

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5Q

Council Meeting Date: April 7, 2021

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

SUMMARY EXPLANATION:

Resolution of the City Council of Biloxi, Mississippi, ("City") authorizing the Mayor to execute and deliver a Lease Agreement jointly with Harrison County, MS ("County"), as Lessors, to RW Development, LLC ("RW"), as Lessee, for construction and operation of a municipal pier on certain premises at the extension of Veterans Avenue in Biloxi; and for related purposes

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease

Other (Specify): Exhibit A: Lease Agreement

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 OF THE CITY COUNCIL OF BILOXI, MISSISSIPPI, ("CITY") AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER A LEASE AGREEMENT JOINTLY WITH HARRISON COUNTY, MS, ("COUNTY"), AS LESSORS, TO RW DEVELOPMENT, LLC ("RW"), AS LESSEE, FOR CONSTRUCTION AND OPERATION OF A MUNICIPAL PIER ON CERTAIN PREMISES AT THE EXTENSION OF VETERANS AVENUE IN BILOXI; AND FOR RELATED PURPOSES

WHEREAS, Lessors and Lessee specifically acknowledge and agree that RW has duly exercised its option to lease the Leased Premises as provided in that certain *Agreement with RW Development, LLC for Option to Build and Lease New Municipal Pier*, executed July 10, 2019, amended on March 23, 2020, and extended by agreement of the parties to July 10, 2021, by and between RW Development, LLC, and the City of Biloxi ("Option Agreement"); that the Lease Agreement ("Lease"), attached and made a part of this resolution as Exhibit "1" to this resolution, replaces and supersedes the Option Agreement; and that the Lessors and Lessee further acknowledge and agree that if any provisions of the Option Agreement are in conflict with the provisions of this Lease, then the provisions of this Lease shall prevail and control, including, but not limited to, the survival provisions in the Option Agreement's paragraph styled, "4. Lease Agreement" on page 4 of the Option Agreement, which the Lessors and Lessee now agree have not survived the closing and execution of this Lease and are now null, void and of no force and effect;

WHEREAS, RW currently owns in fee simple a parcel of land, and all littoral rights and other appurtenances thereunto belonging, beginning at the southern boundary of U.S. Highway 90 and extending southward to the toe of the Harrison County seawall and being contiguous to and bordering the eastern boundary of Veterans Avenue south of Highway 90, upon which RW proposes to construct and operate food service,

entertainment and recreational enterprises that will be connected to the existing Biloxi West Beach Boardwalk and the proposed new municipal pier authorized in this Lease that will serve tourists and residents of the City, County and State of Mississippi;

WHEREAS, RW currently owns parcels of land from the north boundary of U.S. Highway 90 northward bordering both sides of Veterans Avenue, upon which RW has developed and owns existing food service, entertainment and recreational enterprises that serve tourists and residents of the City, County and State of Mississippi;

WHEREAS, the City owns Veterans Avenue in fee simple and owns all property rights appurtenant thereto, including, but not limited to, littoral rights in the Public Trust Tidelands that are seaward of the toe of the seawall at Veterans Avenue at this site, including, but not limited to, the sand beach and submerged lands seaward of the toe of the seawall;

WHEREAS, in addition to the City's littoral rights that the City enjoys by virtue of being the holder of the fee simple title to bordering uplands, the State of Mississippi ("State" or "Trustee"), as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the City the authority, without the City or its lessees having to obtain a tidelands lease from the Secretary of State or pay any rent to the State:

- (a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of the City's upland fee simple parcels like Veterans Avenue and likewise seaward of the toe of the seawall, and further
- (b) to develop, use, and lease to third parties state Public Trust Tidelands

(including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Lease, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

WHEREAS, in addition to the City's authority to develop, use, and lease Public Trust Tidelands by virtue of the municipal ports and harbors statutes cited in the preceding "Whereas" paragraph of this Lease, the City, by virtue of its ownership in fee simple of the parcel of uplands constituting the Veterans Avenue right-of-way, and all appurtenances thereunto belonging, which parcel of real property extends to the toe of the public seawall which is the southern boundary between the City's upland Veterans Avenue parcel and the Public Trust for Tidelands, is vested with littoral rights within the area designated as the Leased Premises in this Lease, including, but not limited to, the right to construct, or cause to be constructed, own, and maintain, or cause to be maintained, a municipal pier for joint public and private recreational and tourism economic development uses, and the right to lease such pier to third parties without the City or its lessee having to pay any rent to the State, which rights are more fully defined in the *Miss. Code of 1972* sections cited in the preceding "Whereas" paragraph, and as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use.... and encourage commerce on the water....we find that the position of ... Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90]

has merit in that they do enjoy certain littoral rights....”) and *Miss. State Highway Comm’n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) (“They [Gilich] still have the [littoral] rights, pursuant to statute...to construct any beach structures they desire.”);

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site of the proposed Leased Premises and holds the sand beach easement in trust for the public (the “Sand Beach Easement”), as is more fully defined in the County’s *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment (“This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid....”), and in the Final Judgment, dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi, et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) (“The record owners...of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights....Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom.” [Final Judgement, p. 4]; “[T]he rights defined herein are subject to the reasonable exercise of any power vested in....municipalities, to create, operate and maintain....piers...and other such facilities....” [Final Judgement, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court’s Final Judgment and Addendum: *U.S. v. Harrison County*, 399 F. 2d 485 (5th Cir. 1968), and *U.S. v. Harrison County* 414 F. 2d 784 (5th Cir. 1969);

WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its

Legislature, which is the sole policy maker for the Trustee, has granted the County the authority, without the County or its lessees having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying within the Public Trust Tidelands seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, as amended, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5; §29-15-13;

WHEREAS, the City previously built and maintained a "Veterans Avenue" municipal pier on the Leased Premises that was severely damaged and made unusable by Hurricane Katrina; the City continues to own the damaged pilings and cross-ties of the former Veterans Avenue municipal pier that are currently visible on the Leased Premises; furthermore, for the Veterans Avenue Municipal Pier that was built prior to Hurricane Katrina, the City had obtained all the necessary governmental approvals for construction and use, including, but not limited to, a wetlands permit from the Mississippi Department of Marine Resources, for which permit the then Secretary of State made no objection and made no demand for a tidelands lease from the City;

WHEREAS, for many years prior to Katrina, the City operated and maintained a public municipal pier in the Public Trust Tidelands seaward of Veterans Avenue without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, on September 30, 2008, RW obtained, without objection from the Secretary of State or any other state or local agency, a wetlands permit from the Mississippi Department of Marine Resources and the U.S. Corps of Engineers, for construction and operation of a pier at the site of the Leased Premises, but RW did not proceed with development of a pier at that time; and

WHEREAS, the Lessors have determined that this Lease and RW's subsequent redevelopment of, and enhancements to, the City's municipal pier on the Leased Premises will, within and for the City, County, and State, increase employment and tax revenue; assist the City, County and State in recovery from the devastation of prior disasters, including the COVID-19 pandemic; and serve a higher public purpose of the Public Trust for Tidelands; further, Lessors have determined that it is in the best interests of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with RW;

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

SECTION ONE: The findings, conclusions, and statements of fact contained in the preamble of this resolution are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor of the City of Biloxi, Mississippi is authorized to execute and deliver a Lease Agreement in substantially similar form to Exhibit "1" attached to this resolution and made a part of this resolution.

SECTION THREE: This Resolution shall take effect and be in force from and after adoption.



Prepared by and return to:
Peter C. Abide
Currie Johnson & Myers
925 Tommy Munro Drive, Suite H
Biloxi, MS 39532
(228) 385-1010

INDEXING INSTRUCTIONS: Part of Lot 15,
Section 36, Township 7 South, Range 10 West,
being part of Veterans Avenue, a public right-
of-way

**STATE OF MISSISSIPPI
COUNTRY OF HARRISON, SECOND JUDICIAL DISTRICT**

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" or "Agreement") is made, executed, and entered into by and between the

LESSORS:

City of Biloxi, Mississippi,

a political subdivision of the State of Mississippi (the "City")

P. O. Box 429
Biloxi, MS 3953e
(228) 43506254,
and

Harrison County, Mississippi,

a political subdivision of the State of Mississippi (the "County")

P. O. Drawer CC
Gulfport, Mississippi 39502
(228) 865-4116,
and

LESSEE:

RW Development, LLC, ("RW"),

a Mississippi limited liability company ("Lessee")

289 Veterans Ave.
Biloxi MS 39531
(228) 435-7200,

and shall be effective upon the latest date of the full execution of this Lease on the signature page of this Lease by the County, City and RW. ("Effective Date").

PREAMBLE:

WHEREAS, Lessors and Lessee specifically acknowledge and agree that RW has duly exercised its option to lease the Leased Premises as provided in that certain *Agreement With RW Development, LLC For Option To Build And Lease New Municipal Pier*, executed July 10, 2019, amended on March 23, 2020, and extended by agreement of the parties to July 10, 2021, by and between RW Development, LLC, and the City of Biloxi (“Option Agreement”); that this Lease replaces and supersedes the Option Agreement; and that the Lessors and Lessee further acknowledge and agree that if any provisions of the Option Agreement are in conflict with the provisions of this Lease, then the provisions of this Lease shall prevail and control, including, but not limited to, the survival provisions in the Option Agreement’s paragraph styled, “4. Lease Agreement” on page 4 of the Option Agreement, which the Lessors and Lessee now agree have not survived the closing and execution of this Lease and are now null, void and of no force and effect;

WHEREAS, RW currently owns in fee simple a parcel of land, and all littoral rights and other appurtenances thereunto belonging, beginning at the southern boundary of U.S. Highway 90 and extending southward to the toe of the Harrison County seawall and being contiguous to and bordering the eastern boundary of Veterans Avenue south of Highway 90, upon which RW proposes to construct and operate food service, entertainment and recreational enterprises that will be connected to the existing Biloxi West Beach Boardwalk and the proposed new municipal pier authorized in this Lease that will serve tourists and residents of the City, County and State of Mississippi;

WHEREAS, RW currently owns parcels of land from the north boundary of U.S. Highway 90 northward bordering both sides of Veterans Avenue, upon which RW has developed and owns existing food service, entertainment and recreational enterprises that serve tourists and residents of the City, County and State of Mississippi;

WHEREAS, the City owns Veterans Avenue in fee simple and owns all property rights appurtenant thereto, including, but not limited to, littoral rights in the Public Trust Tidelands that are seaward of the toe of the seawall at Veterans Avenue at this site, including, but not limited to, the sand beach and submerged lands seaward of the toe of the seawall;

WHEREAS, in addition to the City’s littoral rights that the City enjoys by virtue of being the holder of the fee simple title to bordering uplands, the State of Mississippi (“State” or “Trustee”), as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the City the authority, without the City or its lessees having to obtain a tidelands lease from the Secretary of State or pay any rent to the State:

- (a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of the City’s upland fee simple parcels like Veterans Avenue and likewise seaward of the toe of the seawall, and further

- (b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Lease, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

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Legislature, which is the sole policy maker for the Trustee, has granted the County the authority, without the County or its lessees having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying within the Public Trust Tidelands seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, as amended, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5; §29-15-13;

WHEREAS, the City previously built and maintained a “Veterans Avenue” municipal pier on the Leased Premises that was severely damaged and made unusable by Hurricane Katrina; the City continues to own the damaged pilings and cross-ties of the former Veterans Avenue municipal pier that are currently visible on the Leased Premises; furthermore, for the Veterans Avenue Municipal Pier that was built prior to Hurricane Katrina, the City had obtained all the necessary governmental approvals for construction and use, including, but not limited to, a wetlands permit from the Mississippi Department of Marine Resources, for which permit the then Secretary of State made no objection and made no demand for a tidelands lease from the City;

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WHEREAS, on September 30, 2008, RW obtained, without objection from the Secretary of State or any other state or local agency, a wetlands permit from the Mississippi Department of Marine Resources and the U.S. Corps of Engineers, for construction and operation of a pier at the site of the Leased Premises, but RW did not proceed with development of a pier at that time; and

WHEREAS, the Lessors have determined that this Lease and RW’s subsequent redevelopment of, and enhancements to, the City’s municipal pier on the Leased Premises will, within and for the City, County, and State, increase employment and tax revenue; assist the City, County and State in recovery from the devastation of Hurricane Katrina, the Great Recession, the Deepwater Horizon oil spill, and the COVID-19 Pandemic; promote economic development; and serve a higher public purpose of the Public Trust for Tidelands; further, Lessors have determined that it is in the best interests of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with RW;

NOW THEREFORE, the Lessors and Lessee do hereby agree that the findings, conclusions, and statements of fact contained in the foregoing Preamble are hereby adopted, ratified, and incorporated in this Lease Agreement, and do hereby agree to the following terms and conditions of this Lease Agreement:

ARTICLE 1 GRANT

Section 1.1 Land and Improvements. For and in consideration of the mutual promises,

covenants, and conditions stated in this Agreement and further in consideration of Ten Dollars (\$10.00) cash in hand paid and the Rent payments as contemplated by this Agreement to be made by Lessee, the receipt and sufficiency of which are hereby acknowledged, Lessors hereby demise and lease to Lessee on a non-exclusive basis, and Lessee hereby takes and leases from Lessors on a non-exclusive basis, that certain parcel of land owned or controlled by Lessors, as described more fully in this Agreement and by the legal description and associated depiction on the excerpt of the Harrison County Tax Parcel Map attached hereto and made a part of this Agreement collectively as Exhibit "A" (herein referred to as the "Leased Premises"). The Leased Premises consists of fee simple upland owned by the City and fastland and submerged land within the Public Trust for Tidelands and all improvements thereon, including, but not limited to, the existing pilings and related structure of the former municipal pier damaged by Hurricane Katrina, as depicted on Exhibit "A". The grant of the Leased Premises is subject to the covenants and conditions for public use and access stated in this Lease and includes (a) the City's fee simple upland, (b) the City and County's interests, as political subdivisions of the State vested with the authority to lease certain Public Trust Tidelands in and to the fastland (the sand beach) and submerged land for construction and maintenance of piers, (c) the non-exclusive use of the County's Sand Beach Easement subject to the covenants and conditions of the County's Sand Beach Ordinance and the Final Judgment and Addendum to the Final Judgment of the U.S. District Court for the S. Dist. of Miss., S. Div., in *United States of America v. Harrison County, Mississippi, et. al.*, Civil Action Number 2262 entered October 8, 1970, (d) the non-exclusive use of the County's Seawall Easement, and (e) the City's littoral rights in the fastlands, submerged lands and improvements thereon. Lessee shall have reasonable access to the roadways of the City of Biloxi for egress and ingress and to the Leased Premises to accommodate Lessee's operations.

ARTICLE 2 TERM

Section 2.1 Term. The Term of the Lease shall be five (5) years (the "Term"). The Term of the Lease shall commence upon the Effective Date.

ARTICLE 3 RENT

Section 3.1 Base Rent. Lessee shall pay Lessors rent for the Leased Premises as follows: Base Rent. Lessee shall pay to Lessors base rent of One Thousand Dollars (\$1,000.00) per month (the "Base Rent"), payable in advance on the first day of each month, beginning on the Base Rent Commencement Date defined in this Agreement.

Section 3.2 Rent Payments and Commencement Date. The Base Rent shall commence on the earlier of the following events: (a) the date that RW receives final approval from the City of RW's completion of construction of the new municipal pier contemplated in this Agreement, or (b) two years from the Effective date of this Agreement (the "Base Rent Commencement Date".)

RW shall pay the Base Rent monthly on or before the tenth (10th) day of the month following each month from and after the Base Rent Commencement Date, with the first month to be pro-rated by the number of days in the calendar month of the Base Rent Commencement

Date.

RW shall pay the Base Rent to the County and the City simultaneously by paying each of them one-half of the Base Rent due for the month of payment.

All Base Rent shall be payable at the seat of government addresses stated in this Agreement for the City and County, respectively, or at such other place as Lessors may designate in writing.

Section 3.3 Triple Net Lease. It is the intention and agreement of Lessors and Lessee that the Base Rent herein specified shall be net to Lessors in each year during the Term of this Lease and any renewal term; that all costs, expenses, taxes, charges, utilities, and obligations of every kind relating to the Leased Premises, including, but not limited to the costs of maintaining and repairing the Leased Premises from and after the Base Rent Commencement Date, which may arise or become due during the Term of this Lease shall be paid by Lessee; and that Lessors shall be indemnified by Lessee against such costs, taxes, expenses, utilities, charges and other obligations.

ARTICLE 4 CONSTRUCTION, ALTERATIONS AND EQUIPMENT

Section 4.1 General. Lessee shall at its own cost and expense, renovate the existing damaged municipal pier construct a new public municipal pier on the Leased Premises for the uses described in Article 5 below. Lessee shall submit to the City and County a rendering of the proposed construction within thirty (30) days of the Effective Date of this Lease. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state and local governmental bodies and agencies having jurisdiction over the performance of such construction work. Lessors shall cooperate with Lessee's efforts in obtaining governmental consents, approvals and permits, provided all permit fees shall be paid by Lessee.

Section 4.2 Initial Construction. Prior to Initial Construction, final building plans and specifications shall be submitted to Lessors for approval by the Mayor and President of the Board of Supervisors, respectively. Provided such plans and specifications are in substantial performance with the drawings, renderings and/or plans furnished by Lessee as set forth in Section 4.1, such approval shall not be unreasonably withheld or delayed.

Section 4.3 Failure to submit plans, Commence Construction or Complete Construction. Lessee shall submit final building plans and specifications for approval to Lessors within ninety (90) days from approval by the Mayor and President of the Board of Supervisors of the rendering of the proposed pier. Lessee shall obtain a building permit from the City of Biloxi. Lessee shall obtain permits and commence actual construction of such pier within sixty (60) days of approval of the final building plans and specifications by Mayor and President of the Board. This sixty (60) day commencement date is subject to any delay that may be caused due to the failure of permitting by any other federal, state or state agency, which may be required. Notwithstanding anything in this paragraph to the contrary, construction of the pier shall be

completed and the facility operating not later than June 30, 2022.

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

ARTICLE 5 USE

Section 5.1 General. Subject to the covenants and conditions for public use and access provisions defined in Section 1.1 (the Grant of the Leased Premises) of this Agreement for joint public and private use of, and access to, the Leased Premises, Lessee shall be entitled to the non-exclusive use and possession of the Leased Premises from and after the Effective Date of this Agreement for the purposes and uses provided in this Agreement. Lessee shall use the Leased Premises for non-gaming recreational facilities and activities including, but not limited to, renovation, construction, operation and maintenance of a public municipal pier and other incidental marine and recreational purposes related thereto and serving public purposes of the Public Trust for Tidelands to enhance, *inter alia*, public and private opportunities for fishing, sailing, boating, and marine sports, and make available public and private use and enjoyment of the municipal pier on the Leased Premises. Lessee shall not use the Leased Premises in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body. No gaming shall be allowed on the municipal pier, nor on any vessels docked or berthed at the pier, nor on any other area of the Leased Premises.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Leased Premises are accepted by Lessee "as is" in their present condition. Except as otherwise provided herein, Lessee shall at all times during the Term of this Lease and at its own expense keep the Leased Premises in good order, condition and repair, and shall make all repairs thereto, ordinary and extraordinary, that may be required during the Term hereof, except for maintenance and repair of the sand beach which shall continue to be the responsibility of the County. Lessee shall indemnify and save harmless Lessors against and from any loss, costs, damage and reasonable expenses arising out of or in connection with Lessee's use of the Leased Premises, or any part thereof.

Section 6.2 Lessors' Obligation.

Lessors shall have no obligation to maintain the pier on the Leased Premises. However, Lessors shall provide easements for the necessary utilities to service the improvements made by Lessee, should such easements be necessary.

Section 6.3 Lessee's Obligation. Lessee shall, as required by this Lease, maintain, repair and replace the items comprising the pier on the Leased Premises, including but not limited to, pilings, boards, steps and structural portions of the pier to be constructed upon the Leased Premises, and all wiring, plumbing, conduits and other utilities which service the pier and the Premises. Lessee shall deliver the Leased Premises to Lessors on the expiration or termination of this Lease in good repair and condition, reasonable wear and tear excepted and free and clear of all material liens or encumbrances created or claimed by reason of transactions made by Lessee.

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

**ARTICLE 7
UTILITIES**

Section 7.1 Initial Connections. Lessors warrant to Lessee that Lessors will cause the necessary mains and conduits in order that water and sewer facilities, electricity, telephone and other utilities necessary to initial conduct of Lessee's intended business to be made available for connection within the Leased Premises. It is understood that all service hereunder shall be furnished by public utilities and not by Lessors.

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

**ARTICLE 8
TAXES AND ASSESSMENTS**

Section 8.1 Real Property Taxes. Lessee shall pay, prior to any delinquency, all real

property taxes assessed and levied against the Leased Premises. if any.

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

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

ARTICLE 9 INSURANCE AND INDEMNITY

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

Section 9.2.1 Property Damage Insurance. Throughout the Term of this Lease, Lessee shall maintain insurance coverage on the Premises, including fire, windstorm and flood insurance, naming Lessors as additional insured, in the full amount of the replacement value of the improvements, including building code requirements endorsement once such improvements are complete and appropriate builder's risk insurance during the period of construction of improvements. Such insurance value shall be increased (but never decreased) periodically to always reflect the fair market replacement value of Premises. In the event the rate of the insurance on the said Premises is increased for any reason, Lessee shall pay the increased cost of the insurance at the time the premium notice is presented to Lessee. Lessee and its insurers waive subrogation against Lessors.

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

Lessee shall deliver to Lessors copies of the certificates of insurance evidencing the existence in force of the policies of insurance described in this Article 9. All of the policies of insurance required to be maintained hereunder shall be issued by an insurer licensed to do

business within the state in which the Leased Premises are located. Each certificate shall provide that the insurance shall not be canceled or materially amended unless thirty (30) days' prior written notice of cancellation or amendment is given to the other party. Failure to have Lessors included and named as a co insured on any such policy shall be considered an act of default.

Section 9.2.2 General Liability Insurance. Lessee agrees to indemnify and save Lessors harmless from all claims for damages, to goods, merchandise, persons and other property in or upon the Leased Premises, and any platforms of Lessee, arising out of or occasioned by Lessee's use or occupancy, except such damages resultant from the negligence of Lessors, its agents, servants or employees, or caused by Lessors' failure to perform any of its obligations hereunder.

Lessee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Leased Premises, insuring Lessors, Lessors' beneficiaries and agents and the holders of any notes secured by a first mortgage or trust deed on the Leased Premises. Such insurance may be carried under a blanket policy covering the Leased Premises as well as other locations in which Lessee or any of its affiliated or subsidiary corporations or other entities may be interested. Lessee will promptly furnish Lessors with a certificate of said coverage, and all renewals thereof. In the year following each five-year interval of the Initial Term and any renewal term of this Lease, the Lessee shall adjust the amount of general liability insurance to be an amount reasonable sufficient to reflect the consumer price index increases during such interval.

Section 9.3 Additional Named Insured: Act of Default. All policies of insurance required hereby shall include Lessors as an additional named insured.

Failure to have Lessors included and named as an additional named insured on any such policy shall be considered an act of default.

Notwithstanding the provisions of Section 16 of this lease agreement, should such default continue for a period of ten days after notice of default by Lessors to lessee, Lessors may but is under no obligation to purchase insurance coverage to protect Lessors' interests only in the leased premises and its improvements, in which case the cost of such insurance shall be considered as additional rent due immediately from Lessee.

This lease shall terminate upon the expiration of thirty days from the date of such Notice of Default should Lessee fail to correct such omission or exclusion and have Lessors added as an additional named insured under all such policies.

Should any loss occur at a time when Lessors is not included as an additional named insured under Lessee's insurance policy Lessors shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss.

Section 9.4 No Hazardous Use. Lessee will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk materially more hazardous, it being understood and agreed that the use of the Leased Premises in the proper and ordinary conduct of Lessee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.5 Waiver of Subrogation. Recognizing that Lessors are governmental subdivisions of the State of Mississippi, and thus to the extent but only to the extent allowed under law, Lessors and Lessee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Lessors and Lessee, as the case may be, their respective property, or to the Leased Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only, Lessors and Lessee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Lessors and Lessee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting therefrom to pay such additional costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.6 Indemnification for Host Liquor Liability. Lessee will defend, indemnify, save free and hold harmless the Lessors for any action or damages, including, attorney's fees and costs, resulting from a claim relating to host liquor liability.

ARTICLE 10 SIGNS

Section 10.1 General. With the prior approval of Lessors, which such approval shall not be unreasonably withheld or delayed, Lessee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Leased Premises which otherwise comply with applicable laws and County Sand Beach Ordinance and City of Biloxi sign ordinances.

Lessee's installation and removal of such sign shall be made in such manner as to avoid injury, defacement and structural overloading of the Leased Premises or other improvements.

ARTICLE 11 ASSIGNMENT, SUBLETTING AND RIGHT OF PURCHASE

Section 11.1 General. Lessee may not assign this Lease, or any interest herein, or sublet the whole or any part of the Leased Premises, nor transfer majority interest or effective control of or interest in Lessee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Lessee, without the prior written approval of Lessors. Any such approval by Lessors will only be with the approval of the intended Assignee by

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

ARTICLE 12 RIGHT OF ENTRY

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

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

ARTICLE 13 CASUALTY

Section 13.1 Substantial Destruction. If the Leased Premises is substantially destroyed (50% or more of replacement cost) by fire, hurricane, storm, or other casualty, or if said damage is to such extent that it reasonably appears rebuilding or repair cannot be completed within one hundred eighty (180) days of said casualty, Lessee shall have the duty to repair and restore the Leased Premises, and this Lease shall remain in full force and effect while Lessee proceeds with due diligence to repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty. Lessee shall promptly commence repair and restoration of the building and structures on the Leased Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration within 365 days of the date of casualty, or as quickly as is commercially reasonable to do. In the event of substantial destruction as provided herein, such insurance proceeds as may be payable due to such destruction shall be first paid to any secured lien holders holding liens for funds advanced and used exclusively for the construction

of the improvements located on the leased premises, and only to the extent of such advances. After such payment to said secured lien holders the balance of insurance proceeds shall be paid in full to Lessors but held by Lessors. If Lessee repairs and restores the Leased Premises to substantially the same or better condition as prior to such casualty, Lessors shall reimburse Lessee's construction costs of such repair or restoration up to the amount of same or the amount of insurance payment made to Lessors, whichever is lesser.

Section 13.2 Partial Destruction. In the event the Leased Premises should be damaged or destroyed by fire, hurricane, storm, or other casualty, Lessee shall give written notice thereof to Lessors within a reasonable time, not to exceed seventy-two (72) hours. If the Leased Premises shall be damaged by fire, hurricane, storm, or other casualty, but (1) not to such extent as to be substantially destroyed (50% or more of replacement cost) or (2) to such extent that rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Lessee shall proceed with reasonable diligence to rebuild and repair the Leased Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Leased Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third party approvals cannot be obtained within said time or if all infrastructure for required utilities remains unavailable to the Leased Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction.

ARTICLE 14 DEFAULT OF LESSEE

Section 14.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Lessee under the Lease:

14.1.1 Lessee shall fail to pay any installment of the Base Rent and such failure shall continue for a period of ten (10) days after the due date of such installment.

14.1.2 Lessee shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of Base Rent or insurance, and such failure shall continue for a period of thirty (30) days after Lessors' written notice thereof to Lessee.

14.1.3 Lessee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.

14.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee; provided, however, that no default shall occur under this Section 14.1.4 so long as Lessee continues to pay the Base Rent and is not otherwise in default under any other provision of this Lease).

14.1.5 If Lessee abandons any substantial portion of the Leased Premises and ceases to pay the Base Rent.

14.1.6 Assignment or subletting by Lessee shall be an act of default unless such assignment or subletting is first approved in writing by Lessors or unless otherwise permitted under this Lease under Article 11 hereof.

14.1.7 Lessee shall fail to have in effect or maintain insurance herein required on Leased Premises which includes Lessors as a named insured along with Lessee, in which case the provisions of Article 9 shall apply.

Section 14.2 Remedies of Lessors. Except as otherwise provided herein, upon the occurrence of any act of default, Lessors shall provide written notice of such default to Lessee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Lessee shall have thirty days from the date of such notice to cure any default under the lease. Should Lessee fail to cure any default hereunder, Lessors shall have the option to pursue any one or more of the following remedies after giving written notice to Lessee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

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

14.2.2 Enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary; and Lessee agrees to pay to Lessors on demand any deficiency that may arise by reason of such re-letting.

Section 14.3 Operation of Lessee. It shall be considered an act of default if after the initial construction of the pier is complete and opens to the public, the pier or any replacement fails to be open and usable for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial or Partial Destruction as described above.

ARTICLE 15 RENT PAYMENT AND NOTICE

Section 15.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to Lessors shall be deemed to be complied with when and if the following steps are taken. All Base Rent

and other payments required to be made by Lessee to Lessors hereunder shall be payable in cash to the City and County (with one-half of the total of each rent payment to be paid to each to the City and County) either (a) by electronic transfer to City and County bank accounts, respectively, for which City and County shall within a reasonable time after executing this Lease Agreement notify the Lessee in writing of the account numbers and electronic transfer information; or (b) by checks delivered to their respective seats of government at the following addresses:

City of Biloxi, Mississippi
City Hall
140 Lameuse Street
Biloxi, MS 39531

Harrison County, Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

or at such other address as Lessors may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith) and shall be deemed received only when actual collected funds are in the accounts of Lessors. In the event any check or instrument drawn by Lessee and delivered to Lessors as payment for any sum due hereunder is dishonored or refused payment, it shall be treated as if no payment had been made.

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

Lessee: RW Development, LLC
Ray Wooldridge, Manager
289 Veterans Avenue
Biloxi, MS 39531

With a copy to: Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Post Office Box 1911
Biloxi, Mississippi 39533

Lessor: City of Biloxi: City of Biloxi, Mississippi
c/o A. M. Gilich, Jr., Mayor of Biloxi
City Hall

140 Lameuse Street
Biloxi, Mississippi 39530

With copy to:

Peter Abide, City Attorney
City Hall
140 Lameuse St.
Biloxi, Mississippi 39530

Lessor:

Harrison County, Mississippi
c/o Beverly Martin
President, Board of Supervisors
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

With Copy to:

Tim Holleman, Attorney for Bd. of Supervisors
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

ARTICLE 16 MISCELLANEOUS

Section 16.1 Tax Credits. The parties agree that Lessee shall be entitled to any and all Investment Tax Credits, Rehabilitation Expenditure Tax Credits or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Lessee's work (See, Section 4.1 above) in the Leased Premises.

Section 16.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Lease or in any way affect this Lease.

Section 16.3 Consent. Whenever the consent of either party is required to an action under the terms of this Lease, unless otherwise provided herein such consent shall not be unreasonably conditioned, withheld nor delayed.

Section 16.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 16.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for

brokerage commissions or finder's fees will arise in connection with the execution of this Lease Agreement, and each of the parties agrees to indemnify the other against and hold it harmless, from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of reasonable attorneys' fees in connection therewith).

Section 16.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Lease, including the rights herein granted to terminate this Lease, shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Lessors and Lessee set forth herein be deemed both a covenant and a condition.

Section 16.7 Governing Law. Jurisdiction and Venue. This Lease shall be interpreted and construed under the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

Section 16.8 No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessors and Lessee, and neither the method of computation of rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Lessors and Lessee other than the relationship of Lessors and Lessee.

Section 16.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 16.10 Entire Agreement; Option Agreement Superseded; Amendments. As of the execution hereof, this Lease contains all covenants and agreements between Lessors and Lessee exclusively relating in any manner to the rental, use and occupancy of the Leased Premises and the other matters set forth in this Lease. No prior agreement or understanding, written or oral, pertaining to the same shall be valid or of any force or effect. Lessors and Lessee specifically acknowledge and agree that this Lease replaces and supersedes that certain *Agreement With RW Development, LLC For Option To Build And Lease New Municipal Pier*, executed July 10, 2019,

amended on March 23, 2020, and extended to July 10, 2021, by and between RW Development, LLC, and the City of Biloxi ("Option Agreement"), and the Lessors and Lessee further acknowledge and agree that if any provisions of the Option Agreement are in conflict with the provisions of this Lease, then the provisions of this Lease shall prevail, including, but not limited to, the survival provisions in the Option Agreement's paragraph styled, "4. Lease Agreement" on page 4 of the Option Agreement, which are now agreed not to survive the closing and execution of this Lease and now to be null, void and of no force and effect. The covenants and agreements of this Lease cannot be altered, changed, modified or added to, except in writing signed by Lessors and Lessee. No renewal after this Lease terminates shall be binding on either party unless it be in writing and signed by the Lessors and Lessee.

Section 16.12 Severability; Invalidity of Whole. Any provision or provisions of this Lease which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. If a court of competent jurisdiction determines in a final, non-appealable judgment that all of the provisions of this Lease are invalid, void or illegal, then, as of the date of such final, non-appealable judgment, this Lease shall be terminated, cancelled and considered void *ab initio* and the parties shall have no duties, obligations, or liability of any kind to any of the other parties for any claims, damages, injuries, or losses of any kind arising out of the Lease.

Section 16.12 Waste and Nuisances. The Lessee agrees not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Leased Premises and will, when requested by the property authorities, abate all nuisances at its own expense.

Section 16.13 Late Fee and Charges. Should Lessee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Lessors shall charge as late fees an additional one and one-half percent (1.50%) of the outstanding balance due, commencing as of the date such amounts were originally due.

Section 16.14 Proof of Payment. No set-off in the payment of the Base Rent or Additional Rent herein shall be allowed unless signed by Lessors, its legal representative or assigns, and the proof of the payment of the Base Rent and Additional Rent shall be on Lessee in all controversies.

Section 16.15 Quiet Enjoyment. Lessors warrant and guarantee that they have the full right and authority to enter into and perform this Lease Agreement and to grant the estate herein leased, and the Lessors covenant and agree that at all times during the term of this Lease, including any extension thereof, Lessee, subject to the County Sand Beach Ordinance and the provisions, covenants, and requirements for public use and access defined in this Lease, shall have quiet and peaceful enjoyment of the Leased Premises and of all Lessee's rights, easements, appurtenances and privileges belonging or otherwise appertaining thereto and shall not be disturbed or interfered with by Lessors or any person; provided, however, Lessors do not warrant and guarantee quiet enjoyment as against the State of Mississippi.

Section 16.16 Time is the Essence. Time is of the essence with respect to all matters provided in this Lease Agreement.

Section 16.17 Concurrent Rights. Nothing in this Lease is intended to circumvent or supersede any concurrent rights that Harrison County, the State of Mississippi, or any state or federal agency may have in the circumstances that may be applicable to the Leased Premises or to the Lessee.

-----END OF TEXT OF LEASE - SIGNATURE PAGE FOLLOWS-----

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed on the dates beside the signatures of their authorized representatives below.

ATTEST:

Lessor: CITY OF BILOXI, MISSISSIPPI

Municipal Clerk

By: _____
A. M. Gilich, Jr. Mayor

Date: _____

ATTEST:

Lessor: Harrison County, Mississippi

Chancery Clerk

By: _____
Beverly Martin, President,
Board of Supervisors

Date: _____

WITNESS OR ATTEST:

Lessee: RW Development, LLC

By: _____
Ray Wooldridge, Manager

Date: _____

EXHIBIT "A" TO LEASE
LEGAL DESCRIPTION OF LEASED PREMISES
AND TAX PARCEL MAP DEPICTING LEASED PREMISES

IN ADDITION TO THE WRITTEN LEGAL DESCRIPTION OF THE LEASED PREMISES ON THIS PAGE 1 OF EXHIBIT "A", AN EXCERPT OF THE HARRISON COUNTY TAX PARCEL MAP DEPICTING THE LEASED PREMISES AND VICINITY IS ATTACHED AS PAGE 2 OF EXHIBIT "A". THE PARTIES AGREE THAT BEFORE BEGINNING CONSTRUCTION OF THE PIER, RW WILL PROVIDE TO THE CITY AND COUNTY A SURVEY BY A LICENSED MISSISSIPPI LAND SURVEYOR DEPICTING THE LEASED PREMISES AND PROPOSED PIER AND OTHER IMPROVEMENT AND PROVIDING A MORE DETAILED LEGAL DESCRIPTION OF THE PROPERTY. THE SURVEY MUST RECEIVE WRITTEN APPROVAL OF THE CITY AND COUNTY, WHICH APPROVAL SHALL NOT UNREASONABLY BE WITHHELD, AND COPIES OF THE APPROVED SURVEY SHALL BE ATTACHED TO, AND BECOME A PART OF, THE FULLY EXECUTED LEASE AGREEMENT HELD BY EACH OF THE PARTIES.

THE LEGAL DESCRIPTION OF THE LEASED PREMISES IS AS FOLLOWS:

That certain parcel of land, being composed of uplands, fastlands and submerged lands, and the air rights and littoral (riparian) rights appurtenant thereto belonging, situated in the City of Biloxi, Second Judicial District of Harrison County, Mississippi, being part of the land comprising the right of way of Veterans Avenue and located within approximately parallel lines that are Veterans Avenue's eastern and western boundaries north of the northern boundary of Highway 90 and extending those lines southward to the southern boundary of Highway 90 and then running along the southern boundary of Highway 90 to points at the eastern and western boundaries of Veterans Avenue where it begins south of Highway 90 and then extending in approximately parallel lines into the fastlands, submerged lands and waters of the Mississippi Sound to the northern boundary of the Biloxi Navigation Channel. This parcel is bordered on the north by a line beginning at a point on the western border of Veterans Avenue two hundred (200) feet north of the northern boundary of Highway 90 and extending eastward in a straight line to a point on the eastern border of Veterans Avenue two hundred (200) feet north of the northern boundary of Highway 90; on the east by the eastern border of Veterans Avenue beginning at the northern boundary of these Leased Premises and continuing southward on the eastern boundary of Veterans Avenue to a point at the southern boundary of Highway 90 and then continuing westward on the southern boundary of Highway 90 to a point at the beginning of the eastern boundary of Veterans Avenue south of Highway 90 and continuing southward on the eastern boundary of Veterans Avenue to the toe of the Harrison County Seawall, which is the southern end of the City's fee simple title to the uplands that comprise Veterans Avenue, and continuing in a straight line being an extension of the eastern boundary of Veterans Avenue to the northern boundary of the Biloxi Navigation Channel in the Mississippi Sound; on the south by the Biloxi northern boundary of the Biloxi Navigation Channel; and on the west by the western boundary of Veterans Avenue beginning at a point where it intersects with the northern boundary of the Biloxi Navigation Channel and continuing northward in a straight line being the extension of the western boundary of that part of Veterans Avenue that is south of Highway 90 until the western boundary of Veterans Avenue intersects with the southern boundary of Highway 90 and then continuing westward on the southern boundary of Highway 90 to a point at the intersection of the western boundary of extended Veterans Avenue and the southern boundary of Highway 90 and continuing northward on the western boundary of Veterans Avenue to the northern boundary of the Leased Premises.

