

**MINUTES OF APRIL 17, 2008
LONG BEACH PORT COMMISSION**

Be it remembered that a regular meeting of the Port Commission 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 5:30 p.m. it being the third Thursday in April, 2008, and the same being the time, date and place fixed for holding said meeting.

There were present and in attendance on said Commission and at the meeting the following named persons: Commission President Phil Kies, Commission Vice-President James Hancock, Commission Secretary Barbara Reed, Commissioners Vernon Ehlers, Bob Starek, Steve Nicosia, Chuck Ryan, Charles Stringer, City Clerk Rebecca E. Schruoff, Port Attorney Bryan Vonderbruegge and Harbor Master Calvin Poupart.

Commissioner Charles Purchner was out of the country and absent the public meeting.

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

The meeting was called to order and Commissioner Nicosia made motion seconded by Commissioner Hancock and unanimously carried to move Item V.4. SIGNAGE IN HARBOR, forward on the Agenda to Item V.1.

There were no public comments or amendments to the Agenda.

Commissioner Ehlers made motion seconded by Commissioner Hancock to approve the regular meeting minutes of the Port Commission dated March 20, 2008, as submitted. The motion carried upon the affirmative voice of all the Commissioners present and voting, with Commissioner Starek abstaining.

There came on for consideration a request from Captain Scott Simpson, Impulsive Charters, Pier 1, Slip 50, as follows:

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Date: April 17, 2008

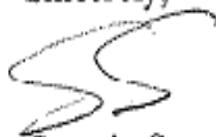
To: L.B. Harbor Port Commission
From: Captain Scott Simpson
Impulsive Charters
Pier 1 Slip 50

Re-Construct Sign Request: Captain Scott Simpson
Impulsive Charters

I would like to respectfully request to re-construct my (temporary) sign back in its original location where it has been located since March 1, 2006. I was told by Mr. Kies to take it down prior to the "Keep America Beautiful" project and could re-construct it after the project was completed.

Operating out of Long Beach Harbor for 12 years

Sincerely,



Captain Scott Simpson
Impulsive Charters
Long Beach Harbor Pier 1 Slip 50

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The Commission recognized Captain Simpson who stated that the sign will be sturdy and replaced when worn. Upon discussion, it was determined that the temporary sign, once erected, would not display the Coca-Cola™ logo.

After considerable discussion and debate, Commissioner Ehlers made motion seconded by Commissioner Hancock and unanimously carried to approve the placement of a temporary sign as requested by Captain Scott Simpson, said sign to be placed under the supervision of the Harbor Master,

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facing north, in a location south of the easement and north of the "Keep America Beautiful" landscaping. Said temporary sign is approved until December 1, 2008, at which time a moratorium will be placed on all temporary signs in the Long Beach Harbor.

There came on for consideration the BERTHING AGREEMENT. Upon discussion, the Port Attorney apprised the Commission that, if challenged, the non-refundable payment clause may not be sustained; in addition, a typographical error was corrected. Said BERTHING AGREEMENT is as follows:

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STATE OF MISSISSIPPI
COUNTY OF HARRISON

Effective Date: 1 June 2008

BERTHING AGREEMENT

This BERTHING AGREEMENT made and entered into on the day and year herein noted by and between the Long Beach Port Commission, hereinafter referred to as the "Commission", and the following identified Boat Owner as follows, to-wit:

BOAT OWNER OR OWNERS: _____

ADDRESS OR ADDRESSES: _____

BILLING ADDRESS IF DIFFERENT FROM ABOVE ADDRESS:

HOME PHONE: _____ EMERGENCY PHONE: _____

WORK PHONE: _____ CELL PHONE: _____

EMPLOYER: _____

TYPE OF VESSEL: _____ I.D.# _____

BOAT NAME: _____ DOC.# _____

MFG. OF BOAT: _____ HULL I.D.# _____

LENGTH: _____ A/C: # of UNITS _____ NO _____

SLIP NO: _____ PIER NO: _____

RATE PER MO: _____ PRO-RATED 1ST MO: _____

LIEN HOLDER: _____

LIEN HOLDER ADDRESS: _____

LIEN HOLDER PHONE: _____

INSURANCE COMPANY _____ POLICY# _____ EXPIRES _____

AS A CONDITION PRECEDENT to the placement of any vessel in the harbor, the Boat Owner shall provide the Harbor Master with proof of ownership and a current home state registration for the vessel or a copy of the US Coast Guard vessel documentation certificate indicating actual Over All Length (OAL) to determine slip rent for the vessel. In addition, a copy of an active insurance policy for the vessel shall be provided when the initial agreement is enacted. The Harbor Master's initials certifying proof of ownership, current registration or vessel documentation certificate, and active insurance shall be affixed to the original Berthing Agreement below:

Harbormaster's Initials _____

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BERTHING AGREEMENT 1 JUNE 2008

1. BERTHING AND FEES: Boat Owner shall pay to Commission and/or its duly appointed representative for the use of the above described slip together with utilities and air conditioning charge(s) as required as provided herein and a limited license to use the adjacent areas herein provided as follows, to-wit
 - A. Mississippi Residents: Rent to be calculated at the rate of \$ 4.20 per linear foot of the above described vessel.
 - B. Harrison County Residents: Rent to be calculated at the rate of \$ 3.50 per linear foot of the above described vessel.
 - C. Out of State Residents: Rent to be calculated at the rate of \$ 6.30 per linear foot of the above described vessel.
 - D. Air-conditioning: Any vessel that has an air-conditioner shall be charged an additional sum of \$ 15.00 per month for each air conditioning unit aboard.
 - E. Utility Fee: Boat Owners shall pay the sum of \$ 20.00 per month for costs of utilities.
 - F. Daily Rate: Boat Owners who rent a slip on a daily basis shall pay the sum of \$ 1.00 per foot of boat length per day. Space and Slip availability is at the sole discretion of the Harbor Master.

The monthly lease rate for the above described vessel based upon the information provided by Boat Owner shall be payable in advance on or before the first day of each and every month hereafter. The first month rent shall be pro-rated. In the event the Boat Owner elects to pay his month-to-month lease rate annually in advance, the Boat Owner will receive a ten percent (10%) discount for said yearly rate, payment to be non-refundable. The above described [payments (i.e., daily, monthly, yearly, etc.) shall be payable in advance at the Long Beach City Hall, Jeff Davis Ave. Long Beach, Mississippi, on or before the first day of each and every month hereafter, unless paid in advance.

2. Non-Payment and for late payment: A charge of 10% of the monthly rent shall be added to any bill for monthly rent and fees not paid on or before the 15th of the month for which same is due and payable. In the event that the rent and other charges are not paid on or before the date such charges become due and payable, the Boat Owner shall be subject to having his vessel seized and sold according to the lien imposed by general maritime law and/or Section 85-7-9, Mississippi Code of 1972, annotated and amended, et. seq. Further, Boat Owner is hereby advised pursuant to the above referenced State Statute that "such lien shall be paramount to all other debts due and owing by such water craft or the owner thereof or other lien thereon, except as provided by section 85-7-7, Mississippi Code of 1972, annotated and amended. Further, and by mutual agreement Boat Owner shall be responsible for and pay a reasonable attorneys fee deemed to be at least \$400.00 or 25% of the total sum due and owing, whichever shall be greater if found to be in violation of any provision hereof and said matter is turned over to an attorney. Further, Boat Owner agrees that in the event that Boat Owner becomes delinquent in the payment of any sums owed Commission, that Commission and/or its duly appointed Harbor Master may use any reasonable method available included, but not limited to, chaining the vessel to the dock, removing the vessel to a secure storage facility or blocking the vessel in its berth, to impose its lien against the vessel itself. That Boat Owner specifically agrees and understands that some damage may occur to the vessel and the Boat Owner agrees that Commission shall not be responsible for such consequential damages.

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3. Term: This Berthing Agreement shall continue in effect from month to month, subject to termination upon fifteen (15) days written notice by either party.

4. Uses: Boat Owner shall not use nor permit the demised premises, or any portion thereof to be used for: (1) the conduct of any offensive, noisy, or dangerous activity or public nuisance, or against any law, or (2) in any manner which would infringe on the rights of other tenants of the Commission, or (3) in any manner contrary to the rules and regulations of the Commission, a current copy of which has been provided to Boat Owner and which may be amended from time to time without prior notice to Boat Owner. Boat Owner agrees to abide by all rules, regulations and directions of the United States Coast Guard, Mississippi Department of Marine Resources, Mississippi State Health Department, the U.S. Environmental Protection Agency and all other federal and state agencies, departments or political subdivisions thereof.

5. Indemnification of Commission: Boat Owner covenants to exercise due care in the occupation of the leased berthing slip and to vacate the same in good condition, reasonable wear and tear excepted. Boat Owner shall indemnify Commission its agents, employees, members and the City of Long Beach, Mississippi, against all claims, actions, proceedings, damages and liabilities, including attorneys' fees, costs, and other expenses arising from or connected with Boat Owners possession and use of the aforesaid berthing space and common areas, including, but not limited to those caused by or resulting from vandalism, theft, fire, weather, tides or wave action. Boat Owner does further agree to be responsible for and pay any and all damages to other craft and property caused by the above described vessel, Boat Owner, or guest.

6. Alteration and improvements: Boat Owner shall make no alterations or improvements to the property of Commission without expressed written consent of Commission. Any and all improvements approved by Commission shall become property of Commission.

7. Limitation on Commissions Liability: Boat Owner acknowledges that he, she or it has inspected the berthing slip identified herein and has satisfied himself, herself, or itself that the berthing space is adequate for the safe berthing of Boat Owners vessel. Harbor assumes no responsibility for tending mooring lines or moving vessels from the berths assigned. Further, Boat Owner agrees to indemnify and hold Commission harmless from damages to vessel and/or injuries to Boat Owner's guest's, invitees or all others regarding occupancy of the berthing space and use of common areas not the direct negligence of Commission.

8. Cancellation of Berthing Agreement: Boat Owner agrees to give at least fifteen (15) days written notice of his intent to vacate; His failure to do so shall result in Boat Owner being responsible for payment of all monthly payments due on said slip until such time as written notice is given Commission. The removal of Boat Owners vessel from the slip shall not constitute notice to Commission of his intent to vacate, nor does it relieve Boat Owner from the obligation to pay according to the terms hereof.

9. Indemnification: Boat Owner agrees to hold harmless Commission, its members, the City of Long Beach, Mississippi, and/or its employees, agents and contractors against all damages, claims, and cost of defense occasioned by Boat Owner or Boat Owner's guests, use of the slip and/or common areas by third parties for any injury or damage caused by the Boat Owner, his vessel, agents, servants, operators, crew or others.

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BERTHING AGREEMENT 1 JUNE 2008

10. Liability Insurance: Boat Owner agrees to provide liability insurance on their vessel in the amount of \$300,000.00. Boat Owner shall name the Long Beach Port Commission and the City of Long Beach as additional insureds on said policy and shall provide written proof of such insurance (i.e., such as declarations page), prior to placing vessel in harbor under the initial berthing lease and by January 1st of each year thereafter and upon request of any official of the Long Beach Harbor. Said proof of insurance shall provide proof of liability limits and the named insureds therein.

11. Changes in Circumstances: Boat Owner agrees to promptly notify and provide the Commission or the Harbor Master with documentation of any and all changes to this agreement including, but not limited to, any change in ownership, liens, co-owners or vessels. Failure to do so constitutes grounds for immediate cancellation of this agreement.

12. Commission's Right to Use Slip: Boat Owner agrees to notify Commission of the intention to vacate slip for any period in excess of three (3) days, and Boat Owner agrees that Commission may make said slip available for transient or other use of the slip in Boat Owners absence without charge or credit. Boat Owner agrees to notify Commission or Harbor Master prior to 24 hours of the return of the vessel so that Commission can make alternate plans for any vessel using the said slip in the absence of Boat Owner.

13. Removal of Vessel by Boat Owner: If at any time the Boat Owner or Lessee is in any way concerned about the safety of his/her vessel, he/she should immediately remove said vessel from the harbor. Furthermore, in the event of eminent danger from hurricanes, tropical storms or other natural disasters and/or notification by Emergency Management officials, the Boat Owner agrees to immediately remove said vessel from the harbor. Failure to remove said vessel will result in possible liability of the Owner to other Boat Owners and the Long Beach Port Commission or property owners that may result in damage caused by boat owners.

14. Emergency Removal of Vessel: Boat Owner agrees that Commission may remove the vessel from the slip at the sole expense of Boat Owner in the event that said vessel becomes a nuisance, becomes unseaworthy, or in case of dangerous weather conditions such as hurricanes. "Expense" includes but is not limited to the removal and storage cost of said vessel. Boat Owner further agrees to hold harmless all parties involved in the removal and storage of vessel in the event of its Emergency Removal.

15. Alteration of Agreement: This Berthing Agreement shall constitute the whole agreement of the parties and can not be altered except in writing signed appropriately by the parties.

16. Sublease. Boat Owner may not sublease slip specified in this agreement.

SO EXECUTED, this the _____ day of _____, 20_____

BOAT OWNER

COMMISSION by Harbor Master

After considerable discussion and debate, Commissioner Reed made motion seconded by Commissioner Ehlers to approve the BERTHING AGREEMENT, as set forth above.

The motion carried upon the affirmative voice of all the Commissioners present and voting, with Commissioner Hancock abstaining.

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There came on for consideration the extended lease agreement, Lookout Restaurant, and documents submitted regarding same, as follows:

Emailed & postal mailed to all.

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ey

From: Phil Kies [kiesp@cableone.net]
Sent: Tuesday, April 08, 2008 9:44 PM
To: Tina Dahl; Stacey Dahl; Bryan Vonderbruegge; Barbara Ann Reed; Calvin Poupart; Steve Nicosia; Robert Starek; Charles Purchner
Cc: Billie Skellie
Subject: Lookout Lease
Attachments: LBL Lease Proposal 432008.xls

Fellow Commissioners,
I've recently had a couple of telephone discussions with Rob Stinson regarding his lease for the Lookout Restaurant. First, we must recognize that as written, his lease is good for another 22 years without any required changes. Second, if we attempt to change, modify, amend or enhance the Initial Term of his lease, it could require us to advertize the lease to the general public for a complete new bid or the current instrument (lease). Bryan can best answer to that possible problem! Third, Rob has stated in no uncertain terms that he does not want to make any changes to the Initial Term section of the lease. I firmly stand with him on that point!!!

Attached to this Email is Rob's proposal for the Secondary Term which I find to be quite generous. Yes, you can pick the numbers apart and request even greater revenue than Rob is offering. However, he has stated this is his best (final?) offer for the Secondary Term.

The Lookout was (and will be) a valuable asset to the harbor, not only for the revenue, but as a fine upscale eatery with reasonable prices and a fabulous menu. Let us not become adversarial in our discussions and negotiations with Rob. Rather, let us work with him and welcome him and his staff back to the harbor.

Unfortunately, Rob will be out of town on the date of our next meeting (April 17th) but he intends to have engineering drawings of his proposed building available at the meeting for the Commission to review.

We can work with Rob to bring a larger and improved version of the Lookout to the harbor or we can force him to rebuild on a smaller scale that does not benefit anyone, Landlord, Tenant or the citizens of Long Beach and guests to our "Friendly City." Please keep these thoughts in mind as you are contemplating changes or negotiation strategies regarding the current lease for the Lookout property.

PJK

Stacey, please snail mail a copy of this Email and the attachment to those commissioners that do not have Email addresses.
Thank You!

PJK

"Eliminate annoying spam!
My mailbox is protected by iHateSpam, the #1-rated spam buster."

<http://www.ihatespam.net>

4/9/2008

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LOOKOUT LEASE FIRST TERM

YEARS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
MONTHLY BASE	\$1,000	\$1,030	\$1,061	\$1,093	\$1,126	\$1,159	\$1,194	\$1,230	\$1,267	\$1,305	\$1,344	\$1,384	\$1,426	\$1,469	\$1,513
YEARS	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
MONTHLY BASE	\$1,558	\$1,605	\$1,653	\$1,702	\$1,754	\$1,806	\$1,860	\$1,916	\$1,974	\$2,033	\$2,094	\$2,157	\$2,221	\$2,288	\$2,357

MY PROPOSAL IS TO DOUBLE THE STARTING YEAR BASE FROM \$2357 (THE LEASE BASE AT THE END OF THE FIRST TERM OF THE LEASE) TO \$4713 AT THE SECOND TERM OF THIRTY YEARS WOULD HAVE \$4713 AS A BASE TO INCREASE AT THE SAME RATE OF 3% PER YEAR. IT WOULD APPEAR AS FOLLOWS:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	\$4,713	\$4,854	\$5,000	\$5,150	\$5,305	\$5,464	\$5,628	\$5,796	\$5,970	\$6,148	\$6,334	\$6,524	\$6,720	\$6,921	\$7,129
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
	\$7,343	\$7,583	\$7,790	\$8,024	\$8,264	\$8,512	\$8,768	\$9,031	\$9,302	\$9,581	\$9,868	\$10,164	\$10,469	\$10,783	\$11,106

IN ADDITION WE PAY 2% ON SALES BETWEEN 750K - 1.25MIL AND 4% ON SALES OVER 1.25MIL

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**Appraisal Research
Company**

660 Katherine drive, Suite 302
Post Office Box 32027
Jackson, Mississippi 39232
(601) 664-2422
1-800-759-1840

April 2, 2008

Mr. Rob Stinson

Re: Long Beach Port Commission Lease

Dear Mr. Stinson:

In reference to your question, Section 2.4 of the Lease discusses Renewals and Options. The original term of the Lease is for 30 years, consisting of six 5-year terms.

Section 2.4 (B) of the Lease states that the tenant has an option to lease the property at the end of the initial 30 year term. Section 2.4 (C) states that the Landlord "has a duty" to "reasonably negotiate and agree to a Secondary Term" and that "the intent is for the Lessee to obtain an option reasonable in length and price (i.e. rent)."

As I read the lease, there are no contractual terms as to the amount of rent to be paid during such negotiated extension period, and there is no discussion as to what the extension period should be, other than it is clear that the length of the lease extension and the rent to be paid during any extension period(s) are to be reasonable, and that those items shall be negotiated. I would think that the term "reasonable" could be subject to a variety of interpretations, i.e. reasonable to whom.

A Lease has value to a tenant (leasehold value) only when a financial advantage exists in the lease terms. In this case, the lease is silent as to what those renewal terms will be, other than that they will be reasonable. Leasehold Value is calculated by discounting the periodic leasehold advantage (in dollars) to a present worth. Because there are no certain lease extension terms, it is impossible to conclude that the lease has any value at the end of the original 30-year term. Whether it has value beyond the end of the original 30-year term will not be known until the terms of the extension are reduced to a contract. Only then can that determination be made.

As a matter of note, the lack of "certain" lease terms for the extension period could reduce the value of the lease as the end of the original 30-year term approaches.

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Potential buyers would be far less willing to invest in the property knowing that lease extension terms were not known. Also, lenders would be less willing to loan with the Leasehold (tenant's) interest as collateral.

Please contact me if you have any further questions on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe W. Parker".

Joe W. Parker, MAI, CRE, FRICS
President

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between the Long Beach Port Commission and Lookout Restaurant, said lease agreement to be executed and spread upon the minutes of the Port Commission in words and figures, at the next regular meeting, May 15, 2008.

The motion carried upon the affirmative voice of all the Commissioners present and voting, with Commissioner Starek abstaining.

The Resolution transferring funds was taken under advisement for consideration at the next regular meeting, May 15, 2008.

The internal control budget was taken under advisement for further consideration at the next regular meeting, May 15, 2008.

* * * * *

It was noted for the record that the Port Commission Fiscal Year 2008-2009 Preliminary Budget should be forwarded to the City Clerk by June, 2008.

Upon clarification of an invoice to Desporte, Alderman Stringer made motion seconded by Alderman Hancock and unanimously carried to approve payment of invoices as listed in Docket of Claims Number HBR040108 and HBR041508.

The Port Attorney apprised the Commission that he attempted correspondence with Attorney Hayes Johnson, representing Steve Pucheau, to no avail.

There was no report from the Harbor Master.

It was noted for the record that Commissioner Vernon Ehlers would no longer serve on the Port Commission following this meeting and the Commission expressed their appreciation, commending Commissioner Ehlers for his 13 1/2 years of hard work and dedicated service to the City of Long Beach, the Long Beach Harbor and the Long Beach Port Commission.

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There being no further business to come before the Port Commission at this time, Commissioner Hancock made motion seconded by Commissioner Ehlers and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

Phil Kies, President

ATTEST:

Stacey Dahl, Deputy City Clerk