, any lien held by Landlord upon goods, wares, equipment, trade fixtures, furniture, leasehold improvements and other personal property of Tenant shall be subordinate and inferior at all times to the first (1<sup>st</sup>) lien to be held in favor of Tenant's primary lender, and Tenant shall not be required to obtain any waiver of Landlord's lien as a prerequisite to granting a first (1<sup>st</sup>) lien at any point in time to such primary lender.

**ARTICLE 18**

**Regulations**

18.1 Regulations. Landlord and Tenant acknowledge that there are in effect federal, state, county and municipal laws, orders, rules, directives and regulations (collectively, the "Regulations") relating to or affecting Tenant and/or the Demised Premises, including without limitation, Regulations related to construction, land use, environmental issues, maintenance and the conduct of business. Tenant will not cause or permit any act or practice, that violates any Regulation. Further, Tenant shall have no claim against Landlord by reason of any changes Landlord may make pursuant to any Regulation, including, without limitation, changes in connection with the Demised Premises or the Building or changes imposed upon customers or other invitees of Tenant.

**ARTICLE 19**

**Expiration or Termination; Holding Over**

19.1 Expiration or Termination of Lease. Immediately upon the expiration or termination of this Lease, Tenant shall peaceably vacate the Demised Premises and give possession thereof to Landlord. All alterations, additions, improvements and fixtures (other than Tenant's unattached, movable trade fixtures and other personal property) shall be surrendered with the Demised Premises and become the property of Landlord at the termination or expiration of this Lease, unless Landlord requires the removal of such property, in which event Tenant shall promptly remove such property and repair any damage caused thereby.

19.2 Condition of Demised Premises. Upon the surrender of the Demised Premises to Landlord, the Demised Premises shall be clean and free of debris and in condition comparable to

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the condition of the Demised Premises on the Commencement Date, ordinary wear and tear excepted.

19.3 Holding Over. In the event that Tenant remains in possession of the Demised Premises after the expiration or termination of this Lease, it shall be deemed to be occupying the Demised Premises on a month-to-month basis on the terms and conditions set forth herein applicable to the Initial Term and Extended Terms, but at a Rental equal to the Rental herein provided plus fifty percent (50%) of such amount. Landlord's acceptance of such Rental from Tenant shall not preclude Landlord from enforcing any of its right and remedies provided in this Lease, including, without limitation, those remedies set forth in Article 16 hereof.

**ARTICLE 20**

**Subordination; Attornment; Non-Disturbance**

20.1 20.2 Attornment. In the event of (i) a sale or other transfer of Landlord's interest in the Building, or (ii) the purchase or other acquisition of the Building or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or deed of trust, or pursuant to a power of sale contained in any mortgage or deed of trust, then, in any of such events, Tenant shall, at the request of Landlord or Landlord's successor in interest, attorn to and recognize the transferee or purchaser as Landlord under this Lease for the balance then remaining of the Initial Term or any Extended Term, and, thereafter, this Lease shall continue as a direct agreement between such transferee or purchaser, as "Landlord," and Tenant, as "Tenant." Further, upon the request of Landlord or Landlord's successor in interest, Tenant will execute any further written instruments which may be necessary or appropriate to memorialize, confirm or effectuate the provisions of this section subject to all of the terms of this agreement .

20.3 Estoppels Certificates. Upon the request of Landlord from time to time, Tenant shall execute and deliver such certificates, instruments or other documents ( defined instruments ) which may be necessary or appropriate to effectuate, confirm and/or memorialize the terms of this article, the terms of this Lease and/or the status of the relationship between Landlord and Tenant. Further, Tenant agrees that, at Landlord's request, Tenant will execute and deliver to Landlord, prospective mortgagees and prospective purchasers estoppel certificates (i) certifying as to the instruments comprising all of the agreements between Landlord and Tenant (and the effectiveness thereof), and (ii) specifying that Landlord is not in default in Landlord's obligations under the Lease, except as therein specified, (iii) specifying that no Rental or other sums have been paid in advance, except as therein specified and (iv) certifying or specifying such other matters as Landlord may reasonably request.

20.4 20.5 Memorandum. 20.6 Non-Disturbance. Landlord does hereby agree with Tenant that, in the event any lender or other successor in interest succeeds to Landlord's interest in the Building and/or Demised Premises under the provisions of this Article 20 or otherwise, so long as Tenant complies with and performs its obligations under the Lease, (a) the Lease shall continue in full force and effect as a direct Lease between the succeeding party, whether lender or otherwise, and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and any lender or other successor in interest will not disturb the possession of Tenant, and (b) the Building and Demised Premises shall be subject

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to the Lease and Lender shall recognize Tenant as the tenant of the Building and Demised Premises for the remainder of the term of the Lease in accordance with the provisions thereof. Landlord shall obtain any necessary approvals from any lender or other successor in interest, whether now existing or in the future, related to this Article.

**ARTICLE 21**

**Dispute Resolution; Arbitration**

21.1 Negotiation. In the event of any dispute between the parties hereto arising out of this Lease or otherwise related to the Building ("Dispute"), the parties hereto involved in such Dispute shall consult and negotiate with each other in good faith, and, recognizing their mutual interests, use their best efforts to reach a solution which is satisfactory to all of the parties hereto involved in the Dispute.

21.2 Non Binding Mediation. In the event that any Dispute cannot be settled pursuant to the preceding section, then, before the institution or instigation of any litigation in any court, the Parties hereto agree that they will first submit the dispute to a neutral mediator for non-binding mediation and both Parties agree to make honest and good faith efforts to resolve the Dispute through mediation. Litigation may only be instituted or instigated after the Parties have submitted the Dispute to non-binding mediation and the good faith efforts of the Parties have been unsuccessful in resolving the Dispute. The cost of the mediation/mediator shall be equally borne by both Parties.

21.3 Notices. Wherever any notice or other correspondence is required or permitted hereunder, such notice or other correspondence shall be in writing. All notices and other correspondence shall be delivered by hand delivery, first class mail, facsimile, certified mail and/or overnight delivery service addressed to the parties hereto at the respective addresses set forth in Section 1.1 above or at such other addresses as they have theretofore specified by written notice in compliance herewith. Notwithstanding the foregoing, any notice or other correspondence that is actually received by the party to whom it is addressed shall be deemed to be properly delivered, regardless of how or where it is delivered and regardless of whether or not it was delivered in compliance with the foregoing requirements.

**ARTICLE 22**

**Miscellaneous**

22.1 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computing Rental nor any other provision hereof shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

22.2 Gender and Plurality. Wherever applicable, the pronouns designating the masculine or neuter will apply equally to the feminine, neuter, and/or masculine genders. Furthermore, wherever applicable, the singular will include the plural, and the plural will include the singular.

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22.3 Use 22.4 Joint-and-Several Liability. If there is more than one Tenant, all Tenants shall be jointly-and-severally liable for any and all of the obligations of Tenant under this Lease.

22.5 Modification; Severability. If any provision of this Lease is duly found by court to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof. Further, if any provision of this Lease is duly found by r court to be invalid or unenforceable, such part or provision shall be modified (or deleted if necessary) only to the extent necessary to render it valid and enforceable while preserving, to the fullest extent possible, the intent, effect, and substance of the original provision and this Lease. In the event of such modification (or deletion), each and all of the remaining provisions of this Lease shall remain in full force and effect, and shall be unaffected by the modification (or deletion).

22.6 Measurement of Square Footage. The square footage of the Demised Premises and the Building shall be measured and calculated using such method(s) as Landlord determines, in its sole discretion. In the event that Tenant believes that the square footage of the Demised Premises set forth in Section 1.1 above is inaccurate, or Tenant otherwise desires to contest the square footage calculations of Tenant, Tenant shall provide written notice thereof to Landlord within thirty (30) days of the Delivery Date, after which the parties shall use their best efforts to resolve any disputes in accordance with the terms hereof.

22.7 Waiver; Consent. One or more waivers of any covenant or term of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant or term. The consent or approval by either party of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary the consent or approval of any subsequent act.

22.8 Force Majeure. Whenever a period of time is herein prescribed for any non-monetary-related action to be taken by Landlord or Tenant, Landlord or Tenant shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, delays due to strikes, riots, any acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other such causes which are beyond the reasonable control of Landlord or Tenant, as applicable.

22.9 Choice of Law. The laws of the Mississippi in which the Demised Premises are located shall govern the interpretation, validity, performance and enforcement of this Lease.

22.10 Headings. The captions and headings used herein are for convenience only, and shall not construe, limit or modify the provisions thereunder.

22.11 Binding Nature. The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs and successors, except as otherwise expressly provided herein.

22.12 Integration. This Lease contains the entire understanding and agreement between the parties hereto with regard to the subject matter hereof, and supercedes any prior or contemporaneous understanding or agreement, whether verbal or written, with regard to the subject matter hereof.

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22.13 Modification; Termination. Except as otherwise provided herein, no agreement shall modify or terminate this Lease, in whole or in part, unless such agreement is in writing and duly signed by the party against whom enforcement of such modification or termination is sought.

22.14 No Reliance. Tenant hereby acknowledges that it is not relying on any representation or promise of Landlord, except as may be expressly set forth in this Lease. Likewise, Landlord hereby acknowledges that it is not relying on any representation or promise of Tenant, except as may be expressly set forth in this lease.

22.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

**ARTICLE 23**

**Gaming**

23.1 Sale or Assignment of Land Lease. Tenant is advised that the demised premises may become an integral part of a casino project currently being considered by the Landlord. In the event that a casino project moves forward, the Landlord may decide to sell or assign all or part of his interest in the land lease agreement with the Long Beach Port Commission. Tenant has no right to delay or stop the sale or assignment of the lease by the Landlord and has no right to any income or equity in the casino project.

23.2 Buyout. If an "Approval to Proceed with Development" is issued by the Mississippi Gaming Commission to develop the casino project, tenant may accept a buyout of his interest in the Building Lease Agreement, his leasehold improvements, FF&E and inventory. The "Buyout Amount" shall be either; 1) an amount negotiated between the buyer and Tenant and approved by the Landlord or; 2) an amount of One Million Dollars (\$1,000,000.00) during the Initial Term or any Extended Term of this Lease not to exceed 10 years. If after 10 years, amount negotiated between the buyer and the Tenant.

23.3 Mississippi Gaming Commission. In accordance with Mississippi Code 75-76-63 subsection (2) (a) regarding "Other persons subject to findings of suitability and licensing; termination of agreements upon finding of suitability or failure to obtain license", Tenant is advised that any person that "Does business on the premises of the licensed gaming establishment" may be called forward for a finding of suitability to be associated with the gaming establishment. Tenant agrees to cooperate fully and promptly with any such Landlord request.

**EXECUTED** as of the date first set forth above.

**LANDLORD:**



By: Blue Ridge Properties, LLC  
Name: James E. Levens III  
Title: Managing Member

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TENANT:

By: ORC, LLC  
Name:   
Title: owner

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**EXHIBIT A  
TO  
BUILDING LEASE AGREEMENT**

Parcel "A" and Parcel "B" of Long Beach Harbor Boundary Survey

:99231639-1  
PD.3875056.1



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**EXHIBIT B  
TO  
BUILDING LEASE AGREEMENT**

**Lease Agreement between Landlord and Long Beach Port Commission**

.99231639-1  
PD.3875056.1

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Upon continued discussion, the commission requested that ORC, LLC furnish a letter, for the record, of the parties that form the business name, ORC, LLC.

\*\*\*\*\*

There being no further business considered at this special meeting, Commissioner Snodgrass made motion seconded by Commissioner Casey and unanimously carried to adjourn until the next regular meeting in due course.

\*\*\*\*\*

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APPROVED:

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PHIL KIES, PRESIDENT

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DATE

ATTEST:

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STACEY DAHL, DEPUTY CITY CLERK