

**PORT COMMISSION MINUTES  
AUGUST 20, 2009**

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. o'clock, it being the third Thursday in August, 2009, 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, Vice President James Hancock, Secretary Barbara Reed, Commissioners Vernon Ehlers, David Marks, Rod Rishel, Chuck Ryan, Charles Purchner , Steve Nicosia, Harbormaster Calvin Poupart, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

The commission welcomed Mr. Rod Rishel, appointed by Ward 3 Alderman Kaye Couvillon.

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

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The meeting was called to order and Commissioner Ehlers made motion seconded by Commissioner Hancock and unanimously carried to suspend the rules and rearrange the agenda and move the Port Attorney's Report to agenda item #2.a.

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Commissioner Nicosia made motion seconded by Commissioner Purchner and unanimously carried to approve the regular minutes of July 16, 2009, recessed minutes of July 20, 2009, and the executive session minutes of July 20, 2009.

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Commission Secretary Barbara Reed was preliminarily absent the meeting and arrived at 5:45 p.m.

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The commission recognized Mr. Ron Robertson, Project Manager with Broaddus and Associates. Mr. Robertson submitted project updates as follows:

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August 20, 2009

Long Beach Port Commission  
Phil Kies

### RE: Project Updates

#### Projects –

1. North Bulkhead Repairs\*
  - Issue NTP May 27, 2009.
  - Contract duration 90 days.
  - Pink Marine is contractor
  - Contract award plus C.O. \$45,600.00
  - Construction completion August 25, 2009
  
2. Katrina Pier Repairs/Fishing Piers\*
  - Issued NTP April 6<sup>th</sup> 2009.
  - Contract duration 120 days.
  - Contractor Bay South
  - Contract award plus change orders \$152,612.01.
  - Construction substantial completion August 4<sup>th</sup> 2009.
  - Ribbon Cutting August 21, 2009
  
3. Harbor Master Building
  - Bid open July 7, 2009.
  - Award August 18, 2009.
  - Contractor H. Gordon Myrick, award \$996,214.00
  - Currently, awaiting FEMA confirmation project Classification.
  - Issue NTP September 3, 2009.
  - Contract duration 270 days
  - Final Completion date June 4, 2010.
  
4. Dredging
  - Bid Advertisement June 8, 2009.
  - Bid Opening July 7, 2009.
  - Award August 4, 2009.
  - Contractor Matthews Marine, award \$168,387.25
  - Port Commission may be liable for \$2,500 to \$8,000 first 550 cy
  - Issue NTP August 28, 2009.
  - Construction duration 90 days.
  - Construction completion November 27, 2009.

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5. Parking Lot and Road Paving\*
  - Contractor Bid Bond Paving Co for \$268,857.81
  - Issued NTP April 1, 2009.
  - Contract duration 90 days.
  - Construction completion June 30<sup>th</sup> 2009.
  - Contract Amount plus change orders \$314,127.81
  - Minimal work on East end of harbor left for final completion.
  
6. Chamber of Commerce Building
  - Requested Replacement June 25, 2009
  - FEMA approved eligibility August 18, 2009
  - PW being developed by FEMA
  - Deadline for requesting an Alternate Project August 28, 2009

\* See attached Photos

Please contact me at your convenience with any questions.

Best Regards,



Ron Robertson, P. E.  
Project Manager  
Broaddus and Associates  
(228) 224-3039

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West Fishing Pier



East Fishing Pier



Harbor Paving



Fueling Dock



North Bulkhead Repair

Discussion was held regarding the aforesaid projects and FEMA deadline requirements. It was determined that a recess meeting date would be determined later during the course of this meeting and further discussion/action would be taken at that time.

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After brief discussion, Commissioner Purchner made motion seconded by Commissioner Nicosia and unanimously carried to spread the signed **LEASE AGREEMENT BY AND BETWEEN THE LONG BEACH PORT COMMISSION, LESSOR, AND JUSTIN ROLAND, LESSEE**, upon the minutes of this meeting in words and figures as follows:

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**LEASE AGREEMENT**

This lease agreement made and entered into on this 7 day of August, 2009, by and between LONG BEACH PORT COMMISSION of Long Beach, Mississippi, hereinafter referred to as "LESSOR" and JUSTIN ROLAND, hereinafter referred to as "LESSEE".

**SECTION ONE**

**DEMISE, DESCRIPTION AND USE OF PREMISES**

(A) USES ALLOWED: LESSOR leases to LESSEE and LESSEE hires from LESSOR, for the purpose of constructing, operating or maintaining thereon a marine convenience store to serve the boating and fishing patrons of the Long Beach Harbor through the sale of marine convenience items, live and dead bait -fresh or frozen, marine fuel and marine supplies, canned or bottled soft drinks and beer, non-prepared food items such as prepackaged snacks, sandwiches, and similar items and for no other purpose, those certain premises with the appurtenances, situated thereon in the City of Long Beach, County of Harrison, State of Mississippi, and more particularly described in the schedule attached hereto as Exhibit A, and made a part hereof, and hereinafter referred to as the demised premises. As used herein, the term "demised premises" refers to the real property described on the Exhibit A attached hereto and to any fuel storage, pumping, and delivery systems and equipment and related improvements located thereon from time to time during the term hereof, but excludes any portion of any presently existing or to be constructed elevated structure which is located on, over or encroaching upon the described property.

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(B) USES PROHIBITED: LESSEE shall not use, or permit the demised premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the demised premises are hereby leased. No use shall be made or permitted to be made of the demised premises, or acts done, which will cause a cancellation of any insurance policy covering any building or facilities located or to be located on the premises, or any part thereof, nor shall LESSEE sell, or permit to be kept, used, or sold, in or about the demised premises, any article which may be prohibited by the standard form fire insurance policies. No prepared foods or meals shall be sold, cooked or consumed on the premises. No alcoholic beverages shall be sold for consumption on the premises or consumed on the premises. No fresh or frozen seafood shall be sold for human consumption. No out-door activities or events shall be sponsored, conducted or allowed on the subject premises by LESSEE without prior consent of LESSOR, and LESSEE shall, at its sole cost, comply with all requirements, pertaining to the demised premises, of any insurance organization or company, necessary for the maintenance of insurance, as herein provided, covering any building and appurtenances at any time located on the demised premises. Failure to comply with these provisions shall constitute an act of default hereunder

(C) RELOCATION OF FUEL FACILITIES: LESSOR reserves the right to relocate the fuel pumping facilities and equipment building at its sole cost and expense to a location within the described premises at any time within the primary term or any extensions hereof.

(D) RELOCATION OF LEASED PREMISES: LESSOR also reserves the right to relocate the leased premises, facilities and equipment at its sole cost and expense from the initial location to another temporary location within the Harbor. Should the

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LESSOR choose to exercise this right, it agrees to relocate the facilities to an alternate location of at least equal size and which is no less accessible to water craft within the harbor area.

LESSEE acknowledges the initial location of the facility is temporary in nature and agrees to relocate the leased premises to a permanent location within the Harbor at its sole cost and expense at such time as directed by LESSOR. Nothing in this section shall obligate the LESSOR to assist or pay for the removal and replacement of demised premises should such temporary removal be ordered by the City of Long Beach Civil Defense Director.

(E) Any sign(s) or advertising to be displayed on the subject premises shall be first submitted to and approved by LESSOR.

SECTION TWO

**TERM, RENT, RIGHT OF FIRST REFUSAL, OTHER CONDITIONS**

(A) TERM: The term of this lease shall be for an initial period of FIVE years, the "primary term".

(B) RENT: Base Rent for the primary term shall be equal to the full amount of THIRTY THOUSAND DOLLARS (\$ 30,000.00). Said rent shall be payable monthly as follows:

1. From the first day of the month commencing next after execution of this lease agreement by all parties hereto and continuing for a period of SIXTY successive calendar months, rent shall be due and paid in advance on the first day of each month in the amount of FIVE HUNDRED DOLLARS.
2. As additional rent during the primary term hereof, LESSEE agrees to pay to LESSOR a sum equal to three (3) percent of the gross sales proceeds of

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all fuel and fuel products sold each month. Such additional rent payments shall be made by the 20<sup>th</sup> day of each following month and be supported by actual copies of State of Mississippi sales tax payment receipts or other tax return or payment returns or documents.

3. It is acknowledged and agreed that LESSEE shall have the right to sell and operate a facility for sale of fuel to marine vessels in the current boundaries of the Long Beach Harbor. As such, LESSOR wishes to ensure that fuel prices remain competitive to harbor users and competitive with those prices available in other harbors and marinas on the Gulf Coast. Therefore, it is agreed that fuel shall be sold at prices not to exceed fifteen percent over the wholesale price paid for such fuel by LESSEE. Price for fuel must be adjusted consistently by LESSEE to reflect a price no greater than one hundred and fifteen percent of the weighted average of LESSEE'S most recent 500 gallons of fuel purchased, and said calculations shall be provided to LESSOR each month. Failure to comply with these provisions shall constitute an act of default.

(C) RIGHT OF FIRST REFUSAL: If the LESSEE is otherwise in compliance with the terms hereof, upon expiration of the primary term hereof, should LESSOR desire or choose to again lease or offer the subject premises for lease or let for substantially the same purposes as allowed hereunder, LESSEE shall have the first right to lease the subject premises from LESSOR, on the same terms and conditions as offered by LESSOR for rental of the premises to any other party. This Right of First Refusal shall not apply to extend to any lease or letting of the subject premises after an

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abandonment of this lease by LESSEE and shall not extend to any lease of the subject premises for purposes other than as allowed hereunder.

Any such offer to lease shall be delivered to LESSEE by first class mail, and LESSEE shall have 10 days from the date of mailing of same to deliver to LESSOR its written unconditional agreement and acceptance of the lease on the terms contained in such notice or this right of first refusal shall be considered waived.

In the absence of another interested party seeking to rent the premises, the Port Commission may elect to extend the lease on such terms as it sees fit, provided that the rent to be paid shall be no less than that paid herein.

(D) OTHER CONDITIONS: Hours of operation shall be Monday through Thursday 6:00 AM to 6:00 PM, and Friday through Sunday 5:00 AM to 7:00 PM. During said hours LESSEE shall provide those services listed above and described in the schedule attached hereto as Exhibit "B" and made a part hereof. With the notification and permission of the port commission, these hours can be adjusted to shorter periods of operation during those months public marine operations are reduced, e.g., winter. The retail price of live bait shall be competitive with the average retail price for the same type bait sold elsewhere in Harrison County. Failure to comply with these provisions shall constitute an act of default and grounds for immediate termination of this lease.

SECTION THREE

**WARRANTIES OF TITLE AND QUIET POSSESSION**

LESSEE shall satisfy itself as to the state of the title of the LESSOR=s premises. LESSOR will not warrant title to the demised premises and will lease only such interest that it may have, if any.

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SECTION FOUR

**WASTE AND NUISANCE PROHIBITED**

LESSEE shall not commit, or suffer to be committed any nuisance or obnoxious activity on or about the demised premises. LESSEE shall not commit, or suffer to be committed any waste which includes but is not limited to failure to have and make available fuel or live bait to the public for any period in excess of forty-eight (48) hours, except in case of acts of God, inability due to availability or mechanical breakdown beyond the ability of LESSEE to have corrected within said time, or otherwise by lawful order of any appropriate jurisdiction.

SECTION FIVE

**SUBLETTING**

LESSEE shall not have the right to assign or sublet this lease either in whole or in part and may not pledge this lease or any right herein as collateral for any loan or indebtedness.

SECTION SIX

**NOTICES**

All notices, demands, or other writings in this lease provided to be given, or which may be given, by either party hereto to the other, shall be deemed to have been fully given and delivered when made in writing and deposited in the United States mail, return receipt requested and postage prepaid, and addressed as follows:

TO LESSOR: Long Beach Port Commission  
Post Office Box 929  
Long Beach, MS 39560

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TO LESSEE:                   Justin Roland  
                                  Post Office Box 413  
                                  Gulfport, MS 39502

The address to which any notice, demand, or other writing may be given to any party as above provided may be changed by written notice given by such part as above provided.

SECTION SEVEN

**CONSTRUCTION AND IMPROVEMENTS**

(A) IMPROVEMENTS: LESSEE shall have the right to make such temporary improvements on the demised premises and alterations to such improvements which from time to time LESSEE may deem necessary in furtherance or operation of his business use of the demised premises; provided, however, LESSEE will in no event make any alterations, improvements, or other changes of any kind to any structure or building on the demised premises that will decrease the value of such structure or building, or that will adversely affect the structural integrity of the structure or building. Any such activities must also be submitted to and approved by the LESSOR prior to commencement of construction in accordance with subparagraph (C) below.

(B) COST: All alterations, improvements and changes constructed by the LESSEE upon or to the demised premises shall be at LESSEE's sole expense.

(C) ALTERATIONS, IMPROVEMENTS AND CHANGES PERMITTED: The plans and specification for the initial structure and improvements, and any alterations, improvements, and changes constructed by LESSEE thereto in the future shall be approved by LESSOR prior to commencement of actual construction. LESSOR shall

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approve or disapprove the plans and specifications within ninety (90) days of their submission in final form or LESSOR shall be deemed to have granted its approval.

(D) DISPOSITION OF NEW IMPROVEMENTS: Any alterations, improvements, and changes constructed by LESSEE on the premises shall become the property of LESSOR, and LESSEE shall have only a leasehold therein, subject to the terms hereof.

**SECTION EIGHT  
REPAIRS AND DESTRUCTION OF IMPROVEMENTS  
AND EQUIPMENT**

(A) MAINTENANCE OF IMPROVEMENTS AND EQUIPMENT: Lessee shall, throughout the term of this lease, keep and maintain the premises, including all buildings, fuel pumps, fuel storage tanks and related equipment and any other improvements of whatever kind located on the premises, or which may be a part thereof, and all appurtenances thereto, in good, sanitary, and neat order, condition and repair. Any costs of maintenance or repair of fuel dispensing and storage improvements, excluding the exterior case of the fuel dispensing pump, shall be borne by the LESSEE up to the first TWO HUNDRED FIFTY DOLLARS (\$250.00) per occurrence after the initial warranty period for the equipment expires. Any amount in excess of said amount per occurrence shall be the responsibility of the LESSOR. The costs and expenses for maintenance for all other improvements shall be the sole responsibility of the LESSEE. At the end of the primary term hereof, plus any extensions, LESSEE agrees to return the subject premises to LESSOR in its present condition, subject only to customary and reasonable wear and tear.

(B) COMPLIANCE WITH LAWS: LESSEE shall comply with and abide by all

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federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the demised premises, and any activity or condition on or in such premises, including the temporary removal of equipment and improvements as directed by the Long Beach Civil Defense Director. Failure to comply with the provisions of this Section Eight (B) shall constitute an act of default and may result in immediate termination of this lease.

(C) DAMAGE TO AND DESTRUCTION OF IMPROVEMENTS/ CASUALTY LOSS: In the event the leased premises shall be destroyed or rendered totally untenable by fire, earthquake, tornado, hurricane or other cause beyond the control of the LESSOR, this agreement shall cease and terminate as of the date of such destruction and the rental shall then be apportioned between the LESSOR AND LESSEE as of said date. In case of damage to or destruction of improvements leased hereunder, LESSEE may, at its own expense, repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction, and continue this lease in effect.

SECTION NINE

**UTILITIES**

LESSEE shall fully and promptly pay for all water, gas, heat, light, power, telephone service and other public utilities of every kind furnished and billed to the premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the premises and all activities conducted thereon, and any and all taxes of any kind assessed against the demised premises and any personal property located thereon and LESSOR shall have no responsibility of any kind thereof.

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SECTION TEN

**INSURANCE**

(A) **PERSONAL INJURY LIABILITY:** LESSEE shall maintain in effect throughout the term of this lease personal injury liability insurance covering its activities on the premises in the amount of ONE MILLION DOLLARS (\$1,000,000) for injury to or death of any one person, and TWO MILLION DOLLARS (\$2,000,000) for injury to or death of any number of persons in one occurrence. Such insurance shall specifically insure LESSEE against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both LESSOR and LESSEE but shall be endorsed as to create the same liability on the part of the insurer as though separate policies had been written for LESSOR and LESSEE.

(C) A copy of each policy required under this lease shall be delivered to LESSOR annually and upon any renewal or reissuance. LESSOR shall be named as a coinsured under any such policy. Failure to so name LESSOR as a coinsured or failure to timely provide a copy of any such policy shall constitute and act of default hereunder and shall be grounds for immediate termination of this lease.

SECTION ELEVEN

**INDEMNIFICATION**

LESSOR shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by LESSEE or by any person whomsoever may at any time be using or occupying or visiting the demised premises or be in, on, or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of LESSEE

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or of any occupancy, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as, or of a different kind than, the matters or things above set forth, and LESSEE shall indemnify LESSOR against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. LESSEE expressly acknowledges that it accepts the premises and property as is, and hereby waives all claims against LESSOR. This section shall not apply to loss, injury, death, or damage arising by reason of the gross negligence or willful misconduct of LESSOR, its agents, or employees.

SECTION TWELVE

**ENVIRONMENTAL INDEMNITY**

(A) Lessee is prohibited from discharging, disposing or depositing or allowing to be spilled or wasted any hazardous substances in any manner whatsoever on the demised premises or location. Lessee may only use hazardous substances on the demised premises or location if such substance and/or materials are utilized in the manner prescribed or permitted by federal and state statutes and regulations. Lessee agrees to indemnify and hold the Lessor harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys fees) arising directly or indirectly from or out of or in any way connected with Lessee's use or disposal of hazardous materials on the demised premises or location resulting in any damage to Landlord's property, environmental or otherwise. Lessee acknowledges that it will be solely responsible for all costs and expenses related to environmental clean up, as may be required by Mississippi Department of Environmental Quality, the United States Environmental Protection Agency, United States Coast Guard or by any applicable law,

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rule or regulation, resulting from any release, threatened release, use or disposal of any hazardous substances and/or hazardous materials on the demised premises or location caused by Lessee or its business guests licensees or invitees, and agrees to indemnify and hold Lessor fully harmless from any liability, costs and expenses related to same, excluding damages, liabilities, costs and/or expenses relating to any condition that is documented to exist prior to execution of this agreement, but only to such extent.

(B) The terms "hazardous substances" and "hazardous materials" shall include "hazardous waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, petroleum, including crude oil or any fraction thereof, flammable explosives, asbestos, any material containing polychlorinated biphenyls, and any of the substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., Hazardous Materials Transportation Act, 49 U.S.C. Section 1802, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. Section 2601, et seq., or any other federal, state, local or other governmental legislation, statute, law, code, rule, regulation or ordinance identified by its terms as pertaining to the disposal, storage, generation or presence of hazardous substances or waste.

(C) LESSEE also agrees to observe and comply with requirements of the NOAA sponsored CLEAN MARINA PROGRAM.

SECTION THIRTEEN

**INGRESS AND EGRESS BY WATER**

LESSOR authorizes LESSEE, during the time this lease agreement remains in force and effect, to create and maintain an egress and ingress for the passage of boats

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over and upon the water within the Long Beach Harbor for the purpose of approaching and accessing the fuel facility. No boats shall dock at any pier utilized by LESSEE except boats docked for the purpose of conducting business with LESSEE, and in no case or event for a period of time greater than one (1) hour per occurrence.

SECTION FOURTEEN

**CONDITIONS/ACTS OF DEFAULT**

Any breach or violation of any term hereof shall constitute an act of default hereunder, and entitle the LESSOR to the rights and remedies provided herein, in addition to all other remedies provided by law. For such time as any act of default remains un-cured, a condition of default shall exist.

It shall also be considered an act of default should the LESSEE fail to have and make available fuel and live bait to the public for an period in excess of forty-eight (48) hours, except in case of acts of God, inability due to availability or mechanical breakdown beyond the ability of LESSEE to have corrected within said time, or otherwise by lawful order of any appropriate jurisdiction.

It shall also be considered an act of default for LESSEE to either fail to properly and accurately account to LESSOR all fuel purchases and sales occurring during the term hereof, or to inconsistently, inaccurately or improperly reflect and revise fuel sales prices in accordance with the limitations contain in Section Two above.

SECTION FIFTEEN

**NOTICE OF DEFAULT**

A notice of default shall consist of a written notice of the acts or omissions of LESSEE which constitutes the act of default and the action required by LESSEE to cure

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the default. The notice of default shall be mailed by United States mail, postage prepaid, return receipt requested, to Lessee's mailing address given above.

SECTION SIXTEEN

**EXERCISE OF LESSOR'S RIGHTS**

Except for Lessee's non-payment or untimely payment of rent or for default for failure to properly and accurately account to LESSOR for all fuel purchases and sales, or for failure to consistently, accurately and properly reflect and revise fuel sales prices in accordance with the limitations contain in Section Two hereof, or for other violation of any condition contained in Section Two hereof, or for failure to maintain required insurance contained in Section Ten hereof, violation of any of which conditions require no notice upon any act or condition of default under this Lease Agreement by LESSEE, LESSOR shall not exercise any of its rights and remedies contained herein, or terminate this Lease Agreement for any reason, except upon the following conditions:

- (1) LESSOR has sent LESSEE a notice of default as required in Section Fourteen herein and;
- (2) Thirty (30) days have elapsed from the date of mailing of Notice of Default by LESSEE; and
- (3) LESSEE has either: a) failed to cure the default within the said thirty (30) days to Lesson's satisfaction or b) LESSEE has failed to make diligent efforts, in the sole judgment of the LESSOR, to cure the default within a reasonable time if the default cannot be cured with the said thirty (30) days and the port commission agrees the delay in curing the default is justifiable due to circumstances or c) LESSEE has committed a repeat default or violation hereunder.

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SECTION SEVENTEEN

**DEFAULT**

In the event LESSEE shall fail to cure a default of this lease within time allowed above or in the case of any default for failure to pay rent or properly account and report fuels matters, LESSOR shall have the right of immediate re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of LESSEE. Should LESSOR elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings, LESSOR may terminate this lease.

SECTION EIGHTEEN

**DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE**

On termination of this lease for any cause, except upon total condemnation, LESSOR shall become the owner of any permanent structure or improvements on the demised premises. All personal property located on the demised premises which is the property of the LESSEE shall remain the property of the LESSEE after termination of this lease, provided however that any such personal property not removed within thirty (30) days of termination of this lease shall be considered abandoned by LESSEE, and may be removed and discarded or otherwise dealt with by the LESSOR, at LESSEE' S expense.

SECTION NINEEEN

**GENERAL PROVISIONS**

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(A) **Dispute Resolution.** To the extent allowed by law all damages, costs and expenses, including reasonable attorney's fees and expert's fees, incurred by the port commission in a dispute involving this lease will be borne by the lessee if determined to be at fault in such dispute.

(B) **Modification.** No modification, termination or attempted waiver of this lease, or any provision thereof, shall be valid unless in writing signed by LESSOR and LESSEE.

(C) **Waiver.** The waiver, either expressed or implied, or lack of LESSOR=s enforcement of any provision of this lease shall not operate or be construed as a waiver of any other or subsequent breach by LESSEE.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

LESSOR:

LESSEE:

THE LONG BEACH PORT  
COMMISSION

BY:

*Phillip Kils*  
PHILLIP KILS, President

*Justin Roland*  
JUSTIN ROLAND,  
d/b/a The Tackle Box



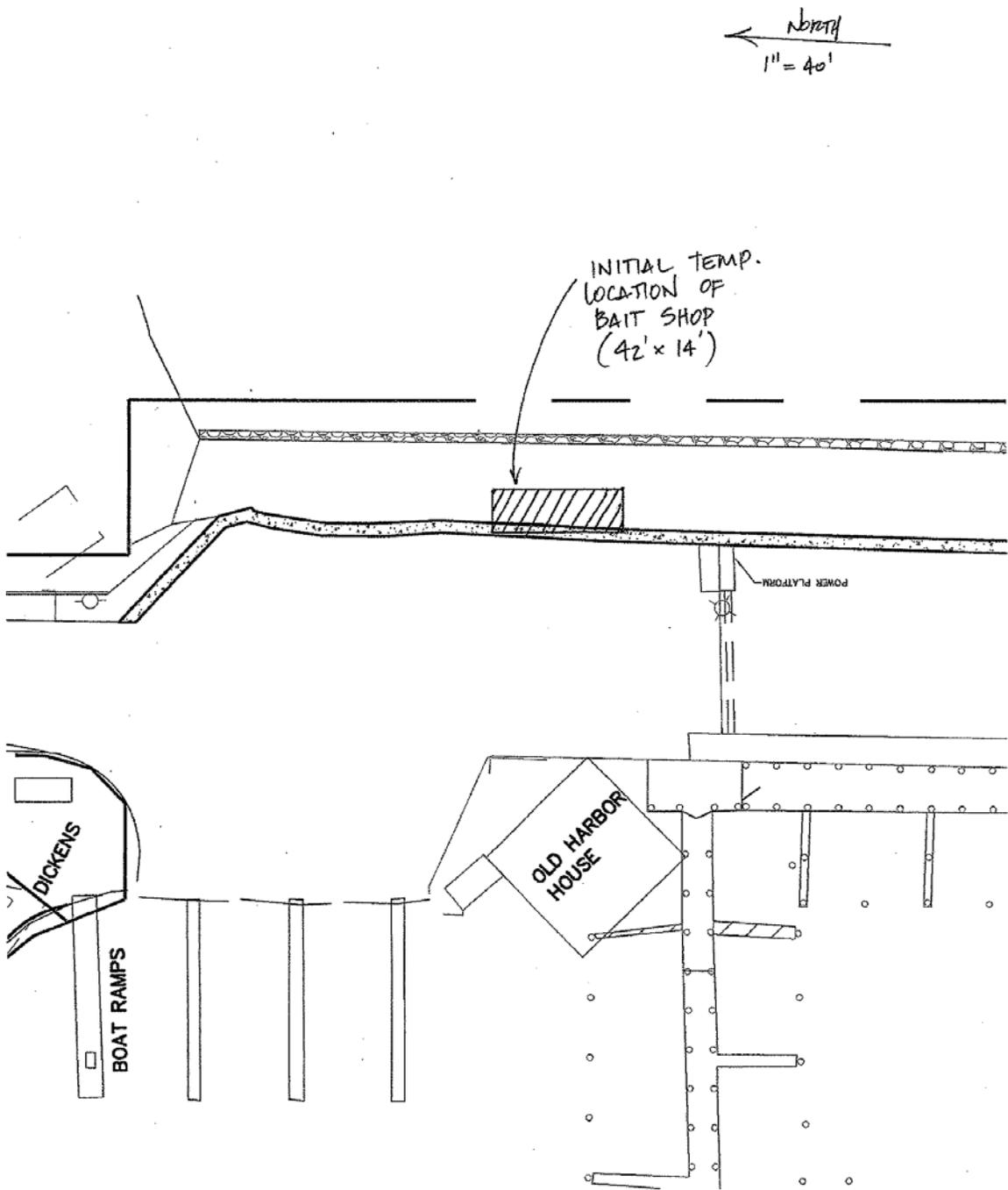
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ATTACHMENTS and EXHIBITS

Exhibit A Description of Demised Premises

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EXHIBIT "A"



\*\*\*\*\*

The commission recognized Mr. James C. Simpson, Jr. for the Port Attorney's report; whereupon it was determined an executive session may be in order regarding the lease to Lookout Catering, LLC.

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Mr. Glenn W. Mitchell expressed, for the record, his objection to executive session due to the lease of public property and the public's right to hear discussion.

\*\*\*\*\*

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Commissioner Nicosia made motion seconded by Commissioner Ehlers to meet in executive session for the transaction of public business, to-wit: to discuss with and seek the legal advice and counsel of the Port Attorney regarding potential litigation and lease negotiations. The question being put to a roll call vote, the result was as follows:

|                       |       |     |
|-----------------------|-------|-----|
| Commissioner Nicosia  | voted | Aye |
| Commissioner Reed     | voted | Aye |
| Commissioner Ryan     | voted | Aye |
| Commissioner Purchner | voted | Aye |
| Commissioner Kies     | voted | Aye |
| Commissioner Hancock  | voted | Aye |
| Commissioner Ehlers   | voted | Aye |
| Commissioner Rishel   | voted | Aye |
| Commissioner Marks    | voted | Aye |

The question having received the affirmative vote of all commissioners present and voting, the President declared the **motion carried**.

\*\*\*\*\*

The meeting resumed in open session and based upon discussion held and action taken in executive session, no action was required or taken in open session.

\*\*\*\*\*

Commissioner Rishel left the meeting during executive session due to an emergency, therefore not present when the commission returned to open session.

\*\*\*\*\*

Commissioner Hancock made motion seconded by Commissioner Ehlers and unanimously carried to recess this meeting until Tuesday, August 25, 2009, at 5:30 p.m. o'clock, at the Long Beach School District Central Office, 19148 Commission Road, Long Beach, Mississippi.

\*\*\*\*\*

APPROVED:

\_\_\_\_\_  
PHIL KIES, PRESIDENT

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

ATTEST:

\_\_\_\_\_  
STACEY DAHL, DEPUTY CITY CLERK