

**PORT COMMISSION MINUTES
SEPTEMBER 19, 2019**

**PORT COMMISSION AGENDA
September 19, 2019
5:00 P.M.**

- I. CALL TO ORDER
- II. ROLL CALL AND ESTABLISH QUORUM
- III. AMENDMENTS/COMMENTS
- IV. APPROVE MINUTES:
 - A. August 15, 2019; REGULAR
- V. BUSINESS:
 1. LETTER TO TENANTS; REF ORDINANCE #641
 2. BAIT SHOP AMENDED LEASE AGREEMENT
 3. HARBORMASTER'S REPORT

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Be it remembered that a regular meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the City Hall Meeting Room, 201 Jeff Davis Avenue, in said City, on Thursday, September 19, 2019, at 5:00 o'clock p.m., it 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: President Phil Kies, Vice President Russell Jones, Commissioners Kevin Hicks, Brian Jernigan, Barney Hill, Harbormaster Bill Angley, Attorney Steve Simpson, and City Clerk Stacey Dahl.

Absent the meeting were Secretary Don Deschenes, Commissioners Brian Currie, Dan Fillette, Jr., and Nicholas Brown.

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

Commissioner Kies called the meeting to order; whereupon there were no comments or amendments.

There came on for consideration a letter to tenants regarding Long Beach City Ordinance 641, as follows:

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Date

Dear Tenant:

Re: Long Beach City Ordinance 641

The Mayor, Board of Alderman and members of the Long Beach Port Commission are proud of the Long Beach Harbor facilities and continue working together to develop the best practices, rules and regulations for the operation, maintenance and growth of the harbor facilities for the tenants' and public's enjoyment.

All tenants are encouraged (and advised) to review the Long Beach City Small Craft Harbor Ordinance Number 641 which establishes the use and operation of the harbor facilities. It is critical all slip owners/renters read and understand their individual requirements for action regarding boats in the harbor during anticipated periods of severe weather: i.e., tropical storms/hurricanes. These requirements are detailed in the referenced ordinance. The Ordinance may be viewed and/or downloaded at the Long Beach City website or, on the Harbor FaceBook website.

Feel free to visit or contact the Harbor Master for any assistance you may require regarding this ordinance.

Respectfully,
William Angley
Harbor Master

cc: Long Beach Harbor Commission

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It was the consensus of the commission to approve the aforesaid letter to tenants, directing the Harbormaster to place on letterhead, deliver to tenants and post aforesaid letter and ordinance on bulletin board, city/harbor website, etc.

There came on for consideration an AMENDED LEASE AGREEMENT by and between Long Beach Port Commission and Brandon Boggess, as follows:

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AMENDED LEASE AGREEMENT

This lease agreement made and entered into on this ____ day of _____, 2019, by and between LONG BEACH PORT COMMISSION of Long Beach, Mississippi, hereinafter referred to as "LESSOR", and **Brandon Boggess d/b/a Willie's Fuel and Bait, LLC**, 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 related business and service facility, the purpose of which shall include the sale of fuel and fuel products to the boating public, non-prepared food items such as drinks, 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. As used herein, the term "demised premises" refers to the real property 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.

(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 located or to be located on the

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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 of fire insurance policies. No prepared foods or meals shall be sold, cooked or consumed on the premises. 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.

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

SECTION TWO
TERM AND RENT

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

(B) RENT: Base Rent for the primary term shall be equal to the full amount of FORTY-THREE THOUSAND FIVE HUNDRED (\$ 43,500). 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 consecutive calendar months, rent shall be due and paid in advance on the first day of each month in the amount of \$725 DOLLARS.

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2. As additional rent during the primary term hereof, LESSEE agrees to pay to LESSOR a sum equal to THREE PERCENT (3%) of the gross sales proceeds of all fuel and fuel products sold each month. Such additional payments shall be made by the 20th day of each following month and supported by actual copies of State of Mississippi sales tax payment receipts or other tax return or payment returns or documents.
3. OPTION PERIOD: 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 option to re-lease the subject premises from LESSOR for TWO additional five year periods, each such period to be re-negotiated on such terms and conditions, including revised rent provisions, as may be agreed upon between the parties. This Option to renew shall not apply or allow LESSEE extend to his lease of the subject premises for substantially different purposes than as allowed hereunder.
4. It is intended that LESSEE operate a facility for sale of fuel and fuel products to marine vessels in the Long Beach Harbor. LESSOR wishes to ensure that fuel prices remain reasonable 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

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fuel must be adjusted consistently by LESSOR to reflect his most recent fuel purchase cost, and shall be subject to audit by LESSOR.

(C) HOURS OF OPERATIONS: LESSEE shall be open for operation during all hours as specified in DMR regulations. In addition, LESSEE shall also maintain hours of operation as follows: Sunday through Thursday 6:00 AM to 5:00 PM and Friday and Saturday 5:00AM to 5:00 PM. In the event of inclement weather the business can be closed providing a sign is posted stating a date/time the business is scheduled to be reopened for normal business. During said hours LESSEE shall provide those services listed above and described herein. 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.

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

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committed any waste which includes but is not limited to failure to have and make available fuel to the public for any period in excess of forty-eight (48) hours, except in case of acts of God, inability due to 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.

**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

TO LESSEE: Brandon Boggess
d/b/a Willie's Fuel and Bait, LLC
309 Rita Lane
Long Beach, MS 39560

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.

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SECTION SEVEN
CONSTRUCTION AND IMPROVEMENTS

(A) IMPROVEMENTS: LESSEE shall have the right to make such temporary improvements on the 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 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 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 contiguous to the demised premises shall be at LESSEE's sole expense.

(C) ALTERATIONS, IMPROVEMENTS AND CHANGES PERMITTED: The plans and specification for any such alterations, improvements, and changes to be constructed by LESSEE shall be approved by LESSOR, prior to commencement of actual construction. LESSOR shall approve or disapprove the plans and specifications within sixty (60) days of their submission or LESSOR shall be deemed to have granted its approval.

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

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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 shall be borne by the LESSEE up to the first TWO HUNDRED FIFTY DOLLARS (\$250.00) per occurrence. Any amount in excess of said amount per occurrence shall be the responsibility of the LESSOR. 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 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.

(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 accounted for between the LESSOR AND LESSEE. In case of damage to or destruction of improvements leased hereunder, LESSEE may, at its own

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expense, repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction.

(D) The city (Harbor) is responsible for arranging the removal and relocating of the bait shop building, while the lessee is responsible for the contents of the building (trailer). The lessee shall provide assistance (as required) to harbor personnel in securing the building for transportation from the harbor.

(E) Lessee is responsible for removing all equipment associated with the "live bait" building and assisting harbor personnel with securing the building for "heavy weather".

(F) Lessee shall provide assistance to harbor personnel in the removal of the fuel tank facility for relocation at a "safe harbor" as requested by the city official in charge of the tank removal.

(G) LESSEE shall maintain hazard and windstorm insurance in an amount equal to the value of the improvements constructed on the demised premises. It is agreed that the proceeds of any such covering any such damage or destruction shall be paid to the LESSOR in the event of a total destruction of the subject premises and cancellation of the lease as provided above. In the event of damage to the subject premises such that LESSEE elect to repair same, any insurance proceeds paid to LESSOR may be applied to the costs of such repair.

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 to the premises

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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 bear no responsibility of any kind thereof.

**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 name Lessor as a co-insured thereunder. Such policy 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. A copy of each such policy shall be delivered to LESSOR.

**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 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 or death or damage shall be caused

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by or in any way result from or arise out of an act, omission, negligence of LESSEE or of an occupancy visitor or user of any portion of the premises, or shall result from or be caused by any other matter 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 attorney's 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

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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 an applicable law, 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.

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(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 over and upon the water within the Long Beach Harbor to the southern boundary line of the area described above 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 eight (8) consecutive hours.

SECTION FOURTEEN
CONDITIONS OF DEFAULT

Any breach or violation of any term hereof shall constitute a default hereunder, and entitle the LESSOR to the rights and remedies provided herein, in addition to all other remedies provided by law.

It shall also be considered an act of default should the LESSEE fail to have and make available fuel to the public for an period in excess of forty-eight (48) hours, except in case of acts of God, inability due to 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

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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 default and the action required by LESSEE to cure 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, for which no notice is required, or for default for failure to properly and accurately account to LESSOR for all fuel purchases and sales, or to consistently, accurately and properly reflect and revise fuel sales prices in accordance with the limitations contain in Section Two hereof, for which three instances of Notice of such event of default shall be required before any remedy of cancellation is available, LESSEE shall not be in default of this Lease Agreement and 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

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(3) LESSEE has either: a) failed to cure the default within the said thirty (30) days, 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.

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 building 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 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.

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**SECTION NINETEEN
GENERAL PROVISIONS**

(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.

LONG BEACH PORT COMMISSION CITY OF LONG BEACH

By: _____
Phil Kies, President

By: _____
George Bass, Mayor

Date of Execution _____

Date of Execution _____

LESSEE:

**Brandon Boggess d/b/a
Willie's Fuel and Bait, LLC, Lessee**

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STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, BRANDON BOGGESS, _____ of Willie's Fuel and Bait, LLC, and who acknowledged that he executed and delivered the above and foregoing instrument on the day and year therein stated, as his act and deed having full authority to do so.

GIVEN under my hand and official seal of office on this the ____ day of _____, 2019.

Notary Public

My Commission Expires:

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY came and appeared before me, the undersigned Notary, George Bass, who after being duly sworn by me did state that he executed the above and foregoing document in his capacity as Mayor of the City of Long Beach, having been first duly authorized to do so by the Board of Aldermen of the City of Long Beach.

GIVEN under my hand and official seal of office on this the ____ day of _____, 2019.

Notary Public

My Commission Expires:

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Attorney Simpson apprised the commission the amendments contained in the aforesaid lease appear in Section Eight, clarifying the responsibilities of both lessor and lessee regarding repairs and destruction of improvements and equipment. After brief discussion, Commissioner Jones made motion seconded by Commissioner Hicks and unanimously carried to approve the aforesaid Amended Lease Agreement.

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The commission recognized Bill Angley for the Harbormaster's report, as follows:

Harbor Master Report

September 19, 2019

- Sidewalk from Harbor building to pier 2 has moved during storms consistently and needs to be replaced. Trip hazards are getting worse, due to undermining. Need to seek FEMA assistance for improvement project so that we can seal undermining. Have been looking at a foam application. A project is being put together to fix these issues and solve others to include benches, speed bumps, and striping
- Working with Overstreet Engineering for a tidelands project to clear all these issues
- The two small pavilions sustained minor damage to roofs and tables during Nate. The roofs have been repaired but no guarantee how long it will hold. We can include those two in the project with Innovative builders to install sheet metal roofs. If they are denied by FEMA though we will need to pay from some other funds.
- Cruisen the Coast this year will be tight with personnel I am requesting a few volunteers help the harbor achieve another great year for the parade.
- Fuel Tank update: Gas and Diesel are pumping and certified
- The Harbor Master building suffered some damage from past storms. Due the water that was not sealed out there is mold and corrosion consuming the building. I am putting together a small FEMA project to fix these issues and help protect the health of all those that use our building.
- Working with budget and have found the need for a fund for storms that have no reimbursement to save yearly budget from suffering the costs. 2 time this budget we have incurred cost that need to be amended.
- 145 of 218

ICE MACHINE OOC NEED REPLACED

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There was no official action required or taken regarding the aforesaid report.

There being no further business to come before the Port Commission at this time, Commissioner Hill made motion seconded by Commissioner Jernigan

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and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

PHIL KIES, PRESIDENT

DATE

ATTEST:

STACEY DAHL, CITY CLERK

