

**Minutes of April 21, 2009**  
**Mayor and Board of Aldermen**

Be it remembered that a public hearing before the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, was reconvened and held at 6:00 o'clock p.m. on Tuesday the 21<sup>st</sup> day of April, 2009, in the Long Beach School District Central Office, 19148 Commission Road in said City and the same being the time, date and place fixed by order of the Mayor and Board of Aldermen for continuing said public hearing from April 7, 2009.

There were present and in attendance on said Board and at the public hearing the following named persons: Mayor William Skellie, Jr., Aldermen Allen D. Holder, Jr., Charles Boggs, Richard Notter, Joseph McNary, Mark Lishen, Carolyn Anderson, City Clerk Rebecca E. Schruoff, and City Attorney James C. Simpson, Jr.

Alderman Richard Burton was absent the public hearing.

There being a quorum present and sufficient to transact the business of this public hearing, the following proceedings were had and done.

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The public hearing to determine whether or not a parcel of property located at 210 2<sup>nd</sup> Avenue, Long Beach, Mississippi, and owned by Pecan Village Apartments, LLC, is in such a state of uncleanness as to be a menace to the public health and safety to the community, was reconvened.

\* \* \* \* \*

It was noted for the record that the public hearing was recessed, continuing to Tuesday, April 21, 2009, at 6:00 p.m., allowing two weeks for outward progress to be implemented in securing the property and to furnish the city with a plan and time frame for repairing and rehabilitating the property and structures. In addition, the owners were requested to provide photographs depicting before and after progress.

\* \* \* \* \*

The Mayor recognized Zoning Enforcement Officer Claire Leatherwood who reported as follows:

- The property is completely secured with a 6 foot fence and locked gates.
- There is a dumpster on site; trash and debris removed.
- There is an overall improvement in the appearance of the property.
- The pool is drained and an automatic pump installed.
- Securing of all windows and doors is incomplete.

\* \* \* \* \*

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The Mayor recognized William Alex Brady, II, Attorney at Law, representing the interests of the property owners, Pecan Village, LLC, and Mr. Mike Young, project manager of the property.

Attorney Brady stated that Pecan Village, LLC, submitted applications for the final round of Mississippi Development Authority funds and should know something by July 1, 2009.

Upon further discussion, Attorney Brady submitted documents, whereupon, Alderman Boggs made motion seconded by Alderman Anderson and unanimously carried to make said documents a part of the record of this public hearing, collective Exhibit "A", as follows:

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**BRADY LAW FIRM, PLLC**

ATTORNEYS AT LAW

WILLIAM ALEX BRADY, II  
Admitted in MS and WA  
Email: [alexbrady@alexbradylaw.com](mailto:alexbrady@alexbradylaw.com)

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April 21, 2009

City of Long Beach  
Meeting of Board of Aldermen

Re: Pecan Village Apartments  
210 2<sup>nd</sup> Avenue, Long Beach, Mississippi

Dear Board of Aldermen:

As discussed at the previous meeting, I represent Pecan Village Apartments, the owner of the property located at 210 2<sup>nd</sup> Avenue in Long Beach, MS. The property contains six apartment buildings and a clubhouse. At one time, the property contained 72-separate apartment units.

As is well known in this area, this property was severely damaged in Hurricane Katrina. Following Katrina, the owners entered into a building contract to rebuild the six buildings and the clubhouse. Significant problems developed during the process, which resulted in lawsuits filed in two separate courts in Harrison County. The litigation was completed at the end of 2008. During the construction work, two of the six buildings were 90% complete, and the clubhouse was complete.

Since the completion of the litigation, Pecan Village has actively marketed the property and is in the process of selling the property. Pecan Village has also been involved in the MDA grant process, in an attempt to secure grant funds. Pecan Village has applied for the second and third rounds of funds, and is awaiting a decision regarding a MDA award.

Pecan Village is attempting to cooperate with the City of Long Beach, to ensure the property remains safe and clean. Pecan Village has taken significant steps to ensure the property's safety, and has recently engaged in a thorough clean-up of the property. Pecan Village will continue to maintain the property and work to meet all requirements set forth by the City.

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Enclosed please find a proposed timeline which I have prepared at the City's request. This timeline outlines the steps which have been taken to ensure the safety of the property, and to keep the property clean. Additionally, this timeline addresses the concerns of the City regarding the pool fence and securing the individual buildings. I have discussed this matter with individuals who will be performing the work and have been informed that the work could take up to 180 days.

The Pecan Village property will ultimately be completed, and will provide a significant benefit for the City of Long Beach. Unfortunately, the process is taking longer than expected. However, the property is not dangerous. A fence is in place. The pool has been drained. A fence will be installed around the pool. The buildings have been inspected, and no structural dangers currently exist. Based on the fact that the property is not dangerous, and the fact that Pecan Village is attempting to comply with the demands of the City, I request the City's patience on this project, and request that Pecan Village be allowed 180 days to perform all work.

Sincerely,  
BRADY LAW FIRM, PLLC



William Alex Brady, II

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## Mayor and Board of Aldermen

### PROPOSED TIMELINE FOR PECAN VILLAGE PROPERTY

#### I. CLEAN-UP

1. A significant amount of clean-up work has been performed. A dumpster has been placed on site. The dumpsters have been filled and dumped numerous times and several trailers have also been used to remove debris and trash.
2. Grass, weeds and vines have been removed from the premises, along the fence and from the buildings.
3. The pool has been cleaned.
4. Additional clean-up work is currently on-going and will be continued in the future.
5. In addition, the remaining vines and bushes will be removed along the fence.
6. ESTIMATION TO COMPLETE CLEAN-UP OF THE GROUNDS: 2-3 weeks

#### II. THE FENCE

1. The fence has been cleaned, and additional clean-up along the fence rows will continue.
2. Areas where the fence was leaning or needed repair have been repaired.
3. A combination lock and chain has been used, and will continue to be used to secure the gate.
4. ESTIMATION TO COMPLETE FENCE WORK: 2-3 weeks

#### III. SWIMMING POOL

1. All debris has been removed from the pool.
2. The pool has been drained of all water except for a few inches.
3. A submersible pump with floating switch has been installed which will keep the water from accumulating in the pool.
4. A 4' fence will be installed per Mr. Earl Levins's instructions. A proposal for the work has been provided to the owner.
5. ESTIMATION TO COMPLETE POOL FENCE: 4 weeks

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### IV. THE BUILDINGS (all buildings except building A)

1. The majority of debris has been removed from the buildings.
2. Additional work will continue inside the buildings to remove all debris.
3. Steps have been taken to secure the buildings per Mr. Earl Levins's instructions.
4. Mike Young has provided the owner with a proposal to board up the buildings per Mr. Levins.
5. More than 200-sheets of 7/16 OSB sheeting will be purchased and installed on all buildings to close them in and an estimation for materials and supplies has been provided.

### V. BUILDING A

1. Building A is the building which has received the most exposure to the elements. Mr. Levins has indicated he would like that building secured immediately.
2. Mr. Mike Young has provided a proposal for the work to the owner, which has been approved. The building will be secured with OSB sheeting.
3. ESTIMATION TO COMPLETE BUILDING A: 4 weeks

### VI. MAINTENANCE

1. The property will be adequately maintained and clean-up, including grass cutting, removing vines and bushes, will take place on a bi-weekly basis.
2. The owner has contracted with an outside source to provide those services.

### VII. SUMMARY

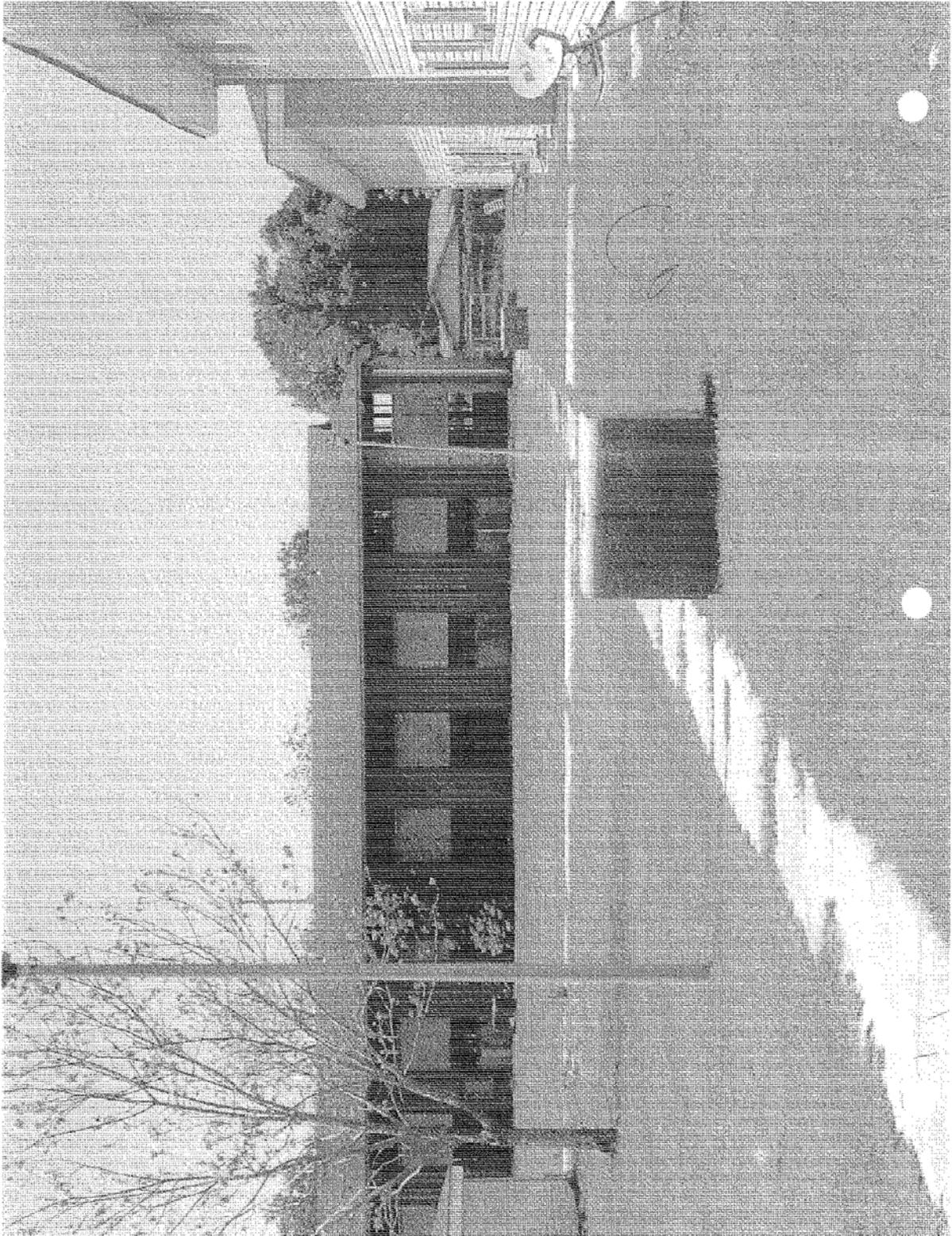
1. The above work will be completed as fast as reasonably possible.
2. I have been informed that the work will take approximately 180 days. The work may be completed sooner, however, 180 days is a conservative estimate.

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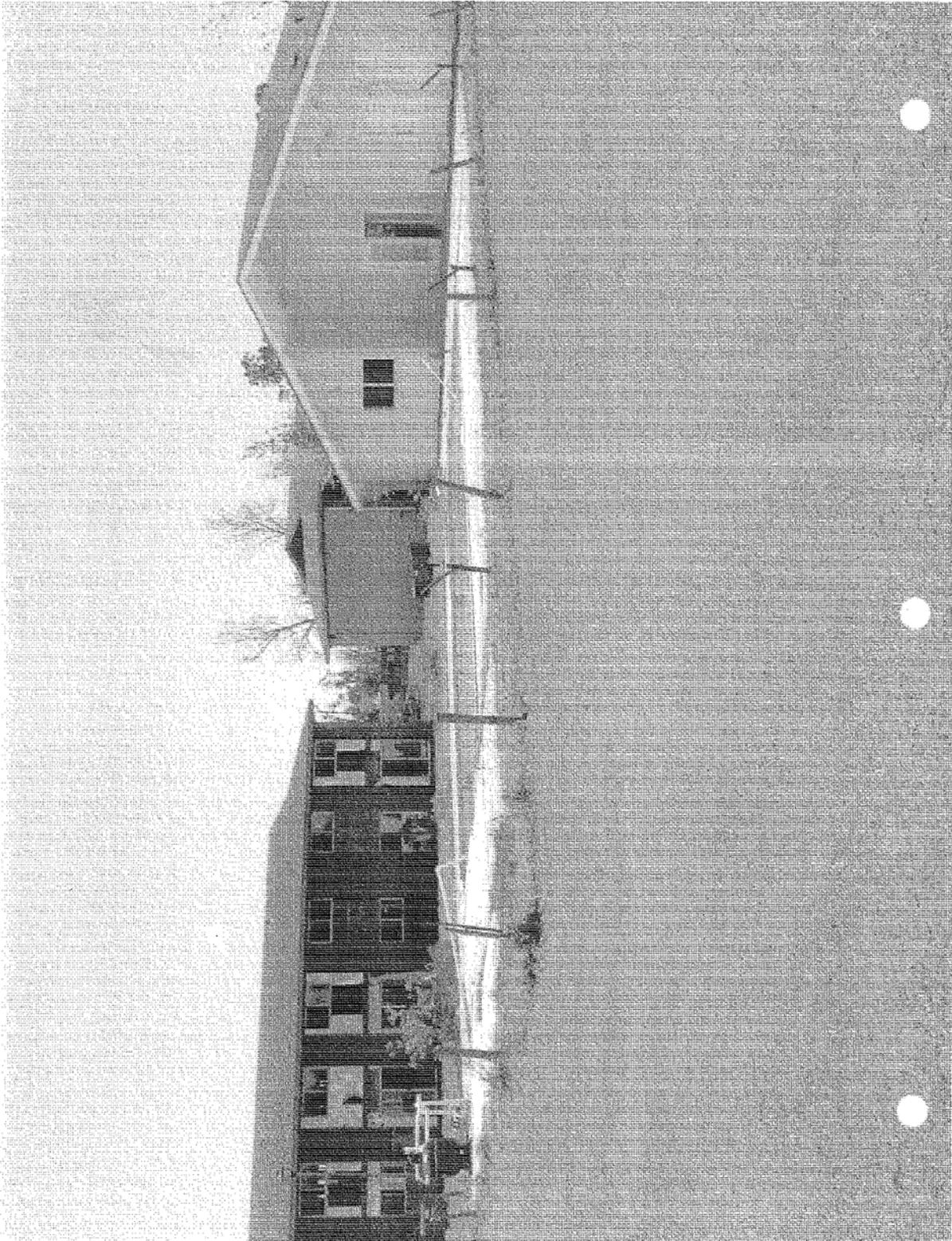
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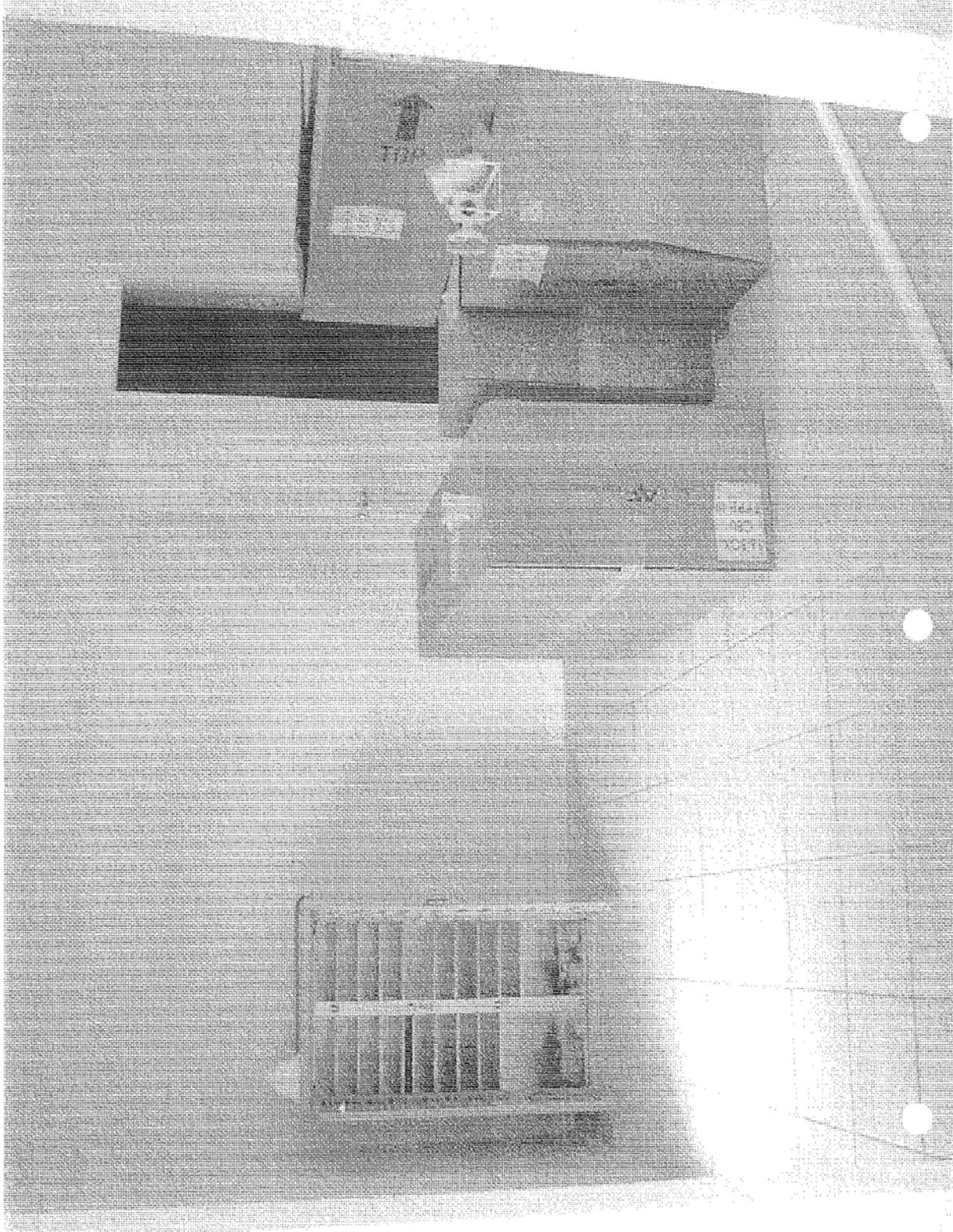
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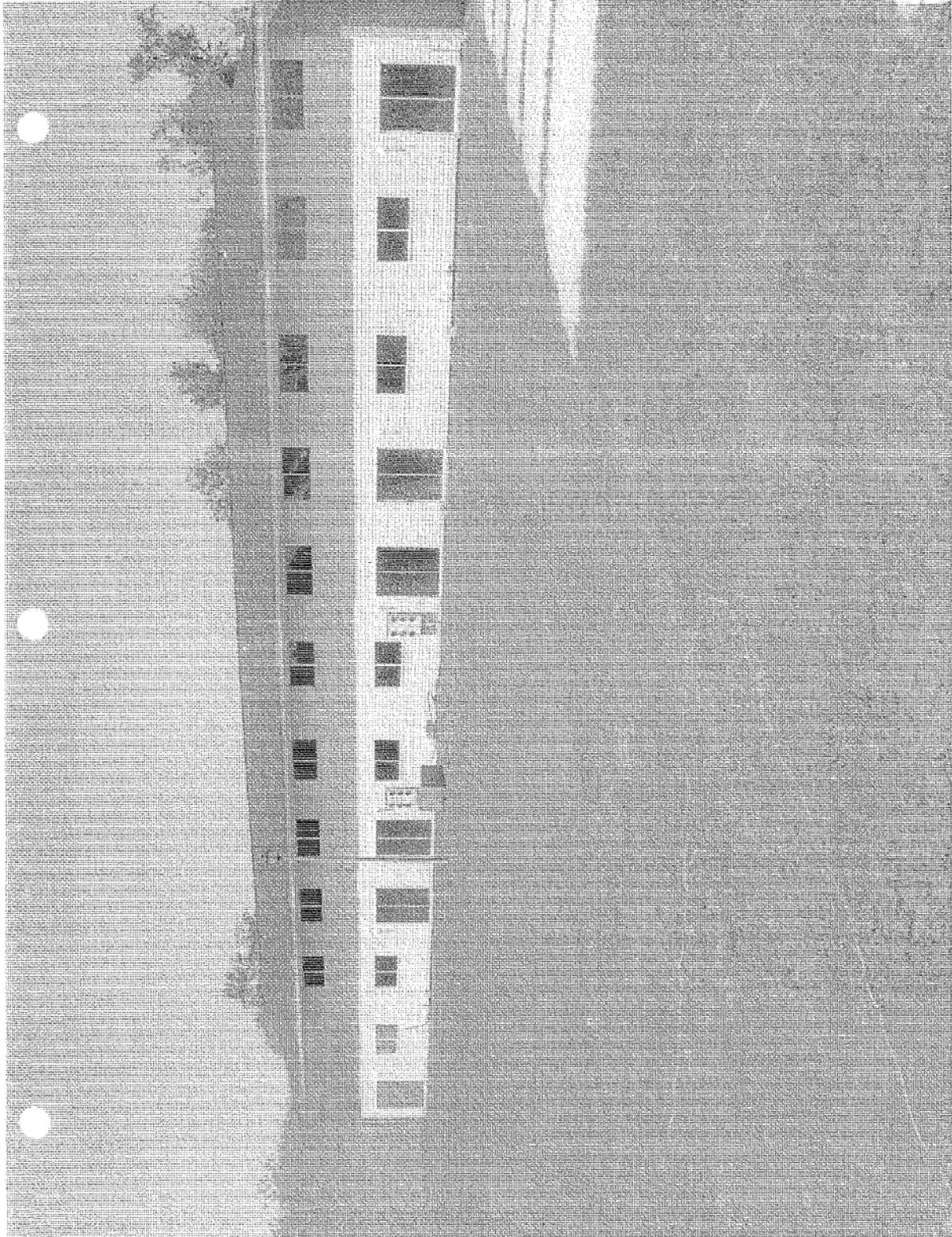
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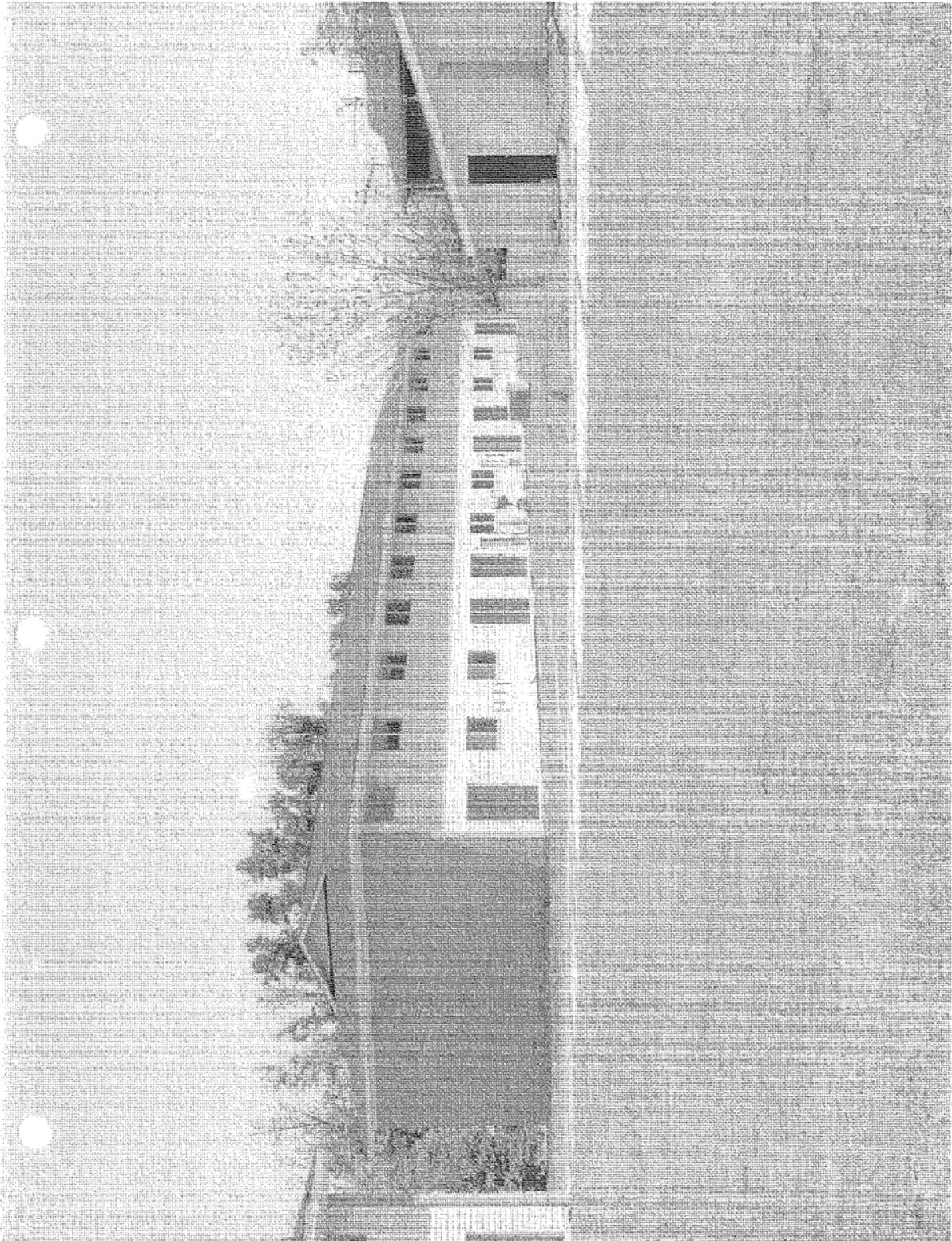
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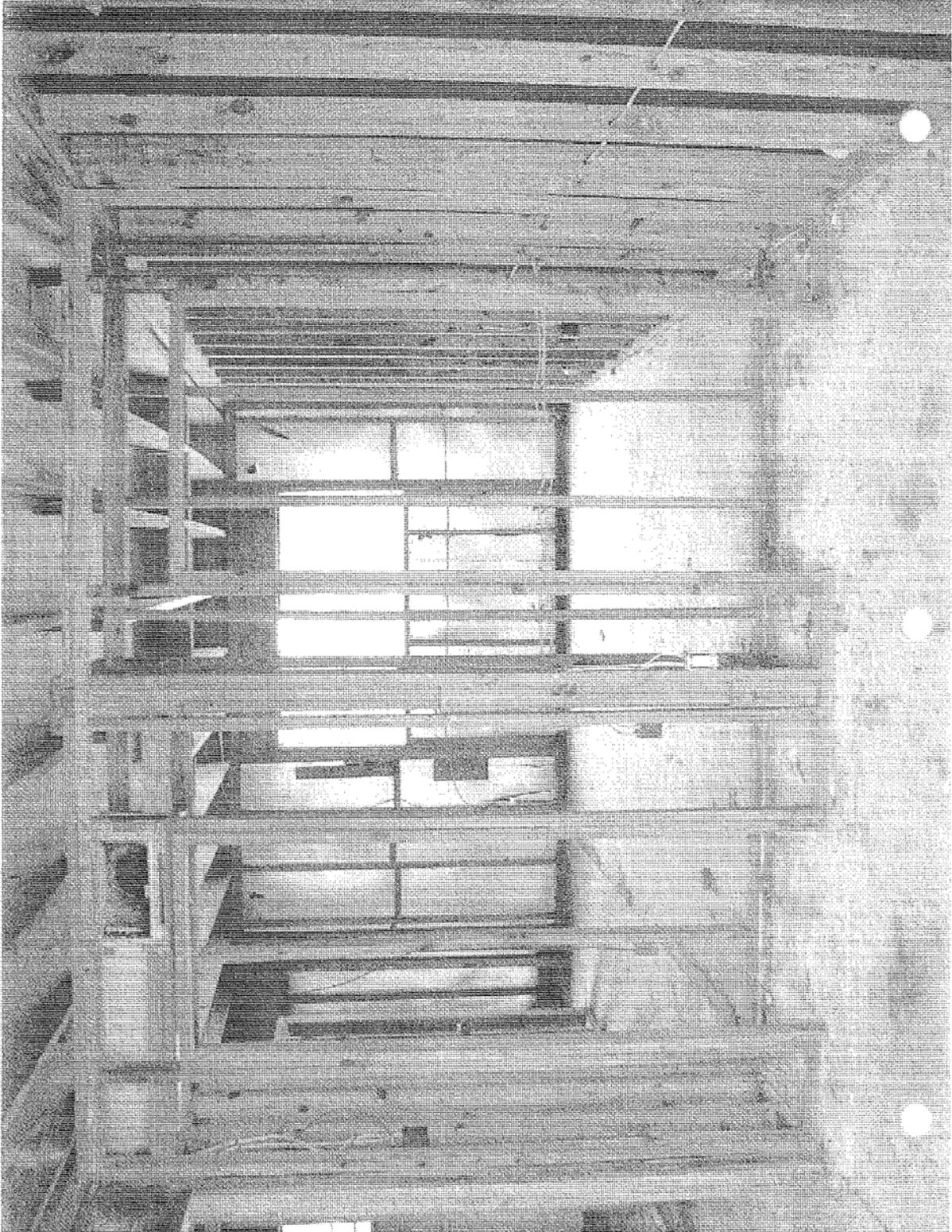
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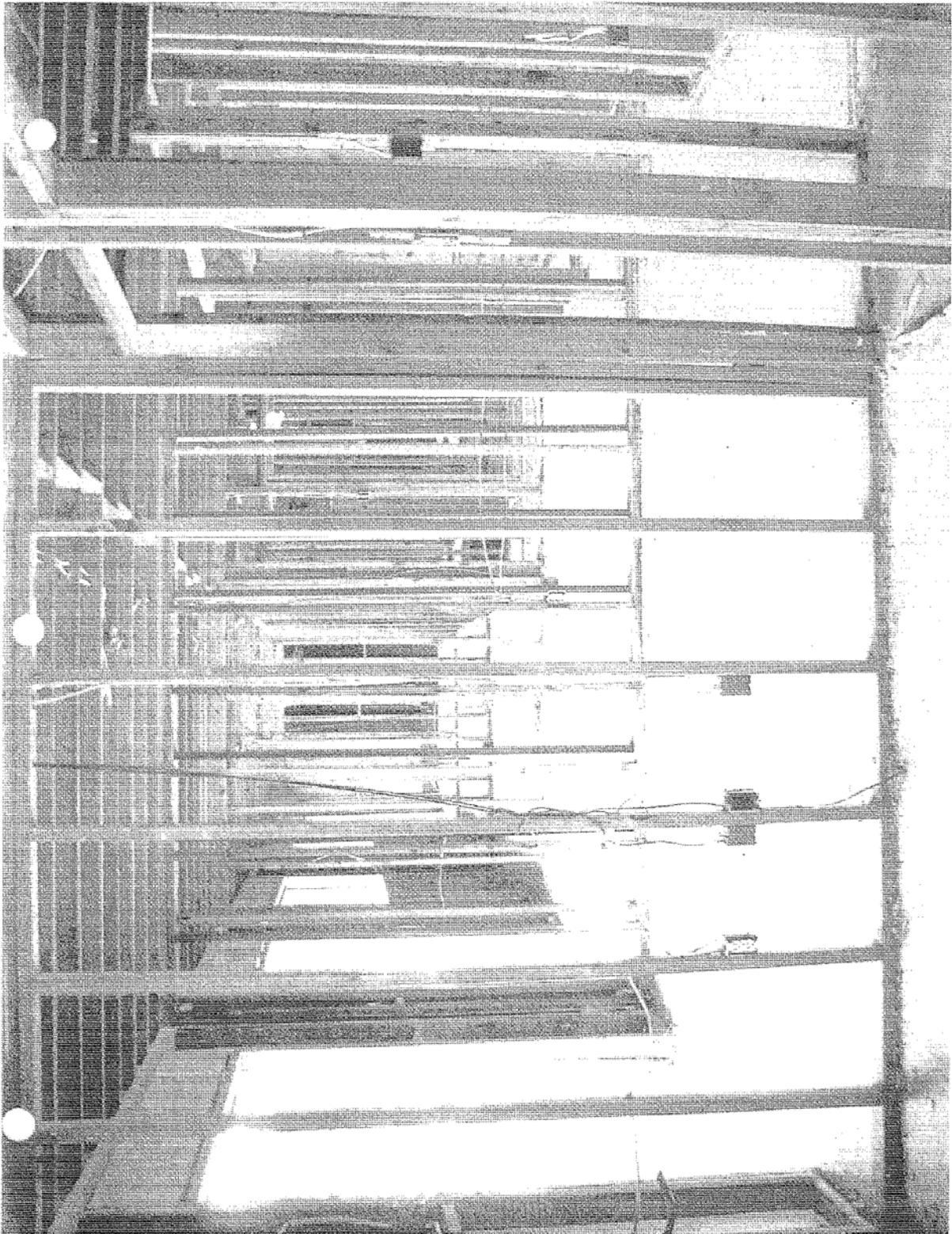
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Upon continued discussion, it was determined by the Mayor and Board of Aldermen that a 180 day time frame for securing the buildings is not acceptable. Further exposure to the elements could result in structural damage. Mr. Young stated that the buildings could be secured with plywood in thirty (30) days. It was further noted that plywood utilized to secure the buildings would eventually deteriorate and themselves become an eyesore.

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Further deliberation and debate followed regarding the condition of the property and city ordinances/regulations requiring the property to be permanently repaired and refurbished in accordance with code.

It was the position of the Mayor and Board of Aldermen that the Pecan Village LLC property covers a very large area and could be considered a blight on the community.

Attorney Brady asserted his opinion that the property is not a blight on the community nor is it a menace to the public and health and safety of the community; he cited another property on Jeff Davis Avenue that is in the same or worse condition; in addition, if the property was to be sold at this time, the owners would not only lose insurance proceeds but would be required to repay funds.

\* \* \*

After considerable discussion, and upon the agreement of all parties, Alderman Notter made motion seconded by Alderman Anderson and unanimously carried to continue the public hearing for thirty (30) days and further assess the condition of the property at that time, whereupon, the public hearing was recessed to Tuesday, May 26, 2009, at 6:00 p.m.

\*\*\*\*\*

Be it remembered that a regular meeting of the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, was begun and held at the Long Beach School District Central Office, 19148 Commission Road, in said City at 6:00 p.m. it being the third Tuesday in April, 2009, and the same being the time, date and place fixed by Laws of Mississippi and Ordinance of the City of Long Beach for holding said meeting.

There were present and in attendance on said Board and at the meeting the following named persons: Mayor William Skellie, Jr., Aldermen Allen D. Holder, Jr., Charles Boggs, Richard Notter, Joseph McNary, Mark Lishen, Carolyn Anderson, City Clerk Rebecca E. Schruuff and City Attorney James C. Simpson, Jr.

Alderman Richard Burton was absent the meeting.

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

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The meeting was called to order and the Clerk reported that bids for "KITCHEN EQUIPMENT – SENIOR CITIZEN FACILITY", were re-advertised.

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Alderman Holder made motion seconded by Alderman Notter and unanimously carried to advertise for bids, "KATRINA INFRASTRUCTURE REPAIRS – AREA VII"; and "PROCURE MOBILE GENERATORS (LIFT STATIONS); said bids to be opened June 3, 2009.

\*\*\*\*\*

In observance of their 100<sup>th</sup> Year Anniversary, the Mayor and Board of Aldermen proclaimed April 26, 2009, "*FIRST BAPTIST CHURCH LONG BEACH DAY*".

\*\*\*\*\*

Alderman Anderson made motion seconded by Alderman Holder and unanimously carried to suspend the rules and amend the Municipal Docket to include the following:

X.1.a. MAYOR'S OFFICE – Personnel Matters – Police and Fire Department – (2) New Hires; (3) Step Increases.

\*\*\*\*\*

There were no public comments pertaining to agenda items.

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Alderman Anderson made motion seconded by Alderman Lishen and unanimously carried to approve the public hearing, regular meeting, and closed/executive session minutes of the Mayor and Board of Aldermen dated April 7, 2009, as submitted.

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## Mayor and Board of Aldermen

The Mayor and Board of Aldermen took up for consideration the matter of final approval for recording of the Plat of RED GATE ESTATES SUBDIVISION. After a discussion of the subject, Alderman Holder offered and moved the adoption of the following Resolution:

**RESOLUTION PROVIDING FOR FINAL APPROVAL FOR RECORDING OF THE PLAT OF RED GATE ESTATES SUBDIVISION, AS A SUBDIVISION OF THE CITY OF LONG BEACH, MISSISSIPPI, ACCEPTING THE DEDICATION THEREOF, REQUIRING OF THE OWNER OF SAID SUBDIVISION ITS WARRANTY AGAINST DEFECTIVE WORKMANSHIP AND MATERIALS IN AND ABOUT THE CONSTRUCTION AND INSTALLATION OF THE IMPROVEMENTS AND APPURTENANCES THERETO AND ADJACENT TO SAID SUBDIVISION, PROVIDING FOR SECURITY OF SAID WARRANTY, PROVIDING THAT NO BUILDING PERMITS FOR THE CONSTRUCTION OF OTHER BUILDINGS OR IMPROVEMENTS ON ANY LOT IN SAID SUBDIVISION SHALL ISSUE UNTIL THE OWNERS SHALL HAVE COMPLIED WITH THE PROVISIONS OF THIS RESOLUTION, AND FOR RELATED PURPOSES.**

WHEREAS, the Mayor and Board of Aldermen (the "Governing Body") of the City of Long Beach, Mississippi (the "Municipality"), having made due investigation, do now find, determine, adjudicate and declare as follows:

1. Leon Long and David Allen, as owners of that certain land situated and being in the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 2, Township 8 South, Range 12 West, City of Long Beach, First Judicial District of Harrison County, Mississippi, more particularly described hereinafter in this Resolution, have subdivided the same as RED GATE ESTATES SUBDIVISION, the final Plat of which subdivision, and the curbs, drainage and utility easements, (and appurtenances thereto), as laid out, surveyed and platted by J. Colter Ratliff, P.S., for said Owners, according to his certificate executed and delivered thereto dated the 26th day of March, 2009, was dedicated by said Leon Long and David Allen, by the Certificate and Dedication therein executed and delivered and acknowledged under the date of March 26, 2009; and said Owners have requested of the Governing Body of the Municipality final approval of said Plat of RED GATE ESTATES SUBDIVISION, as a Subdivision of said Municipality.
2. The aforesaid Plat of RED GATE ESTATES SUBDIVISION was examined and preliminarily approved by the Planning Commission of the Municipality as is reflected by the minutes of the March 26, 2009 meeting of that body.

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3. Garner Russell & Associates, Inc., Consulting Engineers for the Municipality, have inspected and examined the improvements, sewage collection system, water distribution system, drainage system, and fixtures, equipment and appliances appurtenant thereto, constructed and installed by the Owners in the aforesaid subdivision, and said engineers have reported that all of the same are, except for the "punch list items" referred to by the letter to the City from David Ball, P.E. dated March 26, 2009, substantially complete and have recommended upon the owner posting a bond in the amount of FORTY SIX THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$46,125.00), approval of the plat of said subdivision for recording, and subject to examination and approval of said Plat.

4. The City Attorney has reported to the Governing Body of the Municipality that the form of the aforesaid Plat of RED GATE ESTATES SUBDIVISION is in substantial compliance with the subdivision regulations of the Municipality.

5. After a discussion of all of the above, the Governing Body of the Municipality does further find, determine and adjudicate and declare that in the public interest, the aforesaid Plat of RED GATE ESTATES SUBDIVISION, and the Owners' certification and Dedication thereon should be accepted and approved for recording, and that the improvements, sewage collection system, drainage system, water distribution system, and all fixtures, equipment and appliances appurtenant thereto in said subdivision may be accepted for public maintenance upon said Owners furnishing the Municipality their warranty against defective workmanship and materials in and about the construction and installation of the same, and furnishing the Municipality security for such warranty to the extent of SIXTY TWO THOUSAND FOUR HUNDRED NINETY NINE DOLLARS (\$62,499.00); and providing further that no building permit for the construction or installation of any other improvements or buildings on any lot in said subdivision shall issue until the Owners' compliance with the provisions of this Resolution as hereinafter set forth.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** Approval of the Plat for Recording.

The Plat of RED GATE ESTATES SUBDIVISION, being a subdivision of that certain parcel of land situated in the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 2, Township 8

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South, Range 12 West, City of Long Beach, First Judicial District of Harrison County, Mississippi, described as follows, to-wit:

**See Exhibit "A" attached hereto and incorporated herein.**

as laid out, surveyed and platted by J. Colter Ratliff, P.S., Registered Land Surveyor, according to his Surveyor's Certificate on said Plat dated February 2, 2009, and containing Lots numbered consecutively 1 through 44 inclusive, and any drainage and utility easements and rights-of-way, or curbs, as indicated thereon, and the Owners' Certificate and Dedication of Leon Long and David Allen, dated March 26, 2009, dedicating the same, be, and the same hereby is, accepted as a subdivision of the City of Long Beach, Mississippi, and said final Plat of RED GATE ESTATES SUBDIVISION, is hereby finally approved for recording, subject to the provisions of this Resolution hereinafter contained.

### **SECTION 2. Acceptance for Public Maintenance.**

Curbs, water distribution system, drainage system, and sewage collection system, and fixtures, equipment and appliances appurtenant thereto, constructed and installed in the aforesaid subdivision, are hereby accepted for public maintenance; all subject, however, to the following terms and conditions:

- A. Said Owners shall execute and deliver in writing their warranty in favor of the Municipality against defective workmanship and materials for a period of two (2) years from the date of this Resolution, in and about the construction and installation of the improvements in and appurtenant to said RED GATE ESTATES SUBDIVISION, including but not limited to the curbs, curb inlets, sidewalks, drainage system, sewage collection system, water distribution system, fire and water hydrants, and any all fixtures, equipment and/or appliances appurtenant to all of the same; such warranty to be executed and delivered to the City by said Owners, and containing the Owners' covenant to indemnify and save harmless the said Municipality from any and all losses, costs, expenses, damages and/or injuries and compensation of any kind and/or character whatsoever, resulting from, arising out of, or in any manner related to any breach of such warranty or warranties, or of any such defects in workmanship and/or materials in and about the fixtures, equipment and/or appliances thereto as

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aforesaid; all in such form and content as may be approved by the Municipality, acting by and through its Mayor and City Attorney; and

B. The said Owners shall further, at their own cost and expense, furnish the Municipality as security for the warranty and indemnity agreement set out in subsection A of this Section, a cashier's check, certified check, letter of credit, or corporate surety bond, issued or certified by a bank, savings and loan association or corporate surety authorized to do business in the State of Mississippi, in the sum and amount of SIXTY TWO THOUSAND FOUR HUNDRED NINETY NINE DOLLARS (\$62,499.00) without restrictions.

(1) In the event of any breach of warranty or warranties set out in subsection A above, and in the written warranty or warranties and indemnity agreement delivered to the Municipality, and if the Owners shall not correct the same within a reasonable time, the Municipality, at its sole discretion, may correct any defective workmanship and/or materials or contract to have the same done, and apply the above-mentioned security in payment of all of the same and all costs, expenses, injuries and/or damages whatsoever. In the event that such security be insufficient for such purposes, the said Owners shall make up the difference of funds required to make payment for correcting any defective workmanship and/or materials and paying the cost of all expenses, injuries and/or damages resulting from Owners' breach of warranty, if any, herein required.

(2) The condition of the aforesaid security shall be that said Leon Long and David Allen, and their successors in title or assigns shall well and truly comply with all of the terms and conditions of this Resolution and the written warranty herein specified, and if the aforesaid conditions shall have been complied with, the Municipality, upon the expiration of the aforesaid warranty period without any breach of warranty shall return such security, with interest, if any, to said Owners.

(3) The Owners shall execute and deliver unto the Municipality an appropriate conveyance, or conveyances, of the aforesaid improvements in RED GATE ESTATES SUBDIVISION, including but not limited to the aforesaid sewage collection system, water distribution system, fire and water

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hydrants, and any and all fixtures, equipment, appliances appurtenant thereto, free and clear of any and all liens and/or encumbrances.

(C.) The said Owners shall further, at their sole cost and expense, furnish the Municipality as security for the completion within one year of those items designated and /or referred to in the letter of David Ball, P.E. to the City dated March 26, 2009 as being incomplete as of the date of said letter, their Completion, a cashier's check, certified check, letter of credit, or corporate surety bond, issued or certified by a bank, savings and loan association or corporate surety authorized to do business in the State of Mississippi, in the sum and amount of FORTY SIX THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$46, 125.00) without restrictions.

(1) In the event Owners fail to complete those items referred to in paragraph (c) above within one year, the Municipality, at its sole discretion, may complete said items or contract to have the same done, and apply the above-mentioned security in payment of all of the same and all costs, expenses, injuries and/or damages whatsoever. In the event that such security be insufficient for such purposes, the said Owners shall make up the difference of funds required to make payment for completion of said work and paying the cost of all expenses, injuries and/or damages resulting from Owners' failure to timely complete same.

(2) The condition of the aforesaid security shall be that said Leon Long and David Allen, and their successors in title or assigns shall complete the herein above described improvements to the satisfaction of the City engineer, to be evidenced by such engineer's written certification; and if the aforesaid conditions shall have been complied with, the Municipality, upon the completion of all such items and receipt of written certification by the City's engineer of satisfactory completion of same, shall return such security, with interest, if any, to said Owners.

### **SECTION 3. Building Permits in Subdivision.**

The aforesaid Plat shall not be filed for record, and no building permit shall issue for the construction of any building or buildings or other improvements whatsoever on any lot or parcel of land in the aforesaid RED GATE ESTATES SUBDIVISION, unless and until

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the provisions of Section 2, above, shall have been complied with by said Owners and/or their successors in title and/or assigns.

#### SECTION 4. Certificate of Approval of Plat.

The Mayor and City Clerk of the Municipality are hereby authorized and directed, for and on behalf of the Municipality, to execute and deliver a certificate of approval for recording of the aforesaid Plat of RED GATE ESTATES SUBDIVISION, in substantially the form as set forth on the aforesaid Plat.

#### SECTION 5. Captions.

The captions to each section of this Resolution are intended solely for easy reference and reading, and shall not be construed to alter or change the meaning of any such section or portion thereof.

#### SECTION 6. Effective Date.

This Resolution shall take effect and be in force from and after its adoption and being spread upon the minutes of the Governing Body of the Municipality.

Alderman Notter seconded the motion to adopt the foregoing Resolution, and the question being put to a roll call vote by the Mayor, the result was as follows:

Alderman Allen D. Holder, Jr.	voted: aye
Alderman Richard Notter	voted: aye
Alderman Richard Burton	voted: absent, not voting
Alderman Charles Boggs	voted: aye
Alderman Joseph McNary	voted: aye
Alderman Mark Lishen	voted: aye
Alderman Carolyn Anderson	voted: aye

The question having received the affirmative vote of all of the Aldermen present and voting, the Mayor declared the motion carried and the Resolution adopted and approved this 21<sup>st</sup> day of April, 2009.

APPROVED:

William Skellie, Jr., Mayor

ATTEST:

REBECCA E. SCHRUFF, City Clerk

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Exhibit "A"



A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS

520 33<sup>RD</sup> STREET, GULFPORT, MS 39507  
P.O. BOX 1677, GULFPORT, MS 39502

TEL (228) 863-0667  
FAX (228) 863-5232



March 26, 2009

City of Long Beach  
P.O. Box 929  
Long Beach, MS 39560

**RE: Final Acceptance – Red Gate Subdivision**

Ladies and Gentlemen:

We understand that the developer of the referenced subdivision is seeking final approval of the Record Plat for this subdivision, consisting of 44 lots. We have reviewed the form of the plat and find it acceptable, subject to final review by the City Attorney.

After several meetings on-site, a Final Inspection of the improvements constructed for this development was conducted on March 5, 2009. Although I understand from the Contractor that the punchlist items have been completed, I have not been able to get pictorial evidence of their completion. Therefore, we enclose a worksheet which reflects the current status of the punchlist work, with our recommendation regarding the amount of the Completion Bond which would be appropriate if the Plat is to be accepted at this time. The total amount recommended for the Completion Bond is \$46,125.

We have also received a statement from the developer regarding the actual cost of the improvements constructed for this subdivision, which we accept. Based upon this value, the correct amount for the Warranty Bond for this development would be  $10\% \times \$624,991 = \$62,499$ .

Sincerely,

David Ball, P.E.

DB:539  
Enclosure

cc: Bobby Knesal, P.E.

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Red Gate Subdivision  
 Completion Bond Calculation (from punchlist of 03/05/2009)  
 3/26/2009

ITEM	ESTIMATED COST
1 Clean drainage system to remove standing water in boxes.	\$2,500
2 Expose end of 12" culvert at NW corner of Lot 3 & install FES on culvert. Reshape swale the swale and install erosion control in rear drainage area of W property line. Clean drainage system to remove standing water.	\$1,000
3 Lot lines must be at least 10' from top of bank at ponds. Also, clean fence row for access.	\$2,000
4 Adjust both SMH top elevations at Lot 19.	\$1,000
5 Grind stumps which are in the ditch line / dress-up / grade to drain along the W property line near Calnito St.	\$1,000
6 Remove water service to school building.	\$100
7 Seal both SMH @ E edge of NW pond to eliminate infiltration.	\$500
8 Seed & stabilize all exposed earth in drainage areas.	\$700
9 Build invert in junction box in west inlet into the east pond; trim pipe to handle flow.	\$250
10 Add grout to invert in the SMH in N side of lot 19.	\$100
11 Cut a gradual ditch along the ground in the SW corner of the NW pond to drain the surrounding area.	\$250
12 Leave outlet of north pond to perform as is, will check up as part of 2 year warranty inspection will see if any action is needed then.	\$0
13 Flush sewer system; remove standing water and sand in the system.	\$1,000
14 Cut invert for incoming pipe @ the E side of SMH @ Red Gate & Estate Dr.	\$500
15 Both ponds must be dry. This may require modifications to the existing ditch at the NW pond outfall. City will monitor the pond functionality throughout the 2-year warranty period but will expect both ponds to be dry before final acceptance.	\$26,000
<b>TOTAL WORK TO BE PERFORMED</b>	<b>\$36,900</b>
<b>ALLOWANCE (PER ORDINANCE)</b>	<b>\$9,225</b>
<b>TOTAL COMPLETION BOND</b>	<b>\$46,125</b>

**Minutes of April 21, 2009**  
**Mayor and Board of Aldermen**

Exhibit A

BOUNDARY DESCRIPTION  
of  
RED GATE ESTATES SUBDIVISION

A parcel of land located in the Southeast Quarter of the Southwest Quarter (SE 1/4 of the SW 1/4) of Section 2, Township 8 South, Range 12 West, First Judicial District, Harrison County, Mississippi, being more particularly described as follows:

BEGIN at an iron rod found at the Southeast (SE) corner of Lot Fifteen (15), DAUGHERTY PARK SUBDIVISION, Part II, City of Long Beach, on file in Plat Book 25 at Page 28, in the office of the Chancery Clerk, First Judicial District, Harrison County, Mississippi; thence run North 00 degrees 19 minutes 22 seconds East 683.35 feet along the east line of said subdivision to the Northeast (NE) corner of Lot 21 and an iron rod; thence run South 55 degrees 28 minutes 10 seconds East 135.37 feet to an iron rod; thence run South 52 degrees 51 minutes 33 seconds East 347.38 feet to an iron rod; thence run South 51 degrees 24 minutes 58 seconds East 553.77 feet to an iron rod; thence run South 00 degrees 05 minutes 00 seconds East 595.94 feet to an iron rod; thence run North 89 degrees 24 minutes 23 seconds West 288.25 feet; thence South 00 degrees 57 minutes 14 seconds West 295.57 feet to the Northern margin of Commission Road; thence run North 89 degrees 52 minutes 27 seconds West 349.84 feet along said Northern margin to an iron rod; thence run North 00 degrees 22 minutes 28 seconds East 836.05 feet to an iron rod; thence run North 89 degrees 56 minutes 42 seconds West 188.50 feet to the Point Of Beginning.

**Minutes of April 21, 2009**  
**Mayor and Board of Aldermen**

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

INDEMNITY AND OWNER'S WARRANTY OF  
COMPLETION AND CONVEYANCE OF  
IMPROVEMENTS IN, ON AND UNDER  
RED GATE ESTATES

For good and valuable consideration as hereinafter stated, the receipt of all of which is hereby acknowledged, and in accordance with the terms and provisions of that certain resolution adopted by the Mayor and Board of Aldermen (the "Governing Body") of the City of Long Beach, Mississippi (the "Municipality"), on the 21st day of April, 2009, providing for final approval for recording of the Plat of Red Gate Estates as a subdivision of said Municipality, and accepting the dedication thereof and the improvements therein for public maintenance, and of the benefit accruing to the Owners, Leon Long and David Allen do hereby covenant and stipulate and agree to and with the Municipality as follows:

1. The undersigned Owners do hereby warrant unto the Municipality that they have substantially completed the construction and installation of all of the improvements in, on and under the easements and property in Red Gate Estates, dedicated to the public use forever, all in accordance with the plans and the specifications therefore previously submitted to the Planning Commission of the Municipality, including, but not limited to, paving and improvement of the public streets in said subdivision, curbs and curb inlets, drainage system, water distribution system, sewage collection system, fire and water hydrants, together with all and singular, all pipes, pipelines, culverts, mains, fixtures, the equipment and appliances appurtenant to all of the same; all hereinafter collectively referred to as "Improvements".

2. The undersigned Owners, Leon Long and David Allen, for the consideration herein above stated, do hereby convey all of the aforesaid improvements to said Municipality free and clear of any and all encumbrances whatsoever, to have and to hold all of the same unto said Municipality, its successors and assigns forever.

3. Said Owners do hereby covenant and warrant unto the said Municipality that said improvements, and the construction and installation thereof, are free and clear of any and all defective workmanship and materials, except for those items specified by the punchlist set forth in the letter dated March 26, 2009, from David Ball, P.E. to The City of Long Beach, a true and correct copy of which letter is attached hereto as Exhibit "A" and incorporated herein, which items, conditions and/or deficiencies set forth in said punch list Owners do hereby agree to correct, complete and/or repair to the satisfaction of David Ball, P.E., acting for and on behalf of the City of Long Beach, Mississippi, as its engineer, which said warranty shall continue in full force and effect for a period of two (2) years from and after the date of the aforesaid resolution, and which warranty shall include those corrected

**Minutes of April 21, 2009**  
**Mayor and Board of Aldermen**

punch list items as and when corrected, completed and/or repaired, during which warranty the said Owners shall maintain said Improvements in accordance with this warranty.

4. Said Owners do hereby further covenant and agree to, and does hereby, covenant and agree to indemnify and save harmless the Municipality from any and all losses, costs, expenses and/or injuries and damages of any kind and character whatsoever, resulting from, arising out of, or in any manner relating to any breach of the aforesaid warranty herein contained, or of any such defects in the workmanship and/or materials in and about the construction and installation of the aforesaid improvements during the period covered by the aforesaid warranty or warranties.

5. As security for the warranty or warranties set forth in paragraphs 3 and 4 above, the Owners have furnished the Municipality a cashier's check, certified check, letter of credit, or corporate surety bond, issued or certified by a bank, savings and loan association or corporate surety authorized to do business in the State of Mississippi, in the aggregate sum of SIXTY TWO THOUSAND FOUR HUNDRED NINETY NINE DOLLARS (\$62,499.00) without restrictions to be held, or if a check, deposited by the said Municipality in a special fund to be styled "City of Long Beach, Red Gate Estates Security Fund" pending the expiration or termination of the warranty period specified in paragraph 3, above. The warrantors and indemnitors herein, Leon Long and David Allen, do further consent and agree that such instrument/security funds shall be held/deposited as herein above set forth for the purposes herein provided.

6. The condition under which the Municipality shall hold the SIXTY TWO THOUSAND FOUR HUNDRED NINETY NINE DOLLARS (\$62,499.00) cashier's check, certified check, letter of credit, or corporate surety bond, issued or certified by a bank, savings and loan association or corporate surety authorized to do business in the State of Mississippi above mentioned in paragraph 5, above, is that:

(A) In the event of any breach of warranty or warranties set out in paragraphs 3 and 4, above, and if the Owners shall not correct the same within a reasonable time after notice from the Municipality to Owner, if any, the Municipality, at its sole discretion, may correct any defective workmanship and/or materials, or contract to have the same done, and apply the said security in payment of the same and all costs, expenses, losses, injuries and/or damages incurred thereby. In the event that such security may be insufficient for such purposes, the Owners shall pay the difference of funds required to make payment for correcting the defective workmanship and/or materials and for all costs, expenses, losses, injuries and/or damages resulting from Owner's breach of warranty, if any, herein required.

(B) If said Owners, and/or their successors in title or assigns shall well and truly comply with all of the terms and conditions of the aforesaid resolution and of the warranty or warranties and of the indemnity agreement herein specified; and if the aforesaid conditions shall have been complied with by the Owners, the Municipality, upon the expiration of the aforesaid warranty period, without any breach of warranty, shall return the letter of credit or funds representing such security to said Owners.

## **Minutes of April 21, 2009 Mayor and Board of Aldermen**

7. As security for the guarantee of completion set forth in paragraph 3 above, the Owners has furnished the Municipality a cashier's check, certified check, letter of credit, or corporate surety bond, issued or certified by a bank, savings and loan association or corporate surety authorized to do business in the State of Mississippi, in the aggregate sum of FORTY SIX THOUSAND ONE HUNDRED TWENTY FIVE Dollars (\$46, 125.00) without restrictions, to be held, or if a check, deposited by the said Municipality in a special fund to be styled "City of Long Beach, Red Gate Estates Completion Guaranty Security Fund" pending the completion and/or repair of deficiencies, work, items and/or conditions specified therein, or expiration of the completion period of one year. The warrantors and indemnitors herein, Leon Long and David Allen, do further consent and agree that such instrument/security funds shall be held/deposited as herein above set forth for the purposes herein provided.

8. The condition under which the Municipality shall hold the \$46,125.00 above mentioned in paragraph 7, above, is that:

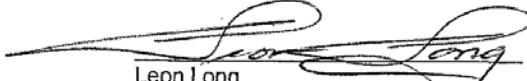
(A) In the event the Owners shall fail to construct, repair, correct and/or remedy to the satisfaction of the City's engineer any of those conditions, deficiencies, or work set forth as items in Exhibit "A" hereto within twelve (12) months from adoption by the City of Long Beach, Mississippi, providing for final approval of Red Gate Estates, the Municipality, at its sole discretion, may correct any such item or contract to have the same done, and apply that part of the said security attributable to same as set forth in Exhibit "A" hereto in payment of the same and all costs, expenses, losses, injuries and/or damages incurred thereby. In the event that such security may be insufficient for such purposes, the Owners shall pay the difference of funds required to make payment for correcting the "item" to the satisfaction of the City's engineer and for all costs, expenses, losses, injuries and/or damages resulting from Owners' breach of warranty, if any, herein required.

(B) If said Owners, and/or their successors in title or assigns shall well and truly comply with all of the terms and conditions of the aforesaid resolution and complete the construction, repair, correction and/or remedy to the satisfaction of the City's engineer of all of those conditions, deficiencies, or work set forth as items in Exhibit "A" hereto within twelve (12) months from adoption by the City of Long Beach, Mississippi, providing for final approval of Red Gate Estates the Municipality, upon the expiration of the aforesaid completion period, without any breach of warranty, shall return the letter of credit or funds representing such security to said Owners. If the Municipality is required to perform any such repair, correction and/or remedy of any of those conditions, deficiencies, or work set forth as items in Exhibit "A" hereto, then the cost of such repair, correction and/or remedy shall be deducted from such security and retained by the City.

9. In the event that the Municipality be reasonably required to litigate its claim for reimbursement of costs, losses, expenses, damages, injuries and/or compensation, resulting from any breach of warranty or indemnity hereunder, said Owner further covenants and agrees to pay the Municipality's reasonable costs and attorneys fees incurred thereby.

**Minutes of April 21, 2009  
Mayor and Board of Aldermen**

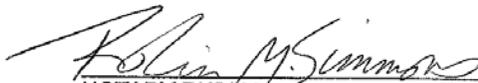
THIS the 27<sup>th</sup> day of April, 2009.

  
Leon Long

  
David Allen

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 28<sup>th</sup> day of April, 2009, within my jurisdiction, the within named Leon Long and David Allen, who acknowledged they are the owners of that parcel of land known as Red Gate Estates and that he executed the above and foregoing instrument.

  
NOTARY PUBLIC

My Commission Expires:



\*\*\*\*\*

There came on for consideration the April 2, 2009, Planning Commission minutes and the Clerk reported that an appeal was filed by Ida Faye Woodfield, by and through her authorized representative, Keesler Federal Credit Union, as follows:

**Minutes of April 21, 2009  
Mayor and Board of Aldermen**

RECEIVED APR 17 2009 - *11:03 AM*

**RUSHING & GUICE, P.L.L.C.**  
ATTORNEYS AT LAW

MARIA M. COBB†  
mcobb@rushingguice.com

604 Porter Avenue  
Ocean Springs, MS 39564

P.O. Box 1925  
Biloxi, MS 39533-1925

Phone 228-374-2313  
Fax 228-875-5987

www.rushingguice.com

April 17, 2009

Our File No. 4464

**VIA HAND-DELIVERY**

The Honorable William Skellie, Jr.  
Mayor, City of Long Beach  
645 Klondyke Road  
Long Beach, MS 39560

**VIA HAND-DELIVERY**

The Honorable Board of Aldermen  
City of Long Beach  
645 Klondyke Road  
Long Beach, MS 39560

Re: Keesler Federal Credit Union/Klondyke Road Property

Dear Mayor Skellie and Board of Aldermen:

Please be advised that in accordance with the Zoning Ordinance of the City of Long Beach, Mississippi, Ida Faye Woodfield, by and through her authorized representative, Keesler Federal Credit Union, will appeal the decision of the Planning Commission of the City of Long Beach, Mississippi, made at its regular meeting on April 9, 2009, in which the Application for Zoning Change of property on Klondyke Road was denied. (A copy of letter of authorization from Ida Faye Woodfield is attached hereto as Exhibit A.)

In accordance with the Zoning Ordinance of the City of Long Beach, Mississippi, Ida Faye Woodfield, by and through her authorized representative, Keesler Federal Credit Union, requests a public hearing before the Mayor and Board of Aldermen upon notice of the time, place and date of said hearing as provided by law.

Very truly yours,

RUSHING & GUICE, P.L.L.C.



MARIA M. COBB

MMC/kb

Attachment

cc: Tammy Brister, Vice President  
Jill Holm, Assistant Vice President

†Licensed In: Mississippi, Louisiana



**Minutes of April 21, 2009  
Mayor and Board of Aldermen**

January 15, 2009

City of Long Beach, Mississippi  
Planning Commission  
645 Klondyke Road  
P O Box 929  
Long Beach, MS 39560

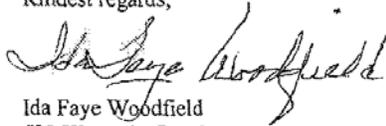
Subject: Resubdivision and Rezoning Request

To whom it may concern:

This letter serves as my authorization for Gerald Caldwell, Tammy Brister or Scotty Broome as representatives of Keesler Federal Credit Union to act in my behalf in the processes of resubdividing and rezoning the parcel referred to as Proposed Parcel A, consisting of 2.53 acres, on the attached survey.

Please also ensure that communications regarding these proceedings are directed to the individuals named above at Keesler Federal Credit Union, 2602 Pass Road, Biloxi, MS 39531. Thank you for your consideration and acceptance of this request.

Kindest regards,



Ida Faye Woodfield  
533 Klondyke Road  
Long Beach, MS 39560

Attachment: Menhennett Survey dated January 9, 2009

Subscribed and sworn to before me, in my presence this 15 day of January 2009,  
a Notary Public in and for the County of Harrison, State of Mississippi.

  
Notary Public

SEAL

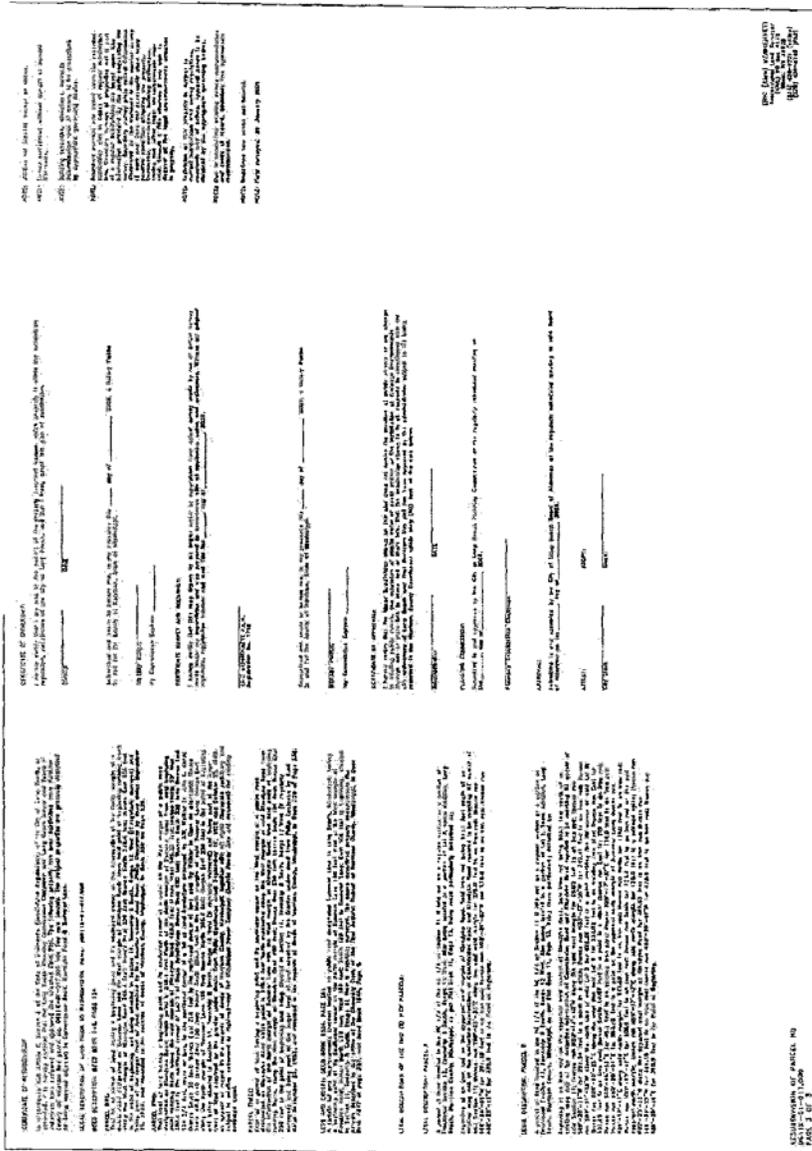
 Commission Expires May 11, 2011

EXHIBIT A





Minutes of April 21, 2009  
Mayor and Board of Aldermen



Upon discussion, Alderman Anderson made motion seconded by Alderman Lishen and unanimously carried to approve the April 9, 2009, Planning Commission minutes with exception to action taken at the public hearing denying the application for zoning change, 533 Klondyke Road, Long Beach, Mississippi, as submitted by Ida Faye Woodfield.

\*

\*

Alderman Anderson made motion seconded by Alderman Holder and unanimously carried to schedule a public hearing, Wednesday, June 3, 2009, at 6:00 p.m.

**Minutes of April 21, 2009**  
**Mayor and Board of Aldermen**

to consider the aforementioned appeal filed by Ida Faye Woodfield, by and through her authorized representative, Keesler Federal Credit Union.

\*\*\*\*\*

Alderman Holder made motion seconded by Alderman Lishen and unanimously carried to approve the April 16, 2009, Port Commission minutes, as submitted.

\*\*\*\*\*

Alderman Anderson made motion seconded by Alderman Holder and unanimously carried to approve payment of invoices as listed in Docket of Claims number 042109, inclusive of application for payment number 012, Flagstar Construction Company, Inc., Senior Citizen and Recreation Facility, in the amount of \$308,541.68.

\*\*\*\*\*

Based upon the recommendation of Police Chief Wayne McDowell and certification by the Civil Service Commission, Alderman Holder made motion seconded by Alderman Notter and unanimously carried to approve Police Department matters, as follows:

Hire Patrol Officer Recruit Joshua Ryan Williams, PS-5-B, effective May 1, 2009.

\*\*\*\*\*

Due to a possible conflict of interest, Alderman Holder was recused from the open meeting.

\* \* \*

Based upon the recommendation of Fire Chief George Bass and certification by the Civil Service Commission, Alderman Anderson made motion seconded by Alderman Notter and unanimously carried to approve Fire Department personnel matters, as follows:

Step Increase Firefighter 1<sup>st</sup> Class Richard Scott, FS-9-IV, effective April 16, 2009;

Step Increase Firefighter 1<sup>st</sup> Class Heath Mitchell, FS-9-II, effective May 16, 2009;

Step Increase Firefighter 1<sup>st</sup> Class Clayton Franklin, FS-9-II, effective May 16, 2009;

Hire (via transfer) Firefighter 1<sup>st</sup> Class Robert Holder, Jr., FS-9-Basic, effective May 1, 2009.

\* \* \*

Alderman Holder returned to the open meeting.

\*\*\*\*\*

# Minutes of April 21, 2009 Mayor and Board of Aldermen

Alderman Boggs made motion seconded by Alderman Notter and unanimously carried to extend the Proclamation of Civil Emergency – Hurricane Katrina and Hurricane Gustav, to protect and preserve the public health and safety of the community.

\*\*\*\*\*

Alderman Lishen made motion seconded by Alderman Anderson and unanimously carried to approve Change Order 005 and 006, Flagstar Construction Company, Inc., Senior Citizen Recreation Facility, as follows:

## AIA® Document G701™ – 2001

### Change Order

<b>PROJECT (Name and address):</b> Long Beach Senior Citizen & Recreation Facility Daugherty Rd Long Beach, MS 39560	<b>CHANGE ORDER NUMBER:</b> 005 <b>DATE:</b> March 06, 2009	<b>OWNER:</b> <input checked="" type="checkbox"/> <b>ARCHITECT:</b> <input checked="" type="checkbox"/> <b>CONTRACTOR:</b> <input checked="" type="checkbox"/> <b>FIELD:</b> <input type="checkbox"/> <b>OTHER:</b> <input type="checkbox"/>
<b>TO CONTRACTOR (Name and address):</b> Flagstar Construction Company, Inc. 2006 Aspen Cove Brandon, MS 39042	<b>ARCHITECT'S PROJECT NUMBER:</b> 8273 <b>CONTRACT DATE:</b> February 15, 2008 <b>CONTRACT FOR:</b> General Construction	

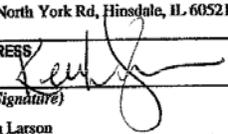
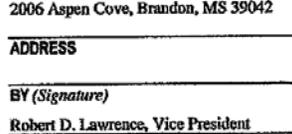
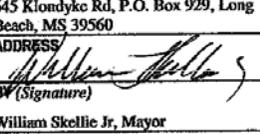
**THE CONTRACT IS CHANGED AS FOLLOWS:**  
*(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)*  
 Item #1 - Upgrade gymnasium flooring to a "standard" rubberized sports floor, ADD \$69,788.00  
 Item #2 - Add gymnasium equipment and telescoping bleachers, ADD \$94,544.00  
 \*Note: Increase to the contract time is to be determined. The contract time will be extended for this change pending approval of submittals and subsequent production lead-times after approvals are returned to the subcontractor.

The original Contract Sum was	\$ 2,906,086.00
The net change by previously authorized Change Orders	\$ 598,969.00
The Contract Sum prior to this Change Order was	\$ 3,505,055.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 164,332.00
The new Contract Sum including this Change Order will be	\$ 3,669,387.00

The Contract Time will be increased by \*TBD ( \*TBD ) days.  
 The date of Substantial Completion as of the date of this Change Order therefore is \*to be determined (TBD)

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Larson Kramer & Associates <b>ARCHITECT (Firm name)</b> 701 North York Rd, Hinsdale, IL 60521 <hr/> <b>ADDRESS</b> <hr/> <b>BY (Signature)</b>  Keith Larson (Typed name) <hr/> <b>DATE</b> 4/3/09	Flagstar Construction Company, Inc. <b>CONTRACTOR (Firm name)</b> 2006 Aspen Cove, Brandon, MS 39042 <hr/> <b>ADDRESS</b> <hr/> <b>BY (Signature)</b>  Robert D. Lawrence, Vice President (Typed name) <hr/> <b>DATE</b>	City of Long Beach, MS <b>OWNER (Firm name)</b> 645 Klondyke Rd, P.O. Box 929, Long Beach, MS 39560 <hr/> <b>ADDRESS</b> <hr/> <b>BY (Signature)</b>  William Skellie Jr, Mayor (Typed name) <hr/> <b>DATE</b>
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Minutes of April 21, 2009  
Mayor and Board of Aldermen

 **AIA** Document G701™ – 2001

**Change Order**

<b>PROJECT (Name and address):</b> Long Beach Senior Citizen & Recreation Facility Daugherty Rd Long Beach, MS 39560	<b>CHANGE ORDER NUMBER:</b> 006 <b>DATE:</b> March 27, 2009	<b>OWNER:</b> <input checked="" type="checkbox"/> <b>ARCHITECT:</b> <input checked="" type="checkbox"/> <b>CONTRACTOR:</b> <input checked="" type="checkbox"/> <b>FIELD:</b> <input type="checkbox"/> <b>OTHER:</b> <input type="checkbox"/>
<b>TO CONTRACTOR (Name and address):</b> Flagstar Construction Company, Inc. 2006 Aspen Cove Brandon, MS 39042	<b>ARCHITECT'S PROJECT NUMBER:</b> 8273 <b>CONTRACT DATE:</b> February 15, 2008 <b>CONTRACT FOR:</b> General Construction	

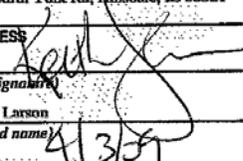
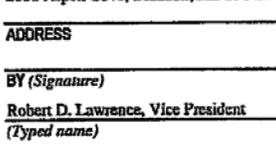
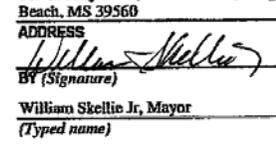
**THE CONTRACT IS CHANGED AS FOLLOWS:**  
*(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)*  
Add 3 1/2" R-13 batt insulation from floor to just above the lay-in ceiling height at the exterior walls of the Dining Room and Wellness Room.

The original Contract Sum was	\$ 2,906,086.00
The net change by previously authorized Change Orders	\$ 763,301.00
The Contract Sum prior to this Change Order was	\$ 3,669,387.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 7,850.00
The new Contract Sum including this Change Order will be	\$ 3,677,237.00

The Contract Time will be unchanged by Zero ( 0 ) days.  
The date of Substantial Completion as of the date of this Change Order therefore is

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

<u>Larson Kramer &amp; Associates</u> <b>ARCHITECT (Firm name)</b>	<u>Flagstar Construction Company, Inc.</u> <b>CONTRACTOR (Firm name)</b>	<u>City of Long Beach, MS</u> <b>OWNER (Firm name)</b>
701 North York Rd, Hinsdale, IL 60521	2006 Aspen Cove, Brandon, MS 39042	645 Klondyke Rd, P.O. Box 929, Long Beach, MS 39560
<b>ADDRESS</b>	<b>ADDRESS</b>	<b>ADDRESS</b>
 <b>BY (Signature)</b>	 <b>BY (Signature)</b>	 <b>BY (Signature)</b>
Keith Larson <b>(Typed name)</b>	Robert D. Lawrence, Vice President <b>(Typed name)</b>	William Skellie Jr, Mayor <b>(Typed name)</b>
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>

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\* \* \* \* \*

Alderman Notter made motion seconded by Alderman Holder and unanimously carried to approve Contract Amendment Number 2, Police Station Facility, authorizing the Mayor to execute same, as follows:

**Minutes of April 21, 2009  
Mayor and Board of Aldermen**

**CONTRACT AMENDMENT NUMBER 2  
CITY OF LONG BEACH  
AND  
SNC LAVALIN CAPITAL ENGINEERING  
FOR SERVICES TO  
DESIGN A POLICE STATION FACILITY  
TO REPLACE THE POLICE STATION  
DESTROYED BY HURRICANE KATRINA**

WHEREAS, The City of Long Beach Mississippi (OWNER) and SNC LAVALIN Capital Engineering (ENGINEER) have heretofore entered into an Agreement for the performance of professional services to the City described as the design of a police station facility to replace the police station destroyed by Hurricane Katrina, said agreement bearing the date 6/23/06, and

WHEREAS, said Agreement provided that total services under that agreement would not exceed \$78,000 initially, and \$111,000 under Amendment No. 1, without further authorization, and

WHEREAS, the scope of the work has increased to include engineering services to design a community hurricane shelter on the grounds and adjacent to the police station facility, and develop a specification for hurricane shutters on the existing police station building.

The parties to this Agreement now mutually further agree as follows:

A. The scope of work is increased to include the additional work as described below for a hurricane shelter:

- Design an approximately 1,000 SF FEMA 361 Shelter
- Specify a Stand by Generator, Transfer Switch and Controls
- Design and Specify a Propane Tank and Controls
- Design and Specify a Potable Water Tank, Pumps, and controls
- Design and Specify a Sewage Tank, Pumps, and Controls

B. The scope of work is increased to include the additional work as described below for hurricane shutters on the police station building.

- Specify Hurricane Shutters for sixteen exterior windows and six exterior door openings on the existing Police Station Building.

C. The estimated compensation for engineering services increased by \$43,800 from \$111,000, to \$154,800.

**Minutes of April 21, 2009  
Mayor and Board of Aldermen**

D. The breakdown of the \$43,800 additional engineering fee is as shown in Revised Appendix 1 to Exhibit C dated April 21, 2009.

E. The following are attached to and form part of this Amendment:

- Amended Agreement dated April 7, 2009
- Revised Exhibit A dated April 7, 2009.
- Revised Exhibit B dated April 7, 2009.
- Revised Exhibit C dated April 21, 2009.
- Revised Appendix 1 to Exhibit C dated April 21, 2009.
- Revised Exhibit G dated April 7, 2009.

CITY OF LONG BEACH

SNC LAVALIN CAPITAL ENGINEERING

BY: \_\_\_\_\_

BY: Lois A. Trainor

DATE: \_\_\_\_\_

DATE: 04/21/09

# Minutes of April 21, 2009

## Mayor and Board of Aldermen

### ARTICLE 1 - SERVICES OF ENGINEER

---

#### 1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

### ARTICLE 2 - OWNER'S RESPONSIBILITIES

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#### 2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

### ARTICLE 3 - TIMES FOR RENDERING SERVICES

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#### 3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth of specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changed in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

#### 3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

### ARTICLE 4 - PAYMENTS TO ENGINEER

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#### 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

#### 4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted

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by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that imposes taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

### ARTICLE 5 - OPINIONS OF COST

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#### 5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

#### 5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit" to this Agreement.

#### 5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

### ARTICLE 6 - GENERAL CONSIDERATIONS

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#### 6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the

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extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER'S Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing and furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services to ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work", or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by the OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

### 6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

### 6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

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B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

### 6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer

hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

### 6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance".

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance".

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interested are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are

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more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

### 6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

#### 1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

#### b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform service contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the

cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

#### 2. For convenience,

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 6.07 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

### 6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty of responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

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2. All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

### 6.09 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in exhibit H, "Dispute Resolution".

### 6.10 Hazardous Environmental Condition

A. OWNER represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER that existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of service does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become

an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

### 6.11 Allocation of Risks

#### A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. If any of the services provided or software developed by ENGINEER contain an error or omission which was within ENGINEER's control and was not attributable to any act or omission of the OWNER, ENGINEER's aggregate liability to the OWNER shall be limited to furnishing engineering services, revised software, and/or revised drawings as shall be necessary to correct or revise any such error or omission for a period of twelve (12) months following final acceptance, or if there is no acceptance test, twelve (12) months after installation. Beyond the cost of furnishing services and revising drawings, ENGINEER's aggregate liability to the OWNER for all claims whatsoever resulting from or in any way attributable to errors, omissions, or other acts of

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ENGINEER, whether or not based on the preceding, shall not exceed the collectable insurance.

4. In no circumstance shall ENGINEER or any of its Officers, Agents, Employees, Subcontractors or Suppliers of any tier, be liable to the OWNER, its successors and assigns, for remote, incidental, indirect or consequential damages or special loss or damage of any kind, whether based on contract, warranty, tort liability (including OWNER's negligence), indemnity, strict liability or otherwise, and whether or not foreseeable, including, but not limited to, loss of use or non-operation of any of the OWNER's plant or property including the project, loss of profits, cost of capital, costs to repair or replace any property, increased expenses of operation, penalties, fines or costs in excess of estimates.

### 6.12 Notices

A. Any notices required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

### 6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

### 6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

### 6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

## ARTICLE 7 - DEFINITIONS

### 7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services", including those Exhibits listed in Article 8 thereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

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9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period* - The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish

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services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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40. *Supplementary Conditions*--That part of the Contract documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Costs, allowances for contingencies, the total costs of services for ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages for properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

### ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

#### 8.01 Exhibits Include

A. Exhibit A, "ENGINEER's Services", consisting of \_ pages.

B. Exhibit B, "OWNER's Responsibilities", consisting of 3 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses" - Standard Hourly Rates Method of Payment, consisting of 2 pages.

- AND -

Appendix 1 to Exhibit C, "Standard Hourly Rates Schedule", consisting of 1 page.

~~D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of 4 pages.~~

~~E. Exhibit E, "Notice of Acceptability of Work", consisting of \_\_\_ pages.~~

~~F. Exhibit F, "Construction Cost Limit", consisting of \_\_\_ page.~~

G. Exhibit G, "Insurance", consisting of 2 pages.

~~H. Exhibit H, "Dispute Resolution", consisting of \_\_\_ page.~~

~~I. Exhibit I, "Allocation of Risks", consisting of \_\_\_ page.~~

~~J. Exhibit J, "Special Provisions", consisting of \_\_\_ pages.~~

#### 8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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Mayor and Board of Aldermen**

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the Effective Date of which is indicated on page 1.

OWNER:

CITY OF LONG BEACH, MISSISSIPPI

By: William Skellie, Jr.

Title: Mayor

Date Signed: \_\_\_\_\_

Address for giving notices:

P. O. Box 929

Long Beach, MS 39560

Designated Representative (paragraph 6.02.A):  
\_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

ENGINEER:

SNC Lavalin Capital Engineering

By: Robert C. Grier, P.E.

Title: Vice President and General Manager

Date Signed: 4/9/09

Address for giving notices:

6933 Indianapolis Blvd.

Hammond, IN 46324

Designated Representative (paragraph 6.02.A):  
\_\_\_\_\_

Louis A. Traina

Title: Engineering Manager

Phone Number: 219-844-1984

Facsimile Number: 219-845-9902

E-Mail Address: ltraina@capital-eng.com

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## Mayor and Board of Aldermen

This is EXHIBIT A, consisting of 6 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated April 7, 2009.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER RCM

### ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

#### PART 1 -- BASIC SERVICES

##### A1.01 Study and Report Phase

###### A. ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
  2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
  3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
  4. Identify and evaluate 1 alternative solution available to OWNER and, after consultation with OWNER, recommend OWNER those solutions which in ENGINEER's judgement meet OWNER's requirements for the project.
  5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
  6. Perform or provide the following additional Study and Report Phase tasks or deliverables:
  7. Furnish 3 review copies of the Report to OWNER within 30 days of authorization to begin services and review it with OWNER.
  8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish 3 final copies of the revised Report to the OWNER within 60 days after completion of reviewing it with OWNER.
- B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.

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### A1.02 *Preliminary Design Phase*

A. After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, selection, and authorization, prepares Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
2. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information, or services.
3. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A1.01.A.5.
4. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
5. Furnish the Preliminary Design Phase documents to and review them with OWNER.
6. Submit to OWNER 3 final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within 30 days after authorization to proceed with this phase.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

### A1.03 *Final Design Phase*

A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A1.01.A.5.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:
5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.
6. Submit 3 final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER within 120 days after authorization to proceed with this phase.

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B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, or Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is 1.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to OWNER.

### A1.04 *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the more recent opinion of probable Construction Costs as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement.)

C. The estimate of the Engineer's compensation for this phase is to be based on the Engineer not attending the pre-Bid conference, Bid opening, or a meeting to award the contract. These services are to be provided by the Owners Representative on site. The estimate of the Engineer's compensation for this phase is to be based on 20 man-hours to assist the Owner in obtaining Bids, documenting pre-Bid meeting notes, issuing addenda as required, tabulating Bids, consulting with the Owner on the acceptability of contractors, and assisting the Owner in evaluating proposals.

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### A1.05 *Construction Phase*

The Engineer is to provide advisory oversight services during the construction phase of the project. The on site construction oversight services are to be provided to the Owner by the Owner's representative or a third party contracted by the Owner. The estimated compensation to the Engineer for the advisory oversight services is included in the final design phase and the bidding and negotiation phase estimates. The Engineer is not required to provide on site services during construction.

### PART 2 -- ADDITIONAL SERVICES

#### A2.01 *Additional Services Requiring OWNER's Authorization in Advance*

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
4. Services resulting from OWNER's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.04.A.4.
5. Services required as a result of OWNER's providing incomplete or incorrect Project Information with respect to Exhibit B.
6. Providing renderings or models for OWNER's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
8. Furnishing services of ENGINEER's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.

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10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.

17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

18. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor. (See A1.05, 17.a)

19. Preparation of operation and maintenance manuals.

20. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the Project.

21. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.

22. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

### A2.02 *Required Additional Services*

A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

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3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

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## Mayor and Board of Aldermen

This is EXHIBIT B, consisting of 3 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated April 7, 2009.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER RCG.

### OWNER's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.  
B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

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G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

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Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

R. Perform or provide the following additional services:

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This is EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated April 21, 2009.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER MA

## Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

### ARTICLE 4 - PAYMENTS TO THE ENGINEER

#### C4.01 *For Basic Services Having A Determined Scope--Standard Hourly Rates Method of Payment*

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2. ENGINEER's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

3. The total compensation for services under paragraph C4.01 is estimated to be \$43,800 based on the following assumed distribution of compensation:

a. Study and Report Phase	NA
b. Preliminary Design Phase	\$ 7,400.
c. Final Design Phase	\$30,200.
d. Bidding and Negotiating Phase	\$ 6,200.

4. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by the OWNER.

5. The total estimated compensation for ENGINEER's services included in the breakdown by phases as noted in paragraph 4.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and ENGINEER's Consultant's charges.

6. The amounts billed for ENGINEER's services under paragraph C4.01 will be based on the

cumulative hours charged to the Project during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges.

7. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.

8. The Standard Hourly Rates Method of Payment is conditioned on Contract Times to complete the Work not exceeding 12 months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

#### C4.02 *For Basic Services Having An Undetermined Scope -- Standard Hourly Rates Method of Payment*

A. OWNER shall pay ENGINEER for Basic Services having an undetermined scope as follows:

#### C4.03 *For Additional Services*

A. OWNER shall pay ENGINEER for Additional Services as follows:

1. *General.* For services of ENGINEER's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2 *Serving as a Witness.* For services performed by ENGINEER's employees as witnesses giving

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testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$1,000 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1).

**C4.05 Standard Hourly Rates**

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.

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This is Appendix 1 to EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated April 21, 2009.

Initial:  
OWNER  
ENGINEER XAT

## Standard Hourly Rates Schedule

### I. ENGINEERING SERVICES Valid Through February 28, 2010

<u>BILL CLASS</u>	<u>DESCRIPTION</u>	<u>BILLING RATES/HOUR</u>	
		<u>STANDARD</u>	<u>OVERTIME</u>
E-7	Technical Specialist, Vice President	\$168.00	Same
E-6	Director, Manager	\$125.00	Same
E-5	Principal Engineer, Buyer, Project/Construction Manager	\$110.00	Same
E-4	Staff Engineer, Buyer, C/S Analyst, Project Manager	\$100.00	Same
E-3	Senior Engineer, Buyer, C/S Analyst, Project Engineer	\$ 90.00	Same
E-2	Engineer, Buyer, Cost/Schedule Analyst	\$ 80.00	Same
E-1	Associate Engineer, Cost/Schedule Analyst	\$ 70.00	Same
NE-6	Lead Designer	\$ 90.00	\$117.00
NE-5	Staff Designer, Inspection Supervisor	\$ 80.00	\$104.00
NE-4	Senior Designer, CADD Specialist, Buyer/Expediter	\$ 70.00	\$ 91.00
NE-4	Senior Designer, CADD Specialist, Buyer/Expediter	\$ 60.00	\$ 78.00
NE-3	Designer, CADD Specialist, Buyer/Expediter	\$ 50.00	\$ 65.00
NE-2	Draftsman, Technician	\$ 40.00	\$ 52.00
NE-1	Clerk, Secretary		

### II. EXPENSES

- 2.1 All transportation, traveling, lodging, subsistence or per diem expenses of SNC-Lavalin Capital Engineering's employees are billable at cost.
- 2.2 All extraordinary costs associated with overseas telephone, overseas express mail, multi-party teleconferencing or similar expenses are billable at cost without mark-up.
- 2.3 The following miscellaneous expenses shall be billed at the flat rate of \$4.00 per man-hour expended during the course of the project:
  - Reproduction of Drawings and Reports (any size)
  - Domestic Local and Long Distance Telephone (person to person)
  - Domestic Regular and Overnight Mailing Costs for Engineering Documents

SNC-Lavalin Capital Engineering will maximize transmittal of data, information, or other engineering deliverables in electronic (E-Mail) or compact disc (CD) format.
- 2.4 When required to meet project specific requirements, the costs for Sub-Contractors, Consultants, Equipment or Specialty Software are billable at cost plus 10%.
- 2.5 Payment terms are net 30 days from receipt of invoice.

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## SUMMARY OF ESTIMATED COSTS

Study & Report Phase for Police Shelter:	Estimated Man-hours: 30 Estimated Cost: \$2,900 Estimated Travel Expense: \$ 0 Total: \$2,900
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The Study and Report phase was completed under a separate contract and is not included in the total estimated cost for this contract.

**Preliminary Design Phase:**

Police Shelter	Police Shutters
Estimated Man-hours: 60	Estimated Man-hours: 8
Estimated Cost: \$ 5,600	Estimated Cost: \$ 800
Estimated Travel Expense: <u>\$ 1,000</u>	Estimated Travel Expense: <u>\$ 0</u>
Total: \$ 6,600	Total: \$ 800

**Final Design Phase:**

Police Shelter	Police Shutters
Estimated Man-hours: 280	Estimated Man-hours: 51
Estimated Cost: \$24,300	Estimated Cost: \$ 4,900
Estimated Travel Expense: <u>\$ 1,000</u>	Estimated Travel Expense: <u>\$ 0</u>
Total: \$25,300	Total: \$ 4,900

**Bidding & Negotiation Phase:**

Police Shelter	Police Shutters
Estimated Man-hours: 20	Estimated Man-hours: 16
Estimated Cost: \$ 2,600	Estimated Cost: \$ 1,600
Estimated Travel Expense: <u>\$ 1,000</u>	Estimated Travel Expense: <u>\$ 1,000</u>
Total: \$ 3,600	Total: \$ 2,600

Sub-Total Shelter: \$35,500	Sub-Total Shutters: \$ 8,300
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**Grand Total (This Contract) \$43,800**

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This is EXHIBIT G, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated April 7, 2009.

Initial:  
OWNER  
ENGINEER RCG

## Insurance

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Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

### G6.05 Insurance

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

a. Workers' Compensation	Statutory
b. Employer's Liability -	
1. Each Accident:	\$ 1,000,000
2. Disease, Policy Limit:	\$ 1,000,000
3. Disease, Each Employee:	\$ 1,000,000
c. General Liability -	
1. Each Occurrence (Bodily Injury and Property Damage):	\$ 2,000,000
2. General Aggregate:	\$ 4,000,000
d. Excess or Umbrella Liability -	
1. Each Occurrence:	NONE
2. General Aggregate:	NONE
e. Automobile Injury -	
1. Bodily Injury:	
a. Each Accident	N/A
2. Property Damage:	
a. Each Accident	N/A
(OR)	
1. Combined Single Limit (Bodily Injury and Property Damage):	\$ 2,000,000
Each Accident	
f. Other (specify):	
<u>N/A</u>	\$ <u>N/A</u>

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2. By OWNER: NA

B. *Additional Insureds*

1. The following person or entities are to be listed on OWNER's policies of insurance as additional insureds as provided in paragraph 6.05.B:

a. NA  
ENGINEER

b. N/A  
ENGINEER's CONSULTANT

c. N/A  
ENGINEER's CONSULTANT

\*\*\*\*\*

The Walking Trail Grant, Canal 2-3, was removed from the agenda until further notice.

\*\*\*\*\*

Discussion was held regarding a property cleaning ordinance, however, no formal action was required or taken regarding this matter.

\*\*\*\*\*

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**ORDINANCE NO. 565**

**FLOOD DAMAGE PREVENTION ORDINANCE**

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**Revised 04/09  
MODEL**

**FLOOD DAMAGE PREVENTION ORDINANCE**

**ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**SECTION A. STATUTORY AUTHORIZATION.**

The Legislature of the State of Mississippi has in Title 17, Chapter 1, Mississippi Code 1972 Annotated delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, *the Mayor and Board of Alderman* of the *City of Long Beach* does hereby adopt the following floodplain management regulations.

**SECTION B. FINDINGS OF FACT.**

- (1) *The flood hazard areas of the City of Long Beach* is subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions both inside and outside the identified Special Flood Hazard Areas causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses

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vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

**SECTION C. STATEMENT OF PURPOSE.**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage, and;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

**SECTION D.OBJECTIVES.**

The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, street and bridges located in floodplains;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
- (7) To ensure that potential homebuyers are notified that property is in a flood area.

**SECTION E. METHODS OF REDUCING FLOOD LOSSES.**

In order to accomplish its purposes, this ordinance includes methods and provisions for:

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- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers that will unnaturally divert floodwaters or may increase flood hazards in other areas.

**ARTICLE 2. DEFINITIONS.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

**A Zone** is the Area of Special Flood Hazard without water surface elevations determined.

**A1 – A30 and AE zone** is the Area of Special Flood Hazard with base flood elevations determined.

**Accessory structure** (Appurtenant structure) means a structure, which is located on the same parcel of property as the principle structure and the use of which is incidental to the use of the principle structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Addition** (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

**AH zone** is an area of 100-year shallow flooding where depths are between one to three feet (usually shallow ponding), with base flood elevations shown.

**Appeal** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

**AR/A1 – A30, AR/AE, AR/AH, AR/AO, and AR/A zones** are SFHAs that result from the decertification of a previously accredited flood protection system that is in the process of being restored to provide a 100-year or greater level of flood protection. After restoration is complete, these areas will still experience residual flooding from other flooding sources.

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**Area of special flood hazard** is the land in the floodplain within a community subject to a one- percent or greater chance of flooding in any given year.

**B and X zones (shaded)** are areas of 500-year flood, areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile, and areas protected by certified levees from the base flood.

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

**Base Flood Elevation (BFE)** is the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent or greater chance of being equaled or exceeded in any given year.

**Basement** means that portion of a building having its floor sub-grade (below ground level) on all sides.

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. This is associated with V Zone construction.

**Building** see **Structure**.

**C and X (unshaded) zones** are areas determined to be outside the 500-year floodplain.

**Coastal AE Zone** means the portion of the Special Flood Hazard Area (SFHA) landward of a Velocity (V) Zone or landward of an open coast or back-bay area without mapped V-Zones, in which the principle sources of flooding are astronomical tides, storm surges, seiches or tsunamis; not riverine sources. Coastal AE Zones may be subject to wave effects, velocity flows, erosion, scour or combinations of these forces and are treated as V Zones. All community-identified portions of the Special Flood Hazard Area (SFHA) between the landward limit of the 1.5-foot breaking wave and the V Zone boundary shall be treated in a regulatory sense as V Zones. Where no V Zone is mapped in back-bay areas, the Coastal AE Zone is the portion between shore and the landward limit of the 1.5-foot breaking wave.

**Coastal high hazard area** is an area of special flood hazard, extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1 – V30, VE or V.

**Community** is a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**Community Rating System (CRS)** is a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

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**Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to designated public shelters, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

**D zone** is an area in which the flood hazard is undetermined.

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

**Elevated building** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Elevation Certificate** is a certified statement that verifies a building's elevation information.

**Emergency Program** means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable buildings in that community before the effective date of the initial FIRM.

**Enclosure Below the Lowest Floor** see "Lowest Floor."

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Executive Order 11988 (Floodplain Management)** was issued by President Carter in 1977. This order requires that no federally assisted activities be conducted in or have the potential to affect identified Special Flood Hazard Areas, unless there is no practicable alternative.

**Existing Construction** includes any structure for which the "start of construction" commenced before *JANUARY 1 1974*.

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by *City of Long Beach* before *May 2, 1988*.

**Expansion to an existing manufactured home park or subdivision** includes the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Fill** means a deposit of earth material placed by artificial means.

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**Five-Hundred Year Flood** means the flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding.

**Flood or flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a.) The overflow of inland or tidal waters.
- b.) The unusual and rapid accumulation or runoff of surface waters from any source.
- c.) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Flood Boundary and Floodway Map (FBFM)** means the official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**Flood Hazard Boundary Map (FHBM)** means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** is the official hydraulic & hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FHBM (where applicable) and the water surface elevation of the base flood.

**Floodplain** means any land area susceptible to being inundated by flood waters from any source.

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain Administrator** is the individual appointed to administer and enforce the floodplain management regulations.

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

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**Floodproofing Certificate** is a form used to certify compliance for non-residential structures as an alternative to elevating buildings to or above the BFE.

**Floodway** *See Regulatory Floodway*

**Floodway fringe** means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

**Flood Protection Elevation** is the base flood elevation plus 1 feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the floodplain administrator.

**Freeboard** means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

**Functionally dependent use** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Hardship** (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The *Mayor and Board of Alderman* requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Hazard potential** means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or mis-operation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of a dam and its appurtenant structures (e.g., safety, structural integrity, flood routing capacity).

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.

**Historic Structure** means any structure that is:

- a.) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:

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- b.) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c.) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;  
or
- d.) Individually listed on a local inventory historic places in communities with historic preservation programs that have been certified either:
  - 1. By an approved state program as determined by the Secretary of the Interior, or
  - 2. Directly by the Secretary of the Interior in states without approved programs.

**Hydrologic and hydraulic engineering analysis** means an analysis performed by a professional engineer, registered in the State of Mississippi, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and / or floodway boundaries.

**Increased Cost of Compliance (ICC)** means the cost to repair a substantially flood damaged building that exceeds the minimal repair cost and that is required to bring a substantially damaged building into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business policies with effective dates on or after June 1, 1997, will include ICC coverage.

**Letter of Map Change (LOMC)** is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's are broken down into the following categories:

Letter of Map Amendment (LOMA)

A revision based on technical data showing that a property was incorrectly included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.

Letter of Map Revision (LOMR)

A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LORM, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.

Conditional Letter of Map Revision (CLOMR)

A formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

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**Levee** means a man-made structure; usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or diverts the flow of water so as to provide protection from temporary flooding.

**Levee system** means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices. For a levee system to be recognized, the following criteria must be met. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual (a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or revised). All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.

**Limit of Moderate Wave Action (LiMWA)** is the limit of the AE Zone category area exposed to wave attack from waves greater than 1.5 feet during the base (one percent chance) flood on open coastal and inland areas exposed to erosion and wave propagation. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

**Lowest adjacent grade** means the elevation of the sidewalk, patio, deck support, or basement entryway immediately next to the structure and after the completion of construction. It does not include earth that is emplaced for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a building's foundation system.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, *provided* that such enclosure is not built so as to render the structure in violation of the non-elevation provisions of this code.

**Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include a "recreational vehicle."

**Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Map Panel Number** is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised.

**Map Amendment** means a change to an effective NFIP map that results in the exclusion from the SFHA or an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

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**Market value** means the building value, excluding the land (as agreed between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

**Mean Sea Level** means, for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**National Flood Insurance Program (NFIP)** is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

**National Geodetic Vertical Datum (NGVD)** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

**New Construction** means a structure for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structure and any construction beginning on a new foundation system or construction beginning with existing foundation system and the raising of new walls.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by a community.

**Non-Residential** means, but is not limited to; small business concerns, churches, schools, farm buildings (including grain bins and silos), poolhouses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, and hotels or motels with normal room rentals for less than 6 months duration.

**North American Vertical Datum of 1988** is a vertical control used as a reference for establishing varying elevations within the floodplain.

**Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**One-Hundred Year Flood (100-Year Flood)** is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to the 100-year flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood with the SFHA.

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**Participating Community** is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Post-FIRM Construction** means construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.

**Pre-FIRM Construction** means construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

**Probation** is a means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Public safety and nuisance**, anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Recreational vehicle** means a vehicle that is:

- a.) Built on a single chassis;
- b.) 400 square feet or less when measured at the largest horizontal projection;
- c.) Designed to be self-propelled or permanently towable by a light duty truck; and,
- d.) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regular Program** means the phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

**Regulatory floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Repair** means the reconstruction or renewal of any part of an existing building.

**Repetitive Loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, equals or exceeds twenty-five percent of the market value of the structure before the damage occurred.

**Section 1316** is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local

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zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**Significant hazard dam** means a dam assigned the significant hazard potential classification where failure may cause damage to main roads, minor railroads, or cause interruption of use, or service of relatively important public utilities.

**Special flood hazard area (SFHA)** means that portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A1 – A30, AH, AO, AR, V, VE, or V1-V30.

**Start of construction** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure**, for floodplain management purposes, means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Structure**, for insurance purposes, means a building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; a manufactured home built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

**Subrogation** means an action brought by FEMA when flood damages have occurred, flood insurance has been paid, and all or part of the damage can be attributed to acts or omissions by a community or other third party.

**Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. "Substantial damage" also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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For the purposes of this definition, “repair” is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences.

The term does not apply to:

- a.) Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
- b.) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

**Substantial Improvement** means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure taking place during *a 10-year period*, the cost of which equals or exceeds fifty percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “repetitive loss” or “substantial damage,” regardless of the actual repair work performed.

For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.

The term does not apply to:

- a.) any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
- b.) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

**Substantially improved existing manufactured home parks or subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**Suspension** means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

**V zone** *see Coastal High Hazard Area*

**V1 – V30 and VE zone** *see Coastal High Hazard Area*

**Variance** is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

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**Violation** means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Water surface elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**X zone** means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2-percent annual probability of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

**Zone** means a geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

**ARTICLE 3. GENERAL PROVISIONS.**

**SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.**

This ordinance shall apply to all areas of special flood hazard (SFHA) areas within the jurisdiction of the *the Mayor and Board of Alderman of the City of Long Beach*

*This ordinance shall apply to all areas within jurisdiction of the City of Long Beach*

**SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the **Flood Insurance Rate Map (DFRIM) Index No. 28047CINDOA, whose effective date is JUNE 16,2009.** The areas of special flood hazard identified by the Federal Emergency Management Agency in the Harrison County Flood Insurance Study, dated JUNE 16,2009 with the accompanying Flood Insurance Rate Map(s) (FIRM) panel(s) numbers 0243,0244,0352,0356,0358,0359 and 0376 and other supporting data are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and / or maps are on file at:

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**SECTION C. USE OF PRELIMINARY FLOOD HAZARD DATA.**

**SECTION D. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

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A development permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities in identified areas of flood hazard within the community.

**SECTION E. COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

**SECTION F. ABROGATION AND GREATER RESTRICTIONS.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION G. INTERPRETATION.**

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body, and;
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

**SECTION H. WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions.

Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of *the Mayor and Board of Alderman* of the *City of Long Beach* or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION I. PENALTIES VIOLATION.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than **\$50.00** or imprisoned for not more than **30** days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator

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from taking such other lawful actions as is necessary to prevent or remedy any violation.

**ARTICLE 4. ADMINISTRATION.**

**SECTION A. DESIGNATION OF FLOOD DAMAGE PREVENTION  
ORDINANCE ADMINISTRATOR.**

The *Mayor and Board of Alderman* of the *City of Long Beach* hereby appoints the *Long Beach Building Official* to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator and/or the administrator.

**SECTION B. PERMIT PROCEDURES.**

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Application Stage.

- a.) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
- b.) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
- c.) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the floodproofing criteria in Article 5, Section B (2) and Section C (2);
- d.) Description of the extent to which any watercourse will be altered or relocated as result of proposed development, and;

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD elevation of the lowest floor or floodproofed elevation, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

Any work undertaken prior to submission of the certification shall be at the permit holder' risk. (The Floodplain Administrator shall review the lowest floor

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& floodproofing elevation survey data submitted.) The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

**SECTION C. POWERS, DUTIES AND RESPONSIBILITIES OF THE  
FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator and/or staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

(1) Right of Entry \*

- a.) Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the administrator has reasonable cause to believe that there exists in any building or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the administrator may enter such building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the administrator by this ordinance.
- b.) If such building or premises are occupied, he shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such request entry.
- c.) If entry is refused, the administrator shall have recourse to every remedy provided by law to secure entry.
- d.) When the administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the administrator for the purpose of inspection and examination pursuant to this ordinance.

(2) Stop Work Orders \*

- a.) Upon notice from the administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(3) Revocation of Permits \*

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- a.) The administrator may revoke a permit or approval, issued under the provisions of this ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
- b.) The administrator may revoke a permit upon determination by the administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

Duties of the administrator shall include, but not be limited to:

- (1) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities, the State NFIP Coordinator, and other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with Article 4, Section B (2).
- (6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been floodproofed, in accordance with Article 4, Section B (2).
- (7) Review certified plans and specifications for compliance.
- (8) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (9) When base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B, then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Article 5.

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- (10) Provide information, testimony, or other evidence, as needed during variance request hearings.
- (11) When damage occurs to a building or buildings, the following actions shall be conducted:
  - a.) Determine whether damaged structures are located within the Special Flood Hazard Area;
  - b.) Conduct damage assessments for those damaged structures located in the SFHA, and;
  - c.) Make a reasonable attempt to notify owner(s) of damaged structure(s) of the requirement to obtain a building permit / floodplain development permit prior to repair, rehabilitation, or reconstruction.

**ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.**

**SECTION A. GENERAL STANDARDS.**

In all areas of special flood hazard the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, such facilities shall be located a minimum of **at or** above the Base Flood Elevation;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

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- (9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance; and,
- (10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.
- (11) New construction and substantial improvement of any building shall have the lowest floor (including basement) at least one foot above the centerline of the designated street, unless the topography of the property does not allow for strict adherence as determined by the *City of Long Beach*
- (12) New construction and substantial improvements built on fill shall be constructed on the properly designed and compacted fill that extends beyond the building walls before dropping below the base flood elevation, and shall have appropriate protection from erosion and scour.

**SECTION B. SPECIFIC STANDARDS.**

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in Article 3, Section B, the following provisions are required:

- (1) Residential Construction. New construction and substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than **0 feet above** the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces on exterior walls of enclosures that are subject to flooding, shall be provided in accordance with standards of Article 5, Section B (3).
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than **0 feet above** the level of the base flood elevation. Buildings located in all A-Zones may be flood-proofed in lieu of being elevated provided that all areas of the building below the base flood elevation (plus community free board) elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator.
- (3) Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevations shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

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- a.) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade);

Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions;

Limited in use to parking, storage, and building access; and,

**Limited to less than 300 square feet.**

- b.) Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and

- c.) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

**d.) Property owners shall be required to execute a floodplain venting affidavit acknowledging that all openings will be maintained as flood vents, and that the elimination or alteration of the openings in any way will not violate the requirements of this Article 5, Section B.**

- (4) Detached storage buildings, shed, or other like accessory improvements, excluding detached garages, carports, and boat houses are used primarily for parking and storage of vehicles. **and will be allowed up to no more than 300 square feet of unfinished, non-partitioned and enclosed storage space.** Such storage space shall not be used for human habitation and shall be limited to storage of items that can withstand exposure to the elements and have low flood damage potential. The storage space shall be constructed of flood resistant or breakaway materials, and equipment and service utilities, such as electrical outlets, shall be limited to essential lighting and other incidental uses, and must be elevated or floodproofed. Openings to preclude hydrostatic loading and allow ventilation as provided in Article 5 Section B. (3) shall also be required. These accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- (5) Accessory improvements and other apparent structures shall be firmly anchored to prevent flotation that may result in damage to other structures.
- (6) Property owners shall be required to execute and record with the structure's deed a non-conversion agreement declaring that the area below the lowest floor or the detached accessory building shall not be improved, finished or otherwise**

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converted; the community will have the right to inspect the enclosed area at any time.

(7) Standards for Manufactured Homes and Recreational Vehicles.

a.) All manufactured homes placed, or substantially improved, on individual lots or parcels, **in existing manufactured home parks or subdivisions**, in expansions to existing manufactured home parks or subdivisions, in new manufactured home parks or subdivisions or in substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

Manufactured homes must be:

- (i) Elevated on a permanent foundation, and
- (ii) Have its lowest floor elevated no lower than 1 **foot** above the level of the base flood elevation, and
- (iii) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

b.) Excepting manufactured homes that have incurred substantial damage as a result of a flood, all manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

- (i) The manufactured home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement, and
- (ii) The lowest floor of the manufactured home is elevated no lower than 1 **feet** above the level of the base flood elevation, or
- (iii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the highest adjacent grade.

c.) All recreational vehicles placed on sites must either:

- (i) Be on site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use, or
- (iii) Must meet all the requirements for new construction, including anchoring and elevation requirements of this Article 5, Section B (7) (a) or Article 5, Section B (7) (b) (i) and (ii), above.

A recreational vehicle is ready for highway use if it is licensed and insured in accordance with the state of Mississippi motor vehicle regulations, is on its

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wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

d.) All principally above ground gas or liquid storage tanks shall be anchored to prevent flotation and lateral movement.

(8) Floodways. Located within areas of special flood hazard adopted by reference in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply: \*

- a.) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;
- b.) If Article 5, Section B (7) (a) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.
- c.) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A (2), and the elevation standards of Article 5, Section B (1) (2) and the encroachment standards of this Article 5, Section B (7) (a), are met. \*\*

**SECTION C. STANDARDS FOR STREAMS WITHOUT BASE FLOOD  
ELEVATIONS AND FLOODWAYS. \***

Located within the areas of special flood hazard *and community flood hazard areas* established in Article 3, Section A and Section B, where flood sources exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in Accordance with Article 3, Section A and Section B, then the local administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of Article 5. If data is not available from outside sources, then the following provisions [(2), (3) and (4)] shall apply.
- (2) In special flood hazard areas with base flood elevations (Zones AE and A1-30) but without floodways, no encroachments, including fill material or structures, shall be permitted unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development,

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when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification must be supported by technical data that conforms to standard hydraulic engineering principles. \*\*

- (3) No encroachments, including fill material or structures, shall be located within a distance of the stream bank equal to five times the width of the stream at the top of the bank or twenty feet each side from the top of the bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (4) When base flood elevation data or floodway data are not available in accordance with Article 3, Section A, in Special Flood Hazard Areas *and Community Flood Hazard Areas* without Base Flood Elevation Data, new construction or substantial improvements of structures shall be elevated or floodproofed to elevations adopted / established by the community. The floodplain administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Article 5 of this ordinance. The reference for this action is to be FEMA 265 "Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base Flood Elevation", dated July 1995

**SECTION D. STANDARDS FOR SHALLOW FLOODING ZONES. \***

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet (1 – 3'), where a clearly defined channel does not exist and the water path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall:

Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.

- (2) All new construction and substantial improvements of non-residential structures shall:
  - a.) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
  - b.) Together with attendant utility and sanitary facilities be completely floodproofed either to the base flood elevation or above or, in Zone AO,

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to or above the specified flood depth plus a minimum of one foot so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Article 5, Section B (2).

**SECTION E. STANDARDS FOR ACCESSORY BUILDINGS IN ALL ZONES BEGINNING WITH THE LETTER 'V.'**

For all accessory buildings in SFHA designated 'V' please reference the requirements stated in Section G.

**SECTION F. STANDARDS FOR SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENT.**

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- (4) Base flood elevation data shall be provided for all new subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than **five** lots or five acres, whichever is the lesser.
- (5) Where only a small portion of the subdivision lot or lots is in a designated Zone A Special Flood Hazard Area inundated by 100-year flood with no base flood elevations determined and there is sufficient ground slope on the site to avoid possible flooding of structures in Zone X areas determined to be outside 500 year floodplain. The Floodplain Administrator may waive the requirement for a study to determine the base flood elevations.
- (6) In order for the Floodplain Administrator to consider waiving the requirement of Section F (4) the applicant must provide an accurate topographic data and map for the lot or lots in question certified by a licensed land surveyor and/or professional civil engineer indicating sufficient detail to allow a thorough review by the Floodplain Administrator.
- (7) Each proposed parcel must have a designated buildable pad or site above the 100-year flood plain. The distance of the buildable pad or site above the 100- year flood plain shall depend on the slope of the ground and in accordance with the following table:

Distance in feet from Zone A 100 year floodplain	Minimum Slope from Zone A – 100 year flood plain to ground level at pad
20	5%
30	3.33%
40	2.50%
50	2.0%
60	1.67%
70	1.43%
80	1.25%
90	1.11%
100	1.0%

Residential or non-residential structures lowest floor elevation also must be elevated 1.5 feet above the ground level on the buildable pad or site.

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- (8) If a waiver is granted for Section F (4) the subdivider/applicant must comply with the following:
- a.) File restrictive covenants on the lot or lots prohibiting construction within the designated special flood hazard area inundated by the 100-year flood and requirement for elevated lowest floor elevation.
  - b.) Place a statement on the face of the plat prohibiting construction in the designated area of special flood hazard inundated by the 100-year flood.
- (9) Notice must be sent to the State NFIP Coordinator indicating that a waiver has been granted for Section F (4) providing written details of the waiver for any waiver granted by the Floodplain Administrator.\*

**SECTION G.COASTAL HIGH HAZARD AREAS. \***

Located within areas of special flood hazard areas established in Article 3, Section B are Coastal High Hazard Areas, designated as Zones V1 – V30, VE and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this ordinance, the following provisions shall also apply:

- (1) All new construction and substantial improvements in Zones V1 – V30 and VE (V if base flood elevation is available) shall be elevated on pilings and columns so that:
  - a.) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level; and,
  - b.) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in a given year (100-year mean recurrence interval).
- (2) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Section G (1) a.) and b.).
- (3) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures Zones V1 – V30 and VE. The Floodplain Administrator shall maintain a record of all such information.
- (4) All new construction shall be located landward of the reach of mean high tide.
- (5) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening

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intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. **Solid breakaway wall enclosures will not exceed 299 square feet.** Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

- a.) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and,
  - b.) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any give year.
- (6) If breakaway walls are utilized, such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.
- (6) Prohibit the use of fill for structural support of buildings. Under the building, no fill may be used except for minor landscaping and minor site grading for drainage purposes. Fill may be used on coastal building sites for landscaping and site grading as long as the fill does not interfere with the free passage of floodwaters and debris underneath the building or cause changes in flow direction during coastal storms such that will cause additional damage to buildings on the site or to any adjacent buildings.
- (7) Prohibit man-made alteration of sand dunes that would increase potential flood damage. An example of unacceptable placement of fill would be construction of a small berm or retaining wall that is backfilled and used for landscaping purposes when it has been determined that ramping or deflection of floodwaters will adversely affect adjacent buildings and thereby create additional flood damage potential.
- (8) All manufactured homes to be placed or substantially improved within Zones V1 – V30, V, and VE on the community’s FIRM on sites:
- a.) Outside of a manufactured home park or subdivision,
  - b.) In a new manufactured home park or subdivision,
  - c.) In an expansion to an existing manufactured home park or subdivision, or
  - d.) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood;

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shall meet the standards of this Article 5, Section G (1) through (8) and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision with Zones V1 – V30, V, and VE on the FIRM meet the requirements of Article 5, Section B (7) (a) through (b).

- (9) Recreational vehicles placed on sites within Zones V1 – V30, V, and VE on the community's FIRM either;
- a.) Be on the site for fewer than 180 consecutive days,
  - b.) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  - c.) Meet the requirements of Article 4, Section B and Article 5, Section B, (7) and this Section G.

**SECTION H. CRITICAL FACILITIES.**

Construction of new or substantially improved critical facilities shall be, to the maximum extent possible, located outside the limits of the special flood hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet (approximate 500-year floodplain) or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the maximum extent possible.

**ARTICLE 6. VARIANCE PROCEDURES.**

**SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD.**

The *Zoning Board of Appeals* ( Board of Appeals) as established by the *the Mayor and Board of Alderman* of the *City of Long Beach* shall hear and decide appeals and requests for variances from requirements of this ordinance.

**SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the *Circuit Court in and for the First Judicial District of Harrison County*, as provided by *law*.

**SECTION C. VARIANCE PROCEDURES.**

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In passing upon such applications, the ( Board of Appeals) shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners;
- (2) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions;
- (3) The danger that materials may be swept onto other lands to the injury of others;
- (4) The danger of life and property due to flooding or erosion damage;
- (5) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (6) The importance of the services provided by the proposed facility to the community;
- (7) The necessity to the facility of a waterfront location, where applicable;
- (8) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (9) The compatibility of the proposed use with existing and anticipated development;
- (10) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (11) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (12) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (13) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (14) Upon consideration of factors listed above, and the purpose of this ordinance, the ( Board of Appeals) and *the Mayor and Board of Alderman* may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**(15) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.**

**SECTION D.CONDITIONS FOR VARIANCES.**

- (1) Variances shall only be issued when there is:
  - a.) A showing of good and sufficient cause;
  - b.) A determination that failure to grant the variance would result in exceptional hardship; and,

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- c.) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of an "historic structure," a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
- (3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (See Article 6, Section E.)
- (4) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency or Mississippi Emergency Management Agency upon request. (See Section E.)

**SECTION E. VARIANCE NOTIFICATION.**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and;
- (2) Such construction below the base flood level increases risks to life and property. *A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Chancery Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.*

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

**SECTION F. HISTORIC STRUCTURES.**

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

**SECTION G. SPECIAL CONDITIONS.**

Upon consideration of the factors listed in Article 6, and the purposes of this ordinance, the *Mayor and Board of Alderman* of the *City of Long Beach* may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this ordinance.

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**SECTION H.FLOODWAY.\***

Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

**ARTICLE 7. SEVERABILITY.**

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance. *This ordinance having first been reduced to writing was adopted at a public meeting of the Mayor and Board of Alderman of the City of Long Beach, on April 21, 2009, wherein the vote was as follows:*

Alderman Richard Notter	voted Aye
Alderman Richard Burton	voted Absent, Not Voting
Alderman Charles Boggs	voted Aye
Aldermen Carolyn Anderson	voted Aye
Alderman Allen D. Holder, Jr.	voted Aye
Alderman Mark Lishen	voted Aye
Alderman Joseph McNary	voted Aye

**SIGNED:** \_\_\_\_\_  
William Skellie, Jr., Mayor  
Clerk

**ATTESTED BY:** \_\_\_\_\_  
Rebecca E. Schruff, City

\*\*\*\*\*

The City Attorney reported that he has a meeting with attorneys for the Center for Justice regarding the MEMA Katrina Cottages, Thursday, April 23, 2009, at 3:00 p.m.

\*\*\*\*\*

The Mayor opened the floor for public comments not appearing on the agenda, as follows:

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**PUBLIC COMMENTS PERTAINING TO MATTERS NOT APPEARING  
ON THE AGENDA**

**NOTE:** All comments shall be directed to the Chairman (Mayor) at the end of the meeting.

Comments of a personnel nature regarding individual members of the Governing Authority (Mayor and Board of Aldermen), City Staff and/or Personnel, disruptive comments or improper actions will not be permitted.

Public Comments will be limited to a total of **ten (10) minutes** and limited to a maximum of **two (2) minutes** per person.

Except as otherwise directed by the Chairman (Mayor), Public Comments will not be permitted before or after the allotted time. Disruption of the regular business meeting will be cause for removal from the public meeting.

<b>PLEASE PRINT:</b>		
	<b>NAME / ADDRESS / TELEPHONE</b>	<b>SUBJECT MATTER</b>
1	MANDA CAZAU BAN 203 S ISLAND VIEW 228-617-6224	LETTER FROM LAWYERS COMMITTEE FOR CIVIL RIGHTS
2		
3		
4		
5		
6		
7		
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9		
10		

City of Long Beach, Mississippi  
Mayor and Board of Aldermen Meeting  
Date: \_\_\_\_\_

\*\*\*\*\*

There being no further business to come before the Mayor and Board of Aldermen at this time, Alderman Notter made motion seconded by Alderman Anderson and unanimously carried to recess the meeting to Wednesday, May 6, 2009, at 6:00 p.m. due the First Republican Primary Election being held on Tuesday, May 5, 2009.

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APPROVED:

\_\_\_\_\_  
Alderman Allen D. Holder, Jr., At-Large

\_\_\_\_\_  
Alderman Charles A. Boggs, Ward 1

\_\_\_\_\_  
Alderman Richard Notter, Ward 2

\_\_\_\_\_  
Alderman Richard Burton, Ward 3

\_\_\_\_\_  
Alderman Joseph McNary, Ward 4

\_\_\_\_\_  
Alderman Mark Lishen, Ward 5

\_\_\_\_\_  
Alderman Carolyn Anderson, Ward 6

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Rebecca E. Schruff, City Clerk