

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5 K

Council Meeting Date: August 28, 2018

ITEM TITLE: RESOLUTION
 INTRODUCED BY: Mayor Andrew "FoFo" Gilich
 CONTACT PERSON: E. Michael Leonard, CAO *em*
 Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution approving entry into Lease-Purchase Agreement with Jourdan Nicaud for the Magnolia Hotel and adjacent lot

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps Deed _____ Lease

Other (Specify): Exhibit A: Lease-Purchase Agreement
 Exhibit B: Tax Map

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

Resolution No.

RESOLUTION APPROVING ENTRY INTO LEASE-PURCHASE AGREEMENT WITH
JOURDAN NICAUD FOR THE MAGNOLIA HOTEL AND ADJACENT LOT

WHEREAS, the City of Biloxi has found that two (2) parcels of real property together with all improvements thereon, commonly known as the Magnolia Hotel (Tax Parcel 1410K-06-125.000) and the adjacent lot, commonly known as the Fountain Lot (Tax Parcel 1410K-06-126.000), are not necessary or desirable for the financial welfare of the municipality and deemed said parcels to be surplus property pursuant to Miss. Code Ann., Section 21-17-1(2)(a), *et. seq.*;

WHEREAS, in accordance with the above-referenced statute, the City advertised a Request for Proposals for the lease / purchase of the Magnolia Hotel;

WHEREAS, the proposal received from Jourdan Nicaud ("Nicaud") will promote and foster the development and improvement of the community and the civic, social, educational, cultural, moral, economic or industrial welfare thereof and is in the best interest of the economic growth and development of the City;

WHEREAS, Nicaud's proposal is consistent with City plans applicable to the Biloxi's Downtown Area;

WHEREAS, Nicaud's proposed use of the Magnolia Hotel will comply with laws and ordinances pertaining to the site;

WHEREAS, acceptance of Nicaud's proposal will result direct and indirect economic benefits to the City;

WHEREAS, upon receipt and review of the proposals received, the City, in its sole and absolute discretion, has determined that based on the criteria stated in its Request for Proposals, Nicaud's proposal best fulfills the requirements; and

WHEREAS, it is appropriate that the City enter into the Lease-Purchase Agreement (the "Agreement"), the form of which is attached hereto as Exhibit "A," with Nicaud, for Tax Parcels 1410K-06-125.000 and 1410K-06-126.000, as identified on Exhibit "B."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BILOXI, MISSISSIPPI, THAT:

Section 1: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

Section 2: The Mayor is, on behalf of the City of Biloxi, authorized to accept, execute, and enter into the Lease-Purchase Agreement, with Jourdan Nicaud, in substantially the form as attached hereto as Exhibit "A."

Section 3: This resolution shall take effect and be in force from and after adoption.

LEASE-PURCHASE AGREEMENT
BY AND BETWEEN

CITY OF BILOXI, MISSISSIPPI
AS LANDLORD

AND

JOURDAN NICAUD, AS TENANT

FOR MAGNOLIA HOTEL AND ADJACENT LOT
119 RUE MAGNOLIA
BILOXI, MS 39530

EXHIBIT
A

STATE OF MISSISSIPPI
COUNTY OF HARRISON
SECOND JUDICIAL DISTRICT

LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT (the "Lease Agreement") made and entered into this day, between the **CITY OF BILOXI, MISSISSIPPI**, a Mississippi municipal corporation, hereinafter referred to as "Landlord"; and **JOURDAN NICAUD**, hereinafter referred to as "Tenant".

WITNESSETH

WHEREAS, Lessor is the fee simple owner of certain real property, commonly known as the Magnolia Hotel and adjacent lot, located at 119 Rue Magnolia in the City of Biloxi, Mississippi, as more fully described in this Lease Agreement; and

WHEREAS, it is appropriate that the following Lease Agreement be entered into for the lease with option to purchase of the Magnolia Hotel and adjacent lot, as the Lease Agreement will promote and foster the surrounding community and will promote and foster the development and improvement of the community and the civic, social, educational, cultural, moral, economic welfare of the City of Biloxi and surrounding area for the benefit of the City and its citizens, and further this Lease Agreement is in the best interest of economic growth and development of the City of Biloxi and is consistent with the City of Biloxi ordinances applicable to the downtown area;

NOW THEREFORE, for and in consideration of the rental payments, covenants and mutual promises contained herein, the Landlord leases to Tenant, and Tenant leases from Landlord the real property and improvements thereon located, "as is, where is", at 119 Rue Magnolia, Biloxi, MS 39530, being identified as Harrison County Tax Parcel No. 1410K-03-
Lease-Purchase Agreement - Magnolia Hotel

125.000 and adjacent lot, being identified as two Harrison County Tax Parcels No. 1410K-03-126.000, together with the non-exclusive use of the adjacent public parking lot being identified as Harrison County Tax Parcel No. 1410K-03-127.000, and more fully described on that certain legal description stated on the attached Exhibit "A", which is made a part of this Lease Agreement (the "Leased Premises"). The Leased Premises are also known as the Magnolia Hotel, and the Leased Premises will be unoccupied and clean as of the date of Tenant taking possession. Landlord and Tenant agree and covenant that the adjacent public parking lot being identified as Harrison County Tax Parcel No. 1410K-03-127.000 shall always be used for public parking and not be used for any other purpose unless mutually agreed upon in writing by Landlord and Tenant.

1. TERM OF LEASE: The primary term of this Lease Agreement shall be a period of three (3) years commencing on the Rent Commencement date (hereinafter defined) (the "Term").

2. RENTAL PAYMENTS; LATE PAYMENT PENALTY; DEPOSIT AMOUNT; PAYMENT OF HALF COST OF TWO APPRAISALS:

A. For the Term, the Tenant agrees to pay as rent to Landlord the annual sum of Eighty-Four Thousand Dollars (\$84,000.00). Annual rent for the Term shall be paid in equal monthly payments of Four Thousand Seven Hundred Dollars (\$7,000.00) each month in advance, with the payment to be made on the first business day of each month; however, the first monthly payment shall be pro-rated in an amount equal to the percentage determined by the number of days of occupancy by the Tenant in the first month, beginning on the Rent Commencement Date and ending on the last day of the first month, divided by thirty (30). The first payment shall be made on the Rent Commencement Date. Rent payments shall be made in

advance to the Landlord at 140 Lameuse Street, Biloxi, MS 39530 or at such other address as the Landlord may designate in writing to the Tenant.

B. The monthly installments of rent are due on the first (1st) day of each month during the term(s) hereof but rental payments shall not be considered to be delinquent if payment thereof is received by the Landlord on or prior to the fifteenth (15th) day of the same month for which such rent due. For any monthly rental which shall not be paid by Tenant and received by Landlord by the fifteenth (15th) day of the month (after becoming due on the first), Landlord shall be entitled to recover a late charge in the amount of five percent (5%) of overdue amount. Landlord shall have the right to refuse to accept partial rent payments, and may decline to accept any payment less than the full sum required to pay all rentals and late charges then due.

C. Landlord shall have the right to charge Tenant a service charge of Twenty-Five Dollars (\$25.00) for any check of Tenant received by Landlord for payment of rent or additional rent which shall not be honored when presented for payment. And, should Landlord receive a check from Tenant that is, in fact, dishonored when presented for payment, Landlord shall have the right thereafter to refuse to accept payment of rent, late charges and/or additional rent by personal check.

D. In the event of a default by Tenant in the performance or observance of any of the terms and conditions hereof as applicable to it, and in the event this Lease shall be placed in the hands of an attorney for appropriate action, Tenant agrees to pay all costs or expenses incident thereto, including reasonable attorney's fees.

E. Tenant further agrees to pay to the Landlord in trust a deposit of Seven Thousand Dollars (\$7,000.00) on the date of signing of this lease. This deposit shall be a security deposit

to be held and disbursed, if needed, by Landlord for Tenant damages to the Leased Premises or other defaults under this Lease Agreement, if any.

F. Tenant delivered to Landlord a Five Thousand Dollars (\$5,000.00) bank check as earnest money with its response to the City's Request for Proposals regarding the Leased Premises. Tenant and Landlord agree that Landlord shall disburse, on the date of full execution of this Lease Agreement, the Tenant's Five Thousand Dollars (\$5,000.00) Earnest Money as follows: Landlord shall deposit the Five Thousand Dollars (\$5,000.00) to the Landlord's account as a credit paid by the Tenant towards Tenant's first monthly rental due on the Rent Commencement Date under this Lease Agreement.

3. REQUIREMENT TO PURCHASE: Subject to the provisions of paragraph 5 of this Lease Agreement, on or before the expiration the Term of this Lease Agreement, or such earlier date as the Tenant, in his sole and exclusive discretion, may elect, Tenant shall be required to purchase fee simple title only to the real property described herein as Parcel One (1) of the Leased Premises (the hotel real property and one lot being Tax Parcel No. 1410K-03-125.000 and 1410K-03-126.000) on the following basic terms and conditions plus other ordinary and reasonable terms and conditions for a contract of sale and purchase of commercial real property:

(a) Tenant shall notify Landlord in writing of his intent to exercise the option to purchase by giving no more than ninety (90) days and no less than sixty (60) days written notice to the Landlord, stating a closing date to be within the sixty-to-ninety-day notice period; if the notice is sent on the last day of the Term, the closing shall be not later than sixty (60) days after the last day of the Term; if the closing date is after the Term, Tenant shall continue to pay rent until closing;

(b) The purchase price shall be the greater of (1) the average of two appraisals of fair market value estimated by two appraisers selected by the Landlord and approved by the Tenant, with the fair market value determined as of the date of the notice of intent to purchase, or (2) Eight Hundred Thousand Dollars (\$800,000.00). Notwithstanding the provisions of this paragraph, in no event shall the purchase price exceed the sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) or be lower than Eight Hundred Thousand Dollars (\$800,000.00).

(c) The deed of conveyance will provide that the property conveyed is subject to all state, federal and municipal laws, codes, covenants and restrictions of record, including, but not limited to, the Certification of Mississippi Landmark Designation certified by the Board of Trustees of the Mississippi Department of Archives and History and any related requirements pertaining to the Magnolia Hotel as a Mississippi Landmark in accordance with the State Antiquities Law, Miss. Code of 1972, §§39-7-3, et seq. and recorded in the Land Deed Records of Harrison County, Second Judicial District, Mississippi in Deed Book 165 at Page 401.

4. RENT COMMENCEMENT DATE; DATE OF FIRST POSSESSION; RESTRICTIONS ON CHANGES TO THE LEASED PREMISES; DEPOSIT AMOUNT: The date of first possession by the Tenant shall be fifteen (15) days after execution of this Lease Agreement by the Mayor of the City of Biloxi. The "Rent Commencement Date" shall be the latter date of (a) the date that Tenant receives a temporary or permanent certificate of occupancy after making tenant improvements, or (b) the date the Tenant complies with the requirements of the Mississippi Department of Archives and History under the Historic Preservation Easement and Mississippi Landmark rules applicable to the Leased Premises; provided, however, if neither condition (a) or (b) has occurred by January 1, 2019, the Landlord may notify the Tenant that the

Rent Commencement Date is February 1, 2019, or the Landlord may terminate this Lease Agreement by written notice of the termination to be no later than March 1, 2019.

5. RIGHT OF SALE OR TRANSFER; The Landlord retains the full and complete authority to sell or transfer all or part of the real property described on Exhibit "A" that constitutes the Leased Premises at any time after the expiration of the Term in the event Tenant has not purchased the Leased Premises as required under the provision of Paragraph 3 above.

6. TENANT'S USE; RESTRICTIONS ON SMOKING AND NOISE: Tenant and any approved sub-tenants shall use and operate the first and second floors and the grounds of the Leased Premises exclusively for a retail restaurant and entertainment (including the sale of alcoholic beverages and live music indoors), sale of art work, other retail, and any and all lawful business incident thereto, and they shall use the third floor for short-term residential rentals, with this Lease Agreement constituting approval of the third floor for short-term rentals under applicable City Ordinances. Tenant and any approved sub-tenants shall not allow smoking outdoors of and on the building and grounds of the Leased Premises. Tenant and any approved sub-tenants shall not allow outdoor music or other broadcasts to be played on or from the Leased Premises except for (a) special events for which the Tenant must obtain a special events music and noise permit from the City's Community Development Department to allow live or machine-generated music and/or other broadcasts at a reasonable noise level appropriate for the event and not to exceed the limits of the City's applicable noise ordinances, or (b) City-sponsored events for which outdoor music and/or other broadcasts are permitted by the City for the event at standards applicable to the Rue Magnolia area.

7. UTILITIES: The Tenant agrees and covenants to pay or cause to be paid all bills, charges, and sur-charges for all utilities on the Leased Premises, including but not limited to

water, sewer, garbage, gas, cable, alarm monitoring, pest control, internet and electricity, during the Term of this Lease Agreement, beginning fifteen (15) days following the date of first possession of the Leased Premises by Tenant. Tenant shall further indemnify, defend and hold Landlord harmless for all such payments and shall discharge the same in a timely manner. Tenant will move accounts into his name within fifteen (15) days of execution of this Lease.

8. REPAIRS AND MAINTENANCE: Except for replacement, maintenance and repair to the roof and exterior walls of the Leased Premises and replacement, maintenance and repair to the Leased Premises required by reason of the intentional or negligent acts of Landlord, its employees, agents, invitees, licensees, or contractors, the Tenant, at its sole cost and expense, shall be responsible for all replacement, maintenance and repair to the Leased Premises and shall keep the Leased Premises in good commercial condition and state of repair during the term of this Lease Agreement, ordinary wear and tear excepted. Tenant covenants that it will not cause or allow any waste to occur on the Leased Premises at any time during the term of this Lease Agreement. Reasonable notice from Tenant of the need for Landlord to perform a repair to the roof or exterior walls of the Leased Premises shall be a condition to Landlord commencing such repair. The provisions of this subsection shall not apply in the case of damage or destruction by fire or other casualty, or by Eminent Domain, that are controlled by other provisions of this Lease Agreement. Tenant shall be solely responsible for the repair, upkeep and maintenance of the elevator servicing the building.

9. IMPROVEMENTS: Subject to the provisions of the Historic Preservation Easement, the Mississippi Landmark requirements referenced in this Lease Agreement, and any other applicable laws, codes, covenants and restrictions, Tenant may at its sole cost and expense make additions, improvements, alterations or changes necessary for the business of the Tenant,

provided that the Tenant has obtained all necessary governmental approvals and permits and has obtained the Landlord's prior written consent and provided that such work shall be completed in a good and workmanlike manner. Tenant agrees and covenants that it will not allow any liens to be placed against the subject property as a result of said construction. This includes but is not limited to contractor's liens, materialman's/mechanics liens, lis pendens notices or security interests in any property which may become fixed to the realty. Tenant shall further be solely responsible for obtaining and paying for all necessary permits, applications and approvals for any contemplated repairs and/or modifications to the Leased Premises, and the Tenant will, in all respects and at all times comply with all applicable codes, ordinances, rules, and regulations.

Tenant will promptly pay, when due, all bills and charges incurred for labor and materials utilized in the performance by the Lessee of alterations and improvements, upon, or within the leased premises as herein permitted to be accomplished by Tenant, and Tenant will not suffer or permit any lien to attach to or against the leased premises by reason of its nonpayment of same. The enrollment or notice to Landlord of any lien imposed or threatened for Tenant's nonpayment of bills and/or charges for labor or materials incorporated into the leased premises shall constitute a default by Tenant entitling the Landlord to impose the rights and remedies to which it is entitled hereunder or under the laws of the State of Mississippi for any other default.

10. **INSURANCE AND TAXES:** The Landlord shall maintain casualty insurance insuring the real property of the Leased Premises in such amounts as the Landlord shall deem appropriate.

The Tenant shall at its sole cost and expense maintain casualty insurance on its personal property, fixtures and equipment located within the Leased Premises during this Lease Agreement, in such amounts as the Tenant shall deem appropriate.

Tenant shall maintain, at Tenant's sole cost and expense, Workers Compensation insurance pertaining to its employees according to the provisions of Mississippi law.

Tenant shall provide, at Tenant's sole cost and expense, guaranteed business income insurance naming the Landlord as the insured in an amount equal to the monthly Rental.

Tenant shall pay all ad valorem real property taxes due on Tenant's Leased Premises, as the same shall become due and payable. Tenant shall pay all ad valorem personal property taxes, as applicable, on its fixtures, furniture or equipment as the same shall become due and payable. Tenant shall provide the Landlord with receipts for said payment of real and personal taxes on or before February 15th of each calendar year. Tenant understand Landlord will provide copy of Lease to Tax Assessor.

11. INDEMNITY AND LIABILITY INSURANCE: Tenant shall procure and keep in effect at all times during the term(s) hereof, public liability insurance for the Leased Premises for the protection of the Tenant in which the limits of public liability shall be in a minimum of Five Hundred Thousand Dollars (\$500,000.00) per single occurrence and One Million Dollars (\$1,000,000.00) in aggregated coverage, and shall cause Landlord to be named as one of the insured.

Tenant shall deliver to Landlord copies of policies of insurance or certificates thereof with evidence of the payment of premiums therefore not less than thirty (30) days prior to the expiration of existing coverage. In default of obtaining such required insurance, Landlord, at its option, may procure the same for the account of the Landlord and the cost thereof shall be immediately reimbursed to the Landlord by the Tenant upon the billing therefore to the Tenant. In the event such debt is not reimbursed within thirty (30) days after billing, the Landlord may declare the same as a default by Tenant under the terms hereof entitling Landlord to all of the

rights and remedies provided for herein or under the laws of the State of Mississippi in case of a default by a Tenant.

Policies of insurance required to be procured and maintained by the parties under any of the provisions of this Lease Agreement contract will contain a clause that the insurer will not cancel or change the insurance without first giving both parties prior written notice. And either party shall have the right to furnish insurance required under any of the terms of this lease contract by way of a blanket policy or separate policies issued by a company licensed to do business in the State of Mississippi.

To the extent not covered by insurance carried in favor of Landlord, Tenant shall keep and hold harmless Landlord from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of Landlord or Tenant, by reason of death or injury to persons or loss or damage to property, resulting from Tenant's operations, or any thing done or omitted by Tenant, under this Lease Agreement except to the extent that such claims, demands, suits, judgments, cost and expenses may be attributed to the acts or omissions of Landlord or its agents or employees.

12. WAIVER OF SUBROGATION: Landlord or Tenant severally waive any and every claim which arises or may arise in its favor against the other during the term of this Lease Agreement for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the premises, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable thereunder. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant severally agree immediately to give each insurance company which has issued its policies of

insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

13. "TRIPLE NET" LEASE: It is agreed between the parties that this is a "triple net" Lease Agreement. The Tenant shall pay all ad valorem taxes, sales taxes, income taxes, and any other taxes attributable to Tenant's Leased Premises, and the Tenant shall pay all repairs, maintenance and insurance as more definitively provided in Paragraphs 7, 8, 9, 10, and 11 of this Lease Agreement, except those replacement, maintenance and repair obligations denoted as the sole obligation of the Landlord in paragraph 8. It is further agreed that the Landlord shall receive rent herein free from all charges and expenses imposed upon or by reason of the Leased Premises, except as specified herein. Tenant may not for any reason withhold or reduce Tenant's required rental payments by right of set-off or otherwise, unless otherwise provided by applicable Mississippi law, including Section 89-8-15, Mississippi Code Annotated.

14. INDEMNIFICATION: To the extent permitted by governing law, Tenant shall indemnify, defend and hold harmless the Landlord from and against any and all losses, liabilities, costs and expenses, including reasonable attorney fees, judgments and other claims arising from injury, death or damage to any person or property regarding or in any way related to the Leased Premises which was (a) occasioned by any act, failure to act or omission of the Tenant, its agents, servants, employees, contractors, invitees and licensees, (b) caused by Tenant's use and/or occupancy of the Leased Premises, and/or (c) caused by Tenant's breach of any provision of this Lease Agreement.

15. FURNITURE AND EQUIPMENT: All furniture, equipment, and other items of personal property purchased by Tenant that are not permanently affixed to the Leased Premises shall remain the sole property of the Tenant.

16. DEFAULT: Upon the occurrence of any one or more of the events described below which shall constitute a default, the Landlord shall have the absolute right, subject to Section 89-8-13, Mississippi Code Annotated, but not the obligation to (a) cancel and terminate this Lease Agreement, and thereupon re-enter and take possession of the Leased Premises; and/or (b) re-enter and re-lease said Leased Premises from time to time, as an agent of the Tenant, but such re-entry and re-leasing shall not operate as a release or discharge of the Tenant from liability or obligations hereunder, except that the net rents collected as a result of such re-leasing shall be a credit against the Tenant's liability for rents under the Lease Agreement. In the event of default, Landlord will use its best efforts to mitigate its damages in the event Landlord re-enters and takes possession of the Leased Premised.

Default Events:

(a) In the event that Tenant should fail to pay one or more of said rental installments when the same become due and payable.

(b) In the event an execution, pending execution or other legal proceeding is commenced against the goods, furniture, or other property of the Tenant or a sub-tenant or against said Leased Premises or upon the interest of the Tenant in this Lease Agreement or any sub-tenant.

(c) In the event of a petition in bankruptcy (voluntary or involuntary) by or against the Tenant or any sub-tenant.

(d) In the event of an appointment of a Receiver of Tenant's property or a sub-tenant's property, or in the case of an assignment for the benefit of creditor's by the Tenant or sub-tenant.

(e) In the event the Leased Premises is used for any unlawful activity, or any other activity that in the sole discretion of the Landlord constitutes a nuisance, or any activity contrary to the use provisions of paragraph 6 of this Lease Agreement, subject to the provisions of applicable Mississippi law and the terms of the Lease Agreement.

(f) In the event that the Tenant or any sub-tenant establishes or allows to be established any lien against the Leased Premises, including but not limited to Materialman's, Mechanic's and Contractor's Liens.

(g) In the event that the Tenant fails to pay any additional rent items including but not limited to assessments for taxes; insurance, repairs, etc.

Notwithstanding the above default events, no default hereunder shall be deemed to have occurred on the part of the Tenant until ten (10) days after the first written notice of a monetary default or thirty (30) days after the first written notice of a non-monetary default shall have been given to Tenant, and within such time, Tenant has failed to cure said default. If any non-monetary default by Tenant cannot reasonably be cured with thirty (30) days after notice, then Tenant shall have an additional thirty (30) days to effect such cure; provided however, the Tenant commences immediate action to cure said default within the original thirty (30) day notice period and works diligently, prudently and with reasonable commercial dispatch to complete the necessary actions to cure such default. The reasonableness (or lack thereof) of any such curative action shall be judged by the sole discretion of the Landlord based upon reasonable business practices. It is agreed and understood that should the Tenant commit any default event

in breach of this Lease Agreement (whether monetary or non-monetary) after having previously received one written notice of default, the Landlord may immediately terminate this Lease Agreement by providing written notice as described herein and the Tenant shall immediately surrender the Leased Premises.

It is expressly agreed by the parties that upon Tenant's default under the terms of this Lease Agreement and failure to cure said default within the time period allowed, all rents due hereunder for the entire lease Term and any other monies owed shall be and become immediately due and payable without regard as to whether the Leased Premises shall have been surrendered to or taken by the Landlord.

In the event Landlord fails to comply with any term, provision, warranty or covenant of this Lease Agreement and such breach or failure is not cured within thirty (30) days after written notice by Tenant to Landlord, the Tenant shall have the right to terminate this Lease Agreement and will further have any and all other rights and remedies granted under this Lease Agreement or allowed by law, which rights and remedies will be cumulative.

17. ATTORNEY FEES: In the event it becomes necessary for either party to employ an attorney for the enforcement of this Lease Agreement or to defend any matters arising from the Lease Agreement, the prevailing or non-breaching party shall recover reasonable attorney's fee and all related costs associated with the action or defense from the non-prevailing or breaching party.

18. TENANT'S RIGHT OF QUIET ENJOYMENT: Landlord hereby warrants and covenants that it has the right to lease the Leased Premises to Tenant for the purposes stated herein, and that Tenant shall, while Tenant is not in default of the terms of this Lease Agreement, peacefully and quietly hold the Leased Premises during this Lease Agreement, without

interference or hindrance from Landlord or those claiming by or through Landlord.

19. DAMAGE OR DESTRUCTION OF PREMISES: In the event of a partial destruction of the real property of the Leased Premises during the term of this Lease Agreement from any cause, Landlord shall promptly repair such damage, provided the repairs can be made within one hundred eighty (180) days under the laws and regulations of the applicable governmental authorities. Any partial destruction shall not void this Lease Agreement, except that Tenant shall be entitled to a reduction of rent while the repairs are being made, any apportionment reduction being based upon the extent to which the making of repairs shall interfere with the business carried on by the Tenant at the Leased Premises, including a complete and total abatement of rent, as may be applicable. If the Landlord does not elect to make repairs that can be made within the time specified or, in the alternative, those repairs cannot be made within the time specified herein, this Lease Agreement may be terminated by either party.

20. CONDEMNATION: If there is a partial taking of a material portion of the Leased Premises by condemnation or eminent domain or some other taking by any governmental authority for any purpose, then this Lease Agreement shall be voidable by the Tenant as of the date possession shall be taken by such authority and the rent shall be due and payable only for the period prior to the date of the taking.

21. RESTRICTIONS ON SUBLEASE & ASSIGNMENT: Except as provided in this paragraph, Tenant shall not sublease the subject premises or any portion thereof during the term of this Lease Agreement and shall not assign its interest in this Lease Agreement to any third party, unless prior written approval for such sub-lease or assignment has first been obtained from the Landlord, which approval will not be unreasonably withheld. However, without further written approval, the Tenant may sub-lease or assign this Lease Agreement to a single-purpose

limited liability company controlled by Jourdan Nicaud for the lease and operation of the Leased Premises, provided that Tenant (Jourdan Nicaud) on or before ten (10) days before such sub-lease and assignment shall deliver to the City a copy of the Operating Agreement and names, addresses, phone numbers, email addresses and percentage of ownership of the members of the company. Any sub-lease or assignment will not relieve the original Tenant (Jourdan Nicaud) of his obligations hereunder.

22. **BROKERAGE:** The parties agree that there are no brokers or agents relating to the subject Lease Agreement and that no person is due any broker's or agent's commission.

23. **FORCE MAJEURE:** Landlord shall be excused for the period of any delay and shall not be in default with respect to the performance of any of the terms or conditions of this Lease Agreement, when prevented from so doing by cause or causes beyond the Landlord's control, which shall include, without limitation, all labor disputes, governmental regulations or controls, city and municipal regulation or controls, fire, hurricane or other casualty, inability to obtain any material, services, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Landlord. If such force majeure is related to the physical structure, rent shall be reduced or abated as provided in Paragraph 19 above.

24. **GOVERNMENTAL REGULATIONS:** Tenant shall, at Tenant's sole cost and expense, (a) comply with all of the requirements of all governmental authorities, pertaining to the Leased Premises.

25. **NOTICES:** Any notice which is required or desired to be given in accordance with the terms of this Lease Agreement shall be deemed to have been properly give when such notice(s) shall be sent by registered or certified mail, postage prepaid and addressed as follows:

To Landlord at: CITY OF BILOXI
 Attn: Mayor A. M. Gilich, Jr.

City Hall
140 Lameuse St.
Biloxi, MS 39530

Copy to: CITY OF BILOXI
Attn: City Attorney/Contract Manager
Post Office Box 429
Biloxi, MS 39533

To Tenant at: JOURDAN NICAUD
111 West Scenic Drive
Pass Christian, MS 39571

Copy to: David A. Wheeler
Wheeler & Wheeler, PLLC
P.O. Box 264
Biloxi, MS 39533
david@wheelerattys.com

26. APPLICABLE LAW/VENUE; CONSTRUCTION OF LEASE: This Lease Agreement shall be governed by, and construed and enforced according to the laws of the State of Mississippi, regardless of the residency of the parties or the place of execution of this Lease Agreement; jurisdiction and venue shall be in the Second Judicial District of Harrison County, Mississippi.

The covenants, terms, conditions, provisions and undertakings in this Lease Agreement shall extend to and be binding upon the parties hereto and upon their heirs, executors, administrators, successors and assigns as if they were in every case named and designated, and the same shall be considered as covenants running with the land.

This Lease Agreement, together with and including any attachments or exhibits, and the documents referred to herein, contains the entire agreement between the parties and may not be modified, amended or in any way altered orally but only by an agreement or amendment in writing signed by the party or parties against whom enforcement of any waiver, change, amendment, modification or discharge is sought.

27. SECURITY INTEREST IN IMPROVEMENTS TO THE STRUCTURE: The Tenant hereby covenants and agrees to execute any and all documents reasonably necessary in order to grant the Landlord a collateral security interest in the Tenant's improvements to the Leased Premises. Landlord will agree to subordinate its interest hereunder at the request of Tenant's lender.

28. RIGHT OF ENTRY: The Landlord hereby expressly reserves the right to enter on and inspect the Leased Premises during the term of this Lease Agreement. The Landlord shall only enter the Leased Premises during normal business hours and shall do so in a manner that will not interfere with the Tenant's or sub-tenant's operation of business.

29. MODIFICATION: No modification, alteration or amendment of this Lease Agreement shall be binding unless in writing and executed by the parties.

30. BINDING EFFECT: This Lease Agreement shall be binding upon the parties and their respective heirs, assigns, and successors in interest.

31. HEADINGS: The headings and captions contained herein are included for convenience and reference only, and shall not be considered as any indication of priority or construction of the Lease Agreement.

32. ENTIRE AGREEMENT: This Lease Agreement contains the entire agreement between the parties. Neither the Tenant nor Landlord has relied upon any statements, promises, or agreements in conflict with the terms of this document.

33. SIGNAGE. Tenant may construct, at its sole cost and expense, signage according to design and specifications approved by Landlord through the requirements of the City of Biloxi's and the City's Architectural and Historic Review Committee's applicable codes and the covenants, conditions, and restrictions of this Lease Agreement.

34. NON-WAIVER OF DEFAULT: Waiver by either party hereto of any breach or violation of terms, conditions or covenants of this lease or the non-performance of same for any particular time shall not be construed as a waiver of any succeeding breach or violation of the same or another term, condition or covenant hereof, and the consent, approval or acquiescence by Landlord or Tenant of any breach or violation shall not waive or render unnecessary such consent or approval of any subsequent breach.

35. INVALIDATION: Should any clause or provisions of this Lease Agreement be invalid, void or voidable for any reason, such invalid, void or voidable clause or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect.

36. HOLDING OVER: If Tenant holds over after termination or expiration of this lease, the tenancy thereafter shall be from month to month at a monthly rental rate of Ten Thousand Dollars (\$10,000.00) per month, subject to all other terms, conditions and covenants of this Lease Agreement.

37. BREACH OF CONTRACT: Any assent, expressed or implied, by the Landlord to any breach of any covenant or condition herein contained, shall operate as such only in the specific instances and shall not be construed as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof.

38. CUMULATIVE RIGHTS: The various rights, powers, elections and remedies of the Landlord contained in this Lease Agreement shall be construed as cumulative, and no one of them is exclusive of the other, or exclusive of any rights or priorities allowed by law and no rights shall be exhausted by being exercised on one or more occasion.

39. DEFINITIONS:

A. "Improvements" - shall mean all structures or improvements which shall be hereafter constructed by Lessee on the land, including buildings, parking facilities, driveways, walkways, and gardens, and all fixtures affixed thereto or used in connection therewith.

B. "Land" - shall mean that certain real property described herein, together with all tenements, hereditaments and appurtenances thereunto belonging, but excluding the improvements.

C. "Lease Agreement" - shall mean this Lease Agreement, as the same may be from time to time amended, as provided herein.

D. "Lease Year" - shall mean the period of twelve (12) consecutive months commencing on the date stated herein or any succeeding twelve (12) month period during the term of this Lease.

E. "Premises" - shall mean the land and the improvements.

F. "Rent Commencement Date" and "Date of First Possession"- The Rent Commencement Date shall be the latter date of (a) the date that Tenant receives a temporary or permanent certificate of occupancy after making tenant improvements, or (b) the date the Tenant complies with the requirements of the Mississippi Department of Archives and History under the Historic Preservation Easement and Mississippi Landmark rules applicable to the Leased Premises; provided, however, if neither condition (a) or (b) has occurred by January 1, 2019, the Landlord may notify the Tenant that the Rent Commencement Date is February 1, 2019, or the Landlord may terminate this Lease Agreement by written notice of the termination to be no later than March 1, 2019. The date of first possession by the Tenant shall be fifteen (15) days after execution of this Lease Agreement by the Mayor of the City of Biloxi.

40. **BENEFIT OF CONTRACT:** This contract and the terms, conditions and

covenants herein contained shall inure to the benefits of and be binding upon the parties, their respective heirs, administrators, executors, representatives, successors and assigns.

41. PERSONAL GUARANTY: If the Tenant assigns this Lease Agreement, JOURDAN NICAUD shall simultaneously sign and deliver his Personal Guaranty Agreement to the Landlord, personally and individually guaranteeing the obligations of Tenant under this Lease Agreement.

42. MISCELLANEOUS:

A. Upon the reasonable request of the other party, each party shall join in the execution of a short form lease memorandum setting forth the basic terms and conditions of this Lease Agreement and such short form memorandum may be recorded in the office of the Chancery Clerk of Harrison County, Mississippi.

B. If any term, condition, or covenant of this Lease Agreement shall be held to be invalid by a court of competent jurisdiction, the remaining terms of the Lease Agreement shall remain in full force and effect.

C. This Lease Agreement may be executed in any number of counterparts, each of which when signed by both parties will be deemed an original.

D. Landlord and Tenant shall not be considered or deemed to be joint venturers or partners, and neither shall have the power to bind or obligate the other except as may be provided by law.

E. In the event this Lease Agreement is terminated pursuant to a right to do so herein contained, neither party hereto shall thereafter have any further obligations nor liability one to the other, and this Lease Agreement shall be of no further force or effect.

F. Words of any gender used in this Lease Agreement shall be construed to include

any other gender, and words in the singular shall include the plural and vice versa, unless the context otherwise requires.

IN WITNESS WHEREOF, the parties have made and signed this Lease Agreement in duplicate in the City of BILOXI, State of Mississippi, this the _____ day of _____, 2018.

SIGNATURE PAGE TO FOLLOW

Landlord: CITY OF BILOXI, MISSISSIPPI

BY: _____
A. M. GILICH, JR., MAYOR

Tenant:

JOURDAN NICAUD

Exhibit "A"

MAGNOLIA HOTEL AND ADJACENT LOT

Legal Description of Leased Premises

PARCEL ONE (1):

LEGAL DESCRIPTION: Parcel 1410K-03-125.000 – Magnolia Hotel

Parcel 1 of Block 43, Biloxi Downtown Revitalization Project Area, Mississippi, R-30, Harrison County, Mississippi, generally bounded on the North by Water Street, on the East by the west right-of-way line of Magnolia Street on the South by Parcel 2 of Block 43, on the West by the new East right-of-way of Croesus Street and more particularly described as follows:

Commencing at the intersection of the south line of Water Street (30 foot right-of-way) with the west line of Rue Magnolia Street (28 foot right-of-way); thence run South 00°40'22" East along the west line of said Rue Magnolia Street, a distance of 79.65 feet to the a point being the southeast corner of Parcel 1 of Block 43 and the northeast corner of Parcel 2 of Block 43; thence South 89°22'34" West 149.34 feet to a point on the east line of Croesus Street (22 foot right-of-way); thence run North 00°37'26" West, along said east line, a distance of 82.00 feet, more or less, to the intersection of the south line of Water Street with the east line of Croesus Street; thence east along the south line of Water Street 149.00 feet, more or less, to the Point of Beginning.

And

DEED DESCRIPTION: Parcel 1410K-03-126.000 - Fountain parcel

Parcel 2 of Block 43, Biloxi Downtown Revitalization Project Area, Mississippi, R-30, Harrison County, Mississippi, generally bounded on the North by Parcel 1 of Block 43, on the East by the west right-of-way line of Magnolia Street on the South by Parcel 3 of Block 43, on the West by the new East right-of-way of Croesus Street and more particularly described as follows:

Commencing at the intersection of the south line of Water Street (30 foot right-of-way) with the west line of Rue Magnolia Street (28 foot right-of-way); thence run South 00°40'22" East along the west line of said Rue Magnolia Street, a distance of 79.65 feet to the Point of Beginning of the property herein described; thence continue South 00°40'22" East, along said west line, a distance of 70.00 feet; thence South 89°22'34" West 149.40 feet to a point on the east line of Croesus Street (22 foot right-of-way); thence run North 00°37'26" West, along said east line, a distance of 70.00 feet to a point which is the southwest corner of aforementioned Parcel 1, Block 43; thence run North 89°22'34" East, 149.34 feet to the Point of Beginning, containing 0.24 acres, more or less.

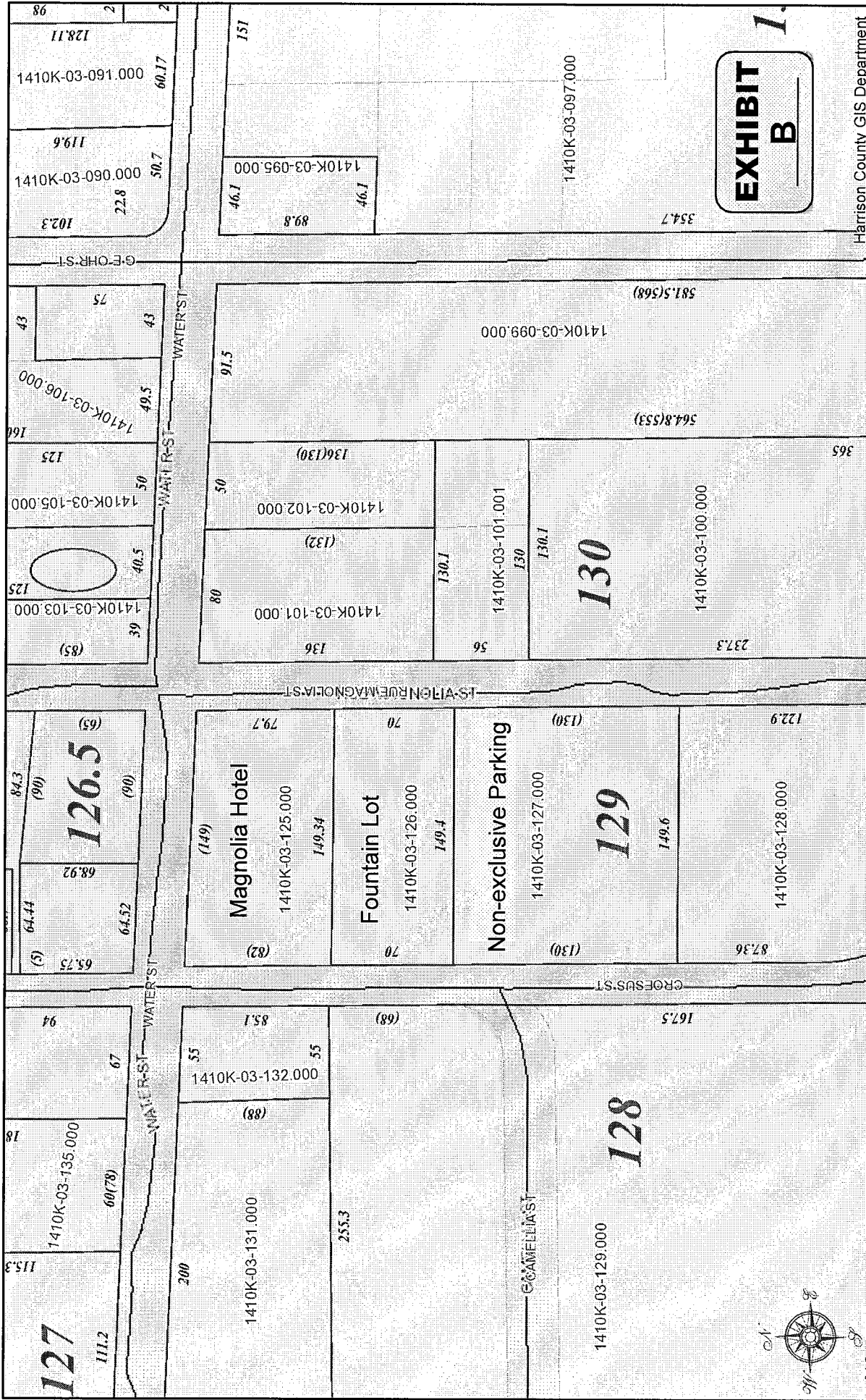
PARCEL TWO (2):

LEGAL DESCRIPTION: Parcel 1410K-03-127.000 – Public Parking Lot

Parcel 3 of Block 43, Biloxi Downtown Revitalization Project Area, Mississippi, R-30, Harrison County, Mississippi, generally bounded on the North by Parcel 2 of Block 43, on the East by the west right-of-way line of Magnolia Street on the South by Parcel 4 of Block 43, on the West by the new East right-of-way of Croesus Street and more particularly described as follows:

Commencing at the intersection of the south line of Water Street (30 foot right-of-way) with the west line of Rue Magnolia Street (28 foot right-of-way); thence run South 00°40'22" East along the west line of said Rue Magnolia Street, a distance of 279.65 feet to the Point of Beginning of the property herein described, said point being the southeast corner of this Parcel 3 of Block 43; thence South 89°22'34" West 149.51 feet to a point on the east line of Croesus Street (22 foot right-of-way); thence run North 00°37'26" West, along said east line, a distance of 130.00 feet, more or less, to a point which is the southwest corner of aforementioned Parcel 2, Block 43; thence run North 89°22'34" East, 149.34 feet to a point on the West line of Rue Magnolia, thence run South 00 degrees 40' 22" East 130.00 feet, more or less to the Point of Beginning.

My Map



HARRISON COUNTY, MISSISSIPPI



DISCLAIMER: THIS MAP IS FOR PROPERTY TAX ASSESSMENT PURPOSES ONLY. IT WAS CONSTRUCTED FROM PROPERTY INFORMATION RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS AND IS NOT CONCLUSIVE AS TO LOCATION OF PROPERTY OR LEGAL OWNERSHIP.

MAP DATE: August 21, 2018