

PORT COMMISSION MINUTES
April 26, 2011

Be it remembered that a recess meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the City Hall, 201 Jeff Davis Avenue, in said City, on Tuesday, April 26, 2011, at 5:30 o'clock p.m., and the same being the time, place, and date fixed by order of the Port Commission recessing the meeting from April 21, 2011.

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 David Marks, Vernon Ehlers, Charles Purchner, Barney Hill, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioners Danny Hansen and David Blackstock, and Harbormaster Bill Angley.

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

The meeting was called to order; whereupon, the commission recognized Mr. Ron Robertson, Project Manager, Broaddus and Associates. Mr. Robertson submitted the following project updates in words and figures as follows:

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Long Beach Port Commission
Phil Kies, President

April 26, 2011

RE: Project Updates:

1. **Meeting with Project Design Engineer**

- As Directed by the Port Commission a Meeting with David Ball took place Monday, April 25, 2011 to discuss possible revisions to both the Alternate Project and the North Bulkhead/Pier project (B.I.G. Grant).
- Attendees: David Ball, Phil Kies, Bill Anglely and Ron Robertson.
- Several subjects and possible revisions were discussed. The end results of the meeting follows below and it was recommended to change the design as stated.

2. **Alternate Project. Harbor Pier #2 and other revisions.**

- A. Revise Position of new 4' wide pier from launch ramp moving east up next to harbormaster building.
- B. Provide option in Bid Package to add Handicap access at Launch Ramps with removable lift chair device. This will be paid for out of FEMA funded Alt. Project.
- If LBPC agrees with these changes a Motion is requested for Port Commission to approve the revised Alternate Project plans and specifications.

3. **Bulkhead Project.**

- A. Provide Sidewalk extension to East connecting sidewalk to road
- B. Laundry Facilities to be located in Harbormaster building, coin operated washer/dryer stacked, located in elevate entrance room. Include this item in bid package for bait shop. Paid for out of BIG grant project.
- C. Add Steps at east end of new 8' wide pier to access the sidewalk.
- D. Add vertical boards along water side of new Pier; 2x12's at 3' on center. This is for boat fenders to rest against.
- E. Install aluminum ladders along pier at 30 feet apart.
- F. Eliminate steps to Fuel Dock pier, and add slope paving to eliminate wooden bulkhead. Extend pier to the east if possible.
- G. Extend 1" water line under new 8' Pier add drain valve.
- H. Add alternate deduct in Bid Package for reducing length of new Bulkhead. This provides some budget flexibility if necessary. David Ball will investigate dredging to 4' at 10'-12' away from existing bulkhead.
- If LBPC agrees with these changes a Motion is requested for Port Commission to approve the revised 2009 B.I.G. Grant Improvements plans and specifications.

Please contact me at your convenience with any questions.

Best Regards,

Ron Robertson, P. E.
Project Manager

After brief discussion and based upon the recommendations of Mr. Robertson, action was taken as follows:

- Commissioner Ehlers made motion seconded by Commissioner Purchner and unanimously carried to approve the revised Alternate Project plans and specifications for Harbor Pier #2.
- Commissioner Marks made motion seconded by Commissioner Reed and unanimously carried to approve the revised 2009 B.I.G. Grant Improvements plans and specifications regarding the Bulkhead Project.

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There came on for consideration the Public Trust Tidelands Lease Agreement with the Secretary of State Public Lands Division. Said Agreement ordered spread upon the minutes of this meeting in words and figures as follows:

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PREPARED BY:
Secretary of State
Post Office Box 97
Gulfport, MS 39502
(228) 864-0254

RETURN TO:
Secretary of State
Post Office Box 97
Gulfport, MS 39502
(228) 864-0254

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PUBLIC TRUST TIDELANDS LEASE AGREEMENT
TO CITY OF LONG BEACH, MISSISSIPPI

(Long Beach Harbor)

THIS AGREEMENT, made and entered into this the ____ day of _____, 201_, by
and between the

THE STATE OF MISSISSIPPI
By the Secretary of State
Public Lands Division
Post Office Box 136
Jackson, Mississippi 39205-0136
Telephone: (601) 359-6373

with approval of the GOVERNOR,

("LESSOR")

AND

CITY OF LONG BEACH, MISSISSIPPI
By the Board of Aldermen
Post Office Box 929
Long Beach, Mississippi 39560
(228) 863-1556
With approval of the Mayor

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With approval of
LONG BEACH PORT COMMISSION
By Phillip J. Kies
President of Long Beach Port Commission
228-863-1556

("LESSEE")

IN CONSIDERATION of the covenants, conditions, and obligations herein provided and to be observed and performed by LESSEE, LESSOR does hereby lease and rent unto LESSEE, pursuant to the authority of MISS. CODE ANN. §29-1-107 (Supp. 2009), the following described submerged land or tideland, hereinafter referred to as LEASE PREMISES, to-wit:

PARCEL A (Submerged Lands and Tidelands): All of the submerged lands and tidelands as described in Exhibit 2-A attached to this LEASE. *[This will be the water bottoms within the harbor.]*

PARCEL B (Fastlands): All of the fastlands as described in Exhibit 2-B attached to this LEASE. *[This will be the "green area" marked on the survey.]*

Said parcels are depicted on the survey attached as Exhibit 3 this LEASE.

1. TERM.

1.1 The primary term of this lease shall be for forty (40) years, beginning on the 1st day of January, 2011, and terminating on the 31st day of December, 2051.

1.2 If at the expiration of the primary term, LESSEE has faithfully complied with all terms, covenants, conditions, and obligations of this lease, then LESSEE shall have the right and option to extend this lease for an additional twenty-five (25) years (SECONDARY TERM) subject to such terms and provisions as may then be agreed upon by LESSOR and LESSEE.

1.3 If at the expiration of the SECONDARY TERM, LESSEE faithfully complied with all terms, covenants, conditions and obligations of the LEASE as renewed, then LESSEE shall have the prior right, exclusive of all other persons to re-lease LEASE PREMISES subject to such terms and provisions as may then be agreed upon by LESSOR and LESSEE.

1.4 It is expressly agreed and understood that during the SECONDARY TERM of this LEASE and during the term of any future leases entered pursuant to Paragraph 1.3, LESSEE shall fully comply with all laws of the State of Mississippi applicable to the Lessee and the property which is the subject of this lease governing the leasing of submerged lands and tidelands in effect at the time of renewal or re-leasing.

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1.5 If LESSOR and LESSEE cannot reach mutual agreement on terms and provisions of the renewal lease or any new lease under Paragraphs 1.2 or 1.3 hereof, then either LESSOR or LESSEE may apply to a court of the State of Mississippi of competent jurisdiction and venue for a judicial determination of those lease terms and provisions upon which the parties cannot agree.

2. USE OF LEASE PREMISES.

2.1 It is specifically agreed that the LESSEE will use LEASE PREMISES only for the purposes of:

(a) a City Harbor (HARBOR USE) consisting of municipal harbor and marina; boat slips for recreational and commercial boating, for recreational and commercial fishing; (provided no commercial boat shall exceed sixty (60) feet in length) and for harbor infrastructure, to include parks, green space, wharfs, piers, docks, boat slips, parking areas, boat launches, and access road, all of which serve a higher public purpose of promoting the public access to and public use of the public trust tidelands and submerged; and

(b) Related Commercial Development (DEVELOPMENT USE) which shall be limited to retail, fine dining or casual dining restaurants; low impact businesses related to tourism and recreation; and low impact businesses providing support activities for the commercial fishing activities; all of which would be appropriate and complementary for a working municipal harbor and waterfront development integrated into the city. Any DEVELOPMENT USE shall be approved by the LESSOR and the LESSEE. It is expressly understood that where local ordinance requires a minimum number of parking spaces to be dedicated for any such DEVELOPMENT USE, that said required parking spaces shall be a permitted for such DEVELOPMENT USE under this LEASE. For purposes of DEVELOPMENT USE low impact shall include, but shall not be limited to, uses that do not materially, directly or indirectly, (i) impair the natural character of tidelands within the LEASE PREMISES or adjacent thereto, (ii) interrupt the public use of the tidelands within the LEASE PREMISES or adjacent thereto, (iii) require filling of tidelands, (iv) interfere with other harbor activities and operations, (v) create noise, odors, environmental hazards or unsightly conditions or (vi) make a disproportionate demand on city infrastructure, utilities and services; and

HARBOR USE and DEVELOPMENT USE are hereinafter collectively referred to as USES.

(c) are in compliance with applicable zoning regulations or ordinances.

2.2 LESSOR and LESSEE agree that gambling, gaming operations, games of chance and casinos (GAMING) are not permitted USES under the terms of this LEASE. Any facilities or amenities used in support of or in association with GAMING are not permitted uses under the terms of this LEASE, except for DEVELOPMENT USES permitted in Paragraph 2.1(b) of this LEASE.

2.3 LESSOR and LESSEE agree that any lease of LEASE PREMISES or other Public Trust Lands at the Long Beach Harbor location for GAMING shall, in addition to all other

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determinations or permissions of other agencies as required by law, require a first party lease between the gaming entity and the State of Mississippi acting by and through the Secretary of State with the approval of the Governor as LESSOR. LESSOR reserves the exclusive authority and right to execute leases for GAMING on LEASE PREMISES, and all rights under this LEASE shall be subservient to any lease for GAMING executed by LESSOR. The LESSOR, in its sole discretion, shall decide whether or not a GAMING lease will be offered, but in the exercise of such discretion shall give due consideration to the favor of local governing authorities. All revenues from any GAMING lease shall be paid to the Public Trust Tidelands Fund or as otherwise may be directed pursuant to the Laws of the State of Mississippi as they may be amended from time to time.

2.4 LEASE PREMISES shall not be used in such a manner so as to obstruct normal navigation of any artificial, normal or natural channel.

2.5 Except as provided in Paragraph 12 hereof, if LESSEE abandons permitted USES defined in Paragraph 2.1, above, of the LEASE PREMISES for a period of more than one year, then this lease may be terminated by LESSOR upon one-hundred twenty (120) days notice. If after receiving notice of cancellation, LESSEE within said one-hundred twenty (120) day period, provides LESSOR with a viable plan for resumption of permitted USES of LEASE PREMISES and thereafter undertakes and continues, without unreasonable delay, work to resume such USES, then this LEASE shall not be cancelled by LESSOR.

3. CONSIDERATION

3.1 The LESSEE and LESSOR agree:

(a) The LEASE PREMISES contains _____ acres, more or less, of both submerged lands and fast lands.

(b) LESSEE shall be exempt from any use or rental fees pursuant to Miss. Code Ann. §29-15-13 (Supp. 2009).

(c) The LESSEE, in conjunction with the operation of the LEASE PREMISES for HARBOR USE, may rent boat slips for recreational and commercial boating, recreational and commercial fishing (provided no commercial boat shall exceed sixty (60) feet in length) upon such terms and conditions as the LESSEE deems proper and appropriate. The terms and conditions, including the rental and fee amounts, of the boat slip rental agreements between the LESSEE and any occupant of a boat slip (SLIP AGREEMENTS) shall be established by the LESSEE.

(d) Any sub-lessee shall pay fair market value for all DEVELOPMENT USE on the LEASE PREMISES.

3.2 The LESSEE shall be entitled to retain all revenues from rentals and fees from SLIP AGREEMENTS and DEVELOPMENT USE within LEASE PREMISES, so long as such

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revenues are used by the LESSEE for the operation, debt service and maintenance cost of the LEASE PREMISES pursuant to the terms provided in Exhibit 1 attached to this LEASE.

(a) All revenues received from SLIP AGREEMENTS and DEVELOPMENT USE shall be deposited in a separate bank account titled Long Beach Harbor Operating Account. This account shall be deemed a public account and shall be subject to audit by the State Auditor. This account shall be specifically established to pay the operations, debt service for capital improvements the Long Beach Harbor and maintenance costs in Exhibit 1. Those funds can only be used for the operations, debt service for capital improvements to the Long Beach Harbor and maintenance costs in Exhibit 1.

(b) All revenues received for SLIP AGREEMENTS and DEVELOPMENT USE and deposited in the above specific account which are not expended in the LEASE YEAR will, at the end of the fiscal year in which the funds were collected, be transferred to a separate capital Long Beach Harbor Fund to be held by LESSEE for capital improvements and for the benefit of Long Beach Harbor. The account shall be deemed a public account and shall be subject to audit by the State Auditor. Said funds shall be accumulated to be used for capital improvements, including maintenance dredging and unanticipated operational expenses, maintenance costs and other expenses in Exhibit 1 and may also be used for recovery and rebuilding on the LEASE PREMISES after Catastrophic Destruction.

(c) LESSEE shall provide LESSOR

(i) a copy of any all budgets or similar documents produced as a result of the USE of LEASE PREMISES contemporaneous with the documents being produced.

(ii) Within ninety (90) days of the end of the LESSEE's fiscal year, an annual accounting of all income, including all rents, fees, revenues, compensation, and other income from HARBOR USE, including SLIP AGREEMENTS and DEVELOPMENT USE; of all expenditures including operation and maintenance costs and capital improvements; and of all deposits, increases, withdrawals and decreased affecting the Long Beach Harbor Fund.

3.3 For the purpose of complying with Paragraph 3(c), the LESSEE may provide the LESSOR an original report of an independent external audit conducted and reported within the time specified and containing the information required.

3.4 (a) The LESSOR shall have the right to an accounting and audit of the records relating to all rents, fees, revenues, compensation and other income derived from the operations under this LEASE or any subleases of this LEASE. Notice of said accounting and audit shall be made in writing with five (5) days business notice to the LESSEE at the address provided in this LEASE. The LESSOR shall designate the persons or agencies who shall conduct the accounting or audit.

(b) LESSEE and all sublessees shall make available to LESSOR all required documents and information required by its auditors.

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3.6 – 3.11 PARAGRAPHS NOT USED.

4 & 5 PARAGRAPHS NOT USED.

6. TRANSFERABILITY OF LEASE.

6.1 Except as provided in Paragraph 6.1(a) and 6.1(b) hereof, LESSEE shall not sublease or otherwise transfer its rights or obligations under this LEASE without prior approval of LESSOR.

(a) The City of Long Beach and the Long Beach Port Commission may enter into an agreement providing for operations (including the collection of rents), improvements, and management of the Harbor, the terms of which shall not be inconsistent the terms of this lease.

(b) LESSEE may enter SLIP AGREEMENTS pursuant to Paragraph 3.1(c) without approval of the LESSOR.

6.2 LESSEE represents to LESSOR that it has previously entered the following leases covering portions of LEASE PREMISES:

(1) Long Beach Port and Harbor Commission to Long Beach Yacht Club dated March 29, 1983.

(2) Long Beach Port and Harbor Commission to Justin Roland, dated August 7, 2009; assigned to Gulfport Harbor Fuel and Bait Inc., November 19, 2009.

(3) Long Beach Port and Harbor Commission to Blue Ridge Properties LLC dated February 11, 2010; amended May 10, 2010.

(4) Long Beach Port and Harbor Commission and the City of Long Beach to S. Pucheu Holdings, LLC and DMF Properties, LLC dated September 7, 2010; assigned to DMF Properties, LLC October 1, 2010.

To the extent necessary to provide good leasehold title in aforesaid Leases of the Long Beach Port and Harbor Commission, LESSEE may execute partial assignments of this LEASE, to the extent, but only to the extent, such assignments do not convey any right or title not covered by this lease and do not violate any term or provision of this LEASE. In accepting such assignments, said assignees recognize this LEASE as source of title.

6.3 – 6.7 PRAGRAPHS NOT USED.

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7. PUBLIC ACCESS ASSURED.

7.1 LESSEE agrees to maintain free public access to LEASE PREMISES during the term of the LEASE, subject to rules and regulations reasonably necessary to ensure the safety and convenience of all users and normal operations of the harbor.

8. DEFAULT.

8.1 The parties expressly agree that in the event of default in any term, provision, condition, covenant or condition imposed on LESSEE under this LEASE, enforcement shall be pursuant to the following methods. LESSOR shall give notice to the LESSEE of the default of the LEASE provisions in writing as provided in Paragraph 21. LESSEE shall have ninety (90) days from receipt of the written notification of the default(s) in which to seek a judicial determination by a proceeding in a court of competent Jurisdiction of the existence of the default(s). During such ninety (90) days, the LESSOR shall not initiate any action to terminate this LEASE. Should LESSEE seek a judicial determination of the existence of the default(s), any further stay of action by the LESSOR to enforce or terminate the LEASE shall be determined by the court in which the LESSEE sought the judicial determination. If LESSEE does not seek a judicial determination of the existence of the default(s) or cure the default(s) within the provided ninety (90) day period, LESSOR may proceed to enforce or terminate this LEASE. LESSOR shall have all rights and remedies available to Landlords at law or in equity, including but not limited to, the right to restrain violations, compel compliance or terminate this LEASE, and the election to pursue one remedy shall not be deemed to have waived other available remedies.

8.2 If any subleases are in effect at the time of cancellation, termination or forfeiture of this LEASE, then such subleases shall remain in full force and effect subject to state law, and all rights of LESSEE under said subleases shall accrue to LESSOR.

9. IMPROVEMENTS AND MAINTENANCE, FUTURE DEVELOPMENT.

9.1 LESSOR acknowledges that the improvements which exist on LEASE PREMISES on the effective date of this LEASE or which may be constructed on the LEASE PREMISES by the LESSEE under the terms of this lease are not the property of LESSOR unless forfeited to LESSOR pursuant to Paragraph 23.

9.2 LESSEE or LESSEE'S sublessees will operate and maintain all existing improvements on LEASE PREMISES and will construct, operate and maintain all future improvements on LEASE PREMISES. No material or substantial alteration or addition to the LEASE PREMISES shall be constructed, placed or assembled and maintained on LEASE PREMISES until LESSOR has first submitted such proposed alteration or addition in writing to LESSOR and LESSOR agrees that such alteration or addition is a public use, and thereafter LESSEE may proceed to construct such improvements. Such modifications must (a) be consistent with USES allowed under this LEASE, (b) not violate any local, state or federal law or regulation, (c) be approved by all necessary permitting authorities, and (d) not be inconsistent with or prohibited by any term or provision of this LEASE.

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9.3 (a) LESSEE agrees to provide LESSOR a complete set of construction plans prior to the start of construction of any improvements.

(b) LESSEE agrees to provide LESSOR with an "as built" survey and a complete set of "as built" plans showing all improvements, modification or additions.

9.4 LESSOR and LESSEE share in the public interest in establishing and maintaining an attractive view of the waterfront on the Mississippi Sound and the Sand Beach. Accordingly, LESSEE agrees that any improvements or modifications to the LEASE PREMISES shall be constructed and maintained for visual and aesthetic appeal. LESSEE agrees that it shall, at all times, maintain said view of the waterfront in a manner consistent with the public interests and intentions set forth in this Paragraph 9.4. Without limitation, LESSEE acknowledges this is a material provision of this LEASE.

9.5 All improvements, modifications or additions to improvements on LEASE PREMISES shall be constructed in a workmanlike manner and shall be operated and maintained at LESSEE'S or sublessee's expense, and shall be maintained in a good state of repair and in a clean, orderly, and attractive condition with due regard to public health and safety.

9.6 LESSOR and LESSEE agree that it is in the public interest that all improvements constructed on LEASE PREMISES be completed in a timely manner to the end that such improvements shall not remain in a partly constructed condition any longer than reasonably necessary. All assignments and subleases of LEASE PREMISES shall expressly provide that assignees or sublessees will diligently pursue and timely complete construction of all improvements proposed for the LEASE PREMISES and shall include provisions as may be appropriate under the circumstances to enforce this objective, including, but not limited to, (i) construction schedules, (ii) performance bonds, (iii) penalties, (iv) requirements to remove unfinished improvements and restore LEASE PREMISES, (v) termination of rights under assignments or subleases, and (vi) right of assignor or sublessor to complete improvements and thereafter operate or rent same.

9.7 Paragraph not used.

9.8 The provisions of this Paragraph shall be included in all subleases of the LEASED PREMISES.

10. COMPLIANCE WITH APPLICABLE LAWS AND RESTRICTIONS ON USE.

10.1 LESSEE shall comply with any and all federal, state, county or city laws, statutes, regulations, building codes, building requirements, safety or conservation regulations, fire codes, ordinances, environmental and health laws and regulations, zoning regulations and permits applicable to the Lessee and the property which is the subject of this lease (collectively "RESTRICTIONS"). If LESSEE is charged with a violation of such RESTRICTIONS and the violations complained of do not pose an immediate threat to the public health or safety or damage or destruction to or waste of LEASE PREMISES, then LESSEE shall have the right to contest a complaint of violation of such RESTRICTIONS in the manner provided by law, without such contest constituting a default under this LEASE. However, nothing herein shall be

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deemed or construed to prohibit or limit LESSOR'S right to take any action available in equity or law to protect LEASE PREMISES and adjoining State property from damage, waste or destruction.

10.2 To the extent provided in the Mississippi Torts Claim Act, and subject to the limitations and immunities allowed there under, the LESSEE shall be liable for any claims or damages arising as a result of a breach of the covenants of Paragraph 10.1 and from all costs, expenses and charges arising there from including, without limitation, attorney fees and court costs incurred by LESSEE in connection therewith. This provision shall survive the expiration or termination of this LEASE.

10.3 Without first giving LESSOR all notices required by applicable law, ordinance or rule, LESSEE shall not change or attempt any change in zoning, or obtain or apply for a conditional use permit, zoning variance or exception or other similar approval with respect to the use or development of the LEASE PREMISES not expressly allowed under Paragraph 2 or Paragraph 6; and shall not use, develop or attempt to use or develop the LEASE PREMISES or any portion thereof not expressly allowed under Paragraph 2 or Paragraph 6.

10.4 LESSEE shall not under the terms of this LEASE construct any building, structure or pier of any type on State property adjacent to or adjoining LEASE PREMISES without a Tidelands Lease.

10.5 LESSEE shall not use LEASE PREMISES in violation of any state or federal regulation pertaining to coastal wetlands.

10.6 The LEASE PREMISES shall be subject to inspection by LESSOR or his representative at any time.

10.7 It is expressly agreed by and between the parties that LESSEE will not occupy or use, nor permit to be occupied or used, LEASE PREMISES for any activity deemed hazardous or for any unlawful purposes.

11. PARAGRAPH NOT USED.

12. CATASTROPHIC DESTRUCTION.

12.1 In the event of catastrophic destruction by natural causes of any LESSEE owned improvements on the LEASE PREMISES, LESSEE may terminate this LEASE at its option, provided the LESSEE removes any and all debris from the LEASE PREMISES if the LESSEE receives federal or state funding for such activity.

12.2 In the event of catastrophic destruction by natural causes of any LESSEE owned improvements on the LEASE PREMISES, LESSEE may, but shall not be obligated to, restore or replace any portion of such improvements lost or damaged. The LESSEE may use funds from the capital improvements fund account for rebuilding and recovery from Catastrophic Destruction on LEASE PREMISES.

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12.3 LESSOR reserves the right to terminate the LEASE with one-hundred twenty (120) days notice unless LESSEE notifies LESSOR within five (5) years after the catastrophic destruction of its intent to rebuild. If after receiving notice of cancellation, LESSEE, provides LESSOR with a viable plan for rebuilding and resumption of permitted USES of LEASE PREMISES and thereafter undertakes and continues, without unreasonable delay, work to rebuild and resume such USES, then this LEASE shall not be cancelled by LESSOR.

12.4 In the event that this LEASE is terminated by LESSOR under Paragraph 12.3 hereof, LESSEE agrees to remove any and all debris from the LEASE PREMISES if the LESSEE receives federal or state funding for such debris removal.

12.5 – 12.7 paragraphs not used.

13. PROTECTION OF LEASE PREMISES.

13.1 LESSEE and any sublessee of LESSEE shall exercise due diligence in the protection of LEASE PREMISES against damage or waste from any and all causes. LESSEE and any sublessee of LESSEE shall not use LEASE PREMISES in such a manner that it causes waste or damage to other property of the LESSOR in the vicinity of LEASE PREMISES.

13.2 Paragraph not used.

13.3 Paragraph not used.

13.4 Neither the LESSEE nor any sublessee shall deposit any refuse, waste or substances regulated under local, state or federal environmental and health laws on LEASE PREMISES. Nor shall LESSEE or any sublessee of LESSEE make any such deposits on, or damage any submerged lands or tidelands or other property belonging to the State of Mississippi adjacent to or adjoining LEASE PREMISES. Disposition of refuse and waste shall be consistent with local, state and federal environmental and health laws and regulations. Failure to comply with such laws and regulations shall be deemed to be a material breach of this LEASE or any sublease.

14. PARAGRAPH NOT USED.

15. QUIET AND PEACEFUL POSSESSION.

15.1 LESSEE shall have quiet and peaceful possession of LEASE PREMISES so long as LESSEE is in compliance with the terms and provisions of this LEASE.

16. RIGHT OF ENTRY / INSPECTION RIGHTS.

16.1 LESSOR or its authorized representative shall have the right to enter onto LEASE PREMISES or improvements thereon at any reasonable hour to inspect LEASE PREMISES for purposes of verifying compliance with the terms and provisions of this LEASE.

16.2 LESSEE grants unto LESSOR rights of ingress and egress to LEASE PREMISES

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in, over, across and through uplands and facilities on uplands owned or controlled by LESSEE, upon reasonable times, for purposes of entering onto and inspecting LEASE PREMISES.

16.3 In any sublease granted by LESSEE, LESSEE will require that a provision is included granting LESSOR and LESSEE the right of access as provided in Paragraph 16.

17. LESSOR NOT RESPONSIBLE.

17.1 LESSEE assumes full responsibility for the condition of the PREMISES and LESSOR shall not be liable or responsible for any damages or injuries caused by any vices or defects to the LESSEE or to any occupant or to anyone on the LEASE PREMISES who derives his right to be thereon from LESSEE.

18. LIABILITY INSURANCE.

18.1 LESSEE shall secure and maintain throughout the term of the lease a liability insurance policy providing coverage in a commercially reasonable amount to be determined by LESSEE against accidents, death or bodily injury or loss or damage to property occurring on or in connection to LEASE PREMISES, or LESSEE'S improvements, or arising out of or associated with any activity of LESSEE on LEASE PREMISES. LESSEE shall annually supply a certificate evidencing said insurance to LESSOR. In the alternative, LESSEE shall secure and maintain throughout the term of the lease a policy of liability coverage from the Mississippi Municipal Liability Plan or any similar group approved pursuant to MISS. CODE ANN. §11-46-1, et seq. (Supp. 2009), providing coverage in the amount legally required against accidents, death, bodily injury or loss or damage to property occurring on or in connection to LEASE PREMISES, or LESSEE'S improvements, or arising out of or associated with any activity of LESSEE on LEASE PREMISES.

18.2 In any sublease granted by LESSEE, LESSEE will require that a provision is included providing the sublessee will maintain commercially available insurance in an amount approved by LESSOR and provide proof to the LESSOR in a manner similar to Paragraph 18.1.

19. RESERVATION OF MINERAL RIGHTS.

19.1 LESSEE further covenants and agrees that this lease and interest of LESSEE shall not include any mineral, oil or gas, coal, lignite, or other subterranean rights whatsoever.

20. WAIVER NOT A DISCHARGE.

20.1 No failure, or successive failures, on the part of LESSOR to enforce any term or provision of this LEASE, nor any waiver or successive waivers by LESSOR of any term or provision of this LEASE, shall operate as a discharge thereof or render the same inoperative or impair the right of LESSOR to enforce the same in the event of subsequent or continuing breach or breaches or upon any renewal thereof.

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21. NOTICE.

21.1 (a) All notifications or submissions required under the terms of this LEASE shall be made by U.S. Mail or by rapid delivery courier service to the parties at the following addresses:

Secretary of State:	Assistant Secretary of State Public Lands Division (By U. S. Mail) Post Office Box 136 Jackson, Mississippi 39205-0136 (By courier) 700 North Street Jackson, Mississippi 39207 Telephone: (601) 359-6373 Facsimile: (601) 359-461
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City of Long Beach	Attention: Mayor (By U.S. Mail) Post Office Box 929 Long Beach, Mississippi 39560 (By courier) 201 Jeff Davis Avenue Long Beach, Mississippi 39560 Telephone: 228-863-1556
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Long Beach Port Commission	Attention: Commission President (By U. S. Mail) Post Office Bo929 Long Beach, Mississippi 39560 (By courier) 201 Jeff Davis Avenue Long Beach, Mississippi 39560 Telephone: 228- 863-1556
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(b) Notices shall be effective upon receipt by the receiving party. Upon written request, LESSOR and LESSEE agree that they will promptly acknowledge in writing to the other receipt of any notice received pursuant to any provision of this LEASE.

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21.2 LESSOR or LESSEE may change the identity of the party designated to receive notices under this LEASE by delivering, in the manner provided in Paragraph 21, notification of such change. The notice of change in party designated to receive notice shall clearly state the name, title or office, address for U.S. Mail delivery and address for courier delivery, telephone number and facsimile number of the new party designated to receive notices under this LEASE. Neither LESSOR nor LESSEE shall be entitled to designate, at any one time, more than one party to receive notices under this LEASE. Any such notice of change in the party designated to receive notice under this LEASE shall be effective upon receipt of such notice.

22. LAWS OF MISSISSIPPI TO GOVERN.

22.1 This LEASE and any sublease of this LEASE are to be governed by the laws of the State of Mississippi, both as to interpretation and performance.

22.2 Jurisdiction and venue shall be as provided by law.

23. CANCELLATION OR TERMINATION OF LEASE.

23.1 In the event of the invalidation of any material provision of this LEASE by a final, non-appealable judgment or court order, LESSOR and LESSEE may, within ninety (90) days of the entry of such judgment or order, renegotiate this LEASE on mutually agreeable terms not in conflict with such judgment or order. In the event LESSOR and LESSEE are unable to reach agreement on such terms then either LESSOR or LESSEE may, within said ninety (90) day period, apply to a court of the State of Mississippi of competent jurisdiction and venue for a judicial determination of any term or provision upon which the parties cannot agree.

23.2 Paragraph not used.

23.3 If not sooner cancelled or terminated, this LEASE shall terminate at 11:59 P.M. central (standard or daylight savings) time on the last day of the primary term, or if renewed pursuant to Paragraph 1.2, then this LEASE shall terminate at 11:59 P.M. central (standard or daylight savings) time on the last day of the secondary term.

23.4 Immediately upon the cancellation or termination of this LEASE for any reason, LESSOR shall be entitled to take possession of LEASE PREMISES, custom and usage to the contrary notwithstanding, and LESSEE covenants and agrees immediately and peaceably to quit, deliver up and surrender possession of LEASE PREMISES to LESSOR subject to the provisions hereof.

23.5 LESSEE shall have one hundred and eighty (180) days from the date this LEASE is cancelled or terminated for any reason to remove LESSEE'S improvements, structures and equipment from the LEASE PREMISES. LESSEE may, before the end of the one hundred and eighty (180) day period, sell, transfer or convey the improvements to another lessee approved by the LESSOR. LESSOR and the new lessee shall execute a Public Tidelands Lease on mutually agreeable terms. If for any reason LESSEE does not remove the improvements, structures and

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equipment or does not sale, transfer or convey the same, then said improvements, structures and equipment will be deemed forfeited by LESSEE, and may be removed and/or sold by LESSOR. The manner and time of removal or sale and the price for which said improvements, structures, materials and equipment may be sold shall be in the sole discretion of LESSOR. In the event of such forfeiture by LESSEE, LESSOR shall not be obligated to remove said improvements, structures and equipment or bear any liability to LESSEE in the event the same are not removed. Any costs incurred by LESSOR in the removal of such improvements, structures and equipment or restoring LEASE PREMISES shall be paid for from the proceeds of sale of such improvements, structures and equipment. If at the time of cancellation or termination of this LEASE, LESSEE is entitled to receive funds from the federal government or from the state for such removal and thereafter receives such funds, then said funds shall be used for the removal of said improvements, structures and equipment and restoration of LEASE PREMISES, not withstanding this LEASE previously terminated.

23.6 Paragraph not used.

24. MISCELLANEOUS.

24.1 LESSEE covenants and binds itself, its successors and its assigns to the extent allowed by the Laws of the State of Mississippi to faithfully and timely comply with all the terms and provisions of this LEASE.

24.2 The remedies set forth in this LEASE are not exclusive, and the election of one remedy by LESSOR shall not be deemed or construed as a waiver of any other remedy available to LESSOR. In addition to the remedies provided in this LEASE, LESSOR shall be entitled to whatever remedies it may have otherwise at law or in equity.

24.3 LESSOR and LESSEE agree that they will execute and deliver, at the request of the other, any and all such documents or other written instruments as may be reasonably necessary or appropriate to carry out and effectuate the intent and purpose of this LEASE.

24.4 No amendments or additions to LEASE shall be binding unless in writing and signed by all parties.

24.5 All covenants and agreements herein shall bind and inure to the benefit of the parties hereto and to their successors and assigns.

24.6 LESSOR and LESSEE, for all purposes under this LEASE, accept the survey of the LEASE PREMISES attached hereto as Exhibit 3.

24.7 This instrument constitutes the entire agreement between LESSOR and LESSEE and supersedes all prior understandings, previous negotiations, and any memoranda or understanding with respect to the subject matter hereof.

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24.8 Each individual executing this LEASE on behalf of LESSEE represents and warrants that he is duly authorized to do so on behalf of the said LESSEE, and LESSEE shall, at LESSOR'S request, deliver a certified copy of its Board's resolution authorizing said execution.

25. DEFINITIONS.

25.1 HARBOR USE shall have the meaning set forth in Paragraph 2.1(a).

25.2 DEVELOPMENT USE shall have the meaning set forth in Paragraph 2.1(b).

25.3 LEASE shall mean that lease agreement by and between the State of Mississippi, by the Secretary of State, with the approval of the Governor, and the City of Long Beach and Long Beach Port Commission, effective January 1, 2010, for certain surface lands, submerged lands or tidelands referred to as LEASE PREMISES.

25.4 LEASE PREMISES shall mean those submerged lands and fast lands constituting the Long Beach Harbor and adjacent lands, the described property being a 13.75 acre tract, more or less, of submerged land as described in Exhibits 2-A and a 10.0 acre tract, more or less, of fastlands, as described in Exhibit 2-B, all situated along the south side of the toe of the seawall located south of US Highway 90 in the vicinity of located within Section 13, Township 7 South, Range 13 West, City of Long Beach, First Judicial District of Harrison County, Mississippi, and as depicted in Exhibit 3.

25.5 LEASE YEAR begins on the calendar date the LEASE becomes effective and each succeeding anniversary date, and extends for 365 days, but in the case of leap years, extends for 366 days.

25.6 LESSEE shall mean City of Long Beach, Mississippi, as may be assigned to the Long Beach Port Commission pursuant to the authority of Chapter 861, Local and Private Laws, 1987.

25.7 LESSOR shall mean the State of Mississippi, acting by and through the Secretary of State with the approval of the Governor.

25.8 RESTRICTIONS shall mean any and all federal, state, county, district or city laws, statutes, regulations, building codes, building requirements, safety or conservation regulations, fire codes, ordinances, environmental and health laws and regulations, zoning regulations and permits applicable to the LESSEE and the property which is the subject of this lease and to LESSEE'S use of and activities on LEASE PREMISES.

25.9 SECONDARY TERM shall have the meaning set forth in Paragraph 1.2.

25.10 SLIP AGREEMENT shall have the meaning set forth in Paragraph 3.1(c).

25.11 USES shall have the meaning set forth in Paragraph 2.1 herein.

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26. STATE LAW

26.1 (a) In the event the laws of the State of Mississippi are changed or amended to grant ownership of the harbor or any area adjacent there to, those laws shall be incorporated, effective with the effective date of the law, into the LEASE or if a lease is no longer required by Mississippi law, this LEASE shall terminate on the effective date of said law.

(b) In the event that a court of competent jurisdiction by a final, non-appealable judgment or court order should determine that title to the LEASE PREMISES is not vested in LESSOR, or that LESSEE is otherwise empowered by law to continue its operation of the LEASE PREMISES without a lease from LESSOR, then this LEASE shall terminate on the date such judgment or order becomes final.

26.2 LESSEE and LESSOR agree that this LEASE will not operate as evidence in any judicial action to determine ownership of the LEASE PREMISES.

26.3 In the event LESSOR executes a Public Trust Tidelands lease agreement for a municipal small craft harbor containing more favorable terms than contained in this LEASE, then LESSEE may request the same terms and LESSOR amend this lease accordingly.

IN WITNESS WHEREOF, this lease is executed by LESSOR and LESSEE, this the _____ day of _____, _____.

LESSEE:

CITY OF LONG BEACH

BY: _____
Print Name _____
Office _____

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STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named _____, personally known to me to be the _____ of the CITY OF LONG BEACH, MS, who acknowledged that he/she executed the above and foregoing LEASE AGREEMENT as the act and deed of said county, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

LONG BEACH PORT COMMISSION

BY: _____
Print Name _____
Office _____

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named _____, personally known to me to be the _____ of the LONG BEACH PORT COMMISSION, who acknowledged that he/she executed the above and foregoing LEASE AGREEMENT as the act and deed of said county, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

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LESSOR:

STATE OF MISSISSIPPI
C. DELBERT HOSEMANN, JR.
SECRETARY OF STATE

BY: _____
C. DELBERT HOSEMANN, JR.

STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named. C. DELBERT HOSEMANN, JR, personally known to me to be the SECRETARY OF STATE of the STATE OF MISSISSIPPI, who acknowledged that he executed the above and foregoing LEASE AGREEMENT as the act and deed of said SECRETARY OF STATE for and on behalf of the STATE OF MISSISSIPPI, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

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APPROVED BY THE GOVERNOR of the State of Mississippi on the ____ day of _____, ____.

HALEY BARBOUR, GOVERNOR

STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, ____ within my jurisdiction the within named HALEY BARBOUR, personally known to me to be the GOVERNOR of the STATE OF MISSISSIPPI, who acknowledged that he executed the above and foregoing LEASE AGREEMENT as the act and deed of said GOVERNOR for and on behalf of the STATE OF MISSISSIPPI, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

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PUBLIC TRUST TIDELANDS LEASE AGREEMENT
TO CITY OF LONG BEACH, MISSISSIPPI

(Long Beach Small Craft Harbor)

EXHIBIT 1

1. Harbor operation and maintenance costs for which the revenues from USE of the LEASE PREMISES (the "Revenues") may be used shall be paid from a separate fund and shall be accounted for thru separate accounts and accounting registers.

2. The Revenues may be used by the LESSEE for the operation, debt service and maintenance cost of the Long Beach Harbor, including the harbor related surrounding fast lands (Harbor):

a. Salaries: Reasonable salaries for employees, to include the harbor master, and others solely dedicated to the operation and maintenance of the Harbor can be paid from the Revenues. All employees paid from the Revenues should be detailed only for harbor operations and maintenance and shall be designated and identified in the city of Long Beach's personnel roster or employment chart. If employees who are assigned operation and maintenance duties at the Harbor are also detailed or assigned other non-Harbor duties, accurate duty assignment records and time records will be maintained to support the salaries paid from the Revenues.

b. Employee Benefits: Normal and usual employee benefits associated with a compensation package or which are normally and regularly paid by an employer if a part of a compensation plan use by a government entity of the State of Mississippi, to include employee related retirement benefits, medical insurance benefits, and life insurance benefits; taxes normally and usually assess to an employer to include worker's compensation insurance, unemployment insurance, and social security payments can be paid from the Revenues. Withholdings which are normally and usually paid from the employee's earnings may not be paid from the Revenues. If employees who are assigned operation and maintenance duties at the Harbor are also detailed or assigned other non-Harbor duties, accurate duty assignment records and time records will be maintained to support the benefits paid from the Revenues.

c. Vehicles, Machinery and Equipment: Reasonable expenses related to vehicles, machinery and equipment which are detailed only to the operations and maintenance of the harbor may be paid from the Revenues. Vehicles shall be those which are necessary and essential for harbor operations and maintenance, and may not be used for personal or non-business reasons. Vehicles cannot be provided for employee transportation to and from work. Machinery and equipment must be dedicated to the repair and upkeep of the harbor, to include bulkheads, piers, utilities, safety devices, landscape adjacent to and in the immediate vicinity of the harbor, and buildings at the harbor and related to harbor operations. Mileage for use of personal vehicle cannot be paid from the revenues; any off site (away from the harbor) travel can be accomplished in harbor dedicated vehicles. Equipment can include a limited number of city owned small boats and necessary motors in order to access harbor areas from the water for the purpose of maintenance and repair.

d. Fuel & Oil: Reasonable expenses for fuel and oil which are related to vehicles, machinery and

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equipment used in the operations and maintenance of the harbor as detailed on this Exhibit can be paid from the Revenues. Fuel and oil paid from the Revenues is solely for the operations and maintenance and is not for use by any vehicle or boat not owned by the city of Long Beach for harbor use and cannot be sold to any person.

e. Maintenance & Repairs: Reasonable expenses related to the maintenance and repairs of the harbor and related facilities and equipment can be paid from the Revenues. Maintenance and repairs must be related to the repair and upkeep of the harbor, to include harbor buildings, bulkheads, boat launches, piers and docks, utilities, office equipment, safety devices, landscape adjacent to and in the immediate vicinity of the harbor. Maintenance dredging must be confined to the enclosed harbor area and any harbor access channel as permitted by the Mississippi Department of Marine Resources and the Commission on Marine Resources and as it extends from the harbor to the nearest main traffic or navigation channel.

f. Utilities: Reasonable expenses for gas, electricity and sewer directly related to the operations of the harbor master's office and related facilities and equipment, piers and docks, boat launches, safety equipment and operations, and other operation and maintenance activities directly related to the harbor can be paid from the Revenues. Utilities associated with boats berthed in the harbors rental slips cannot be paid for from the Revenues. Such costs associated with boats berthed in the harbor's rental slips cannot be paid for from the Revenues unless such costs are collected as a separate portion or part of the berth or slip rental. If so, then the amount collected as a separate portion of the berth or slip rental will fully cover the rental's associated utilities cost.

g. Telephone: Reasonable expenses for telephones, facsimile devices, computer services, marine radios, and other similar communication devices and services directly related to the operations of the harbor, to include those services and items necessary for the efficient operations of the harbor master's office can be paid from the Revenues. Such costs associated with boats berthed in the harbor's rental slips cannot be paid for from the Revenues unless such costs are collected as a portion or part of the berth or slip rental. If so, then the amount collected as a portion of the berth or slip rental will fully cover the rental's associated cost. Cellular telephone equipment and service shall not be paid from the Revenues, except that the harbor master and all harbor related personnel can be provided cellular equipment and service for harbor business only. All communication service provided to the harbor operations or to the harbor master will be monitored via a call log or call report obtained from the service provider.

h. Garbage: Reasonable expenses for refuse collection or garbage service directly related to harbor operations can be paid from the Revenues. Such collection or service associated with boats berthed in the harbor's rental slips cannot be paid for from the Revenues unless such costs are collected as a separate portion or part of the berth or slip rental. If so, then the amount collected as a separate portion of the berth or slip rental will fully cover the rental's associated cost. The harbor can provide the necessary refuse collection cans in order to maintain an attractive, safe and sanitary location.

i. Insurance: Reasonable expenses for harbor building and building, contents and equipment insurance related to the operations and maintenance of the harbor can be paid from the Revenues. Insurance for any other operations or purposes in the harbor vicinity, except insurance to meet

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the requirements of Paragraph 16 and paragraph 2.b of this exhibit, are not allowable expenses to be paid from the Revenues, without prior written consent of the Secretary of State.

j. General Office Supplies: Reasonable expenses for general office expenses, including office supplies such as paper, pens, pencils, notebooks, registers, log books, receipt books and stamp pads and stamp markers; office furniture such as desk, chairs, lights and filing cabinets; and miscellaneous items such as light bulbs, clocks, calendars, cleaning supplies and cleaning equipment, all of which must be rationally related to and are in fact used for the operations and maintenance of the harbor can be paid from the Revenues.

k. Debt Service: Debt Service related to obligations entered by the LESSEE for maintenance and improvements to the Long Beach Harbor located on the LEASE PREMISES can be paid from the Revenues. Debt service should be in an amount which can be amortized no longer than twenty (20) years by anticipated revenue from SLIP AGREEMENTS which is an excess of the yearly expenses anticipated in Paragraph 2 (a) thru (j).

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PUBLIC TRUST TIDELANDS LEASE AGREEMENT
TO CITY OF LONG BEACH, MISSISSIPPI

(Long Beach Small Craft Harbor)

EXHIBIT 2-A

PARCEL A (Submerged Lands and Tidelands):

All of the bottom lands situated and being located within the confines of the Long Beach Harbor, and being part of the Charles Asmard Claim, Section 13, Township 8 South, Range 12 West, City of Long Beach, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

Beginning at the northerly end of the concrete bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor along the southerly extension of Cleveland Avenue, said Point of Beginning having Grid Coordinates of North 307453.42 and East 886851.66 of the Mississippi State Plane Coordinate System, East Zone, NAD '83; thence run from said Point of Beginning, South 27 degrees 55 minutes 57 seconds East 377.89 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 28 degrees 55 minutes 11 seconds East 49.27 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 36 degrees 21 minutes 07 seconds West 83.48 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 70 degrees 05 minutes 12 seconds West 0.51 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 36 degrees 36 minutes 21 seconds West 36.16 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 25 degrees 41 minutes 35 seconds East 97.28 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 26 degrees 27 minutes 57 seconds East 35.92 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 08 degrees 15 minutes 25 seconds East 2.75 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 64 degrees 37 minutes 25 seconds West 301.07 feet along the bulkhead that borders the southerly confines of the Long Beach Small Craft Harbor; thence run South 24 degrees 56 minutes 06 seconds East 43.36 feet along the bulkhead that borders the easterly confines of the Long Beach Small Craft Harbor; thence run South 64 degrees 28 minutes 04 seconds West 227 feet, more or less, across the mouth or entrance to the Long Beach Small Craft Harbor to concrete rip-rap that borders the westerly confines of the Long Beach Small Craft Harbor; thence run generally Northerly 876 feet, more or less, along the concrete rip-rap that borders the westerly confines of the Long Beach Small Craft Harbor to the northerly shoreline of the Long Beach Small Craft Harbor; thence run generally Easterly 469 feet, more or less, along the meandering mean high water line of the northerly shoreline of the Long Beach Small Craft Harbor and across the southerly line of parcels to Travron, Inc. and Long Beach Yacht Club to the Southeast corner of the Long Beach Yacht Club; thence run the following courses and distances: North 72 degrees 06 minutes 05 seconds East 48.66 feet; thence run North 78 degrees 46 minutes 55 seconds East 48.51 feet; thence run North 85 degrees 03 minutes 10 seconds East 49.86 feet; thence run North 89 degrees 44 minutes 05 seconds East 49.78 feet; thence run South 87 degrees 53 minutes 05 seconds East

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49.50 feet; thence run South 82 degrees 44 minutes 05 seconds East 49.11 feet; thence run South 66 degrees 59 minutes 25 seconds East 22.74 feet; thence run South 50 degrees 17 minutes 45 seconds East 31.74 feet; thence run North 61 degrees 37 minutes 45 seconds East 31.07 feet; thence run North 16 degrees 26 minutes 20 seconds East 15.82 feet; thence run South 28 degrees 17 minutes 39 seconds East 127.50 feet to the Point of Beginning, and containing 13.75 acres, more or less.

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PUBLIC TRUST TIDELANDS LEASE AGREEMENT
TO CITY OF LONG BEACH, MISSISSIPPI

(Long Beach Small Craft Harbor)

EXHIBIT 2-B

PARCEL B (Fast Lands):

All of the uplands located adjacent to the bottom lands situated and being located within the confines of the Long Beach Harbor, being the bottomlands described in Parcel A and being part of the Charles Asmard Claim Section 13, Township 8 South, Range 12 West, City of Long Beach, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

Starting at the south end of the concrete walkway at the mid point of the South side of the observation platform on the West side of the Long Beach Harbor as the Point of Beginning thence NW along the sides of the observation platform and continuing along the West edge of the riprap 1,440 feet, more or less, thence Southwesterly 1,050 feet, more or less along the south side of the asphalt parking area located on the sand beach between Burke Avenue and Jeff Davis Avenue, thence Northwesterly 100 feet, more or less along the west side of the entrance to the parking area from Highway 90 and across from Jeff Davis Avenue to the concrete barrier adjacent to Highway 90, thence running Easterly along the concrete barrier 2,850 feet, more or less, then running SE along the East end of the parking lot 195 feet, more or less, thence running SW 210 feet more or less along the concrete walkway abutting the sand beach, thence running Westerly along the South end of the parking lot and South of the building being constructed at the SW end of the parking lot a distance of approximately 360 feet, more or less, to the intersection with the concrete walkway running North and South on the East Side of the property abutting the sand beach, thence SE 190 feet, more or less and including the building and lot abutting the concrete walkway and the sand beach to the East side of the Riprap, thence SE 710 feet, more or less along the East side of the Riprap, thence SW 70 feet, more or less to a pier, thence SE along the East side of the pier to it's South end, West along the South End of the Pier, thence NW along the West edge of the pier to South edge of the Riprap thence Westerly 150 feet more or less along the South edge of the Riprap to it's end, thence Northerly 45 feet more or less, along the Riprap to the concrete bulkhead, then Westerly 520 feet more or less along the concrete bulkhead and continuing across the mouth of the Harbor to the East side of the Riprap on the West side of the Harbor thence SE 190 feet more or less, along the East side of the Riprap and continuing to the mid point of the South side of the observation platform, the Point of Beginning.

LESS AND EXCEPT:

That area subject to the Coast Transit Authority lease for the Comfort Station located at the southwest corner of the east most parking area and recorded as Instrument No. 2009 9086D-J1 in the land records of the First Judicial District of Harrison County, Mississippi.

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**BOUNDARY AGREEMENT, DEDICATION AND COVENANTS
BY AND BETWEEN
THE CITY OF LONG BEACH, MISSISSIPPI
THE LONG BEACH PORT COMMISSION
AND
SECRETARY OF STATE, C. DELBERT HOSEMANN, JR.,
TRUSTEE OF THE PUBLIC TRUST TIDELANDS**

The office of the Secretary of State of the State of Mississippi is charged by law with responsibility for all public lands belonging to or under the control of the state. Included as part of the Secretary of State's responsibility is the administration of the state's Public Trust Tidelands as Trustee of those Tidelands. Pursuant to Chapter 495 of the *General Laws of Mississippi, 1989*, the Secretary of State is authorized to negotiate with occupants of Public Trust Tidelands and agree to a boundary determination with respect to such lands.

Attached and made a part hereof as Exhibit "A" is that survey plat prepared by J. Michael Cassady, P.L.S., on July 31, 2008, which depicts the subject property and boundary agreed to hereunder. Attached and made a part hereof as Exhibit "B" is that legal description prepared by J. Michael Cassady which describes the subject property and boundary agreed to hereunder.

BOUNDARY AGREEMENT

It is agreed by the undersigned parties that –

(a) The fastland seaward of the surveyed line connecting points A and B on Exhibit "A" and described in Exhibit "B" [*depicted in red for draft purposes only*] is not, and shall not be a part of the public trust tidelands, and all claims by the Secretary of State on behalf of the State of Mississippi are hereby relinquished, consistent with the further terms of this Boundary Agreement, Dedication and Covenants (hereinafter Boundary Agreement) [hereinafter referred to

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as RECLAIMED LAND];

(b) Except between points A and B depicted on Exhibit "A", the boundary of the public trust tidelands on the property described in Exhibit "B" is the current mean high water line, depicted on Exhibit "A" as a dashed line. Property which is seaward of the current mean high water line belongs to the State of Mississippi in trust for the people of the State. Between said points A and B the boundary is inland of the current mean high water line and shall be the surveyed line between said points A and B. ;

(c) Fastland lying and being situated south of the toe of the seawall and north of the surveyed line between said points A and B depicted on Exhibit "A" (crosshatched area) and described on Exhibit "C" belongs to the State of Mississippi in trust for the people of the State [the water bottoms and fastland described in paragraphs (b) and (c) are hereinafter referred to as PUBLIC TRUST TIDELANDS].

(d) The present boundary of the PUBLIC TRUST TIDELANDS is, of course, subject to future changes resulting from natural and gradual processes as is recognized under common law doctrines and the laws of the State of Mississippi. In the event that the RECLAIMED LAND ceases to be used for a public harbor, the same shall revert to the State of Mississippi.

DEDICATION AND COVENANTS

The State of Mississippi, the City of Long Beach, and the Long Beach Port Commission, having agreed to the public trust tidelands boundary, and as an integral and unseverable part of said agreement, do hereby further agree to the following perpetual Dedication and Covenants which shall forever run with the land covered by this agreement:

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1. a. City shall never convey any fee interest in any part of RECLAIMED LAND, and the right of public access, use and enjoyment to the same shall be forever maintained.

b. RECLAIMED LAND may be subject to Harbor Related Commercial Development (DEVELOPMENT USE) as defined and described in Paragraphs 2, 6 and 7 hereof.

2. RECLAIMED LAND shall be used for the support, operation and maintenance of the Long Beach Small Craft Harbor and harbor basin situated on adjacent PUBLIC TRUST TIDELANDS. The City shall be obligated to perpetually maintain, control and regulate said RECLAIMED LAND solely for one or more of the following uses:

(a) Parks and green space;

(b) Amenities incidental to the Long Beach Small Craft Harbor including, but not limited to, boat launches, public parking, marine fuel and boat supply dock facilities, and fishing tackle and bait sales vendors;

(c) Access for the public to enjoy public piers, beaches, and adjacent waterfront areas for observation, fishing, and bathing; and to provide related amenities including, but not limited to, restroom facilities, limited retail sales of concessions, goods, apparel, and souvenirs pertinent to the recreational use of the beaches and waters of the sound, the sale of freshly caught seafood, restaurants for fine and/or casual dining, and for arts, crafts and other cultural events and displays, provided the same shall be conducive to and shall promote public access, use and enjoyment of said RECLAIMED LAND and PUBLIC TRUST TIDELANDS;

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(d) Public access roads, walkways and parking to implement the harbor and public recreational use;

(e) A harbormaster's facility with equipment storage areas, maintenance storage and restroom facilities and pavilions for public edification and enjoyment, and a headquarters as deemed needed for law enforcement and military use to enable and enforce public safety in the harbor basin, surrounding park, waterfront, beaches and nearby waters. However, nothing herein shall be deemed or construed to cede exclusive law enforcement or regulatory jurisdiction to the City of Long Beach or the Long Beach Port Commission where other state agencies or subdivisions of the State may exercise enforcement or regulatory authority.

(f) Passenger boarding space for fishing charter boats and commercial fishing boats operating from the Long Beach Small Craft Harbor.

3. The City agrees to (a) maintain RECLAIMED LAND in a sanitary, clean and attractive condition, keeping all structures and equipment in a good and operational state of repair, (b) not occupy, use or permit RECLAIMED LAND to be occupied or used for any hazardous activity or for storage or discharge of hazardous waste materials, and (c) not to occupy, use or permit RECLAIMED LAND to be occupied or used in a manner that inhibits or restricts public access to PUBLIC TRUST TIDELANDS.

4. **Building Structures:** All structures including the harbormaster facility, pavilions and operational and law enforcement headquarters to be built or modified shall be constructed according to plans presented and approved by the City and determined to be aesthetically

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pleasing and of design complimentary to the existing harbor and adjacent areas, and to be located and designed to avoid, as reasonably as possible, obstruction of the view of, or access to the harbor, beaches, fishing piers and surrounding waters of the Mississippi Sound, and shall be constructed and maintained in a good and workmanlike manner in compliance with all applicable federal, state or local building codes and governmental health, safety, conservation, fire and environmental codes, ordinances and regulations in effect.

5. **Zoning:** All uses of structures shall conform to any applicable City of Long Beach Zoning Codes, and City shall seek to adopt zoning regulations or amendments to zoning of the territory included in this dedication as necessary to allow the harbor, park, recreational, and retail uses consistent with the dedication and covenants. The City of Long Beach will give notice to the Secretary of State of all petitions to rezone RECLAIMED LAND.

6. **Restaurants, food and beverage service:** Restaurants and dining facilities that serve the public may located on RECLAIMED LAND and shall have sufficient public parking, shall not to interfere with the public beach and fishing facilities or the use of harbor by boat slip tenants or the marine fuel dock. On premises sales or consumption of alcoholic beverages, other than beer and light wines, shall be limited to the restaurants. Additionally, food and beverage service, including alcoholic beverages, may be offered at city approved special events where city event approval specifically sets rules and regulations for such sales and consumption, provided such rules and regulations are consistent with state laws governing the sale and consumption of alcoholic beverages.

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7. **Commercial Leases:** Subject to the approval of the Secretary of State that the purpose of the proposed lease is consistent with the dedication and covenants herein, the City may lease RECLAIMED LAND for uses as permitted herein, provided that leases comply with all statutory requirements for lease by municipalities of public lands and/or harbor facilities according to the laws of the State of Mississippi. No commercial leases shall be granted that shall interfere with harbor operations, navigation in the harbor, or obstruct public fishing, bathing and waterfront recreational usage, or unduly obstruct the public view of the harbor, or shall create unsanitary or unsightly conditions, environmental hazards or over utilize the infrastructure, utility and service provisions for the area.

8. No part of the RECLAIMED LAND shall be used for (1) gaming activities or operations except restaurants or amenities compatible with uses as provided in Paragraphs 6 and 7 hereof; (2) the development of condominiums or (3) any development that would create or allow a use excluding the public.

9. **Lease Rentals or Fees Received:** The City of Long Beach shall be obligated to use all revenue received from the RECLAIMED LAND, including but not limited to marine fuel dock and supply facility and its operations, first to be applied to overhead, harbor administrative and operational costs, labor, materials, and utility costs, insurance premiums, garbage collection and disposal fees, repairs, law enforcement and security expenses, and general maintenance and improvements of the Long Beach Small Craft Harbor, and for debt service related to the harbor improvements; and on an annual basis, any and all excess funds collected (net funds over and above said costs expended) during the City's annual budget year shall be retained, earmarked, and

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preserved by a harbor identified enterprise account to budget and expend for future costs of maintenance, administration, and operation, major repairs, restoration from disaster damages, needed dredging, desired capital improvements, and debt service to the harbor basin and harbor facilities that cannot be paid from the periodic collection of slip rentals and insurance claims received.

9. **Commercial and Facility Lease Revenues:** Revenues received from leases of commercial areas, such as restaurant and other vendors, and from any other shore side tenants shall be used for reasonable maintenance and repairs to the RECLAIMED LAND, its infrastructure, and for improvements that will add to the public use and access of the park and waterfront properties, including, without limitation, landscape and paving repairs, repairs to fishing piers and jetties, and to public park facilities and playground equipment in the Long Beach Small Craft Harbor area including the costs of liability insurance premiums, and prorated costs of municipal labor and equipment, costs of administration and operation to the extent required for such park, property, and landside maintenance and improvement purposes, and for law enforcement, safety and security expenses, utilities, and any debt service related to land side improvements. Any and all excess funds remaining over said costs expended during the City's annual budget year shall be retained, earmarked, and preserved in an identified enterprise account to budget and expend for future costs of maintenance, major repairs, restoration and replacement due to disaster damages, and permitted and approved capital improvements intended to promote and make more appealing the public recreational use of the park and waterfront amenities.

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10. **Severability:** If, in any of the conditions, restrictions, obligations or privileges specified in this instrument, any word, clause, phrase, condition, restriction, or obligation is declared by final adjudication of any Court having jurisdiction or by applicable new legislation or case law to be constitutionally invalid or otherwise unlawful or legally unenforceable, the invalid portion shall be treated as removed here from and all remaining parts shall remain in full force and effect.

11. The State of Mississippi, City of Long Beach or any citizen of the State of Mississippi shall have legal right to enforce the dedication and covenants using all remedies available at law or equity, including injunctive relief.

This Boundary Agreement, Dedication and Covenants shall be binding on the undersigned parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, this Agreement is executed this ____ day of _____,
2011.

STATE OF MISSISSIPPI
C. DELBERT HOSEMANN, JR.
SECRETARY OF STATE

BY: _____
C. DELBERT HOSEMANN, JR.
SECRETARY OF STATE

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STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named. C. DELBERT HOSEMANN, JR, personally known to me to be the SECRETARY OF STATE of the STATE OF MISSISSIPPI, who acknowledged that he executed the above and foregoing BOUNDARY AGREEMENT, DEDICATION AND COVENANTS as the act and deed of said SECRETARY OF STATE for and on behalf of the STATE OF MISSISSIPPI, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

CITY OF LONG BEACH,
MISSISSIPPI

BY: _____
WILLIAM SKELLIE
MAYOR

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named _____, personally known to me to be the _____ of the CITY OF LONG BEACH, MS, who acknowledged that he/she executed the above and foregoing BOUNDARY AGREEMENT, DEDICATION AND COVENANTS as the act and deed of said county, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

LONG BEACH PORT COMMISSION
CITY OF LONG BEACH,

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MISSISSIPPI

BY: _____
PHIL KIES
PRESIDENT

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction the within named _____, personally known to me to be the _____ of the CITY OF LONG BEACH, MS, who acknowledged that he/she executed the above and foregoing BOUNDARY AGREEMENT, DEDICATION AND COVENANTS as the act and deed of said county, on the date and for the purposes therein stated, being first duly authorized to so do.

NOTARY PUBLIC

My Commission Expires:

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APPROVED:

PHIL KIES, PRESIDENT

DATE:

ATTEST:

STACEY DAHL, DEPUTY CITY CLERK