

**AGREEMENT TO EXTEND LEASE WITH LANDRY'S SEAFOOD AND STEAK HOUSE-CORPUS CHRISTI, INC.**

THIS AGREEMENT is made and entered into between the **CITY OF CORPUS CHRISTI**, a municipal corporation and political subdivision of the State of Texas, hereinafter referred to as "CITY," and **LANDRY'S SEAFOOD AND STEAK HOUSE-CORPUS CHRISTI, INC.** a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Texas, hereinafter referred to as "Landry's"

Whereas, the parties previously entered into a five-year Lease Agreement, with term beginning on January 1, 2010; ("Lease Agreement");

Whereas, the parties desire to extend the term of the Lease Agreement for an additional five year term;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1) Section 4 of the Lease Agreement, "Term", is amended to extend the term from January 1, 2015 thru December 31, 2019 ("Extension Period").
- 2) Section 5 of the Lease Agreement, "Lease Rate and Payments", is amended to provide Lease Rate and Payments during the Extension Period as follows :
  - (A) From January 1, 2015 through December 31, 2016, the Lessee shall pay the City a base lease rate of \$6,657.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment"); and then
  - (B) From January 1, 2017 through December 31, 2018, the Lessee shall pay the City a base lease rate of \$7,056.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment"); and then
  - (C) From January 1, 2019 through December 31, 2019, the Lessee shall pay the City a base lease rate of \$7,500.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment").
  - (D) "**Gross Sales**" means all sales of food, drink, souvenir items, and all merchandise of any kind, prepared, produced or sold on the Premises or sold

on the Peoples Street T-Head, excluding credit card transaction fees and sales, consumption and alcoholic beverage taxes.

- (E) Payments must mailed or delivered and made payable to the order of the City of Corpus Christi Marina Department, 400A North Shoreline Blvd., Lawrence Street T-Head, Corpus Christi, TX, 78401

- 3) This Agreement takes effect on date of last signature.
- 4) All other terms and conditions of the Lease Agreement between Landry's Seafood and Steak House – Corpus Christi, Inc. and the City of Corpus Christi approved by City Council on December 9, 2009, which are not inconsistent herewith shall continue in full force and effect during this Extension Period. A copy of the current Lease Agreement is attached as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have themselves or through their duly authorized officers executed this Extension Agreement effective as of the date of last signature.

EXECUTED IN DUPLICATE ORIGINALS by the authorized representative of the parties.


**City of Corpus Christi, Texas**

By: \_\_\_\_\_  
**Ronald L. Olson**  
**City Manager**  
Date: \_\_\_\_\_

Approved as to legal form this \_\_\_\_ day of \_\_\_\_\_, 2014:

By: \_\_\_\_\_  
**Lisa Aguilar**  
**Assistant City Attorney**  
**for the City Attorney**

LANDRY'S SEAFOOD AND STEAK HOUSE – CORPUS CHRISTI, INC.

By:   
Name: Steven L. Scheinthal  
Title: Vice President  
Date: November 18, 2014

Legal LF

State of Texas §

County of Harris §

This instrument was acknowledged before me on the 18<sup>th</sup> day of November, 2014, by Steven L. Scheinthal, as Vice President for Landry's Seafood and Steak House – Corpus Christi, Inc., a Texas corporation, on before of the corporation.

  
Notary Public



Exhibit A  
Copy of December 2009 Lease Agreement

**LEASE AGREEMENT  
BETWEEN  
LANDRY'S SEAFOOD AND STEAK HOUSE – CORPUS CHRISTI, INC.  
AND THE  
CITY OF CORPUS CHRISTI**

**THE STATE OF TEXAS §**

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF NUECES §**

This lease ("**Lease**") is entered into between the City of Corpus Christi ("**City**"), a Texas municipal home-rule corporation, acting through its duly authorized City Manager ("**City Manager**"), and Landry's Seafood & Steak House-Corpus Christi, Inc., a Texas corporation ("**Lessee**");

The City, in consideration of Lessee's faithful performance of the conditions and covenants contained in this Lease, leases to Lessee a dockside area in the Corpus Christi Marina ("**Marina**"), as follows:

**Section 1. Preamble Language.** The preamble language included above this initial numerated section is incorporated into this Lease by reference and made a part of this Lease for all intents and purposes.

**Section 2. Premises.** Lessee is granted use of sufficient berthing space on the north side of the Peoples Street T-Head, to accommodate a barge restaurant to be permanently moored pursuant to US Coast Guard rules and regulations, and related site improvements, including the additional adjacent space designated "Boardwalk" on the attached **Exhibit A** (all areas collectively referred to as the "**Premises**"), which is incorporated in this Lease by reference, and is set forth in Landry's proposal in response to RFP BI 0132-09 and in compliance with applicable City of Corpus Christi codes and ordinances.

**Section 3. Permitted Uses.**

- (A) Lessee must use the Premises primarily as a restaurant, to include outside dining, and secondarily as a bar.
- (B) Lessee may use the bar, as a secondary use only, to sell and serve alcoholic beverages if Lessee has complied, and remains in compliance, with all State and local laws, rules, regulations, and ordinances. Additionally, the bar may be used by Lessee for the sale of souvenirs and other merchandise secondary to and as appropriate to complement food and drink service.

- (C) The business operation must be confined to the barge restaurant, Boardwalk, and deck areas within the Premises.
- (D) This Lease is not an exclusive right to operate a restaurant in the Marina area.

**Section 4. Term.** The term of this Lease shall begin on January 1, 2010 and be for five (5) years, unless terminated earlier as provided herein. Thereafter, the Agreement shall become month-to-month until a new lease has been re-negotiated.

**Section 5. Lease Rate and Payments.**

- (A) From January 1, 2010 through December 31, 2011, the Lessee shall pay the City a base lease rate of \$6,000.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment"); and then
- (B) From January 1, 2012 through December 31, 2013, the Lessee shall pay the City a base lease rate of \$6,300.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment"); and then
- (C) From January 1, 2014 through December 31, 2014, the Lessee shall pay the City a base lease rate of \$6,657.00 per month or 2.75% of monthly "Gross Sales", whichever is greater (the "Lease Payment").
- (D) "**Gross Sales**" means all sales of food, drink, souvenir items, and all merchandise of any kind, prepared, produced or sold on the Premises or sold on the Peoples Street T-Head, excluding credit card transaction fees and sales, consumption and alcoholic beverage taxes.
- (E) Payments must be made to the order of the City of Corpus Christi and mailed to the City Collections Department, P. O. Box 9277, Corpus Christi, TX, 78469, or delivered to City Hall at 1201 Leopard Street, Corpus Christi, TX, 78401.

**Section 6. Lease Payment Abatement.**

- (A) The monthly Lease Payment shall be abated during the time Lessee ceases restaurant business operations as set forth hereinafter:
  - (1) in preparation for closure due to the implementation by a legally authorized official of the City of Corpus Christi or Nueces County of a declaration that requires the cessation of all normal operations of the restaurant in accordance with Lessee Hurricane Preparedness Plan ("**Hurricane Plan**"), a copy of which is attached as **Exhibit C** and incorporated in this Lease by reference, or any other condition declared by a legally authorized official of the City of Corpus Christi or Nueces County that requires the cessation of all normal operations of the restaurant;

- (2) whenever the barge is rendered substantially unusable because of damage resulting from fire, water, wind, or force majeure; or
  - (3) in the event major repair, renovation, or construction prohibits access to and through the Peoples Street T-Head.
- (B) In the event that a condition in subsection (A) of this section occurs and Lessee desires to claim a Lease Payment abatement, Lessee must notify the City's Marina Superintendent, City Manager or the Marina Superintendent's designee ("**Marina Superintendent**") in writing within three (3) business days following the occurrence of a condition stated in subsection (A) of this section or as soon as practical under the circumstances, providing the date, time, and reason for cessation of restaurant business operations and the expected date of resumption of restaurant business operations.
- (C) Lessee must resume its restaurant business operations as soon as practical after a condition that caused the cessation of restaurant business operations no longer exists. Lessee must provide the Marina Superintendent with written notice within 24 hours after resuming restaurant business operations.
- (D) The Lease Payment abatement amount will be a pro rata share of the minimum monthly Lease Payment due for each day of cessation of business as provided herein.

#### **Section 7. Monthly Financial Statements; Audit of Records.**

- (A) Lessee must keep strict and accurate books of account and records of Gross Sales and of all receipts collected.
- (B) Lessee must furnish monthly statements of Gross Sales, certified by an authorized officer of Lessee, in accordance with generally accepted accounting principles and procedures and in a form approved by the City's Director of Finance.
- (C) Lessee's books and records must be open for inspection by the City Manager at all reasonable times.
- (D) All underlying documentation for Lessee's certified monthly statements, including, but not limited to, cash register and computer terminal tapes, must be preserved by Lessee for at least three (3) years. The City Manager may terminate this Lease for failure to preserve such records or provide them to the City upon the City Manager's request.
- (E) The City Manager may audit Lessee's books and records at any time to verify Gross Sales for any period within three (3) years prior to an audit.

(1) "Books and records" includes, but is not limited to, all documents related to the conduct of the business such as: general ledgers, accounts receivables and payables, sales journals, inventory records, daily and periodic summary re-ports, cash register and computer terminal tapes, bank deposit slips, bank statements, tax reports to State and Federal agencies, and discount and rebate records.

(2) Any additional payments due the City, as may be determined by an audit, must be paid by Lessee to the City, with annual interest of 10% from the date the payment became due, within 30 days of such determination and notice to Lessee.

(3) Audits will be conducted at the administrative offices of the City's Park & Recreation Department, 1201 Leopard Street, Corpus Christi, Nueces County, Texas, 78401, and Lessee must make its books and records available at such time as required by the City's Auditor. If first agreed to in writing by the City's Marina Superintendent, the audit can be conducted at another site, provided Lessee's reimburses the City for the travel, food, and lodging expenses of City staff necessary to conduct the audit.

(4) If the audit shows that Lessee has understated Gross Receipts by 3% or more, the entire expense of the audit must be paid by Lessee's.

#### **Section 8. Delinquency and Default Regarding Lease Payments.**

- (A) Lessee is "delinquent" if the City has not received Lessee's monthly Lease Payment and certified financial statement on or before 5:00 p.m. on the 10th day of the month in which the payment and certified financial statement are due. If the 10th day on the month falls on a weekend or holiday, the Lease Payment and certified financial statement must be tendered on the first business day thereafter.
- (B) Lessee is "in default" if Lessee fails to pay the amount due or provide the certified financial statement within ten (10) business days after the City Manager has sent a written notice of delinquency requesting the payment, certified financial statement, or both. A default for failure to pay the amount due or provide the certified financial statement constitutes grounds to terminate this Lease.

#### **Section 9. Lessee Responsibilities. Lessee, shall:**

- (A) Pay for the installation, maintenance, and use of all of its utilities including, but not limited to, water, sewer, sanitation, electricity, natural gas, and telephone;



- (B) Comply with all Federal, State, and local laws, rules, regulations, and ordinances, as each may be amended, including, but not limited to, Chapter 12 of the City's Code of Ordinances and the Marina Rules and Regulations, and ensure that its employees, agents, and representatives comply as well;
- (C) Perform the alterations, repairs and improvements to the barge restaurant by the completion dates set forth on Exhibit F herein subject to any delays approved by the Marina Superintendent;
- (D) Maintain the Premises and all improvements in a good and safe condition during the Lease term;
- (E) Maintain the barge restaurant, mooring lines, spuds, pilings, and anchors at all times in a satisfactory state of repair, as specified by the Marina Superintendent;
- (F) Perform grounds maintenance for the area north of the center of the head portion of the Peoples Street T-Head, as shown on the attached **Exhibit B**, which is incorporated in this Lease by reference, to include, without limitation, litter control of all grass and landscaped areas and the parking lots utilized by its restaurant customers, except for such times as the City leases such property to other third parties;
- (G) Raise the barge restaurant if it sinks, regardless of the cause of its sinking;
- (H) Remove the barge restaurant from the Marina in the event of extensive damage, destruction, sinking, or partial sinking, regardless of cause;
- (I) Ensure that no pollutant, effluent, liquid or solid waste material, bilge water, litter, trash, or garbage issued from the Premises is allowed to collect in the waters of the Marina or in the vicinity of the barge restaurant or parking areas utilized by restaurant customers. Lessee must regularly inspect and police the vicinity of the Premises for such materials and promptly clean up and remove such materials in order to maintain the cleanliness and attractiveness of the Marina;
- (J) Ensure that the noise level issuing from the Premises is reasonable and not discernibly audible to a person of normal hearing sensitivity standing along the east curb lines of Shoreline Boulevard (northbound);
- (K) Regularly inspect and maintain fire fighting systems and equipment in the highest degree of readiness and regularly conduct training for employees in fire prevention and emergency procedures;
- (L) Pay all operating expenses incurred by Lessee in connection with its restaurant business operations;

- (M) Pay all ad valorem taxes which may be assessed against the Premises, that are associated with Lessee use of the Premises, prior to their past due date;
- (N) Properly maintain and clean the grease traps, trash dumpsters, trash dumpster area and vessel bilges, in accordance with applicable local ordinances and State health regulations, at least once every month or more frequently as needed; and
- (O) Remove the barge restaurant from the Marina at termination or expiration of the lease.

#### **Section 10. Repairs and Maintenance to Barge.**

- (A) Lessee must obtain all required permits from the City prior to commencing repairs.
- (B) For all repairs, Lessee must provide the Marina Superintendent with a written description of the type of maintenance requested and the estimated time frame to start and complete the maintenance requested, at least one week prior to the requested start date.
- (C) Lessee agrees to provide Marina Superintendent with copy of records regarding maintenance (including regular maintenance) for the barge within one week of maintenance.
- (D) Lessee may not make any major repairs or perform any major maintenance to the Barge during such times that a City approved special event is open to the public on the Peoples Street T-Head.

#### **Section 11. Improvements/Additions/Alterations.**

- (A) Lessee may not make any improvements, additions, or alterations to the Premises, the Marina facilities, the exterior of the barge restaurant, or the Boardwalk without the prior written approval of the Marina Superintendent and the City Manager after the completion of the items as set forth in Exhibit F. Lessee must also obtain clearance, in writing, from the City's Risk Manager as required by this Lease.
- (B) If approved, any improvements, additions, or alterations made by Lessee to the Premises must comply with all applicable City Codes.
- (C) Lessee acknowledges and agrees that all improvements, additions, and alterations that may be made to the Premises, including the Boardwalk area, during the term of this Lease become the property of the City upon the earlier termination or expiration of this Lease. Notwithstanding anything contained

herein to the contrary, the barge restaurant shall remain the property of the Lessee.

(D) Location of proposed pilings is subject to prior approval of City Manager or designee. Pilings must be completed by May 31, 2010.

(E) Lessee shall utilize barge restaurant for its restaurant at the Premises.

(F) Prior to any construction, Lessee shall contact City Risk Manager to obtain updated insurance requirements for the construction. Lessee must provide evidence of all required insurance prior to construction. Lessee shall complete all improvements identified in their proposal dated March 12, 2009 in response to RFP BI-0132-09. Pilings must be completed by May 31, 2010. All other improvements in proposal must be completed by December 31, 2010.

**Section 12. Restaurant Operations.** Lessee shall carry out the restaurant operations in a businesslike manner at all times. The hours and days of operation during the term of this Lease must be comparable to those of other restaurants in the City that place emphasis upon lunch and evening meals.

**Section 13. Hurricane Preparedness.** If the City or the surrounding area is threatened by a hurricane or other emergency weather situation, Lessee shall comply with all orders of the Marina Superintendent pursuant to the Hurricane Preparedness Plan, as set out in **Exhibit C**.

Additionally, Lessee agrees to replace any mooring lines connected to the barge restaurant when necessary but in no event more than every two years during the term of this agreement.

**Section 14. Sanitation.** Lessee shall store garbage and trash aboard the barge restaurant or upon the Peoples Street T-Head at a location designated by the Marina Superintendent. All garbage and trash stored in designated areas upon the T-Head must be stored in dumpster-type containers. Such containers must be housed inside a small building, screened or appropriately landscaped, and all at Lessee's expense and as approved by the Marina Superintendent. The garbage container area must be maintained by Lessee. Lessee shall obtain garbage pickup no less than five (5) days per week. Lessee may not store anything outside either the dumpster itself or the dumpster housing. Lessee will construct concrete pad in the operational area apron of the dumpster to reduce damaged to asphalt caused by dumpster service vehicles. Lessee shall relocate its dumpster at Marina Superintendent's direction. During days of special events approved by City which occur at the Peoples Street T-Head, Lessee may be required to alter its daily dumpster pickup, including weekends at the sole discretion of the Marina Superintendent and at Lessee's sole cost.

**Section 15. Parking.** Lessee restaurant customers may park on the stem and head portion of the Peoples Street T-Head, provided, however, that such parking areas may not be utilized by Lessee for the exclusive use of Lessee and its employees and customers. Parking on the Peoples Street T-Head is subject to the City street closure process. For example, during City-approved street closure or special events of Peoples Street T-Head, Lessee (and its employees and customers) may not have access to use of parking areas on the Peoples Street T-Head.

**Section 15.1 Special Events.**

- (A) Lessee acknowledges that City may authorize special events on the Peoples Street T-Head, such as the Texas International Yacht Show, which may impact vehicular access to the Premises.
- (B) During days of City-approved special events at Peoples Street T-Head which include street closures on Peoples Street T-Head, vehicular access to Lessee's premises will be restricted to deliveries made at least one hour prior to opening of special event for the day and deliveries made after the special event has closed for the day.
- (C) Lessee's customers and Lessee's staff access to the Premises during any days of special events approved by the City may be further restricted as follows:
  - (1) Access to Premises when special event is opened to the public:
    - (a) Lessee's customers may be required to pay the price of an admission ticket in order to enter the People's Street T-Head to access the Premises during such special event(s) as approved by the City that allow for the charge of admission for entry to the Peoples Street T-Head.
- (D) Access to Premises when special event is closed to the public and during special event setup and takedown.
  - (1) During times when a special event is closed to public, and during special event setup and takedown times, Lessee's customers and staff will have access to the Premises only via golf cart shuttle service paid for by Lessee, and only under such terms and conditions approved by the City Manager. Such terms and conditions may include but are not limited to the following:
    - (a) Lessee must indemnify City, the special event organizer and its sponsors for Lessee's operation of shuttle service in accordance with the indemnity provision below.
    - (b) Lessee must obtain the attached insurance for the shuttle service.

- (c) Lessee shall pay for off duty Corpus Christi police officers to stand guard at restaurant and at each entrance into People's Street T-Head to ensure that Lessee's customers and staff travel via shuttle directly between restaurant and entrances. The off-duty Corpus Christi police officers shall coordinate with the special event security staff.
- (d) Lessee's customers shall not be allowed to walk through special event site unless the special event is open to public and customer has paid admission ticket.
- (e) Lessee's staff shall not be allowed to walk through special event site unless the special event is open to public and staff is reporting to work.
- (f) Marina Superintendent and special event sponsor shall establish hours for operation of golf cart shuttle.
- (g) Lessee may not operate golf cart shuttle service during times that the special event is opened to the public.

**(E) Lessee agrees to indemnify and hold harmless the City of the Corpus Christi, any special event organizer and their sponsors, their officers, agents, representatives, and employees (collectively "Indemnitees") for the operations of shuttle service by Lessee at People's Street T-head. Landry's covenants to fully indemnify, save, and hold harmless the Indemnitees from and against any and all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments asserted against from any of the Indemnitees on account of injury or damage to persons or property (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims), to the extent any injury, damage, or loss may be incident to, arise out of, or be caused by Lessee's operation of a shuttle service so long as reasonable notice is given Lessee to allow it the opportunity to defend any such claim. Notwithstanding anything contained herein to the contrary, Lessee shall not indemnify and hold harmless any one or more of the Indemnitees to the extent that any injury, damage or loss is caused by the negligent acts, omissions or willful misconduct of any one of them. Lessee covenants and agrees that, if any of the Indemnitees are made a party to any litigation commenced by any party relating to operation of shuttle service, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation and at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the Indemnitees in all actions based thereon with legal counsel satisfactory to the Indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said claims, demands, actions, damages, losses, costs, liabilities, expenses, or judgments.**

- (F) Lessee agrees to provide City Marina Superintendent with evidence of insurance before operation of golf cart shuttle service. Required insurance is attached as separate Exhibit E.
- (G) Lessee must ensure that its shuttle service will be operated in safe manner by responsible drivers at all times. If shuttle service is operated in unsafe manner, then Lessee's authority for shuttle service operation is subject to immediate termination by the City of Corpus Christi Marina Superintendent without further notice.
- (H) Lessor reimbursement for special event(s).

When there is a multi-day special event approved by the City which includes street closures of the Peoples Street T-Head which prohibit vehicular access to the Premises, Lessee shall receive a credit of 50% of the monthly Lease Payment due for the month in which the special event commences. The credit is capped at 50% of one month's Lease Payment due for the month in which the special event commenced.

#### **Section 16. Sanitary Sewer.**

- (A) Lessee shall operate its sanitary sewer facilities in accordance with the City Code of Ordinances, Section 13-201, as amended, and City Code of Ordinances, Chapter 55, Article XI, Commercial and Industrial Waste Disposal and Pretreatment, as amended.
- (B) The City warrants sewer service from the lift station only so long as electrical service to the station is not disrupted by storm, accident or other hazards, or catastrophe. Standby power to operate the lift station is not available at the beginning of this Lease nor is it planned by the City.

**Section 17. Inspection.** Any officer or authorized employee of the City may enter upon the Premises, including the barge restaurant, at all reasonable times and without notice, to determine whether Lessee is providing maintenance required by this Lease, to inspect the restaurant operations, to enforce this Lease, for purposes of any fire or police action, or for any other purpose incidental to the City's retained rights of and in the Premises.

#### **Section 18. Signs and Lighting.**

- (A) Lessee may not exhibit, inscribe, paint, erect, or affix any signs, advertisements, notices, or other lettering ("**Signs**") at, on, or about the Premises, or any part thereof, without the prior written approval of the City Manager.

- (B) The City may require Lessee to replace, repaint, or repair any Signs allowed. If Lessee does not remove, repaint, or repair the Signs within 15 business days of the Marina Superintendent's written demand, the City may do or cause the work to be done, and Lessee shall pay the City's costs within 30 days of receipt of Marina Superintendent's invoice. Failure to pay the amount due within 30 days from receipt of an invoice constitutes grounds to terminate this Lease.
- (C) Lessee may not erect or affix any new or modified lighting fixtures ("**Lighting**") at, on, or about the Premises, or any part thereof, without the prior written approval of the City Manager.
- (D) If approved, the new or altered Signs and Lighting must comply with the City's Code of Ordinances and the City's zoning ordinance, as each may be amended.

**Section 19. Assignment or Sublease.**

- (A) Lessee may not, without the prior written consent of the City's City Council ("**City Council**"), such consent not to be unreasonably withheld, assign this Lease or sub- lease any portion of the Premises. Any attempted assignment or sublease, without the prior written consent of the City Council may, in the City Manager's sole discretion, render this Lease null and void.
- (B) In the event of the City Council's consent to an assignment or sublease of this Lease, each provision, term, covenant, obligation, and condition required to be performed by Lessee must be binding upon any assignee or sublessee and is partial consideration for the City Council's consent to the assignment or sublease. Any failure of the assignee or sublessee to strictly comply with each provision, term, covenant, obligation, and condition stated in this Lease may, in the City's Manager's sole discretion, render this Lease null and void.

**Section 20. Non-discrimination.** Lessee covenants and agrees that it shall not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, gender, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas. The City hereby reserves the right to take such action as the United States may direct to enforce this covenant. Violation by Lessee of this covenant constitutes grounds for the City to immediately terminate this Lease.

**Section 21. Relationship of Parties.** This Lease establishes a landlord/tenant relationship, and none other, and this Lease must be construed conclusively in favor of that relationship. In performing this Lease, both the City and Lessee will act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any

purpose whatsoever. Lessee shall employ sufficient employees to operate the restaurant business and such employees must be solely in the employ of Lessee.

**Section 22. Termination and Damages Prior To Expiration.** If Lessee causes termination of this Lease prior to expiration, Lessee must pay the City, within 30 days of termination, liquidated damages in the amount of \$34,500 to offset income the City will lose due to early termination of this Lease. The liquidated damages paid by Lessee will provide revenue to the City while the City attempts to find a new restaurant operator or other revenue source.

**Section 23. Termination upon Default.** The City may terminate this Lease if Lessee fails to comply with any provision, term, covenant, obligation, or condition of this Lease and fails or refuses to cure the default within a reasonable time after receiving written notice of the default. Notwithstanding the immediately preceding language, default of Section 20 of this Lease will subject this Lease to immediate termination.

**Section 24. Removal of Barge and Pilings.**

Lessee must remove the barge restaurant and the pilings from the Marina no later than day of termination or expiration of this Lease, at Lessee cost and without damage to City property. No extensions will be permitted.

**Section 25. Indemnification.**

**(A) To the extent allowed by Texas law and in consideration of allowing Lessee to lease the Premises, Lessee ("Indemnitor") covenants to fully indemnify, save, and hold harmless the City, its officers, agents, representatives, and employees (collectively, "Indemnitees") from and against any and all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments asserted against the City on account of injury or damage to persons or property (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims), to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part: (1) Lessees' performance pursuant to this Lease; (2) Lessees' use of the Premises and any and all activities associated with the Premises; (3) the violation by Lessee, its officers, employees, agents, or representatives or by Indemnitees of any law, rule, regulation, ordinance, or government order of any kind pertaining directly or indirectly to this Lease; (4) the**



**exercise of rights under this Lease; or (5) an act, omission, or criminal violation on the part of Lessee 's, its officers, employees, agents, representatives, contractors, patrons, guests, licensees, or invitees entering upon the Premises or Boardwalk area with or without the express or implied invitation of Lessee, or of Indemnitees, pertaining to this Lease, regardless of whether the injury, damage, loss, violation, exercise of rights, act, omission, or criminal violation is caused or is claimed to be caused by the sole, contributing, or concurrent negligence of Indemnitees, but not if such damage or injury results from the gross negligence or willful misconduct of the Indemnitees, so long as reasonable notice is given to Lessee to allow it the opportunity to defend any such claim.**

- (B) Lessee covenants and agrees that, if the City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation and at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions based thereon with legal counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said claims, demands, actions, damages, losses, costs, liabilities, expenses, or judgments.**
- (C) The provisions of this section survive the earlier termination or expiration of this Lease.**

**Section 26. Insurance.**

- (A) Lessee must provide insurance in the amounts and types of coverages required by the City's Risk Manager or the Risk Manager's designee ("Risk Manager") as delineated in Exhibit D, which is attached to this Lease and incorporated in this Lease by reference. Lessee must provide the City's Marina Superintendent and the Risk Manager with a Certificate of Insurance, stating the levels and types of coverages, at least 30 days prior to the annual anniversary date of the effective date of this Lease.**

- (B) The language on the Certificate of Insurance must provide that the City's Marina Superintendent and the Risk Manager receive at least 30 days advance written notice, by certified mail, of any cancellation, non-renewal, or material change in the insurance policy required in **Exhibit D**.
- (C) The Risk Manager retains the right to annually review the limits and types of insurance required by this Lease, to require increased coverage limits and types, if necessary in the interest of public health, safety, or welfare, or to adequately insure the Premises, and to decrease coverage, if so warranted. In the event of any necessary increase, Lessee will receive at least 30 days written notice of the revised re-insurance requirements. Lessee shall procure the revised insurance limits and types within 30 days of receipt of written notice of the revised insurance requirements and provide written proof of insurance to the City's Marina Superintendent and the Risk Manager.
- (D) Lessee shall, prior to the construction of any improvement, addition, or alteration to, in, on, or about the Premises, obtain prior clearance, in writing, from the Risk Manager that the proposed improvement, addition, or alteration will not necessitate a change or modification in the existing insurance coverage maintained by Lessee. This clearance is in addition to the prior consent required by Section 11(A) of this Lease. In the event that the Risk Manager determines that the improvement, addition, or alteration necessitates increased insurance coverage, Lessee shall procure such increased insurance coverage within the time specified by the Risk Manager.

#### **Section 27. Taxes.**

- (A) Lessee shall pay all taxes, license and permit fees, and other fees required to operate the Premises. Lessee shall also pay all taxes that Lessee use of the Premises causes to be assessed against the Premises, and any Fixed Asset and Personal Property taxes appurtenant to the Premises. Lessee shall pay all taxes prior to the due date.
- (B) Further, Lessee covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to the United States Internal Revenue Service's Circular E, entitled "Employer Tax Guide", Publication 15, as it may be amended, prior to their respective due dates. Lessee shall provide proof of payment of these taxes within 30 days after payment is due or the Marina Superintendent requests proof of payment. Failure to pay or provide proof of payment is grounds to terminate this Lease.

#### **Section 28. Notice.**

- (A) All notices, demands, requests, or replies provided for or permitted by this Lease must be in writing and may be delivered by any one of the following methods: (1)

by personal delivery; (2) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid, to the addresses stated below; (3) by prepaid telegram; (4) by deposit with an overnight express delivery service; or (5) by fax transmission.

- (B) Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. Notice by fax transmission will be deemed effective upon transmission with proof of delivery.
- (C) All such communications must be made only to the following:

**IF TO THE CITY :**

City of Corpus Christi  
 Attn: Marina Superintendent  
 P.O. Box 9277  
 Corpus Christi, TX 78469-9277  
 (361) 826-3983 Office  
 (361) 883-4778 Fax

**IF TO LESSEE:**

Landry's Seafood & Steak  
 House-Corpus Christi, Inc.  
 Attn: Steven L. Scheinthal  
 1510 West Loop South  
 Houston, Texas 77027  
 Ph: (713) 850-1010  
 fax: (713) 386-7070

- (D) Either party may change the address to which notice is sent by using a method set out above. Lessee shall notify the City of an address change or fax number change within ten (10) days after the address or number is changed.

**Section 29. No debts.** Lessee shall not incur any debts or obligations on the credit of the City during the term of this Lease and including during any Holdover Period that may occur.

**Section 30. Modifications.** This Lease may be modified by the parties if the parties enter into a separate development agreement for the City's Marina area during the term of this Lease. No other changes or modifications to this Lease may be made nor any provision waived unless made in writing and signed by persons duly authorized to sign agreements on behalf of each party.

**Section 31. Interpretation; Venue.** This Lease is to be interpreted according to the Texas laws which govern the interpretation of contracts. Venue lies in Nueces County, Texas, where this Lease was entered into and will be performed.

**Section 32. Captions.** The headings contained in this Lease are for convenience and reference only and are not intended to define or limit the scope of any provision.

**Section 33. Publication.** Lessee agrees to pay the cost of newspaper publication of this Lease and related ordinance, as required by the City Charter, in the legal section of the local newspaper.

**Section 34. Waiver.**

- (A) The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights under this Lease. The waiver of any covenant or condition or of the breach of any covenant or condition of this Lease by either party at any time, express or implied, may not be taken to constitute a waiver of any subsequent breach of the covenant or condition nor justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition of this Lease. If any action by Lessee requires the consent or approval of the City on one occasion, any consent or approval given on said occasion shall not be deemed a consent or approval of the same or any other action at any other occasion.
- (B) Any waiver or indulgence of Lessee default of any provision of this Lease shall not be considered an estoppel against the City. It is expressly understood that, if at any time Lessee 's is in default in any of its conditions or covenants of this Lease, the failure on the part of the City to promptly avail itself of said rights and remedies which the City may have shall not be considered a waiver on the part of the City, but the City may at any time avail itself of said rights or remedies or elect to terminate this Lease on account of said default. Any waiver by the parties of a breach of any covenants, terms, obligations, or events of default shall not be construed to be a waiver of any subsequent breach nor shall the failure to require full compliance with this Lease be construed as changing the terms of this Lease or estopping the parties from enforcing the terms of this Lease.

**Section 35. Force Majeure.** No party to this Lease is liable for delays or failures in performance due to any cause beyond their control including, without limitation, any delays or failures in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, or riots or interference by civil or military authorities. Such delays or failures to perform extend the period of performance until these exigencies have been removed. Lessee shall inform the City in writing of proof of such force majeure within three (3) business days or otherwise waive this right as a defense.

**Section 36. Surrender.** Lessee acknowledges and understands that the City's agreement to lease the Premises to Lessee is expressly conditioned on the understanding that the Premises, including, but not limited to, the Boardwalk area, must be surrendered upon the expiration, termination, or cancellation of this Lease in as good a condition as received, reasonable use and wear, acts of God, fire and flood damage or destruction where Lessee is without fault, excepted.

**Section 37. Enforcement Costs.** In the event any legal action or proceeding is undertaken by the City to repossess the Premises, collect the rent payment(s) due pursuant to this Lease, collect for any damages to the Premises, or to, in any other way, enforce the provisions of this Lease, Lessee agrees to pay all court costs and expenses and such sum as a court of competent jurisdiction may adjudge reasonable as attorneys' fees in said action or proceeding or, in the event of an appeal, as allowed by an appellate court, if a judgment is rendered in favor of the City.

**Section 38. Survival of Terms.** Termination or expiration of this Lease for any reason does not release either party from any liabilities or obligations set forth in this Lease that (1) the parties have expressly agreed survive any such termination or expiration, including, but not limited to, Section 25; (b) remain to be performed; or (c) by their nature would be intended to be applicable following any such termination or expiration.

**Section 39. Acknowledgment and Construction of Ambiguities.** The parties expressly acknowledge that they have each independently read and understood this Lease. By Lessee execution of this Lease, Lessee agrees to be bound by the terms, covenants, and conditions contained in this Lease. Furthermore, Lessee acknowledges and understands that this Lease is not binding on the City until properly authorized by the City's City Council and executed by the City Manager. By agreement of the parties, any ambiguities in this Lease are not to be construed against the drafter.

**Section 40. Severability.**

- (A) If, for any reason, any word, phrase, paragraph, provision, or section of this Lease or the application of such language to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law effective during the term of this Lease or by a final judgment of a court of competent jurisdiction, then the remainder of this Lease, or the application of said language to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected hereby, for it is the definite intent of the parties to this Lease that every word, phrase, paragraph, provision, or section of this Lease be given full force and effect for its purpose.
- (B) To the extent that any word, phrase, paragraph, provision, or section of this Lease is held illegal, invalid, or unenforceable under present or future law effective during the term of this Lease or by a final judgment of a court of competent jurisdiction and in lieu of each such illegal, invalid, or unenforceable language, a word, phrase, paragraph, provision, or section, as similar in terms to such illegal, invalid, or unenforceable language as may be possible and be legal, valid, and enforceable, will be added to this Lease automatically.

**Section 41. Coast Guard Status of Permanently Moored Vessel.** By May 31, 2010 and every two years thereafter, Lessee must provide evidence of current Coast Guard

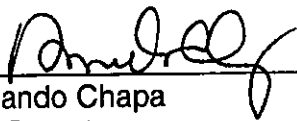
status as permanently moored vessel, and provide copy of marine survey by certified marine surveyor and provide copy of fire marshal inspection within past year.

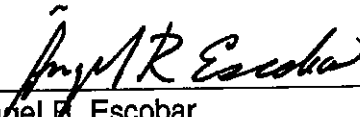
**Section 42. Entire Agreement.** This Lease document and the incorporated and attached exhibits constitute the entire agreement between the City and Lessee for the purpose granted. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter hereof, unless contained in this Lease, are expressly revoked, as it is the intention of the parties to provide for a complete understanding within the provisions of this Lease and its exhibits of the terms, conditions, promises, and covenants relating to Lessee operations and the Premises to be used in the operations.

**EXECUTED IN DUPLICATE**, each of which shall be considered an original, on this the 17<sup>th</sup> day of December, 2009.

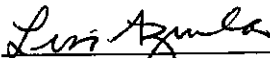
**ATTEST:**


**CITY OF CORPUS CHRISTI**

  
Armando Chapa  
City Secretary

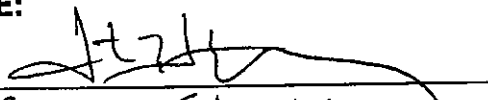
  
Angel R. Escobar  
City Manager


**APPROVED AS TO LEGAL FORM:** Dec 16, 2009.

  
~~Assistant City Attorney~~ Interim City Attorney  
for the City Attorney

Ord. 028426 AUTHORIZED  
BY COUNCIL 12/8/09  
  
SECRETARY AK

**LESSEE:**

By:   
Name: Steven L. Scheinthal  
Title: Vice President  
Date: 11/30/2009



STATE OF TEXAS

§  
§  
§

COUNTY OF Harris

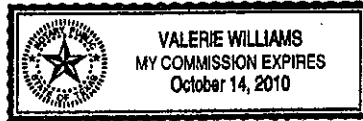
This instrument was acknowledged before me on the 30th day of November,  
2009, by Steven L. Schiethal, JP of Larden's Seafood Market, on behalf of  
SWIA Corporation. House-Corpus Christi, Inc.

[Signature]

Notary Public, State of Texas

Printed Name

Commission expires:



**Incorporated by reference:**

**Exhibit A: Overview of Proposed Restaurant Site**

**Exhibit B: Detailed View of Proposed Restaurant Site**

**Exhibit C: Hurricane Preparedness**

**Exhibit D: Insurance Requirements for Restaurant Operation**

**Exhibit E: INSURANCE REQUIREMENTS FOR OPERATION OF GOLF CART SHUTTLE**

**Exhibit F: IMPROVEMENTS/ADDITIONS/ALTERATIONS**

**Exhibit G: Request for Proposal No: BI-0132-09**

**Exhibit H: Proposer's Proposal**