

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

**IN THE MATTER OF THE STEWARDSHIP OF
THE PUBLIC TRUST TIDELANDS**

CIVIL ACTION NO. C2402-02-760

**SECRETARY OF STATE, ERIC CLARK,
TRUSTEE AND PETITIONER; CITY OF BILOXI,
A MUNICIPAL CORPORATION; BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING IN ITS
OWN CAPACITY AND ON BEHALF OF THE
UNIVERSITY OF SOUTHERN MISSISSIPPI,
THE GULF COAST RESEARCH LABORATORY,
AND THE J. L. SCOTT MARINE EDUCATION CENTER;
ISLE OF CAPRI CASINOS, INC. AND RIVERBOAT
CORPORATION OF MISSISSIPPI, A MISSISSIPPI CORPORATION,
D/B/A THE ISLE OF CAPRI CASINO;
THE POINT CADET DEVELOPMENT CORPORATION,
A MISSISSIPPI NON-PROFIT CORPORATION, CO-PETITIONERS**



**THE CITY OF BILOXI'S MOTION TO ENFORCE AND AMEND THE POINT
CADET COMPROMISE AND SETTLEMENT AGREEMENT AND THE
COVACEVICH COMPROMISE AND SETTLEMENT AGREEMENT
AND FOR ATTORNEY FEES**

COMES NOW, the City of Biloxi, Mississippi (“COB”) and files its Motion to Enforce and Amend the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement (hereinafter collectively “the Agreements”), and would respectfully show unto the Court as follows:

1. COB is requesting the Court to enter an Order enforcing the Agreements and, in such Order, provide a procedure for the City of Biloxi to recoup the sum of One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100

(\$1,188,595.08) dollars due and owing to COB under the Agreements as of the date of this Motion and to recoup any future rent that the State may fail to remit to the City of Biloxi when it becomes due.

2. COB is further requesting that the Court's Order amend the Point Cadet Compromise and Settlement Agreement, along with the Covacevich Compromise and Settlement Agreement, so that payments from leases relating to such agreements are made directly to COB with COB, after recouping its portion of the current lease year rental and all past due amounts plus a reasonable rate of interest to be set by the Court, and any attorney fees and expenses that may be awarded by this Court as a result of this Motion and related proceedings, making monthly distributions to the Secretary of State. Additionally, COB is requesting the Court to grant reasonable attorney fees for bringing this Motion.

3. By way of background, on, or about August 15, 2002, COB, the Secretary of State of the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, the Isle of Capri Casinos, Inc.¹ and Riverboat Corporation entered into the Point Cadet Compromise and Settlement Agreement. A copy of this settlement agreement is attached hereto as Exhibit "1" and incorporated herein. Of pertinent concern is paragraph VIII(2) wherein the parties agreed, "Rents under STATE LEASES and CITY LEASES and any new leases of the POINT CADET PROPERTY, or any portion thereof will be paid to the 'Point Cadet Leasing Fund.' Disbursements from the 'Point Cadet Leasing Fund' shall be made by the State Treasurer upon direction of the Secretary of

¹ Isle of Capri Casinos, Inc. is no longer a party to any of the relevant agreements.

State in accordance with the terms of this Agreement.” *Ex. “1”, §VIII(2).*

4. On, or about August 15, 2002, the Secretary of State of the State of Mississippi and COB entered into the Covacevich Compromise and Settlement Agreement. A copy of this settlement agreement is attached hereto as Exhibit “2” and incorporated herein. Of pertinent concern is paragraph VIII(2) wherein the parties agreed, “Rents under STATE LEASE and CITY LEASE and any new leases of the COVACEVICH PROPERTY, or any portion thereof, will be paid to the ‘Point Cadet Leasing Fund.’ Disbursements from the ‘Point Cadet Leasing Fund’ shall be made by the State Treasurer upon direction of the Secretary of State in accordance with the terms of this Agreement.” *Ex. “2”, ¶VIII(2).*

5. On, or about, August 15, 2002, the Chancery Court of Harrison County, Mississippi, Second Judicial District entered its *DECREE APPROVING AGREEMENTS RELATING TO POINT CADET PROPERTIES*, a copy of which is attached hereto as Exhibit “3” and incorporated herein. Of pertinent concern is ¶11 of the Court’s Decree:

That rents under the existing leases described in the Point Cadet Agreement, the Covacevich Agreement, and the Agreement on Casino Berth Rental Tract and any new leases of the POINT CADET PROPERTY or any portion thereof, shall be paid to the “Point Cadet Leasing Fund” and that disbursements from the “Point Cadet Leasing Fund” shall be made by the State Treasurer upon direction of the Secretary of State in accordance with the terms of the Point Cadet Agreement.

6. For many years COB and the Secretary of State operated under the above payment terms. However, beginning in 2014 and continuing through 2015 into 2016, the Secretary of State made fewer and fewer distributions of COB’s portion of the lease funds as required by the settlement agreements.

7. In 2016, the Mississippi Legislature passed H.B. 878² and S.B. 2362³. H.B. 878, §1 directs:

During fiscal year 2016, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the following enumerated funds, the amounts listed below from each fund:

...

“The Treasury fund that received and distributed the Point Cadet Leasing Fund payments was among the funds listed in the legislation.” *See* July 5, 2016, Letter from Laura Jackson, Department of Finance and Administration, attached hereto as Exhibit “6” and incorporated herein. One million Six Hundred Thousand and no/100 (\$1,600,000.00) dollars was transferred from the Point Cadet Leasing Fund. *Id.*

8. S.B. 2362 directs that, “From and after July 1, 2016, the expenses of the following enumerated state agencies shall be defrayed by appropriation of the Legislature from the State General Fund: . . . the Office of Secretary of State” *Ex.* “5”, §3. S.B. 2362 further directs, “Beginning July 1, 2016, any fees, assessments or other revenues charged for the support of the above named state agencies shall be deposited into the State General Fund, and any special fund or depository established within the State Treasury for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund.” *Id.* Finally, §(3), subsection (3) directs, “The provisions of this section shall not apply to any trust fund account that is maintained by any above-named agency.” *Id.*

9. In short, what has now occurred is the Secretary of State’s court mandated

² H.B. 878 is attached hereto as Exhibit “4” and incorporated herein as if copied in full.

³ S.B. 2362 is attached hereto as Exhibit “5” and incorporated herein as if copied in full.

“Point Cadet Leasing Fund” was transferred to the State General Fund, including funds belonging to COB even though these amounts are due and owing. The Secretary of State is now unable to retrieve these funds and pay the same to COB, and appears that future payments will be swept into the General Fund. The Mississippi Attorney General has issued an Opinion to Honorable Delbert Hosemann, Secretary of State regarding S.B. 2362:

4. Is the Point Cadet Lease Fund exempt from the provisions of SB 2362 and may the State Treasurer distribute funds pursuant to the terms of the Compromise and Settlement Agreement?

Response: If no funds in the Public Lands Trust Fund are used for the support of the Office of the Secretary of State, the fund is not abolished by SB 2362. Deposits and disbursements should continue as set forth in the Compromise and Settlement Agreement approved by Court Order.

Ex. “7” attached hereto.

10. The Secretary of State recently tendered to COB the sum of One Million Two Hundred Ninety-Seven Thousand Six Hundred Twenty and 66/100 (\$1,297,620.66) dollars in partial payment of the Secretary of State’s obligations under the various court approved agreements. However, as of the date of this Motion, there remains due and owing to COB, the sum of One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100 (\$1,188,595.08) dollars in 2014/15 and 2015/16 rental. *See* Affidavit of Susan Pickich attached hereto as Exhibit “8” and incorporated herein as if copied in full.

11. Without question there has been a Court approved agreed settlement among the parties. *See* Ex. “3”. There is no question of a meeting of the minds or the exact

terms. Those terms have been expressed in writing and approved by the Court. “That the chancery court has the power to enforce its decrees goes without saying.” *Edmondson v. Ramsey*, 122 Miss. 450, 84 So. 455, 466 (1920). “The law favors the settlement of disputes by agreement of the parties and, ordinarily, will enforce the agreement which the parties have made, absent any fraud, mistake, or overreaching.” *Ammons v. Cordova Floors Inc.*, 904 So.2d 185, 190, ¶19 (Miss. Ct. App. 2005).

12. Accordingly, COB requests that the Court enter an Order enforcing the explicit terms of the Agreements. The enforcement of these court approved settlement agreements should direct that from, and after, the entry of the Court’s Order enforcing the Agreements, Riverboat Corporation of Mississippi shall make all rental payments due under the various Point Cadet leases directly to the City of Biloxi, with all such payments being made payable to the “City of Biloxi”. The Order should direct the City of Biloxi to first deduct therefrom its portion of the current lease year rental payment. Thereafter, the City of Biloxi should retain the remainder of the rental amount until such time as the City of Biloxi recoups its One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100 (\$1,188,595.08) dollars, plus a reasonable rate of interest to be set by the Court, and any attorney fees and expenses that the Court may hereafter award to the City of Biloxi for these proceedings. Thereafter, the City of Biloxi should remit to the Secretary of State the portion of the rent due to the State. The Court should further Order that the City of Biloxi make monthly reports to the Court and the office of the Secretary of State of the rental amounts received and show how each rental received was applied. Such reports shall continue until the City of Biloxi fully recoups the deficit

owed.

13. Further, in light of S.B. 2362 and H.B. 878, it appears that even after recouping the funds due and owing, future payments required under the various agreements may be delayed or expropriated. Accordingly, COB requests that the Court amend the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement so after the City of Biloxi recoups the money owed to it, COB continues to receive all rental income from the various Point Cadet leases, deposits such funds, withdraws COB's portion of those funds as set forth in the Court approved division on a monthly basis, and remits the remainder to the Secretary of State on a monthly basis. In the event the Legislature amends or otherwise clarifies the provisions of H.B. 878 and S.B. 2362 to provide sufficient protection of COB's proprietary interest in the rent and the City's right to receive timely remittance of the City's portion of the rent, then within a reasonable time after the effective date of such legislation, the Secretary of State may request a hearing for all parties to appear before this Court for the Court to determine whether, in light of such legislation, this Court should order that the parties revert to the prior procedure set forth in the original Decree or to some alternate procedure.

14. Finally, COB requests that the Court award reasonable interest on the amounts past due and reasonable attorney fees and expenses for the necessity of bringing this Motion to correct the State's deliberate violation of the Agreements and the Court's Decree.

WHEREFORE, the City of Biloxi respectfully requests that the Court enter an

Order: (a) enforcing the terms of the *DECREE APPROVING AGREEMENTS RELATING TO POINT CADET PROPERTIES* and finding due and owing to COB the sum of One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100 (\$1,188,595.08) dollars; plus a reasonable rate of interest to be set by the Court; (b) amending the Agreements to direct that all future payments by Riverboat Corporation of Mississippi on the various Point Cadet leases shall be made payable to “The City of Biloxi” and remitted to the same with the City of Biloxi first deducting therefrom its portion of the current lease year rental and then deducting funds until such time as the City has recouped the One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100 (\$1,188,595.08) dollars due and owing plus interest set by the Court, plus any attorney fees and expenses that the Court may award to the City; (c) directing the City is to make monthly reports to the Court and the Secretary of State as to the application of the rental amounts; and (d) directing that after the City of Biloxi has recouped the money owed to it, this payment procedure shall continue until the Mississippi Legislature amends or otherwise clarifies the provisions of H.B. 878 and S.B. 2362 to provide sufficient protection of the City’s proprietary interest in the rents. In the event such legislation is passed, then within a reasonable time after the effective date of such legislation, the Secretary of State may request a hearing for all parties to appear before this Court for the Court to determine whether, in light of such legislation, this Court should order that the parties revert to the prior procedure set forth in the original Decree or an alternate procedure. Finally, COB requests the Court award it reasonable attorney fees and expenses for bringing this motion. COB prays for such other relief as

the Court may deem appropriate.

This, the 22nd day of July, 2016.

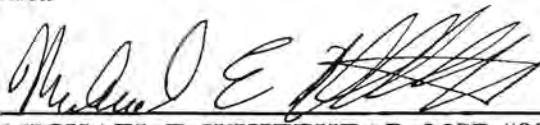
Respectfully submitted,

THE CITY OF BILOXI, MISSISSIPPI

BY: 

GERALD BLESSEY, MSB #3591
GERALD BLESSEY LAW FIRM
2577 CHATHAM CT. (39531)
POST OFFICE BOX 4648
BILOXI, MISSISSIPPI 39535
TEL: 228.806.4755; FAX: 228.388.7434
BLESSEYLAW@ME.COM

And

BY: 

MICHAEL E. WHITEHEAD, MSB #8891
PAGE MANNINO PERESICH & McDERMOTT, PLLC
759 VIEUX MARCHÉ MALL (39530)
POST OFFICE BOX 289
BILOXI, MISSISSIPPI 39533
TEL: 228.374.2100; FAX: 228.374.3838
MICHAEL.WHITEHEAD@PMP.ORG

Attorneys for The City of Biloxi, Mississippi

CERTIFICATE OF SERVICE

I, Michael E. Whitehead, of the law firm of Page, Mannino, Peresich & McDermott, PLLC, hereby certify that on this day, I have filed the foregoing with the Clerk of Court for the Chancery Court of Harrison County, Mississippi, Second Judicial District. I further certify that I have on this day, mailed a copy of the foregoing via Certified US Mail, Return Receipt Requested, to the following:

Attorney General Jim Hood, on behalf of
*The Secretary of State of the State of Mississippi and
The State of Mississippi*
550 High Street
Jackson, Mississippi 39201

Britt Singletary, Esquire
Singletary & Thrash, PLLC
Post Office Box 1229
Biloxi, Mississippi 39533
*Attorney for Riverboat Corporation
of Mississippi*

Lee P. Gore, Esquire
McLaughlin Law
1498 Place Boulevard
Hattiesburg, Mississippi 39402-8603
*Last known Attorney for
Institutions of Higher Learning*

Ray Carter, Esquire
Mississippi Secretary of State's Office
Post Office Box 97
Gulfport, Mississippi 39502-0097

Wilson Minor
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220

This, the 22nd day of July, 2016.



**MICHAEL E. WHITEHEAD, MSB #8891
PAGE MANNINO PERESICH & McDERMOTT, PLLC
759 VIEUX MARCHÉ MALL (39530)
POST OFFICE BOX 289
BILOXI, MISSISSIPPI 39533
TEL: 228.374.2100; FAX: 228.374.3838
MICHAEL.WHITEHEAD@PMP.ORG**

BOOK 390 PAGE 600

POINT CADET COMPROMISE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered on the 5th day of August, 2002, by and between the following parties—

the SECRETARY OF STATE for and on behalf of the State of Mississippi in his capacity as land commissioner for the State of Mississippi and as trustee of the Public Trust for Tidelands and Submerged Lands (STATE);

the CITY OF BILOXI, a municipal corporation (CITY);

the BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING in its own capacity and on behalf of the University of Southern Mississippi, the Gulf Coast Research Laboratory, and the J. L. Scott Marine Education Center (collectively IHL); and

ISLE OF CAPRI CASINOS, INC. and RIVERBOAT CORPORATION OF MISSISSIPPI, a Mississippi corporation, doing business as the Isle of Capri Casino (ISLE).

WHEREAS, STATE, CITY, IHL and ISLE desire to resolve long-standing, conflicting claims and disputes in and to the following described property, in the City of Biloxi, Second Judicial District of Harrison County, Mississippi:

Said property is bounded on the North by U. S. Highway 90, also known as East Beach Boulevard; on the West by an extension into the Gulf of Mexico of the east line of Lot 3, Block 4 of the Summerville Addition, a subdivision in the City of Biloxi, a map or plat of said subdivision being of record in the Office of the Chancery Clerk of Harrison County, Mississippi; on the South and East by the Gulf of Mexico and/or Mississippi Sound and the Bay of Biloxi, LESS AND EXCEPT the property covered and described in the Sublease and Agreement by and between, Casino Parking, Inc., Covacevich Yacht & Sail, Inc. and the City of Biloxi on September 24, 1993, a Recording Memorandum being of record in Book 263, Page 97, in the Office of the Chancery Clerk of Harrison County, Second Judicial District.

(Hereinafter referred to as POINT CADET PROPERTY, which is designated by cross-hatching on the plat on Exhibit A attached hereto.)

AND WHEREAS, upon entry into the Union in 1817, the State of Mississippi became the sovereign owner for the use and benefit of the people of all water bottoms and submerged

BOOK 397 PAGE 541

lands and all lands within the ebb and flow of the tide and up to the line of mean high tide, said lands being commonly known as public trust tidelands and submerged lands;

AND WHEREAS, the State of Mississippi's title to and ownership of the public trust tidelands may not be alienated or otherwise affected by avulsion or by filling or other artificial or non-natural means;

AND WHEREAS, the State of Mississippi asserts that POINT CADET PROPERTY was public trust tidelands at the time of statehood and has at all times since remained public trust tidelands;

AND WHEREAS, by various agreements, deeds and condemnation proceedings, CITY has acquired rights and claims to rights to a portion of POINT CADET PROPERTY generally lying west of a line described as a southward extension of the West line of Lot 4 Block 5 of the Summerville Addition of the City of Biloxi, and CITY likewise claims ownership of said westerly part of POINT CADET PROPERTY; CITY also claims leasehold interests in some of POINT CADET PROPERTY lying east of such southerly line extension;

AND WHEREAS, IHL acquired rights and claims to rights to a portion of POINT CADET PROPERTY generally lying East of a line described as the southward extension of the West line of Lot 4 Block 5 of the Summerville Addition of the City of Biloxi, by three Quitclaim Deeds from the United States of America filed in the Land Records of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi:

Quitclaim dated November 1, 1973 in Book 44, Pages 374-386,
Quitclaim dated March 27, 1973 in Book 38, Pages 449-459 and
Quitclaim dated June 2, 1966 in Book 570, Pages 536-547.

IHL likewise claims ownership of said easterly part of POINT CADET PROPERTY;

AND WHEREAS, ISLE does not claim any fee ownership of POINT CADET PROPERTY, but does hold leasehold interests in POINT CADET PROPERTY on which it operates its business;

AND WHEREAS, unresolved disputes arising from conflicting claims in and to POINT CADET PROPERTY have been an impediment to further development and the financing of development upon POINT CADET PROPERTY;

AND WHEREAS, believing it is in their best interests, STATE, CITY, IHL and ISLE desire to amicably resolve said disputes, and so avoid the financial costs, loss of time and the danger of loss of possession of property which would inevitably result from potentially protracted litigation, and to enable continued use and development in a planned and orderly fashion without the uncertainties, added expense and delays caused by uncertain titles and the possibility of litigation.

BOOK 390... 602

NOW THEREFORE, in consideration of the premises and of the interests hereinbefore identified and in recognition of the benefits hereunder flowing to each party under this AGREEMENT, STATE, CITY, IHL and ISLE, each intending to be bound by the entirety of this AGREEMENT, hereby agree as follows:

I. Definitions

(1) STATE LEASES shall mean and include the following tidelands leases—

(a) Lease from the Secretary of State to City of Biloxi dated July 15, 1988, of record in Book 197, Page 531, in the office of the Chancery Clerk of Harrison County, Second Judicial District, together with any additional amendments thereto, covering the property designated by cross-hatching on the plat on Exhibit B attached hereto;

(b) Lease from the Secretary of State to City of Biloxi dated July 15, 1988, of record in Book 197, Page 546, in the office of the Chancery Clerk of Harrison County, Second Judicial District, and Addendum to said lease dated April 26, 1995, of record in Book 283, Page 369, in the office of the Chancery Clerk of Harrison County, Second Judicial District, together with any additional amendments thereto, covering the property designated by cross-hatching on the plat on Exhibit C attached hereto;

(2) IHL LEASE shall mean and include the following lease—

(a) Lease from the Board of Trustees of State Institutions of Higher Learning for and on behalf of the Gulf Coast Research Laboratory to Point Cadet Development Corporation dated December 2, 1985, of record in Book 165, Page 351, in the office of the Chancery Clerk of Harrison County, Second Judicial District, and First Addendum to Lease dated August 9, 1988, of record in Book 199, Page 275, in the office of the Chancery Clerk of Harrison County, Second Judicial District, together with any additional amendments thereto, covering the property designated by cross-hatching on the plat on Exhibit D attached hereto;

(3) CITY LEASES shall mean and include the following leases

(a) Lease from Point Cadet Development Corporation to Seventy-Six, Inc. dated May 12, 1986, of record in Book 177, Page 455, in the office of the Chancery Clerk of Harrison County, Second Judicial District; Addendum to lease dated August 1, 1992, of record in Book 246, Page 502, in the office of the Chancery Clerk of Harrison County, Second Judicial District; Second Addendum to lease dated April 13, 1994, of record in Book 275, Page 559, in the office of the Chancery Clerk of Harrison County, Second Judicial District; Third Addendum to lease dated April 26, 1995, of record in Book 283, Page 315, in the office of the Chancery Clerk of Harrison County, Second Judicial District; Renewal of said lease for additional term of 5 years beginning July 1, 1999, together with any

BOOK 390 PAGE 603

additional amendments and restatements to said lease and all renewals and extensions as provided therein, said lease generally referred to as the "CASINO LEASE," covering the properties designated by cross-hatching on the plat on Exhibit E attached hereto.

(b) Lease from the City of Biloxi, Mississippi to Riverboat Corporation of Mississippi dated April 13, 1994, a recording memorandum of which is of record Book 275, Page 570, in the office of the Chancery Clerk of Harrison County, Second Judicial District; First Amendment to Lease dated April 26, 1995, of record in Book 283, Page 349, in the office of the Chancery Clerk of Harrison County, Second Judicial District; together with any additional amendments and restatements to said lease and all renewals and extensions as provided therein, said lease generally referred to as the "HOTEL LEASE," covering property designated by cross-hatching on the plat on Exhibit F attached hereto.

(c) The proposed ILSE lease covering NEW TRACT A and NEW TRACT B as described in Section V of this AGREEMENT.

(4) BERTH RENTAL AGREEMENT shall mean the Amendment and Restatement of Berth Rental Agreement dated May 12, 1992 between Biloxi Port Commission (BPC) and ISLE, as amended by the Second Amendment to Berth Rental Agreement between BPC and ISLE dated August 13, 1996, and the Third Amendment to Berth Rental Agreement dated December 14, 1999, between BPC and ISLE, as it may from time to time be further amended, modified, supplemented, restated, renewed or extended, covering the property designated by cross-hatching on the plat on Exhibit G attached hereto.

(5) ACCESS LEASE shall mean the Agreement dated November 3, 1997, between ISLE and IHL, as extended, covering the ACCESS TRACT.

(6) ACCESS TRACT shall mean the property designated by cross-hatching on the plat on Exhibit H attached hereto.

(7) SCOTT LEASE shall mean the lease from STATE and CITY to IHL described in Paragraph II(5) hereof.

(8) SCOTT CENTER shall mean the Gulf Coast Research Laboratory / J. L. Scott Marine Education Center.

(9) NEW TRACT A shall mean the property designated by Cross-hatching on the plat on Exhibit I attached hereto.

(10) NEW TRACT B shall mean the property designated by cross-hatching on the plat on Exhibit J attached hereto.

BOOK 390 PAGE 604

(11) PARK CONVERSION TRACT shall mean the property designated by cross-hatching on the plat on Exhibit K attached hereto.

(12) BERTH EXPANSION TRACT shall mean the property designated by cross-hatching on the plat on Exhibit L attached hereto.

II. Settlement

(1) As a resolution of the tidelands boundary issues between STATE and CITY and in consideration of the mutual covenants, promises, and revenue sharing provisions contained in Paragraph IV hereof, it is agreed that (i) the interest of CITY in the POINT CADET PROPERTY is a vested undivided one-third (1/3) interest; (ii) the interest of the State of Mississippi in the POINT CADET PROPERTY is a vested undivided two-thirds (2/3) interest; (iii) the undivided two-thirds (2/3) interest of the State of Mississippi encompasses the claim of STATE that the POINT CADET PROPERTY is Public Trust Tidelands, together with the claim of IHL under deeds from the United States of America identified hereinabove; (iv) that in lieu of litigating the claims of STATE, CITY and IHL to the POINT CADET PROPERTY, STATE, CITY and IHL agree to accept the benefits and obligations of this AGREEMENT and hereinafter be bound thereby; and (v) STATE and CITY shall hereafter hold and administer the POINT CADET PROPERTY according to the terms of this AGREEMENT.

(2) All future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting POINT CADET PROPERTY or any interests therein must be executed jointly by STATE and CITY. Except with regard to IHL's participation in the NEW MASTER PLAN provided for in Paragraph VI hereof, IHL hereby irrevocably appoints and authorizes STATE to act in its behalf for all intents and purposes concerning POINT CADET PROPERTY, including execution of any and all renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto. In acting for IHL under this AGREEMENT, STATE will endeavor to maximize income for the benefit of IHL in executing any and all future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting said property. Prior to execution of any such renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements, STATE will discuss such execution with IHL.

(3) STATE and CITY agree that POINT CADET PROPERTY shall be held as a tenancy in common as public trust property.

(4) STATE and CITY recognize that immediately prior to the execution of this AGREEMENT, IHL, an official body of the State of Mississippi, is in possession of a portion of POINT CADET PROPERTY generally lying east of a southward extension of the west line of Lot 4, Block 5 of the Summerville Addition of the City of Biloxi, a map or plat of said subdivision being of record in the Office of the Chancery Clerk of Harrison County, Mississippi, Second Judicial District subject however to the IHL LEASE, the ACCESS LEASE and the Intergovernmental Agreement between the Mississippi Commission on Natural Resources, IHL and CITY, as recorded in Land Deed Book 176, Page 369. IHL acknowledges that possession is

BOOK 390 PAGE 605

held for the use and benefit of the Gulf Coast Research Laboratory and the property in its exclusive possession is currently occupied and used by the SCOTT CENTER.

(5) STATE and CITY will execute a lease to IHL for the use and benefit of the Gulf Coast Research Laboratory. The lease will cover that portion of POINT CADET PROPERTY situated generally east of a line described as the southward extension of the West line of Lot 4 Block 5 of the Summerville Addition of the City of Biloxi subject to existing leases on said property and LESS AND EXCEPT the property included in the IHL LEASE and designated by cross-hatching on that plat on Exhibit D attached hereto and NEW TRACT A and subject to (a) the right of ISLE to use ACCESS TRACT for surface parking and access to NEW TRACT A and property covered by CASINO LEASE, (b) public access for Point Cadet Marina and property shown on Exhibit D, and (c) the Intergovernmental Agreement between the Mississippi Commission on Natural Resources, IHL and CITY, as recorded in Land Deed Book 176, Page 369, in the Office of the Chancery Clerk of Harrison County, Second Judicial District. The rights of the ISLE under this provision shall be coextensive with the term of its lease on NEW TRACT A and CASINO LEASE. The purpose of SCOTT LEASE shall be limited to the use by the Gulf Coast Research Laboratory to further its mission and purposes and specifically for the operation and expansion of the SCOTT CENTER and/or other educationally sound programs, operations or facilities consistent with the NEW MASTER PLAN and all future amendments and updates to said plan. Any property included in the SCOTT LEASE that is subsequently developed under the NEW MASTER PLAN will be released from the SCOTT LEASE, and STATE and CITY will execute a new lease for such development purposes. Subject to Paragraph IV(6) hereof, rent under any such new leases for development purposes will be shared pursuant to IV(2) hereof. The SCOTT LEASE shall be exempt from any use or rental fees pursuant to MISS. CODE ANN. §29-15-13 and § 29-1-15. The term of the SCOTT LEASE shall be for 40 years with an option to renew for an additional 25 years, unless sooner terminated by the failure to use lease premises for the permitted purposes of the lease.

III. Status of Existing Leases and Obligations of the Parties Thereunder

(1) Upon execution and court approval of this AGREEMENT, (i) IHL and CITY shall execute a full release and termination of IHL LEASE effective as of the date of court approval of this AGREEMENT, and (ii) STATE, IHL, CITY and ISLE recognize that the ACCESS LEASE expires by its own terms. Thereafter the right of IHL to occupy any part of POINT CADET PROPERTY and to receive payments shall be governed by this AGREEMENT.

(2) Notwithstanding the termination of IHL LEASE, but subject to the limitations contained in Paragraph IV(6) of this AGREEMENT, CITY shall pay to IHL each year to December 31, 2085 a sum equal to one-hundred twenty-five thousand and no/100 dollars (\$125,000.00) less the amount of any payments to IHL made pursuant to Section IV hereof. CITY and IHL shall enter an agreement regarding the time and manner of making the payment provided for in this paragraph and shall advise the Secretary of State regarding the disbursement from the "Point Cadet Leasing Fund" of IHL's share of rent under Section IV hereof.

(3) Promptly after execution and court approval of this AGREEMENT, (i) STATE, CITY and ISLE shall execute amendments to CITY LEASES removing the lease provision

BOOK 390 PAGE 606

requiring ISLE to pay all rents under IHL LEASE beginning in the year 2016 and removing the lease provision requiring ISLE to pay one-half of rents under STATE LEASES, and otherwise deleting references therein to IHL and IHL LEASE; (ii) the CITY LEASES shall also be amended to extend the terms as being capable of running through December 31, 2085 (including through the exercise of options by ISLE in its discretion) and to change the place for payment of rents thereunder consistent with Paragraph VIII hereof; (iii) the terms of the STATE LEASES shall be amended so that the terms thereof are 40 years from the effective date of this AGREEMENT, with an option to renew for an additional 25 years; and (iv) STATE, CITY and ISLE agree to amend existing easements as necessary or appropriate to accommodate the dredging, landfilling, wharfing and construction as contemplated by the cross-hatching on the plat on Exhibit L attached hereto. STATE, CITY and ISLE also shall be entitled to otherwise amend the CITY LEASES upon mutual agreement.

(4) (a) In lieu of the rent provided in STATE LEASES, it is hereby agreed by STATE, CITY and ISLE that the annual rent to STATE for the "Public Trust Tidelands Fund" shall be five hundred thousand and no/100 dollars (\$500,000.00) payable on or before June 30th of each year, beginning June 30, 2002, during the term of STATE LEASES. Said rent shall thereafter be adjusted every five years during the remaining term of STATE LEASES based on the All Urban Consumer Price Index-All Items (CPI) with the first adjustment effective beginning June 30, 2007 (for purposes of this paragraph, hereinafter referred to as "State Rent"). So long as ISLE is a tenant of POINT CADET PROPERTY, ISLE hereby agrees to pay the full amount of "State Rent" as set forth in this AGREEMENT. It is specifically agreed and understood that the terms of this paragraph setting the "State Rent" shall apply to all property covered and included in STATE LEASES whether or not a part of POINT CADET PROPERTY. It is acknowledged and agreed that, the rent obligation created in this Paragraph III(4) hereof is the only rent obligation of the ISLE to the STATE under the STATE LEASES. If the CITY LEASES are ever amended and restated and the STATE LEASES become subsumed or incorporated therein, then the substance of this paragraph shall be incorporated therein.

(b) However, in the event that STATE and CITY lease any portion of POINT CADET PROPERTY covered by STATE LEASES to a non-governmental entity other than an entity owned or controlled by ISLE (for purposes of this paragraph, hereinafter referred to as "Entity"), then each such lease shall provide that the "Entity" lessee shall be responsible for paying a portion of the "State Rent" to be calculated in the following manner: total number of square feet of property included in STATE LEASES covered in "Entity" lease divided by the total number of square feet covered by STATE LEASES multiplied by the "State Rent." During the existence of any such "Entity" lease, the obligation of ISLE to pay the full amount of "State Rent" shall be reduced by that portion of "State Rent" required to be paid by "Entity" lessees under "Entity" leases. "Entity" leases shall further provide that at the beginning of the first year of any "Entity" lease having an effective date other than June 30th, the "Entity" lessee shall reimburse ISLE for "Entity" lessee's prorated share of "State Rent," and in furtherance of such provision, "Entity" shall pay ISLE such prorated share of "State Rent" contemporaneously with the execution and deliver of the "Entity" lease. Thereafter, ISLE and each "Entity" lessee shall pay "State Rent" on or before June 30th of each year in the manner provided in Paragraph VIII hereof. CITY and STATE agree that the amount of "State Rent" is based upon the current commercial use of the site by the ISLE, and should the ISLE or a successor in interest to the

BOOK 390 PAGE 607

ISLE no longer be contractually bound to pay this sum. then the STATE and the CITY agree to re-evaluate the amount of "State Rent" due based upon the use of the property at that time.

(5) STATE, CITY, IHL and ISLE acknowledge and recognize STATE LEASES and CITY LEASES, which shall remain binding in all of their terms and provisions, except as may be inconsistent with the terms of this AGREEMENT. In the event of a conflict between STATE LEASES and this AGREEMENT or CITY LEASES and this AGREEMENT, then the terms of this AGREEMENT shall control. Except as provided herein, all obligations and duties of any party to STATE LEASES and CITY LEASES shall remain the sole obligation and duty of each party in the same manner after this AGREEMENT as existed before this AGREEMENT. Unless otherwise expressly provided in herein, this AGREEMENT is not intended to and shall not be construed to cause another party to assume or share any duties or obligations under the existing leases that were not an obligation of the party prior to this AGREEMENT.

(6) Notwithstanding the provisions contained in Paragraph III(5) of this AGREEMENT, the parties to this AGREEMENT acknowledge and recognize the following agreements affecting parts of POINT CADET PROPERTY, insofar as said agreements otherwise remain in force and effect, in addition to the existing STATE LEASES and CITY LEASES:

(a) Intergovernmental Agreement between the Mississippi Commission on Natural Resources, IHL and CITY, as recorded in Land Deed Book 176, Page 369, of the land record in the Office of the Chancery Clerk of Harrison County, Second Judicial District;

(b) The unrecorded Concession Agreement dated September 30, 1987, between the Point Cadet Development Corporation and Juan Hebert, Danny Pitalo, and George Pitalo (d/b/a Marina Point, Inc.);

(c) The Marina Lease between the Point Cadet Development Corporation and the Biloxi Port Commission dated May 23, 1986, as recorded in Land Deed Book 176, Page 257; and as amended by an agreement dated November 17, 1986, which was recorded in Land Deed Book 179, Page 10, and by an agreement dated March 22, 1995, which was recorded in Land Deed Book 285, Page 115, of record in the Office of the Chancery Clerk of Harrison County Second Judicial District.

(d) Boardwalk Easement between CITY and Biloxi Port Commission dated February 10, 1989, and recorded in Land Deed Book 207, Page 42.

(e) A parking lot agreement styled Modification of Memorandum of Agreement between CITY and Biloxi Port Commission dated July 5, 1989;

(f) All agreements, contracts, or covenants either created by or incurred in conjunction with the issuance of bonds or any other form of secured financing which encumbers any portion of the POINT CADET PROPERTY or is secured

BOOK 390 PAGE 608

by a pledge of either rents generated by or income created by any portion of the POINT CADET PROPERTY.

(g) Declaration of Shared Facilities Agreement dated April 26, 1995 by ISLE.

IV. The Division of Rents under Existing and Future Leases

(1) From and after the effective date of this AGREEMENT, all rents due or to become due under the terms and provisions of existing CITY LEASES, or under any future amendments, restatements, extensions or renewals thereof, as well as under any new leases of the property included in CITY LEASES or any portion thereof, shall be divided and shared as follows:

(a) CITY will receive all rents up to an amount equal to two million seven hundred thirty-three thousand and no/100 dollars (\$2, 733,000.00).

(b) All rents in excess of two million seven hundred thirty-three thousand and no/100 dollars (\$2, 733,000.00) will be divided as follows—

One-third (1/3) to STATE
One-third (1/3) to IHL
One-third (1/3) to CITY.

(2) All rents under any new leases of POINT CADET PROPERTY, or any portion thereof, other than new leases identified in Paragraph IV(1) hereof, shall be divided and shared as follows—

One-third (1/3) to STATE
One-third (1/3) to IHL
One-third (1/3) to CITY.

(3) The collection and disbursement of all rents under existing and future leases shall be made in accordance with Paragraph VIII hereof. This AGREEMENT upon court approval shall constitute notice to all obligated to pay rent of the change in rent collection procedures set forth in Article VIII hereof.

(4) The share of rents allocated to STATE under this AGREEMENT shall be paid over to the "Public Trust Tidelands Fund" upon disbursement from the "Point Cadet Leasing Fund" as defined in Article VIII of this AGREEMENT.

(5) The share of rents allocated to IHL will be dedicated to and used exclusively for the operation and expansion of SCOTT CENTER and/or other educationally sound programs, operations or facilities on POINT CADET PROPERTY upon disbursement from the "Point Cadet Leasing Fund" as defined in Article VIII hereof.

BOOK 390 PAGE 609

(6) (a) In the event that IHL abandons use of POINT CADET PROPERTY by the Gulf Coast Research Laboratory and SCOTT CENTER, and/or other educationally sound programs, operations or facilities, in lieu of rent provided in Paragraph IV hereof, IHL shall receive the sum of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) payable in ten (10) equal annual installments, and thereafter all rights of IHL under this AGREEMENT and the SCOTT CENTER LEASE will terminate. STATE shall be responsible for paying two-thirds (2/3) of said sum and CITY shall be responsible for paying one-third (1/3) of said sum.

(b) In the event operations of SCOTT CENTER and/or other educationally sound programs, operations or facilities on POINT CADET PROPERTY are impeded, impaired, disturbed or ceased due to Acts of God, civil disturbance, acts of war, or other events outside the control of IHL, IHL shall within one (1) year of the occurrence of such event elect whether to abandon use of Point Cadet Property pursuant to provisions of Paragraph IV(6)(a) hereof or whether to proceed under this Paragraph IV(6)(b) hereof. In the event IHL elects to proceed under this Paragraph IV(6)(b) hereof, then IHL shall: (i) continue to receive rents as provided in Paragraph IV hereof; (ii) construct, repair or rebuild the SCOTT CENTER or other educationally sound programs, operations or facilities on the POINT CADET PROPERTY; and (iii) complete the process of resuming operations on the POINT CADET PROPERTY within five (5) years, which period will be extended by STATE and CITY upon a showing by IHL of good faith effort to resume operations. In the event IHL does not resume operation of the SCOTT CENTER or other educationally sound programs, operations or facilities within said five (5) year period, or any extensions thereof, then all rights of IHL under this AGREEMENT and the SCOTT CENTER LEASE shall terminate, and the share of rent allocated to IHL under this AGREEMENT will thereafter be paid to STATE for the "Public Trust Tidelands Fund."

(7) At the time provided in existing leases, ISLE will furnish STATE and CITY with detailed computations showing how rents were calculated. The computation detail shall show at a minimum, rent computations for each lease and shall detail gross gaming and non-gaming revenues under each lease. Such information shall be deemed and held as confidential, commercial, financial and proprietary. In addition, ISLE, at reasonable and mutually agreeable times, will make its financial records available to the STATE and CITY, in order to verify the accuracy of any rental payments on POINT CADET PROPERTY.

V. Proposed ISLE Multi-level Parking Garage

(1) STATE, CITY and IHL find acceptable, and hereby consent to, the placement on the southerly part of NEW TRACT A of a parking garage having (i) parking on grade level and at least an additional five elevated parking levels, (ii) dimensions of approximately 260 feet by 310 feet +/-, and (iii) capacity for at least 1000 cars +/-, and having access thereto, all as generally depicted on the plat on Exhibit I-1 attached hereto. STATE, CITY and ISLE shall enter into a lease regarding NEW TRACT A and NEW TRACT B concerning development and operation by ISLE of such garage and other parking and hotel and related facilities, and also incorporating rights to and over the ACCESS TRACT (subject to Paragraph II(4) hereof).

BOOK 390 PAGE 610

(2) ISLE agrees that (i) within ninety (90) days after ISLE begins to use the new multi-level parking garage, ISLE will submit to CITY and STATE and IHL and applicable planning authorities in Harrison County, Mississippi, a plan to convert the PARK CONVERSION TRACT to a park area with green space, including some part thereof reserved for parking for park users, and (ii) following receipt of approvals from CITY, STATE and applicable authorities, ISLE will implement the plan (collectively, the "Conversion"); provided, that ISLE's obligation to fund the Conversion shall not exceed \$75,000. Provided, at all times there shall continue to be available to the public for use as parking for the Point Cadet Marina the same number of ground level parking spaces dedicated for that purpose as is now provided and available.

VI. New Master Plan

(1) STATE, CITY, IHL and ISLE will work cooperatively to develop a NEW MASTER PLAN for the expansion of SCOTT CENTER and/or other educationally sound programs, operations or facilities and future development of POINT CADET PROPERTY. Each party will have an independent and equal voice in the development of the NEW MASTER PLAN and updates and amendments thereto. Proposed development under Paragraph V hereof may proceed in advance of the development of the NEW MASTER PLAN. The NEW MASTER PLAN will, in any event, permit hotels and retail and parking facilities on NEW TRACT A and NEW TRACT B.

(2) The development of the NEW MASTER PLAN will be funded by contributions of Sixty thousand and no/100 dollars (\$60,000.00) each from STATE, CITY, IHL and ISLE. Each party shall designate two representatives to form a committee for development of the NEW MASTER PLAN.

VII. ISLE Exclusivity

Notwithstanding anything in this AGREEMENT to the contrary, all parties acknowledge that (i) ISLE entered into other agreements identified herein (including without limitation, the CASINO LEASE and the BERTH RENTAL AGREEMENT) which grant certain exclusivity rights to ISLE; and (ii) ISLE would not enter into this AGREEMENT without the covenant (hereby agreed to by all parties) that the exclusivity provisions in those agreements shall be applicable to and binding upon all parties hereto and shall inure to the benefit of ISLE as if set out herein and shall apply to not just the POINT CADET PROPERTY, but also all waters contiguous, within or adjacent thereto where gaming or gambling is authorized under applicable law, and shall be referenced in any deed, lease, deed of trust, or other instrument of conveyance as assignment.

VIII. Court Approval of this Agreement of Settlement and Compromise

(1) Upon execution of this AGREEMENT by all parties, said parties shall cooperate and use their best efforts to file an appropriate proceeding in the Chancery Court of the Harrison County, Second Judicial District, to obtain court approval of the terms and provisions of this AGREEMENT. The petition to the Court will include a request that the judgment of the Court

BOOK 390 PAGE 611

approving the terms and provisions of this settlement include directions to the State Treasurer to create or designate a special fund called the "Point Cadet Leasing Fund" to be administered by the Secretary of State.

(2) Rents under STATE LEASES and CITY LEASES and any new leases of the POINT CADET PROPERTY, or any portion thereof, will be paid to the "Point Cadet Leasing Fund." Disbursements from the "Point Cadet Leasing Fund" shall be made by the State Treasurer upon direction of the Secretary of State in accordance with the terms of this AGREEMENT. STATE and CITY shall enter an agreement establishing the manner and times for making disbursements from the "Point Cadet Leasing Fund."

(3) STATE, CITY, IHL and ISLE hereby agree and stipulate that no resolution reached in this AGREEMENT will be used in any proceeding or litigation, either offensively or defensively, relating to any claim or interest involving any other property beyond the POINT CADET PROPERTY.

IX. Miscellaneous

(1) IHL shall be solely responsible for obtaining release of any covenant contained in the deeds from the United States, necessary to accomplish the purpose of this AGREEMENT.

(2) ISLE shall be solely responsible for obtaining from its lenders or mortgagees any consents or approvals required for the ISLE to enter this AGREEMENT.

(3) Each party to this AGREEMENT shall be solely responsible and shall assume the defense of any claim arising under its chain of title.

(4) This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

(5) Point Cadet Development Corporation acknowledges the terms and conditions of this AGREEMENT and agrees to be bound hereby and to execute and deliver such other documentation as may from time to time be necessary or appropriate in furtherance of the terms hereof.

(6) The Attorney General of the State of Mississippi approves this AGREEMENT in his capacity as legal counsel for STATE and IHL.

(7) The parties hereto agree to amend this AGREEMENT from time to time to incorporate more specific descriptions of property and tracts depicted on the plats on exhibits attached hereto, as such descriptions become available.

(8) To the extent the rights, obligations, covenants and duties herein affect the use, possession, disposition, assignment, transfer, lease or encumbrance of real property, those rights, obligations, covenants, and duties shall run with the land described herein as the POINT CADET PROPERTY.

BOOK 390 PAGE 612

X. Effective Date of Agreement

This AGREEMENT shall take effect and shall be recorded with the Chancery Clerk of Harrison County, Second Judicial District following entry of a judgment of the Chancery Court of Harrison County, Second Judicial District.

STATE OF MISSISSIPPI, BY AND THROUGH ERIC CLARK, SECRETARY OF STATE

AND

ERIC CLARK, SECRETARY OF STATE, AS TRUSTEE OF THE PUBLIC TRUST TIDELANDS

By *Eric Clark*
ERIC CLARK
Executed this the 12th day of August, 2002

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, FOR ITSELF AND ON BEHALF OF THE UNIVERSITY OF SOUTHERN MISSISSIPPI, THE GULF COAST RESEARCH LABORATORY, AND THE J. L. SCOTT MARINE EDUCATION CENTER

By *Bryce Griffis*
BRYCE GRIFFIS, PRESIDENT
Executed this the 15th day of August, 2002

Attest *Thomas D. Layzell*
THOMAS D. LAZZELL, COMMISSIONER
OF HIGHER EDUCATION
Executed this the 15th day of August, 2002

BOOK 390 PAGE 613

CITY OF BILOXI

By A. J. Holloway
A. J. HOLLOWAY, MAYOR
Executed this the 15th day of August, 2002

Attest Brenda H. Johnston
BRENDA H. JOHNSTON, MUNICIPAL CLERK
Executed this the 15th day of August, 2002

ISLE OF CAPRI CASINOS, INC, A DELAWARE CORPORATION

AND

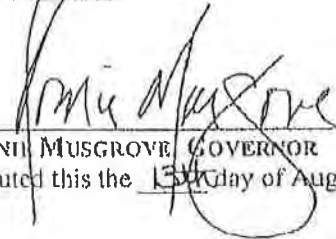
RIVERBOAT CORPORATION OF MISSISSIPPI, A MISSISSIPPI CORPORATION, DOING BUSINESS AS THE ISLE OF CAPRI CASINO

By John M. Gallaway
Name JOHN M. GALLAWAY
Office President
Executed this the 25th day of August, 2002

Attest Richard D. Veisley
Name RICHARD D. VEISLEY
Office VP & CFO
Executed this the 15th day of August, 2002

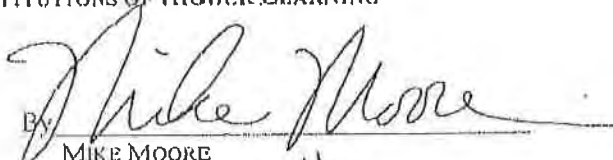
BOOK ~~390~~ PAGE 614

APPROVED BY:



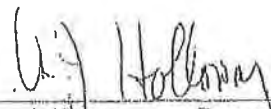
RONNIE MUSGROVE, GOVERNOR
Executed this the 13th day of August 2002

MIKE MOORE, ATTORNEY GENERAL
FOR THE STATE OF MISSISSIPPI
IN HIS CAPACITY AS LEGAL COUNSEL
FOR, ERIC CLARK, SECRETARY OF STATE
AND BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

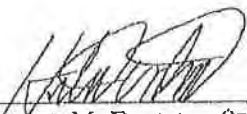
By 

MIKE MOORE
Executed this the 13th day of August, 2002

POINT CADET DEVELOPMENT CORPORATION

By 

A. J. HOLLOWAY, PRESIDENT
Executed this the 15th day of August, 2002

Attest 

HAROLD McDONALD, SECRETARY
Executed this the 15th day of August, 2002

BOOK 390 PAGE 615

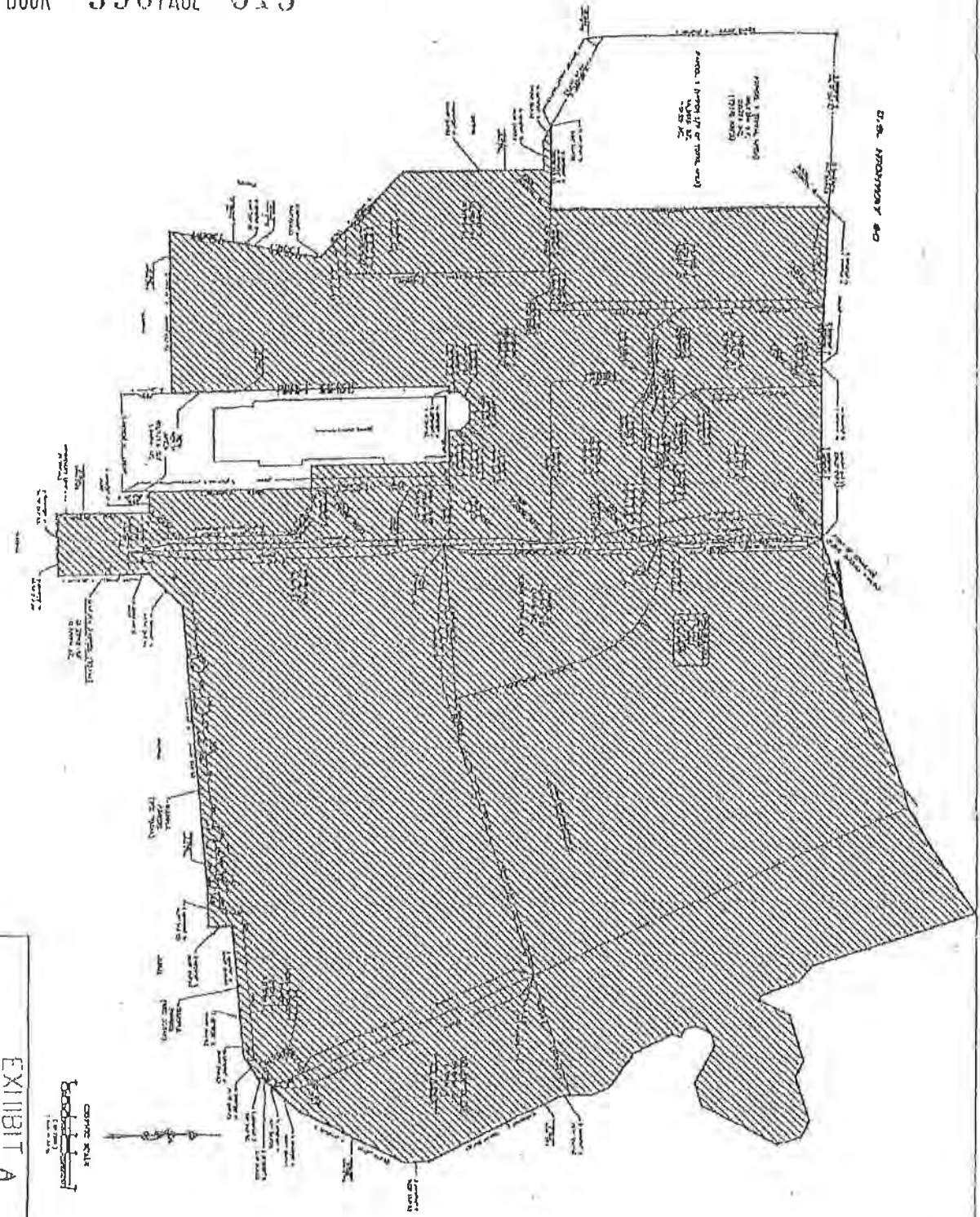


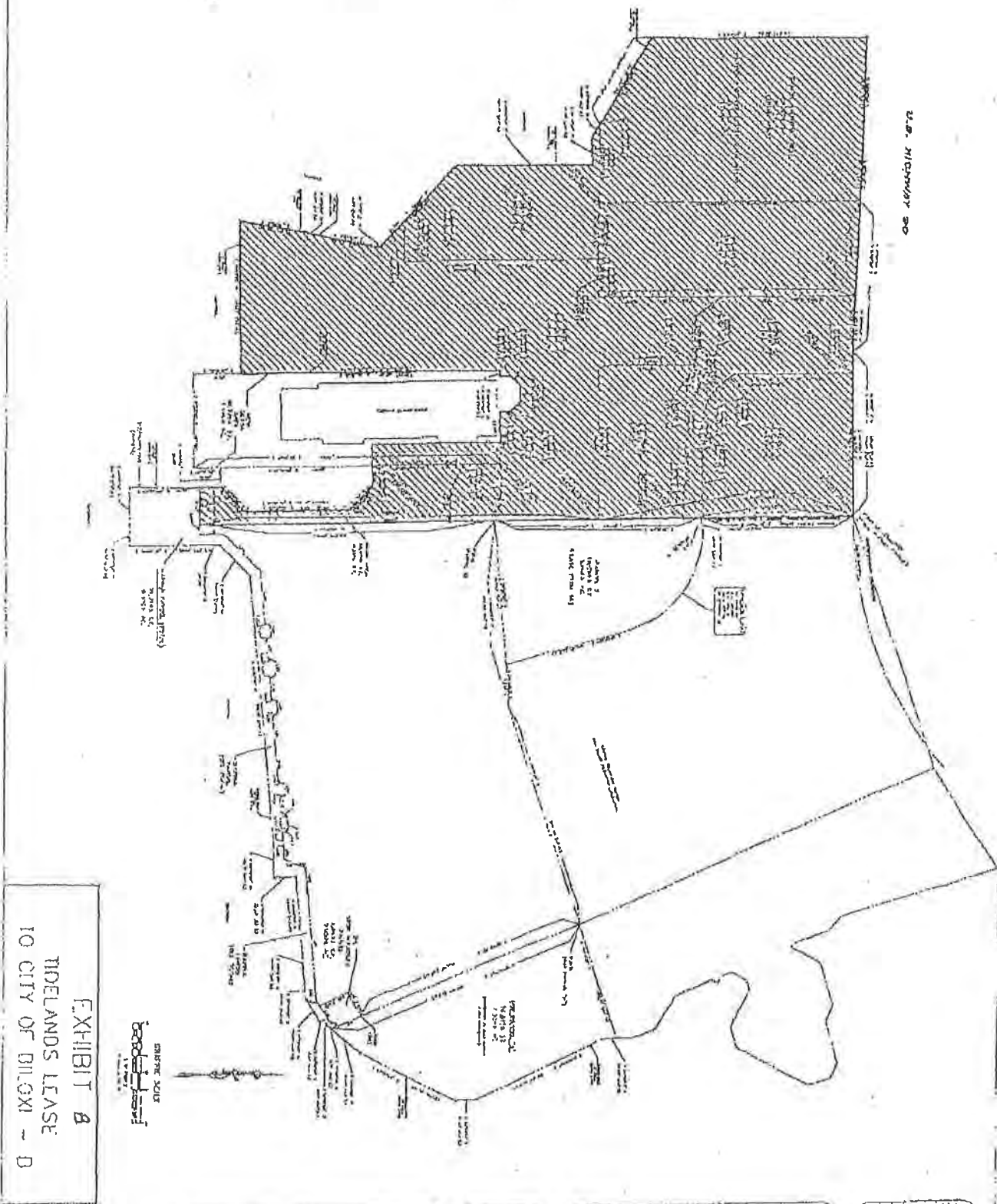
EXHIBIT A
 POINT CAQUET PROPERTY

GRAPHIC SCALE
 1" = 100'

ISLE OF CAPRI CASINO
 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

BROWN & MITCHELL, INC.
 Engineers & Environmental Consultants
 111 144 Street
 (Print Name and Address)

BOOK 390 PAGE 616



ISLE OF CAPRI CASINO

BROWN & MITCHELL, INC.

BOOK 390 PAGE 617

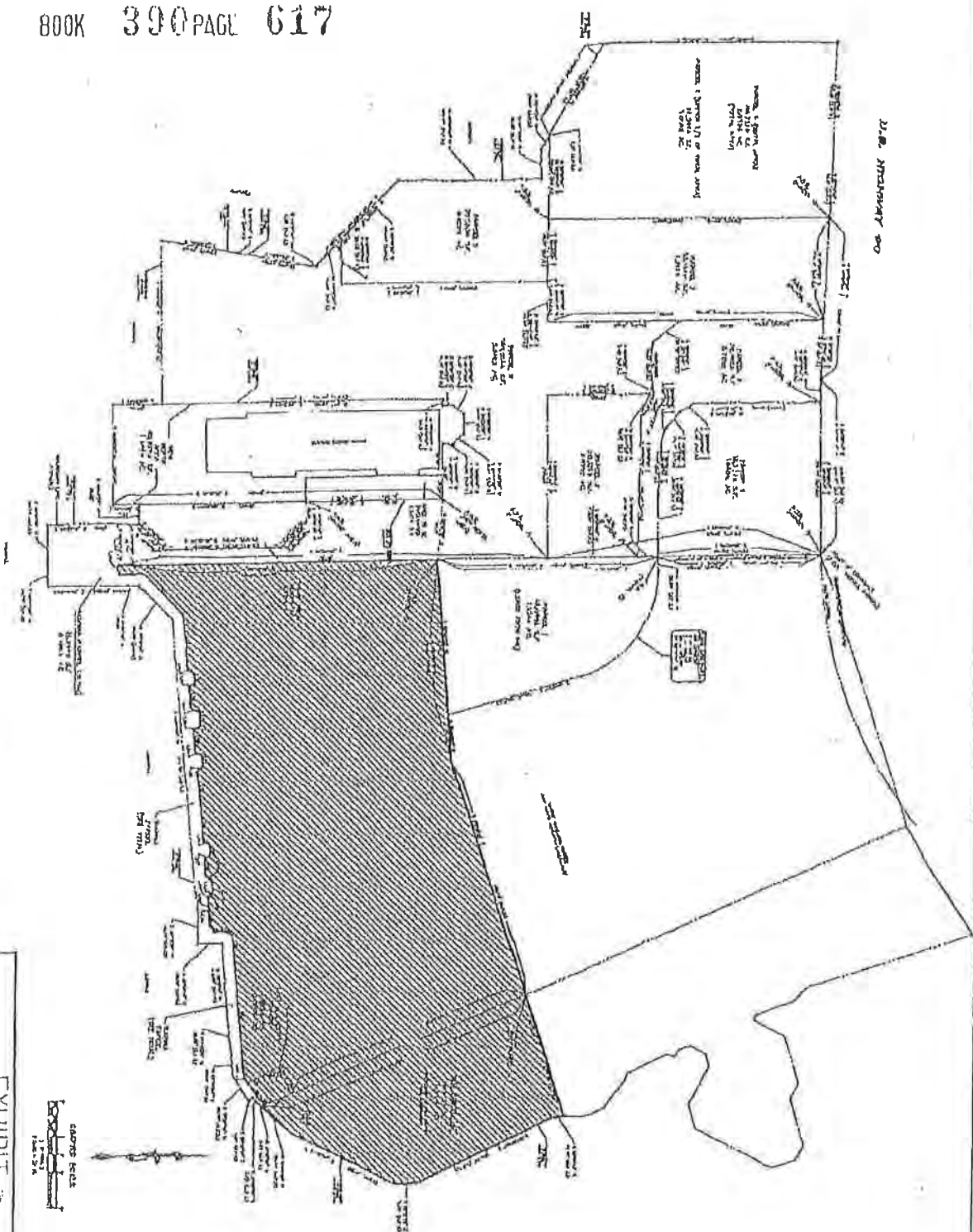
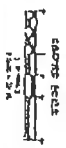


EXHIBIT C
 IDELANDS LEASE
 TO CITY OF BILOXI -- C



IDE OF CASPI CASINO
 FROM MISSISSIPPI
 LEASE PARCELS / BOUNDARY SURVEY

BROWN & MITCHELL, INC.
 Engineers & Professional Consultants
 401 East Second Street
 Biloxi, Mississippi 39264
 Phone: 601-373-1111 Fax: 601-373-1112

Sheet 1 of 1
 2/20/2017

Survey of
 Grounds for
 IDELANDS LEASE
 TO CITY OF BILOXI
 2/20/2017

BOOK 390 PAGE 618

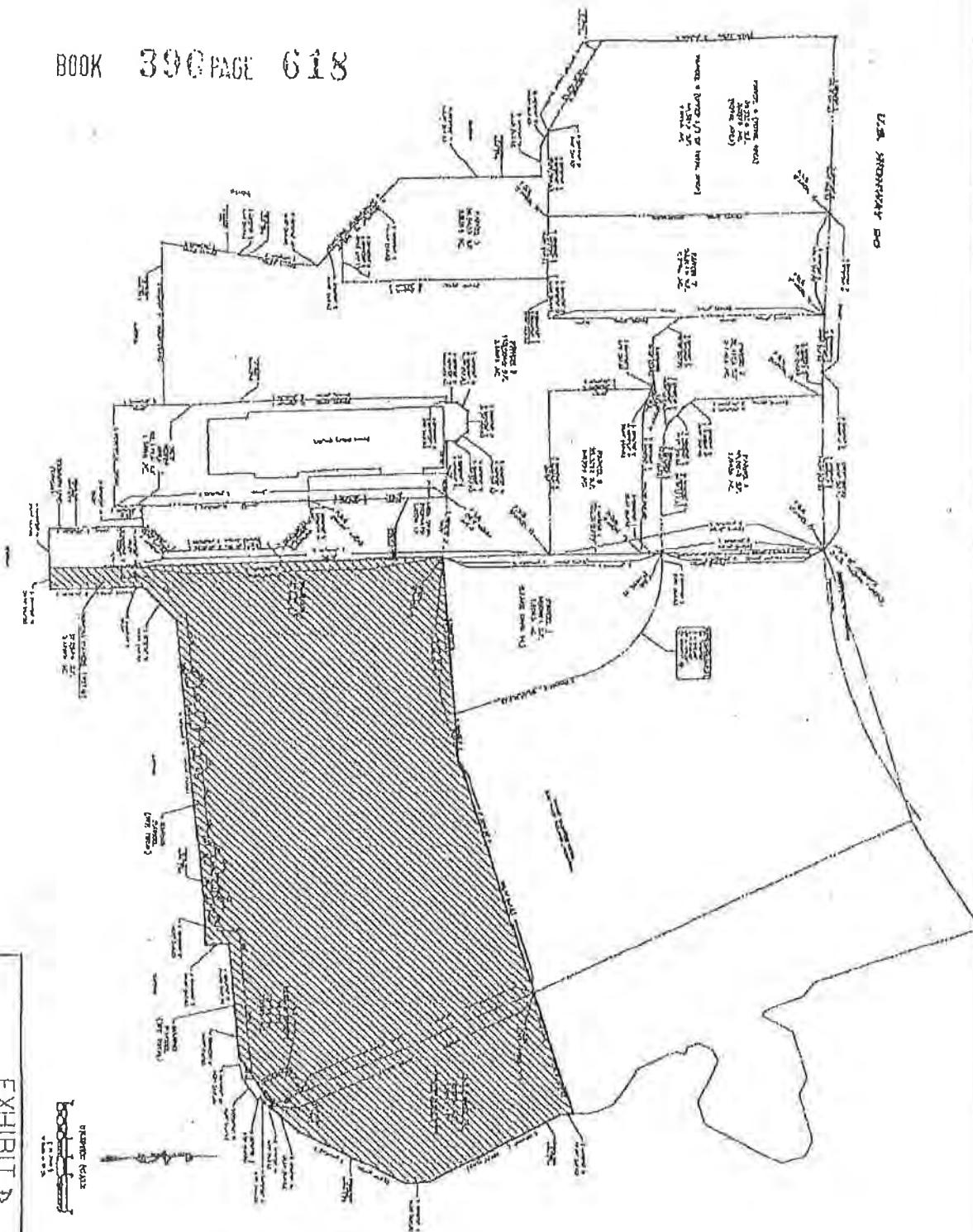


EXHIBIT D
IHL LEASE - D

Sheet No.	1 of 1
Date	11/17/11
Scale	AS SHOWN
Author	MM
Check	MM
Drawn	MM
Plot	MM

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BROWN & MITCHELL, INC.
Engineers & Environmental Consultants
All Our Work From 1945 to 2011

Project No.	11-00000000
Sheet No.	1 of 1
Date	11/17/11
Author	MM
Check	MM
Drawn	MM
Plot	MM

001704 2002 102 10701 BR 011 014901

FRA NO. 2204301010

P. 02/05

BOOK 330 PAGE 619

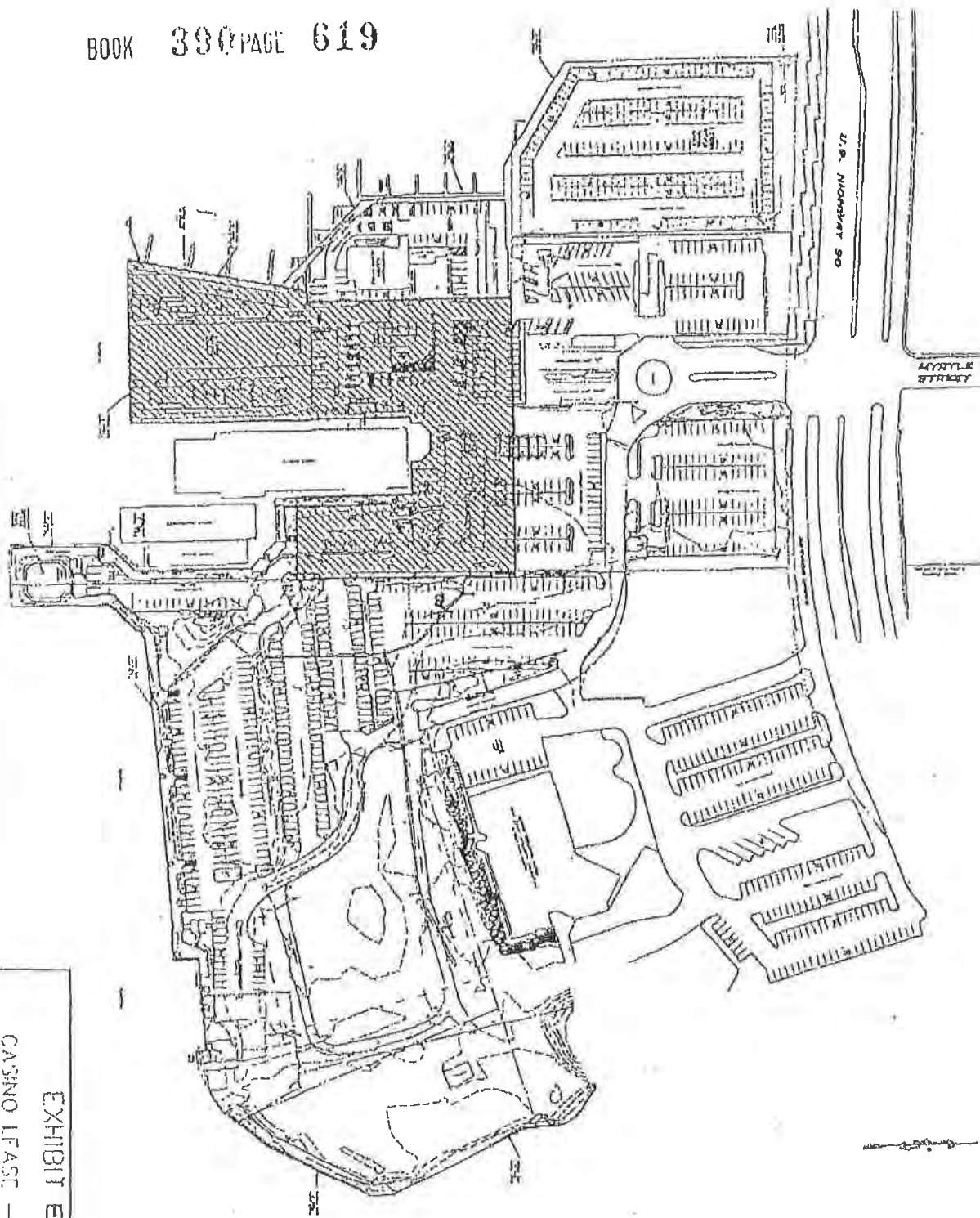


EXHIBIT E
 CASINO LEASE - E

11/11/11

FILE OF CASINO

11/11/11

BROWN & MITCHELL, INC.

11/11/11

JUN-04-2002 10:09 AM BIL BILUXI

FAX NO. 2284367010

P. 04/C5

BOOK 390 PAGE 620

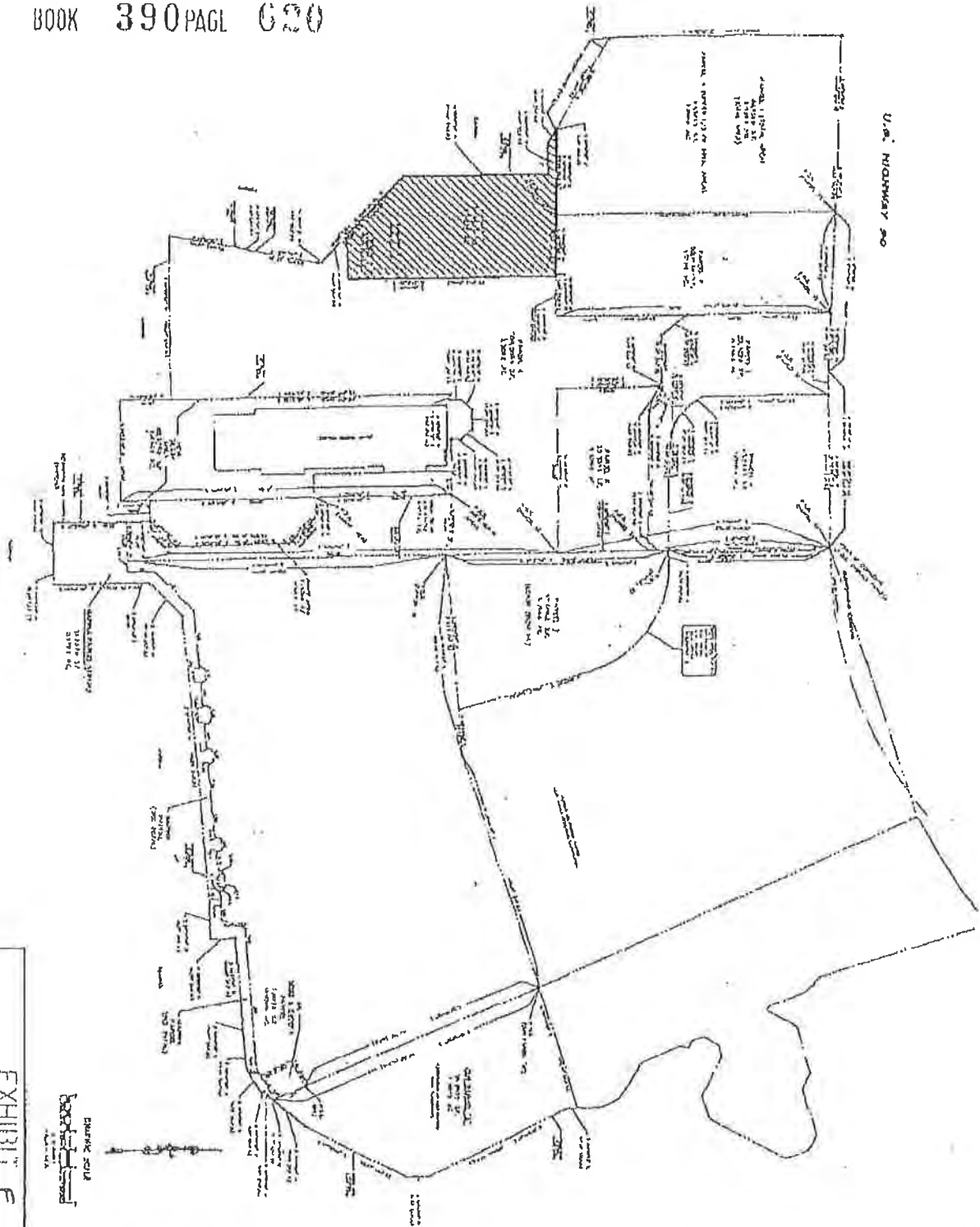


EXHIBIT F
HOTEL LEASE - F

DRINKING WATER
[Symbol]

BLVD OF CAPRI CASINO

B BROWN & MITCHELL, INC.

[Symbol]

JUN-24-2002 10:09 AM (11) 0120X1

FAX NO. 2284367010

P. 04/C5

BOOK 390 PAGE 620

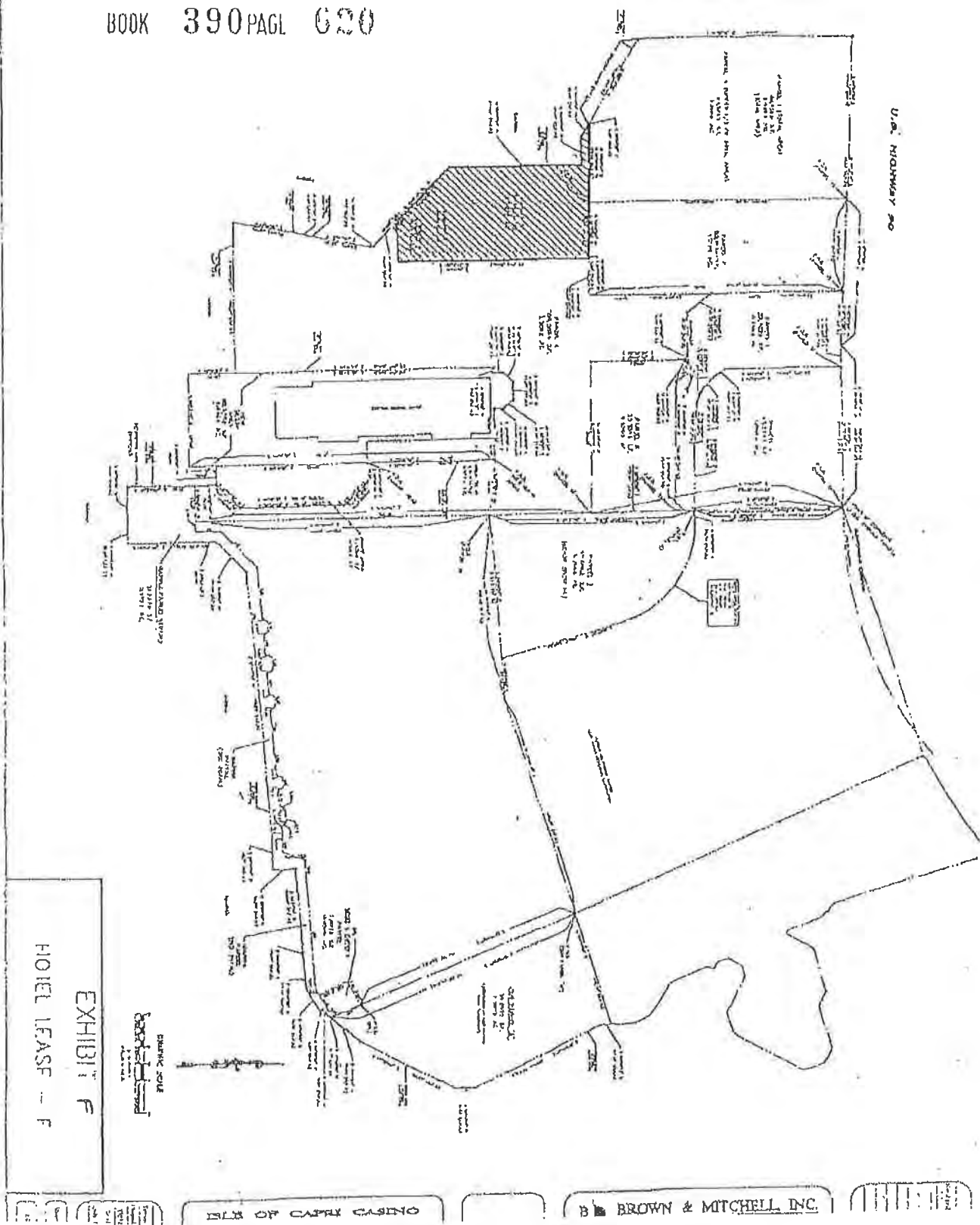


EXHIBIT F
HOTEL LEASE - F

BLK OF CAPRI CASINO

B BROWN & MITCHELL, INC.

BOOK 390 PAGE 621

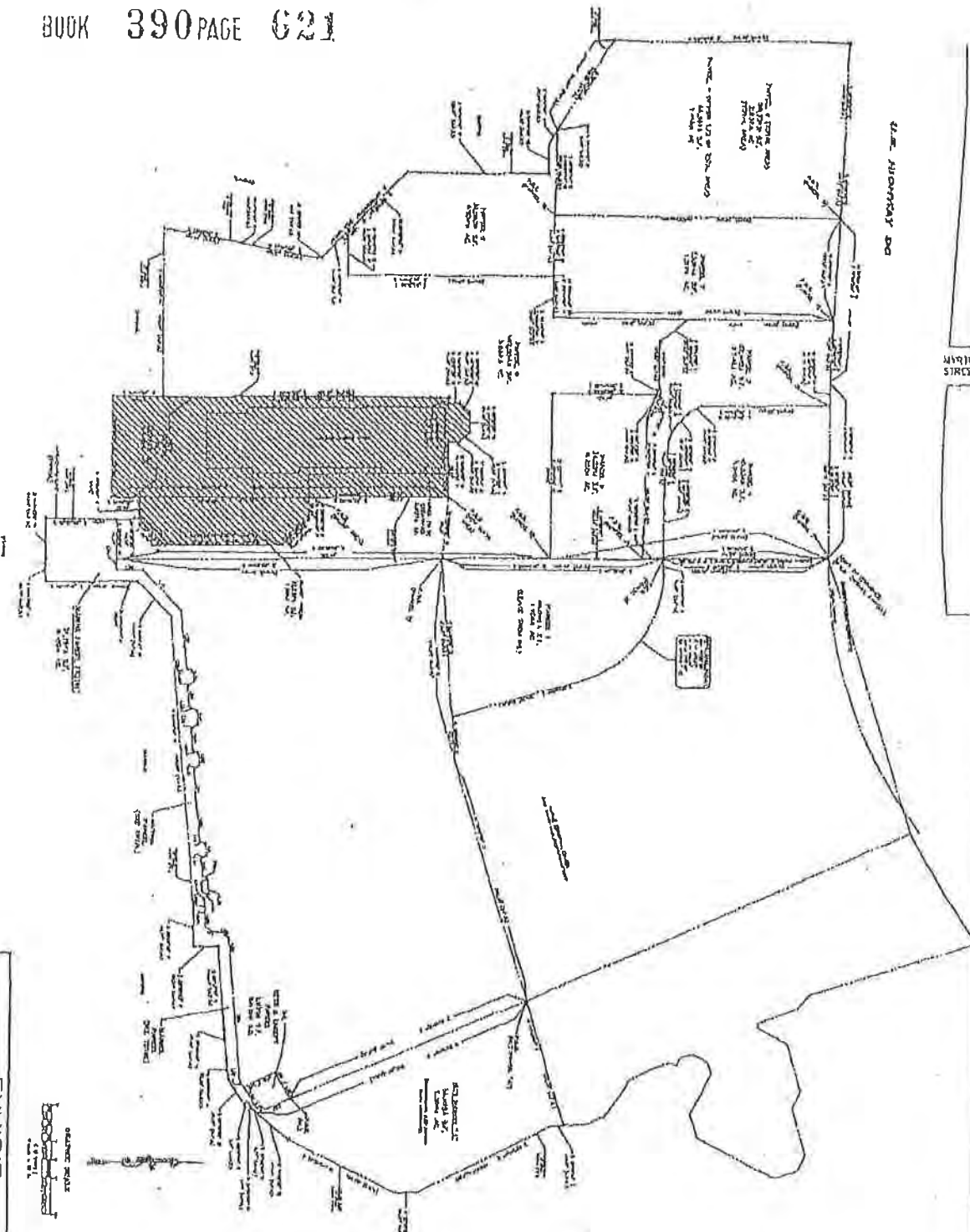


EXHIBIT 4
BERTH TRACT

Scale	1" = 100'
North Arrow	Point to North
Prepared by	Brown & Mitchell, Inc.
Checked by	[Signature]
Date	7/22/16

CONSIDERED PART OF A PLAN
APPROVED WORK

BROWN & MITCHELL, INC.
Engineering & Environmental Consultants
2000 West 10th Street, Suite 100
Anchorage, Alaska 99503
Phone: (907) 562-1111
Fax: (907) 562-1112
www.brownandmitchell.com

Project No.	2016-001
Sheet No.	1 of 1
Date	7/22/16
Scale	1" = 100'
Prepared by	[Signature]
Checked by	[Signature]

BOOK 390 PAGE 622

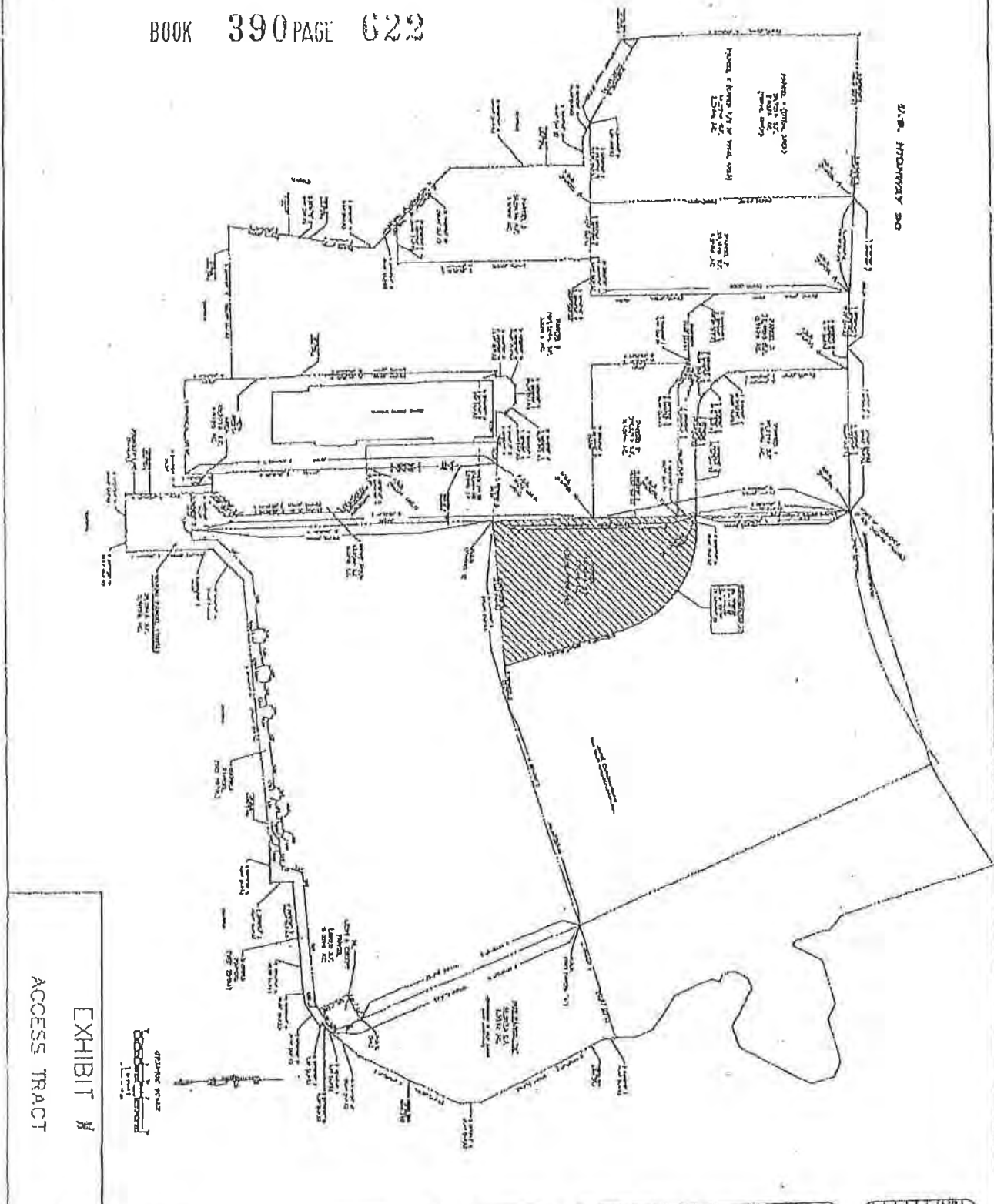


EXHIBIT M
ACCESS TRACT

Date: 11/18/15 Scale: 1" = 100' Project: [unclear]	SHEET NO. 11 OF 11 TOTAL SHEETS: 11	KING OF CLAY CASINO MOB. WASHINGTON LEASE PARCELS / BOUNDARY SURVEY	[Empty Box]	BROWN & MITCHELL, INC. Engineers & Environmental Consultants 100 West Street, Suite 2000 Portland, Oregon 97201	[Table with 2 columns and 4 rows]
--	--	---	-------------	--	-----------------------------------

BOOK 390 PAGE 623

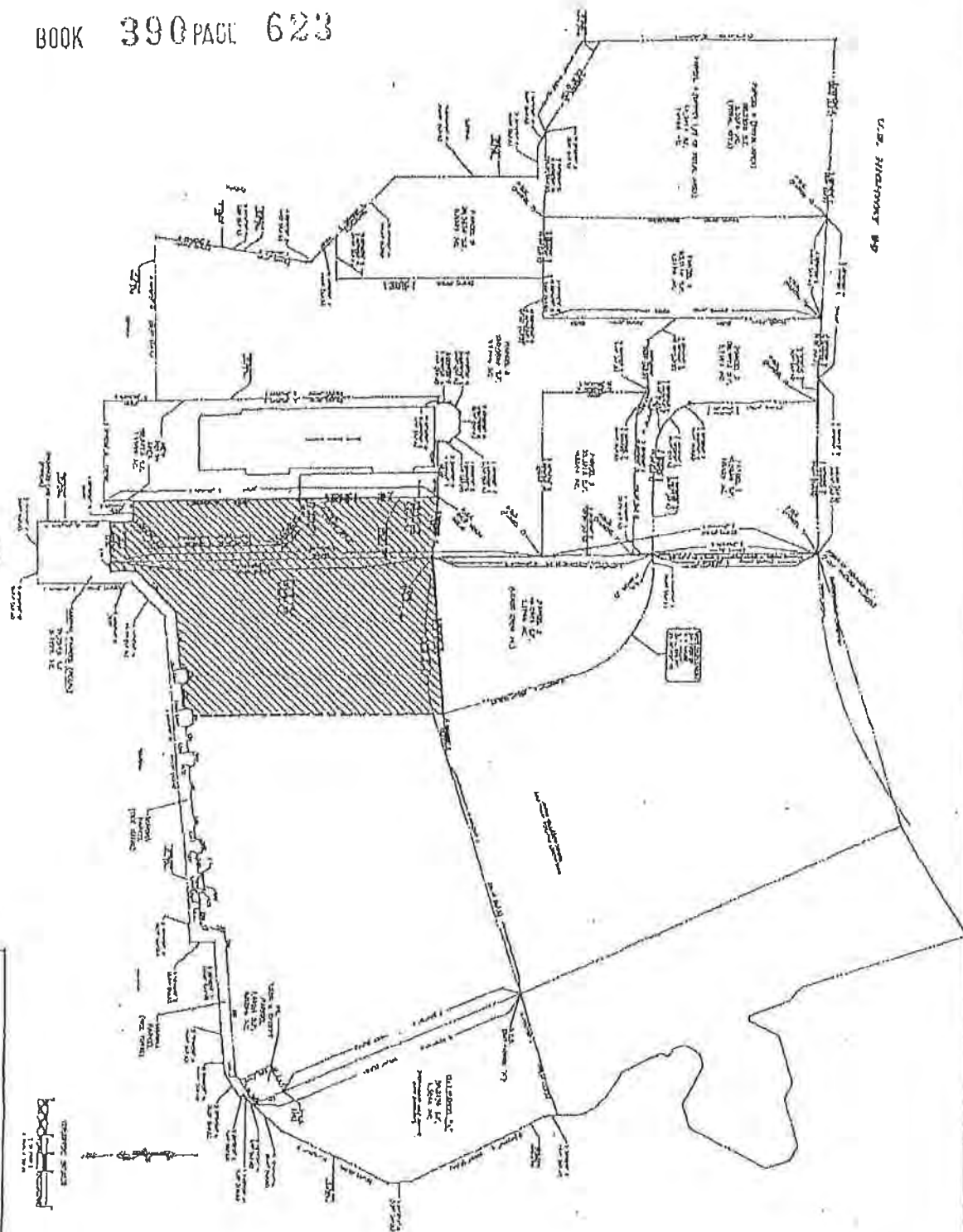


EXHIBIT I
NEW TRACT "A"



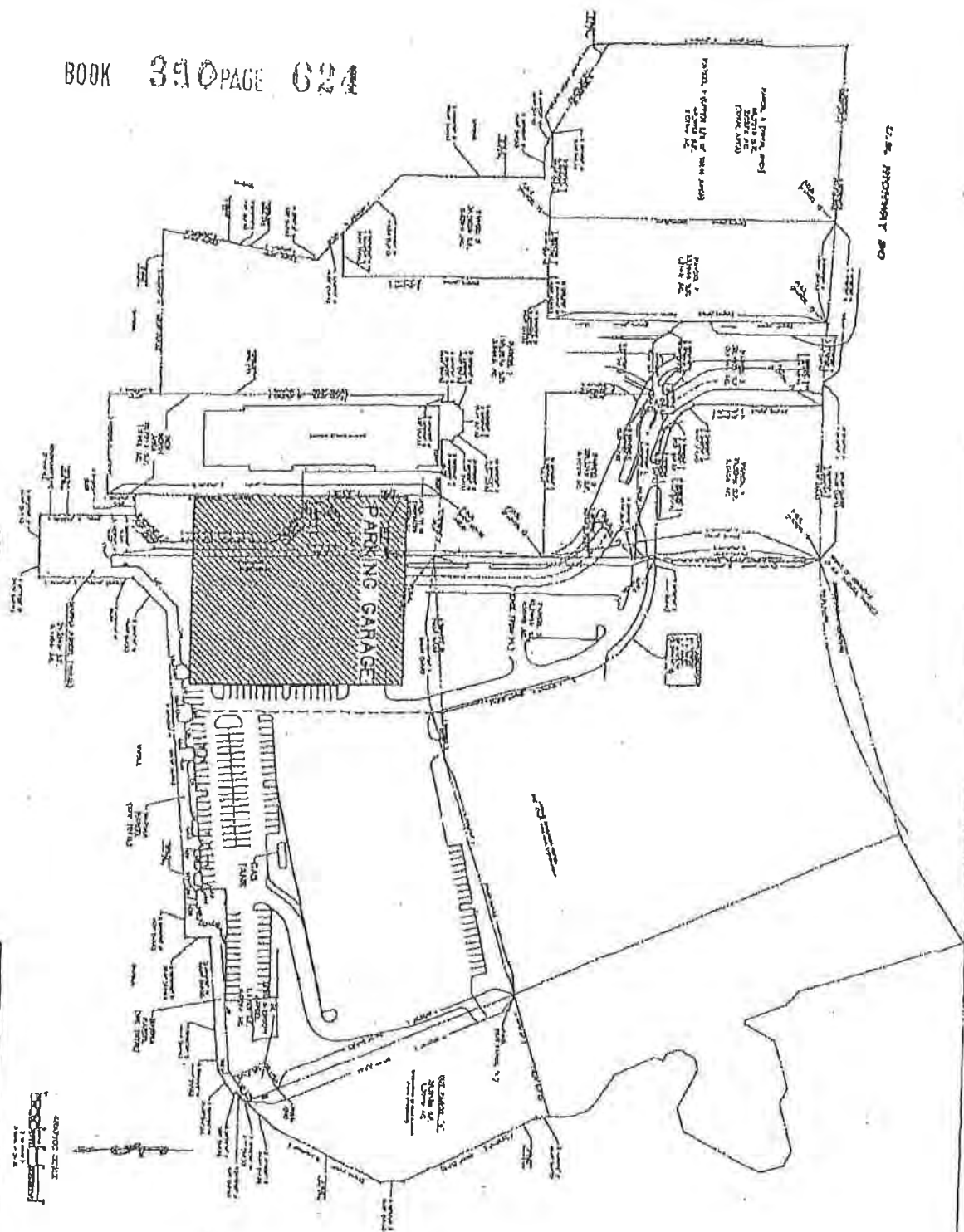
FILE OF CAPRI CASINO
OLD RECORDS

LEASE PARCELS / BOUNDARY SURVEY

BROWN & MITCHELL, INC.
Engineers & Environmental Consultants

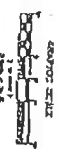
DATE	BY	REVISION

BOOK 390 PAGE 624



U.S. HIGHWAY 200

EXHIBIT I-1
PROPOSED PARKING
GARAGE



DATE OF CASINO
MAP

BROWN & MITCHELL, INC.
Engineers & Environmental Consultants

2010.01.29

BOOK 390 PAGE 625

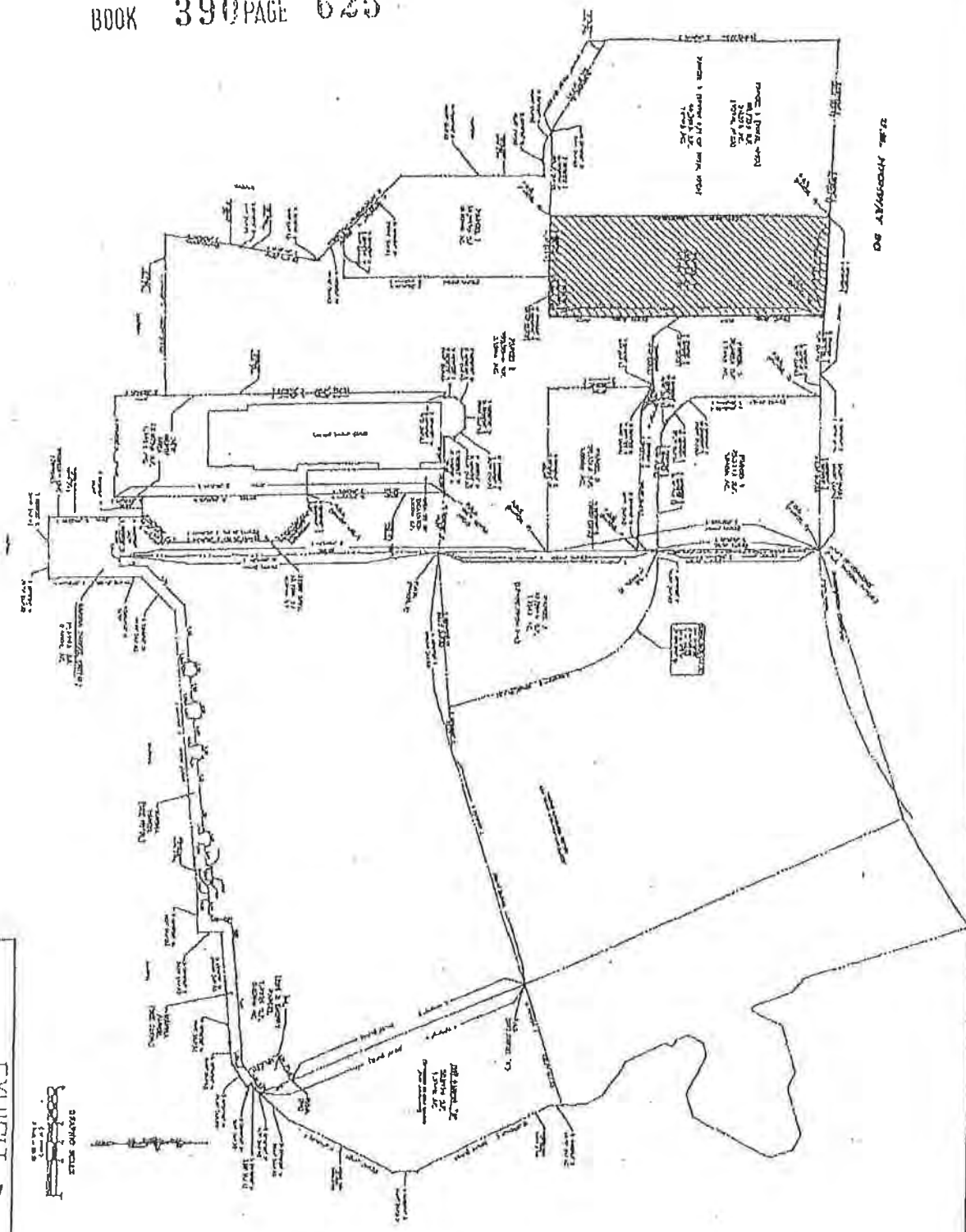


EXHIBIT J
NEW TRACT "B"



YUKI OR CATER CASINO
BIRMINGHAM, ALABAMA

BROWN & MITCHELL, INC.
Engineers & Environmental Scientists
111 10th Street
Birmingham, AL 35202

Project No.	1000000000
Sheet No.	1000000000
Date	10/1/00
Scale	AS SHOWN
Author	
Checked	
Approved	

BOOK 390 PAGE 626

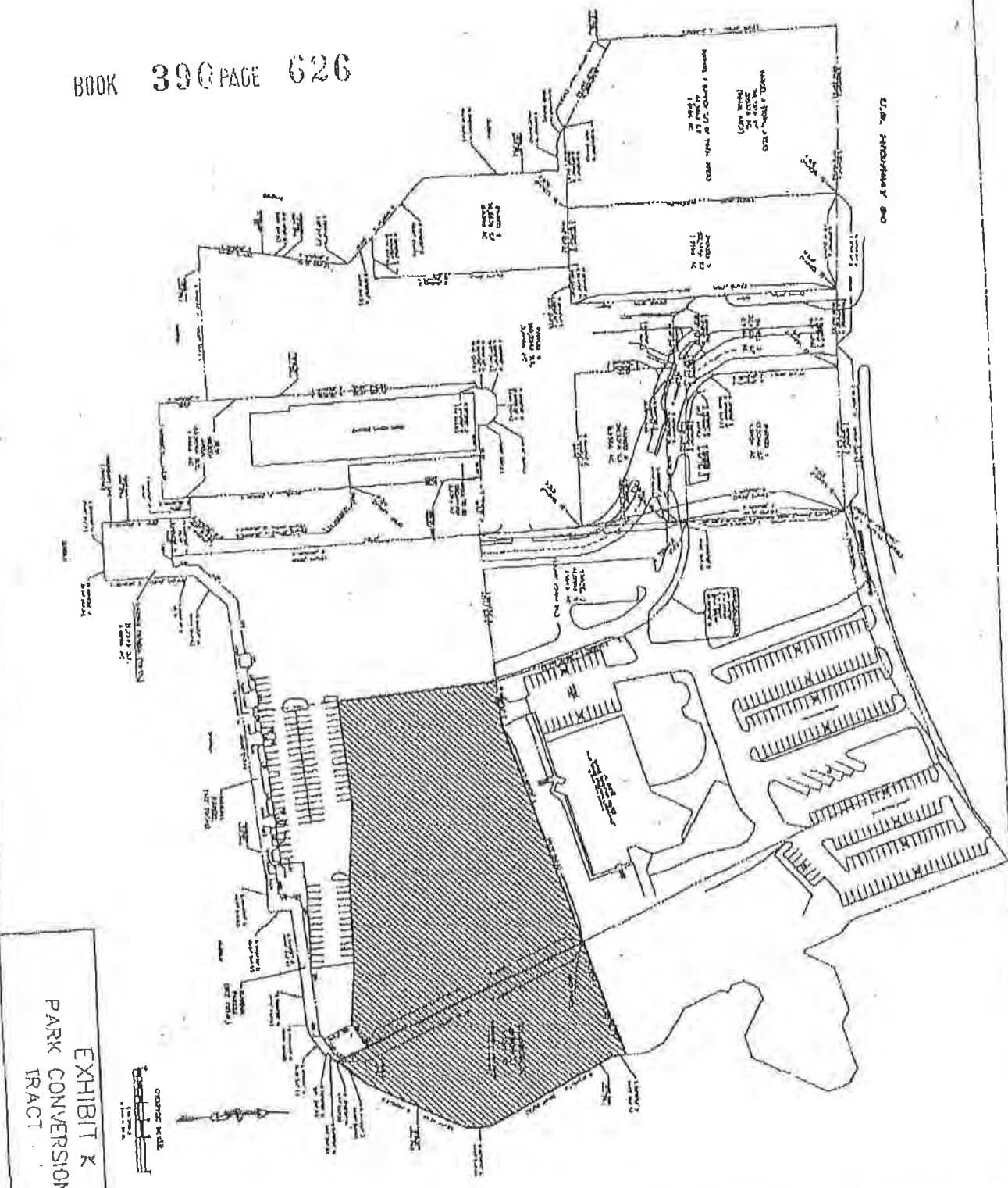


EXHIBIT K
 PARK CONVERSION
 TRACT

DATE	BY	REVISION

TRACT OF CAPRI CASINO
 BLOCK 10000000

BROWN & MITCHELL, INC.
 Engineers & Architectural Consultants
 2200 W. 10th Street, Suite 100
 Las Vegas, NV 89102
 Phone: (702) 735-1100

DATE	BY	REVISION

17th Nov 2009 10:10 AM
 11/11/2002 MON 02:08 PM BML BILVAT

BOOK 390 PAGE 627

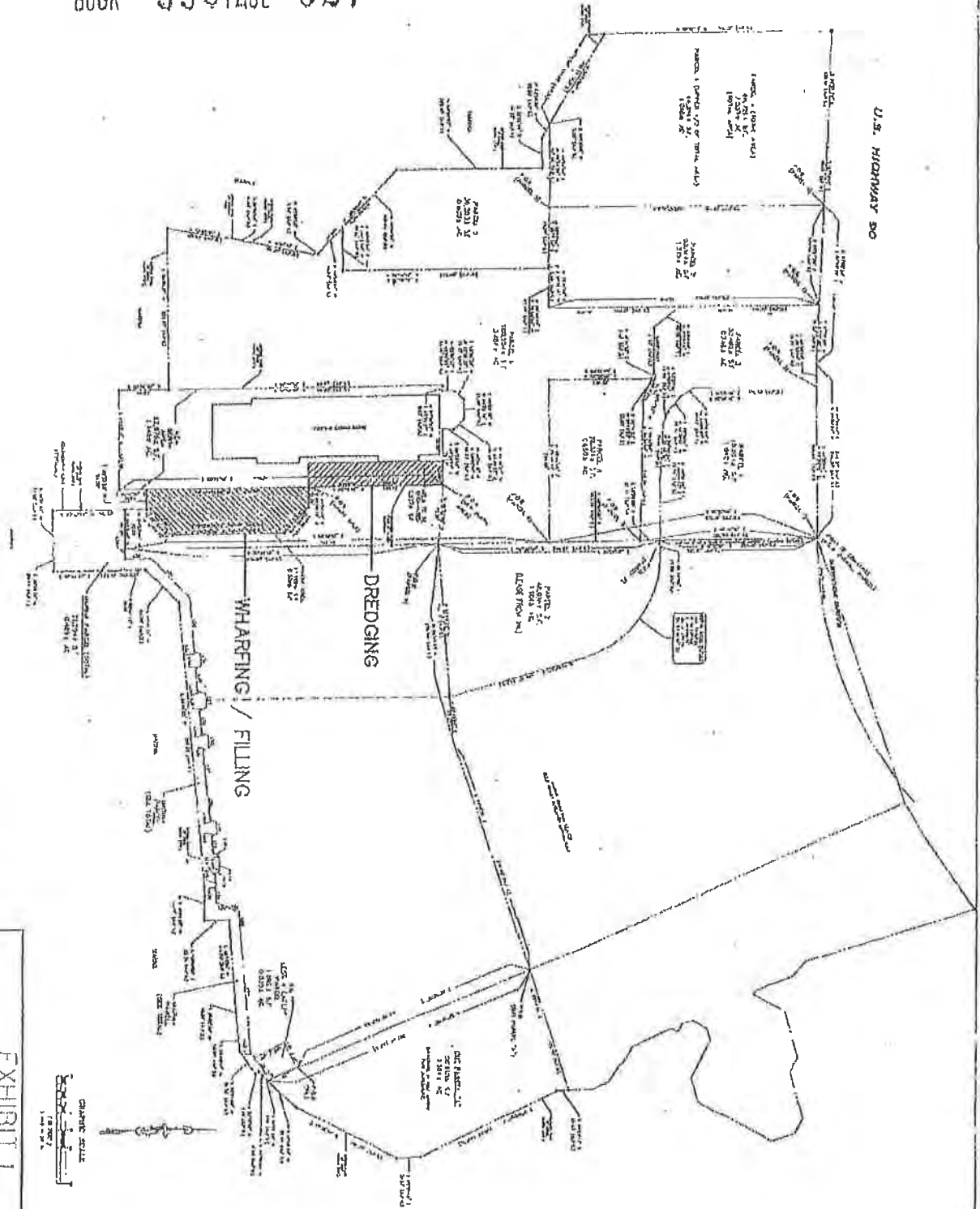
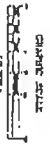


EXHIBIT L



ISLE OF CAPRI CASINO
P.O. BOX 1000000

B & M BROWN & MITCHELL, INC.
Engineering & Environmental Consultants
1000 10th Street, Suite 1000, San Francisco, CA 94103
415.774.1000

Sheet No.	Date	Revised By	Checked By

Scale: 1" = 100'
 Date: 10/1/15
 Project: ISLE OF CAPRI CASINO
 10/1/15

BOOK 300 PAGE 628

COVACEVICH COMPROMISE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered on the 5th day of August, 2002, by and between the following parties—

the SECRETARY OF STATE for and on behalf of the State of Mississippi in his capacity as land commissioner for the State of Mississippi and as trustee of the Public Trust for Tidelands and Submerged Lands (STATE); and

the CITY OF BILOXI, a municipal corporation (CITY);

WHEREAS, STATE and CITY desire to resolve long-standing, conflicting claims and disputes in and to the following described property, in the City of Biloxi, Second Judicial District of Harrison County, Mississippi:

the property covered and described in the Sublease and Agreement by and between, Casino Parking, Inc., Covacevich Yacht & Sail, Inc. and the City of Biloxi on September 24, 1993, a Recording Memorandum being of record in Book 263, Page 97, in the Office of the Chancery Clerk of Harrison County, Second Judicial District.

(Hereinafter referred to as COVACEVICH PROPERTY, which is designated by cross-hatching on the plat on Exhibit A attached hereto.)

AND WHEREAS, upon entry into the Union in 1817, the State of Mississippi became the sovereign owner for the use and benefit of the people of all water bottoms and submerged lands and all lands within the ebb and flow of the tide and up to the line of mean high tide, said lands being commonly known as public trust tidelands and submerged lands;

AND WHEREAS, the State of Mississippi's title to and ownership of the public trust tidelands may not be alienated or otherwise affected by avulsion or by filling or other artificial or non-natural means;

AND WHEREAS, the State of Mississippi asserts that COVACEVICH PROPERTY was public trust tidelands at the time of statehood and has at all times since remained public trust tidelands;

AND WHEREAS, by various agreements, deeds and condemnation proceedings, CITY has acquired rights and claims to rights to the COVACEVICH PROPERTY.

AND WHEREAS, unresolved disputes arising from conflicting claims in and to COVACEVICH PROPERTY have been an impediment to further development and the financing of development upon COVACEVICH PROPERTY;

EXHIBIT

"2"

COVACEVICH COMPROMISE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered on the 15th day of August, 2002, by and between the following parties—

the SECRETARY OF STATE for and on behalf of the State of Mississippi in his capacity as land commissioner for the State of Mississippi and as trustee of the Public Trust for Tidelands and Submerged Lands (STATE); and

the CITY OF BILOXI, a municipal corporation (CITY);

WHEREAS, STATE and CITY desire to resolve long-standing, conflicting claims and disputes in and to the following described property, in the City of Biloxi, Second Judicial District of Harrison County, Mississippi:

the property covered and described in the Sublease and Agreement by and between, Casino Parking, Inc., Covacevich Yacht & Sail, Inc. and the City of Biloxi on September 24, 1993, a Recording Memorandum being of record in Book 263, Page 97, in the Office of the Chancery Clerk of Harrison County, Second Judicial District.

(Hereinafter referred to as COVACEVICH PROPERTY, which is designated by cross-hatching on the plat on Exhibit A attached hereto.)

AND WHEREAS, upon entry into the Union in 1817, the State of Mississippi became the sovereign owner for the use and benefit of the people of all water bottoms and submerged lands and all lands within the ebb and flow of the tide and up to the line of mean high tide, said lands being commonly known as public trust tidelands and submerged lands;

AND WHEREAS, the State of Mississippi's title to and ownership of the public trust tidelands may not be alienated or otherwise affected by avulsion or by filling or other artificial or non-natural means;

AND WHEREAS, the State of Mississippi asserts that COVACEVICH PROPERTY was public trust tidelands at the time of statehood and has at all times since remained public trust tidelands;

AND WHEREAS, by various agreements, deeds and condemnation proceedings, CITY has acquired rights and claims to rights to the COVACEVICH PROPERTY.

AND WHEREAS, unresolved disputes arising from conflicting claims in and to COVACEVICH PROPERTY have been an impediment to further development and the financing of development upon COVACEVICH PROPERTY;

AND WHEREAS, believing it is in their best interests, STATE and CITY desire to amicably resolve said disputes, and so avoid the financial costs, loss of time and the danger of loss of possession of property which would inevitably result from potentially protracted litigation, and to enable continued use and development in a planned and orderly fashion without the uncertainties, added expense and delays caused by uncertain titles and the possibility of litigation.

AND WHEREAS, STATE, CITY, ISLE and Board of Trustees of State Institutions of Higher Learning are contemporaneously entering into the POINT CADET AGREEMENT (as defined in Paragraph I(3) hereof) in order to resolve certain claims and disputes concerning the POINT CADET PROPERTY (as defined in Paragraph I(4) hereof).

NOW THEREFORE, in consideration of the premises and of the interests hereinbefore identified and in recognition of the benefits hereunder flowing to each party under this AGREEMENT, STATE and CITY, each intending to be bound by the entirety of this AGREEMENT, hereby agree as follows:

I. Definitions

(1) STATE LEASE shall mean and include the following tidelands lease insofar as said lease covers the COVACEVICH PROPERTY—

Lease from the Secretary of State to City of Biloxi dated July 15, 1988, of record in Book 197, Page 546, in the office of the Chancery Clerk of Harrison County, Second Judicial District, and Addendum to said lease dated April 26, 1995, of record in Book 283, Page 369, in the office of the Chancery Clerk of Harrison County, Second Judicial District, as amended pursuant to the POINT CADET AGREEMENT, together with any additional amendments thereto, covering the property designated by cross-hatching on the plat on Exhibit B attached hereto;

(2) CITY LEASE shall mean and include the following leases—

Lease from Point Cadet Development Corporation to Covacevich Yacht & Sail Inc. dated June 1, 1987, a memorandum of which is of record in Book 185, Page 37, in the office of the Chancery Clerk of Harrison County, Second Judicial District; First Amendment to lease dated January 24, 1989 (unrecorded); Second Amendment to lease dated June 4, 1990, of record in Book 221, Page 495, in the office of the Chancery Clerk of Harrison County, Second Judicial District; Third Amendment to lease dated December 21, 1992 (unrecorded); Fourth Amendment to lease dated May 17, 1993 (unrecorded); Sublease and Agreement by and between Casino Parking Inc., Covacevich Yacht & Sail, Inc., City of Biloxi, Biloxi Casino Corp., Casino Magic Corp., Riverboat Corporation of Mississippi, Casino America, Inc. and Point Cadet Development Corporation dated October 1, 1993 (unrecorded); together with any additional amendments, renewals and

extensions to said lease and sublease, said lease and sublease generally being referred to as the "Joint Parking Lease."

(3) POINT CADET AGREEMENT shall mean the Point Cadet Compromise and Settlement Agreement entered into by STATE, CITY, Isle of Capri Casinos, Inc. and Riverboat Corporation of Mississippi, a Mississippi corporation, doing business as the Isle of Capri Casino (ISLE) and Board of Trustees of State Institutions of Higher Learning in its own capacity and on behalf of the University of Southern Mississippi, Gulf Coast Research Laboratory, and the J. L. Scott Marine Education Center (collectively IHL).

(4) POINT CADET PROPERTY shall mean that property as described and defined in the POINT CADET AGREEMENT designated by cross-hatching on the plat on Exhibit C attached hereto;

II. Settlement

(1) As a resolution of the tidelands boundary issues between STATE and CITY and in consideration of the mutual covenants, promises, and revenue sharing provisions contained in Paragraph IV hereof, it is agreed that (i) the interest of CITY in the COVACEVICH PROPERTY is a vested undivided one-half (1/2) interest; (ii) the interest of the State of Mississippi in the COVACEVICH PROPERTY is a vested undivided one-half (1/2) interest; and (iii) STATE and CITY shall hereafter hold and administer the COVACEVICH PROPERTY according to the terms of this AGREEMENT.

(2) STATE and CITY agree that COVACEVICH PROPERTY shall be held as a tenancy in common as public trust property. All future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting COVACEVICH PROPERTY or any interests therein must be executed jointly by STATE and CITY.

III. Status of Existing Leases and Obligations of the Parties Thereunder

(1) STATE and CITY have reached a compromise and settlement agreement on all issues pertaining to the proper amount of rental under the STATE LEASE, which agreement is set forth in the POINT CADET AGREEMENT. It is expressly agreed and understood that the sum set forth in Paragraph III(4) of the POINT CADET AGREEMENT also covers and includes the tidelands lease rent for the COVACEVICH PROPERTY, and that the terms and provisions of Paragraph III(4) of the POINT CADET AGREEMENT extend to and cover the COVACEVICH PROPERTY with the express exclusion of the provisions relating to the lease of the POINT CADET PROPERTY to a party other than ISLE.

(2) STATE and CITY acknowledge and recognize STATE LEASE and CITY LEASE, which shall remain binding in all of their terms and provisions, except as may be inconsistent with the terms of this AGREEMENT. In the event of a conflict between STATE LEASE and this AGREEMENT or CITY LEASE and this AGREEMENT, then the terms of this AGREEMENT shall control. Except as provided herein, all obligations and duties of any party

to STATE LEASE and CITY LEASE shall remain the sole obligation and duty of each party in the same manner after this AGREEMENT as existed before this AGREEMENT. Unless otherwise expressly provided in herein, this AGREEMENT is not intended to and shall not be construed to cause another party to assume or share any duties or obligations under the existing leases that were not an obligation of the party prior to this AGREEMENT.

(3) Notwithstanding the provisions contained in Paragraph III(2) of this AGREEMENT, the parties to this AGREEMENT acknowledge and recognize the following agreements affecting the COVACEVICH PROPERTY, insofar as said agreements otherwise remain in force and effect, in addition to the existing STATE LEASE and CITY LEASE:

(a) All agreements, contracts, or covenants either created by or incurred in conjunction with the issuance of bonds or any other form of secured financing which encumbers any portion of the COVACEVICH PROPERTY or is secured by a pledge of either rents generated by or income created by any portion of the COVACEVICH PROPERTY.

IV. The Division of Rents under Existing and Future Leases

(1) From and after the effective date of this AGREEMENT, all rents due or to become due under the terms and provisions of existing CITY LEASE, or under any future amendments, restatements, extensions or renewals thereof, as well as under any new leases of the property included in CITY LEASE or any portion thereof shall be divided and shared as follows:

(a) CITY will receive all rents up to an amount equal to three hundred fifty-two thousand and no/100 dollars (\$352,000.00).

(b) All rents in excess of three hundred fifty-two thousand and no/100 dollars (\$352,000.00) will be divided as follows—

One-half (1/2) to STATE
One-half (1/2) to CITY.

(2) The collection and disbursement of all rents under existing and future leases shall be made in accordance with Paragraph VIII hereof. This AGREEMENT, upon court approval, shall constitute notice to all obligated to pay rent of the change in rent collection procedures set forth in Article VIII hereof. STATE, CITY and ISLE agree to cooperate to take necessary action to cause any payments due under CITY LEASE from any person or entity not a party to this agreement to be made pursuant to Article VIII of this Agreement.

(3) The share of rents allocated to STATE under this AGREEMENT shall be paid over to the "Public Trust Tidelands Fund" upon disbursement from the "Point Cadet Leasing Fund" as defined in Article VIII of this AGREEMENT.

V. Paragraph Intentionally Omitted.

VI. New Master Plan

(1) The NEW MASTER PLAN contemplated by Paragraph VI of the POINT CADET AGREEMENT shall include the future commercial development of the COVACEVICH PROPERTY.

VI. Paragraph Intentionally Omitted.

VIII. Court Approval of this Agreement of Settlement and Compromise

(1) Upon execution of this AGREEMENT by all parties, said parties shall cooperate and use their best efforts to file an appropriate proceeding in the Chancery Court of the Harrison County, Second Judicial District, to obtain court approval of the terms and provisions of this AGREEMENT. The petition to the Court will include a request that the judgment of the Court approving the terms and provisions of this settlement include directions to the State Treasurer to create or designate a special fund called the "Point Cadet Leasing Fund" to be administered by the Secretary of State.

(2) Rents under STATE LEASE and CITY LEASE and any new leases of the COVACEVICH PROPERTY, or any portion thereof, will be paid to the "Point Cadet Leasing Fund." Disbursements from the "Point Cadet Leasing Fund" shall be made by the State Treasurer upon direction of the Secretary of State in accordance with the terms of this AGREEMENT. STATE and CITY shall enter an agreement establishing the manner and times for making disbursements contemplated by this AGREEMENT from the "Point Cadet Leasing Fund."

(3) STATE and CITY hereby agree and stipulate that no resolution reached in this AGREEMENT will be used in any proceeding or litigation, either offensively or defensively, relating to any claim or interest involving any other property beyond the COVACEVICH PROPERTY.

IX. Miscellaneous

(1) Each party to this AGREEMENT shall be solely responsible and shall assume the defense of any claim arising under its chain of title.

(2) This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

(3) Point Cadet Development Corporation acknowledges the terms and conditions of this AGREEMENT and agrees to be bound hereby and to execute and deliver such other documentation as may from time to time be necessary or appropriate in furtherance of the terms hereof.

(4) The Attorney General of the State of Mississippi approves this AGREEMENT in his capacity as legal counsel for STATE.

(5) The parties hereto agree to amend this AGREEMENT from time to time to incorporate more specific descriptions of property and tracts depicted on the plats on exhibits attached hereto, as such descriptions become available.

(6) To the extent the rights, obligations, covenants and duties herein affect the use, possession, disposition, assignment, transfer, lease or encumbrance of real property, those rights obligations, covenants, and duties shall run with the land described herein as the COVACEVICH PROPERTY.


X. Effective Date of Agreement

This AGREEMENT shall take effect and shall be recorded with the Chancery Clerk of Harrison County, Second Judicial District following entry of a judgment of the Chancery Court of Harrison County, Second Judicial District.

STATE OF MISSISSIPPI, BY AND THROUGH ERIC
CLARK, SECRETARY OF STATE

AND

ERIC CLARK, SECRETARY OF STATE, AS TRUSTEE
OF THE PUBLIC TRUST TIDELANDS

By 
ERIC CLARK
Executed this the 12th day of August, 2002

CITY OF BILOXI

By A. J. Holloway
A. J. HOLLOWAY, MAYOR
Executed this the 15th day of August, 2002

Attest Brenda H. Johnston
BRENDA H. JOHNSTON, MUNICIPAL CLERK
Executed this the 15th day of August, 2002

APPROVED BY:

Ronnie Musgrove
RONNIE MUSGROVE, GOVERNOR
Executed this the 13th day of August, 2002

MIKE MOORE, ATTORNEY GENERAL
FOR THE STATE OF MISSISSIPPI
IN HIS CAPACITY AS LEGAL COUNSEL
FOR, ERIC CLARK, SECRETARY OF STATE
AND BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

By Mike Moore
MIKE MOORE
Executed this the 13th day of August, 2002

POINT CADET DEVELOPMENT CORPORATION

By A. J. Holloway
A. J. HOLLOWAY, PRESIDENT
Executed this the 15th day of August, 2002

Attest Harold McDonald
HAROLD MCDONALD, SECRETARY
Executed this the 15th day of August, 2002

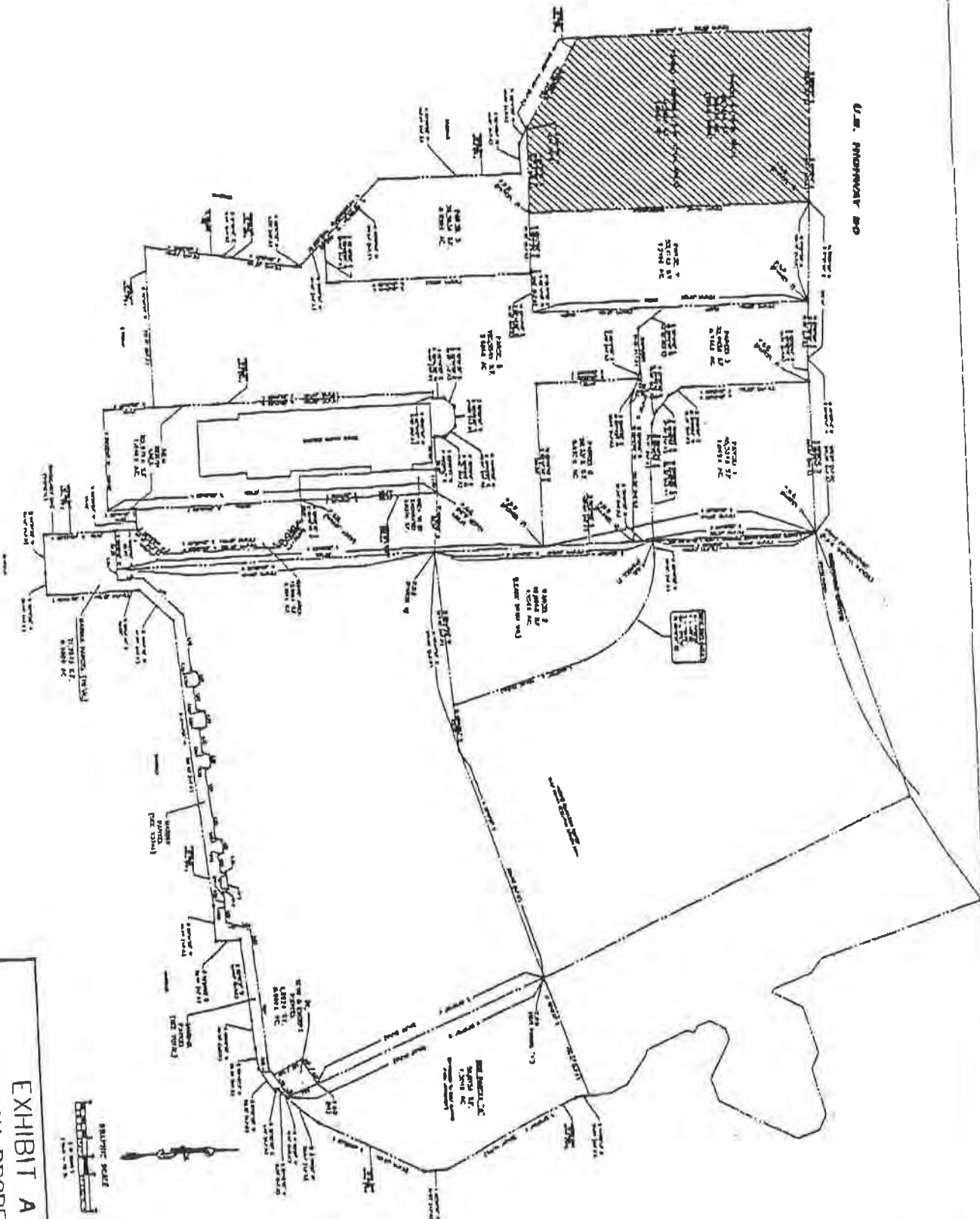


EXHIBIT A
COVACEMICH PROPERTY

Sheet 5 of 5	Scale	Date	Drawn	Checked	Approved

ISLAND OF CAPRI CASINO
BLM SURVEY

B M BROWN & MITCHELL, INC.
Engineers & Environmental Consultants
1000 1st Street, Suite 1000, San Francisco, CA 94103
Phone: (415) 774-1177 Fax: (415) 774-1178

U.S. HIGHWAY 90

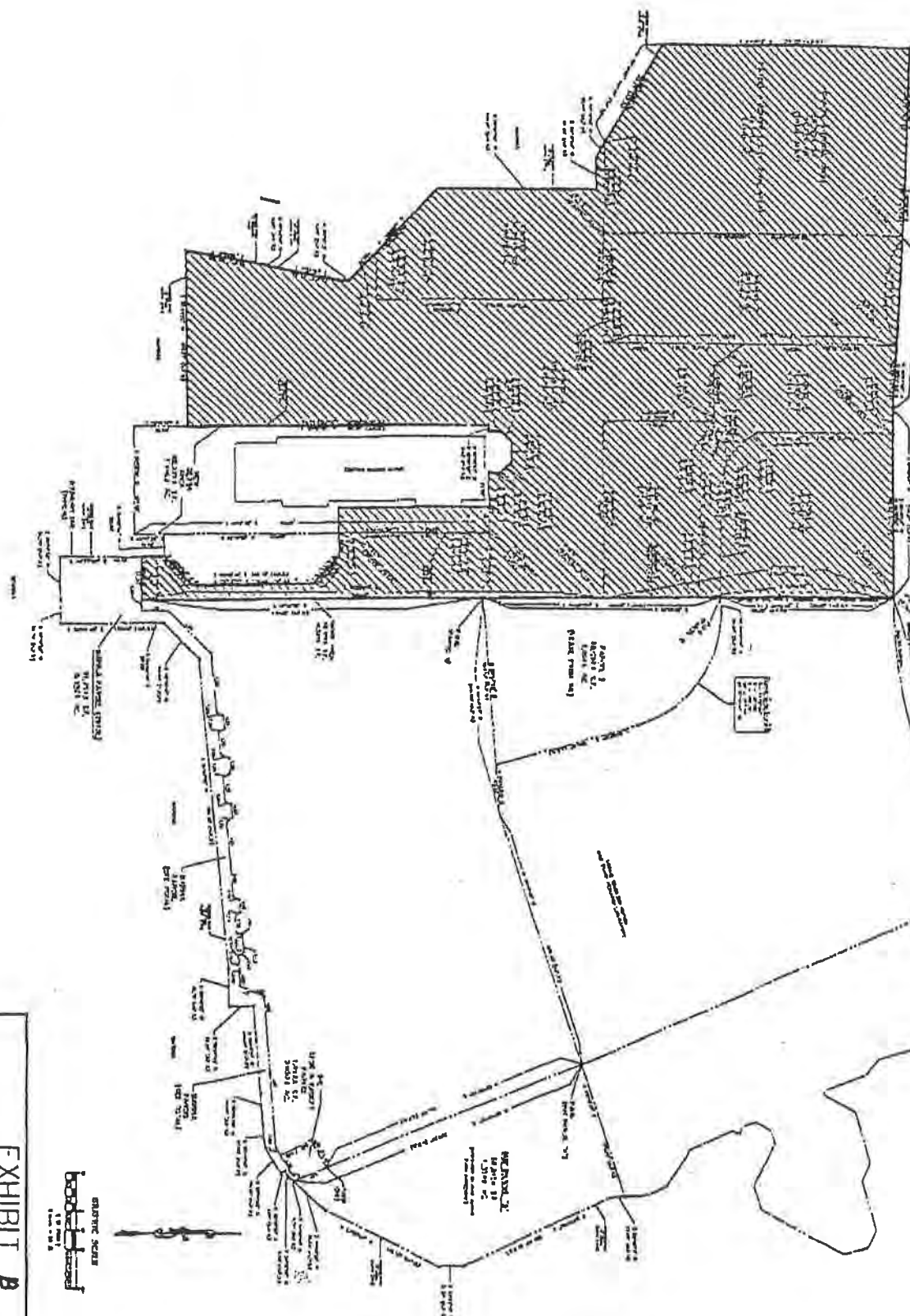


EXHIBIT B
 TIDELANDS LEASE
 TO CITY OF DILOXI - B



EXHIBIT C
POINT CADET PROPERTY



ISLE OF CAPRI CASINO
3000 W. WISCONSIN

B. BROWN & MITCHELL, INC.
Engineers & Environmental Consultants

24CH2:02-cv-00760-JS	Sheet 3 of 7
----------------------	--------------

--	--	--	--	--	--



2nd Judicial District
Instrument Number 2002 2224 D
Filed 8 15 2002 2 29 P
Total Fees 8.00
Book 390 Page 587-639 Recorded

BOOK 390 PAGE 587

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

FILED
AUG 1 2002
MISSISSIPPI CLERK
Muriel D.C.

IN THE MATTER OF THE STEWARDSHIP OF
THE PUBLIC TRUST TIDELANDS

CIVIL ACTION NO. C2902-02-760

SECRETARY OF STATE ERIC CLARK,
TRUSTEE AND PETITIONER; CITY OF BILOXI,
A MUNICIPAL CORPORATION; BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
IN ITS OWN CAPACITY AND ON BEHALF OF
THE UNIVERSITY OF SOUTHERN MISSISSIPPI,
THE GULF COAST RESEARCH LABORATORY,
AND THE J. L. SCOTT MARINE EDUCATION CENTER;
ISLE OF CAPRI CASINOS, INC. AND RIVERBOAT
CORPORATION OF MISSISSIPPI, A MISSISSIPPI
CORPORATION, D/B/A THE ISLE OF CAPRI CASINO;
THE POINT CADET DEVELOPMENT CORPORATION, A
MISSISSIPPI NON-PROFIT CORPORATION, CO-PETITIONERS

DECREE APPROVING AGREEMENTS RELATING TO POINT CADET PROPERTIES

THIS DAY THIS CAUSE came on to be heard on the Petition filed by Petitioner Secretary of State Eric Clark, for and on behalf of the State of Mississippi, in his capacity as land commissioner for the State of Mississippi and as trustee of the Public Trust for Tidelands and Submerged Lands (hereinafter referred to as the STATE), by and through the Attorney General, and Co-Petitioners the City of Biloxi, a municipal corporation (hereinafter referred to as CITY), the Board of Trustees of State Institutions of Higher Learning in its own capacity and on behalf of the University of Southern Mississippi, the Gulf Coast Research Laboratory, and the J. L. Scott Marine Education Center (hereinafter referred to collectively as IHL) and the Isle of Capri Casinos, Inc. and Riverboat Corporation of Mississippi, a Mississippi corporation, d/b/a the Isle

EXHIBIT
"3"

BOOK 290 PAGE 158

of Capri Casino (hereinafter referred to as ISLE), and The Point Cadet Development Corporation, a Mississippi non-profit corporation, for approval of the Point Cadet Compromise and Settlement Agreement, the Covacevich Compromise and Settlement Agreement, and the Casino Berth Rental Tract Agreement and authorization for the Petitioner and Co-Petitioners to carry out the terms and provisions of said agreements. The Court, having heard and considered the same and being fully advised in the premises, finds as follows, to-wit:

(1) Long-standing, conflicting claims and disputes between STATE, CITY, IHL and ISLE exist in and to the following described property, in the City of Biloxi, Second Judicial District of Harrison County, Mississippi:

COVACEVICH PROPERTY

the property covered and described in the Sublease and Agreement by and between, Casino Parking, Inc., Covacevich Yacht & Sail, Inc. and the City of Biloxi on September 24, 1993, a Recording Memorandum being of record in Book 263, Page 97, in the Office of the Chancery Clerk of Harrison County, Second Judicial District.

(Hereinafter referred to as COVACEVICH PROPERTY, which is designated by cross-hatching on the plat on Exhibit A attached to the Covacevich Agreement referenced in paragraph 10 herein below)

POINT CADET PROPERTY

Said property is bounded on the North by U.S. Highway 90, also known as East Beach Boulevard; on the West by an extension into the Gulf of Mexico of the east line of Lot 3, Block 4 of the Summerville Addition, a subdivision in the City of Biloxi, a map or plat of said subdivision being of record in the Office of the Chancery Clerk of Harrison County, Mississippi; on the South and East by the Gulf of Mexico and/or Mississippi Sound and the Bay of Biloxi, less and except the COVACEVICH PROPERTY. (Hereinafter referred to as POINT CADET PROPERTY, which is designated by cross-hatching on the plat on Exhibit A to the Point Cadet Compromise and Settlement Agreement referenced in paragraph 10 herein below)

(2) Upon entry into the Union in 1817, the State of Mississippi became the sovereign owner for the use and benefit of the people of all water bottoms and submerged lands and all

BOOK 390 PAGE 589

lands within the ebb and flow of the tide and up to the line of mean high tide, said lands being commonly known as public trust tidelands and submerged lands. By law, all tidelands, tidewaters and submerged water bottoms along the Mississippi Gulf Coast are held by the State of Mississippi in the Public Tidelands Trust for the use and benefit of the people of Mississippi. Miss. Code §29-15-5. The State of Mississippi's title to and ownership of the public trust tidelands may not be alienated or otherwise affected by avulsion or by filling or other artificial or non-natural means;

(3) The STATE claims that POINT CADET PROPERTY and COVACEVICH PROPERTY were public trust tidelands at the time of statehood and have at all times since remained public trust tidelands; and over the years a number of public purposes have been found in fact to which tidelands, their waters, submerged water bottoms and other assets of the Public Tidelands Trust are practicably amenable and therefore may be devoted. These public purposes include navigation and transportation, commerce, economic and industrial development, fishing, environmental protection and preservation, enhancement of aquatic, avarian and marine life, bathing, swimming, recreational activities generally, tourism, development of mineral resources, sea aquaculture. In its stewardship of the aforesaid Public Tidelands Trust, the State has formally declared that it will act prudently and with due regard for its obligations as a fiduciary, that it will pursue the higher public interest in compliance with the public purposes of the Trust, see Miss. Code §§29-15-3, 49-27-3, and that it will in all things act, accomplish and advance the purposes of the Trust, Miss. Code §49-15-301(1). In connection therewith, it is in the best interest of the public trust property known as the POINT CADET PROPERTY and COVACEVICH PROPERTY that the STATE, CITY, IHL AND ISLE, resolve long-standing, conflicting claims and title disputes in and to said property;

BOOK 390 PAGE 594

(4) By various agreements, deeds and condemnation proceedings, CITY has acquired rights and claims to rights to a portion of POINT CADET PROPERTY and COVACEVICH PROPERTY generally lying west of a line described as a southward extension of the West line of Lot 4 Block 5 of the Summerville Addition of the City of Biloxi, and CITY likewise claims ownership of said westerly part of POINT CADET PROPERTY; and CITY also claims leasehold interests in some of POINT CADET PROPERTY lying east of such southerly line extension (designated by cross-hatching on the plat on Exhibit D to the Point Cadet Compromise and Settlement Agreement referenced in paragraph 10 herein below);

(5) IHL acquired rights and claims to rights to a portion of POINT CADET PROPERTY generally lying East of a line described as the southward extension of the West line of Lot 4 Block 5 of the Summerville Addition of the City of Biloxi, by three Quitclaim Deeds from the United States of America filed in the Land Records of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi:

Quitclaim dated November 1, 1973 in Book 44, Pages 374-386,

Quitclaim dated March 27, 1973 in Book 38, Pages 449-459 and

Quitclaim dated June 2, 1966 in Book 570, Pages 536-547

IHL likewise claims ownership of said easterly part of POINT CADET PROPERTY. IHL has leased to CITY a portion of said property as shown on Exhibit D to the Point Cadet Compromise and Settlement Agreement referenced in paragraph 10 herein below;

(6) ISLE does not claim any fee ownership of POINT CADET PROPERTY, but holds leasehold interests in POINT CADET PROPERTY on which it operates its business;

(7) It is the declared public policy of this State in Miss. Code Ann. §29-15-3 to favor the

BOOK 390 PAGE 591

preservation of the natural state of the public trust tidelands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the public purposes of the public trust in which such tidelands are held and it is a higher public purpose of this State and the public trust tidelands trust to resolve the uncertainty and disputes which have arisen as to the location of the boundary between the State's public trust tidelands and the upland property and as determined by the Mississippi Supreme Court, the laws of this state and Miss Code Ann. §29-15-1 *et seq.*

(8) The STATE acts herein by and through Eric Clark in his official capacity as the duly elected Secretary of State of the State of Mississippi, as trustee of the Public Trust Tidelands, and as the land commissioner of the State of Mississippi. Secretary Clark in his official capacity, as aforesaid, is charged with all executive responsibilities and duties devolved upon his office by the Constitution and laws of the State of Mississippi. In his aforesaid official capacity and for and on behalf of the people, Secretary of State Clark is charged by law with broad discretionary authority and responsibility, including but not limited to the statutory and common law powers of a trustee, for the prudent and sensitive management, regulation, disposition and other forms of stewardship of all public trust assets or corpus, including all assets that are a part of the Public Tidelands Trust, for the use and benefit of the people of the State of Mississippi. See Miss. Code §§7-11-11, 29-15-1, *et seq.*, 91-9-101, *et seq.*, and others. In all respects, the STATE and the Secretary of State have acted and are acting prudently and with due regard for their fiduciary duty to the people of the State of Mississippi. Miss. Code §91-9-107 (1) and (2);

(9) The Chancery Court has jurisdiction to hear boundary disputes and trust matters under

BOOK 390 PAGE 599

Miss. Code §§9-5-81, 9-5-83, and Const. Miss., Art.6, §§159,160.

(10) The STATE, CITY, IHL AND ISLE in furtherance of the declared public policy of the State of Mississippi and believing it to be in their best interest to amicably resolve said disputes, so as to avoid the financial costs, loss of time and the danger of loss of possession of property which would inevitably result from potentially protracted litigation have entered into three agreements, (a) the first agreement is between the STATE, CITY, IHL and ISLE entitled Point Cadet Compromise and Settlement Agreement, a copy of which is attached hereto as Exhibit "A"; and incorporated and made a part hereof (hereinafter referred to as Point Cadet Agreement); (b) the second agreement is between STATE and CITY entitled Covacevich Compromise and Settlement Agreement, a copy of which is attached hereto as Exhibit "B" and incorporated and made a part hereof (hereinafter referred to as Covacevich Agreement); and (c) the third agreement is between STATE and ISLE, entitled Agreement on Casino Berth Rental Tract, a copy of which is attached to the Petition filed herewith as Exhibit "C", and incorporated and made a part hereof as if copied in full herein (hereinafter referred to as Casino Berth Rental Tract Agreement), in order to enable the continued use and development of the POINT CADET PROPERTY in a planned and orderly fashion without the uncertainties, added expense and delays caused by uncertain titles and the possibility of litigation;

(11) The Point Cadet Agreement provides that as a resolution of the tidelands boundary issues between STATE and CITY that City shall be vested with title to an undivided 1/3 interest in the POINT CADET PROPERTY and that the STATE shall be vested with title to an undivided 2/3 interest in the POINT CADET PROPERTY. The undivided 2/3 interest of the STATE shall encompass the claim of STATE that the POINT CADET PROPERTY is Public Trust Tidelands, together with the claim of IHL, under deeds from the United States of America

BOOK 300 PAGE 593

identified above herein. The POINT CADET PROPERTY will be held as a tenancy in common as public trust property. In lieu of litigating the claims of STATE, CITY and IHL to the POINT CADET PROPERTY, STATE, CITY and IHL will accept the benefits and obligation under the Point Cadet Agreement and POINT CADET PROPERTY will hereafter be managed under terms of Point Cadet Agreement. All future renewals, leases, assignments, easements, consents, waivers and other agreements regarding the POINT CADET PROPERTY shall be executed jointly by STATE and CITY. The agreement provides for the recognition of existing leases and agreements and for the termination of the existing lease between IHL and CITY. STATE and CITY will execute a new public purpose lease to IHL for the use and benefit of the Gulf Coast Research Laboratory. The agreement recognizes the right of CITY and IHL to receive certain rent payments and provides for division of additional rent between the STATE, CITY and IHL. The share of rents allocated to IHL will be dedicated to and used exclusively for the operation and expansion of Scott Center and/or other educationally sound programs, operations or facilities on POINT CADET PROPERTY. Additional rent for tidelands is provided in the agreement. A buyout provision is provided for IHL in the event that IHL abandons use of the POINT CADET PROPERTY by the Gulf Coast Research Laboratory and the J. L. Scott Marine Education Center and/or other educationally sound programs operations or facilities. The agreement contemplates the execution of a new lease to allow development of a multi-level parking garage and new hotel at pre-approved locations. In conjunction with construction of the new garage, ISLE will provide landscaping for a specified area of the POINT CADET PROPERTY. A new master plan is funded and will guide future development on the POINT CADET PROPERTY. Recognition is given to existing exclusivity agreements in favor of ISLE.

BOOK 390 PAGE 594

(12) The **Covacevich Agreement** provides that as a resolution of the tidelands boundary issues between STATE and CITY, that CITY shall be vested with title to an undivided 1/2 interest in the COVACEVICH PROPERTY and that the STATE shall be vested with title to an undivided 1/2 interest in the COVACEVICH PROPERTY. The COVACEVICH PROPERTY will be held as a tenancy in common as public trust property. In lieu of litigating the claims of STATE and CITY to the COVACEVICH PROPERTY, STATE and CITY will accept the benefits and obligation under the **Covacevich Agreement**. The COVACEVICH PROPERTY shall be held and managed according to the terms and provisions of the **Covacevich Agreement** and all future renewals, leases, assignments, easements, consents, waivers and other agreements regarding the COVACEVICH PROPERTY shall be executed jointly by STATE and CITY. The agreement provides for the recognition of existing leases. The agreement recognizes the right of CITY to receive certain rent payments and provides for division of additional rent between the STATE and CITY.

(13) As between STATE and ISLE, the **Agreement on Casino Berth Tract** recognizes the existing berth rental agreement between the Biloxi Port Commission and ISLE and gives assurances to ISLE concerning planned dredging and wharfing to reconfigure the tract and concerning leasing of the tract.

(14) The Point Cadet Property has not for many years existed in its natural state having been used and developed commercially.

(15) Petitioner and Co-Petitioners would show that the terms and provision of the **Point Cadet Agreement**, **Covacevich Agreement** and **Agreement on Casino Berth Rental Tract** are consistent with and fulfill the public policy of this State by making the property available for further economic development and public use through the expansion of existing businesses and

BOOK 390 PAGE 391

public educational facilities, and that there will not be any loss of natural undisturbed areas. The approval of this Court will give effect to said agreements which will further advance the public policy of this State by resolving the uncertainty and disputes as the boundary between the state's public trust tidelands and the upland property.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

(1) In a resolution of the tidelands boundary issues on the **Covacevich Property**, STATE and CITY have agreed that the interest of CITY in the **Covacevich Property** is a vested undivided one-half (1/2) interest; and that the interest of the State of Mississippi in the **Covacevich Property** is a vested undivided one-half (1/2) interest. Hereafter the STATE and CITY (i) shall hold the **Covacevich Property** as a tenancy in common as public trust property, (ii) shall jointly execute all future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting **Covacevich Property** or any interests therein, and (iii) shall further hold and administer the **Covacevich Property** according to the terms of the **Covacevich Agreement** attached hereto as **Exhibit "B"** and made a part of this Decree as though copied fully herein.

(2) In resolution of the tidelands boundary issues on the **Point Cadet Property** between STATE, IHL and CITY have agreed that the interest of CITY in the **Point Cadet Property** is a vested undivided one-third (1/3) interest and that the interest of the State of Mississippi in the **Point Cadet Property** is a vested undivided two-thirds (2/3) interest. The undivided two-thirds (2/3) interest of the State of Mississippi encompasses the claim of STATE that the **Point Cadet Property** is Public Trust Tidelands, together with the claim of IHL under deeds from the United States of America identified hereinabove. Hereafter the STATE and CITY (i) shall hold the **Point Cadet Property** as a tenancy in common as public trust property, (ii) shall jointly execute

BOOK 390 PAGE 596

all future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting **Point Cadet Property** or any interests therein, and (iii) shall further hold and administer the **Point Cadet Property** according to the terms of the **Point Cadet Agreement** attached hereto as **Exhibit "A"** and made a part of this Decree as though copied fully herein.

(3) Except with regard to IHL's participation in the **NEW MASTER PLAN** provided for in Paragraph VI of the **Point Cadet Agreement**, IHL has irrevocably appointed and authorized **STATE** to act in its behalf for all intents and purposes concerning **Point Cadet Property**, including execution of any and all renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto. In acting for IHL under this **AGREEMENT**, **STATE** will endeavor to maximize income for the benefit of IHL in executing any and all future renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto affecting said property. Prior to execution of any such renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements, **STATE** will discuss such execution with IHL.

(4) That in lieu of litigating the claims of **STATE**, **CITY** and IHL to the **Point Cadet Property** and the **Covacevich Property**, **STATE**, **CITY** and IHL have agreed to accept the benefits and obligations of the **Point Cadet Agreement** and the **Covacevich Agreement** and shall hereinafter be bound by the terms and provisions of said agreements.

(5) That the Secretary of State as trustee has the power and authority to execute the **Point Cadet Agreement**, the **Covacevich Agreement**, and the **Agreement on Casino Berth Rental Tract** and to present same unto the Court for ratification and approval,

BOOK 390 PAGE 397

(6) That the compromise and settlement by and between the Petitioner and Co-petitioners as expressed in the **Point Cadet Agreement**, the **Covacevich Agreement** and the **Agreement on Casino Berth Rental Tract** is consistent with and furthers the public trust and its purposes as well as the public policy of this State as expressed in MISS. CODE ANN. § 29-15-1 *et seq.*

(7) That the compromise and settlement by and between the Petitioner and Co-petitioners as expressed in the **Point Cadet Agreement**, the **Covacevich Agreement** and the **Agreement on Casino Berth Rental Tract** is approved by this Court as a prudent and reasonable exercise of trust authority and stewardship of the public trust by the Secretary of State.

(8) That the terms and provisions of the **Point Cadet Agreement**, the **Covacevich Agreement**, and the **Agreement on Casino Berth Rental Tract** are approved and the execution of said agreements by the Petitioner and the Co-Petitioners is hereby ratified and that the terms and provisions of said agreements shall take effect upon entry of a judgment on this petition and upon the recordation of said agreements in the land records of the office of the Chancery Clerk of Harrison County, Second Judicial District;

(9) That the Petitioner and Co-Petitioners are authorized to execute any documents, renewals, leases, assignments, easements, consents, waivers and other agreements including amendments and restatements thereto as provided in the **Point Cadet Agreement**, the **Covacevich Agreement**, and the **Agreement on Casino Berth Rental Tract** so as to give effect to all of the terms and provisions of said agreements;

(10) That the State Treasurer is directed to create and designate a special fund called "Point Cadet Leasing Fund", and that said funds will be administered by the Secretary of State;

BOOK 390 PAGE 733

(11) That rents under the existing leases described in the Point Cadet Agreement, the Covacevich Agreement, and the Agreement on Casino Berth Rental Tract and any new leases of the POINT CADET PROPERTY or any portion thereof, shall be paid to the "Point Cadet Leasing Fund"; and that disbursements from the "Point Cadet Leasing Fund" shall be made by the State Treasurer upon direction of the Secretary of State in accordance with the terms of the Point Cadet Agreement;

(12) That the Chancery Clerk is hereby directed to file a copy of this Decree with the attached exhibits of the Point Cadet Agreement, the Covacevich Agreement, and the Agreement on Casino Berth Rental Tract in the land records in the Office of the Chancery Clerk of Harrison County, Second Judicial District.

SO ORDERED, ADJUDGED AND DECREED on this, the 15th day of August, 2002.


CHANCELLOR

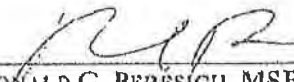
CERTIFIED TRUE COPY
JOHN MCADAMS
Chancery Court Clerk
Harrison County, MS
2nd Judicial District
By M. L. Adams D.C.

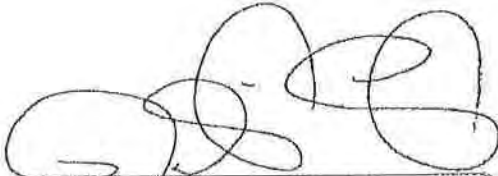
Approved as to form and content:

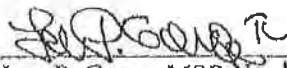

NANCY MORSE PARKES, MSB NO. 3506
SPECIAL ASSISTANT ATTORNEY GENERAL

BOOK 390 PAGE 599

Office of the Attorney General
P.O. Box 220
Jackson, MS 39205-0220
601-359-6376


RONALD G. PERESICH, MSB No. 4113
ATTORNEY FOR THE CITY OF BILOXI
AND ATTORNEY FOR THE POINT CADET
DEVELOPMENT CORPORATION
PAGE MANNINO PERESICH & McDERMOTT
759 VIEUX MARCHE MALL
P. O. DRAWER 289
BILOXI, MS 39533-0289
228-374-2100


MICHAEL F. CAVANAUGH, MSB No. 5933
ATTORNEY FOR ISLE
998 HOWARD AVENUE
P. O. DRAWER 1911
BILOXI, MS 39533-1911
228-374-2247


LEE P. GORE, MSB No. 4915
ATTORNEY FOR IHL
P. O. BOX 10051
HATTIESBURG, MS 39406-0051
601-266-5725

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2016

By: Representative Frierson

To: Appropriations

HOUSE BILL NO. 878
(As Sent to Governor)

1 AN ACT TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER SUMS
2 FROM CERTAIN FUNDS IN THE STATE TREASURY TO THE CAPITAL EXPENSE
3 FUND DURING FISCAL YEARS 2016 AND 2017; TO AMEND SECTIONS
4 27-103-125, 27-103-139 AND 27-103-211, MISSISSIPPI CODE OF 1972,
5 TO REVISE THE PERCENTAGE LIMITATION ON LEGISLATIVE APPROPRIATIONS
6 FROM THE STATE GENERAL FUND FOR FISCAL YEAR 2017; TO AMEND SECTION
7 27-103-213, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
8 DISTRIBUTION OF THE UNENCUMBERED ENDING CASH BALANCE IN THE STATE
9 GENERAL FUND AT THE END OF FISCAL YEAR 2016; TO AMEND SECTION
10 65-37-13, MISSISSIPPI CODE OF 1972, TO DELAY THE REQUIREMENT FOR
11 APPROPRIATIONS TO THE LOCAL SYSTEM BRIDGE REPLACEMENT AND
12 REHABILITATION PROGRAM; TO AMEND SECTION 43-13-405, MISSISSIPPI
13 CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE HEALTH
14 CARE TRUST FUND; TO AMEND SECTION 38, CHAPTER 102, LAWS OF 2015,
15 TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER
16 LEARNING TO MAKE EXPENDITURES FROM THE FISCAL YEAR 2016
17 APPROPRIATION FOR THE REPAIR AND RENOVATION OF A DORMITORY AT
18 MISSISSIPPI VALLEY STATE UNIVERSITY; TO AMEND SECTION 1, CHAPTER
19 103, LAWS OF 2015, TO REDUCE THE AMOUNT APPROPRIATED FOR THE
20 EXPENSES OF THE JOINT LEGISLATIVE BUDGET COMMITTEE IN THE FISCAL
21 YEAR 2016 APPROPRIATION; TO AMEND SECTION 3, CHAPTER 88, LAWS OF
22 2015, TO MOVE FUNDS AMONG VARIOUS CATEGORIES IN THE FISCAL YEAR
23 2016 APPROPRIATION FOR THE DEPARTMENT OF PUBLIC SAFETY; AND FOR
24 RELATED PURPOSES.

25 SECTION 1. (1) During fiscal year 2016, the State Fiscal
26 Officer shall transfer to the Capital Expense Fund out of the
27 following enumerated funds, the amounts listed below from each
28 fund:

29 FUND FUND NUMBER AMOUNT

H. B. No. 878
16/HR43/R1657SG
PAGE 1 (RF\EW)



~ OFFICIAL ~

G1/2



MISSISSIPPI LEGISLATURE
 2016 Regular Session
 To: Appropriations
 By: Senator(s) Clarke

Senate Bill 2362

(As Sent to Governor)

AN ACT ENTITLED THE "MISSISSIPPI BUDGET TRANSPARENCY AND SIMPLIFICATION ACT OF 2016"; TO PROVIDE THAT FROM AND AFTER JULY 1, 2016, NO STATE AGENCY SHALL CHARGE ANOTHER STATE AGENCY A FEE, ASSESSMENT, RENT OR OTHER CHARGE FOR SERVICES OR RESOURCES RECEIVED; TO PROVIDE THAT BEGINNING JULY 1, 2016, THE EXPENSES OF CERTAIN STATE SPECIAL FUND AGENCIES SHALL BE DEFRAYED BY APPROPRIATION OF THE LEGISLATURE FROM THE STATE GENERAL FUND, TO PROVIDE THAT ANY FEES, ASSESSMENTS OR OTHER CHARGES FOR THE SUPPORT OF SAID AGENCIES SHALL BE DEPOSITED INTO THE STATE GENERAL FUND, TO ABOLISH ANY SPECIAL FUNDS CREATED IN THE STATE TREASURY FOR THE SUPPORT OF SAID AGENCIES, AND TO PROVIDE CERTAIN LIMITATIONS ON AMOUNTS APPROPRIATED BY THE LEGISLATURE FOR THE SUPPORT OF SAID AGENCIES; TO AMEND SECTIONS 75-76-325, 75-76-33, 75-76-81, 75-76-85, 45-11-3, 45-11-5, 45-11-7, 25-53-5, 7-7-3, 25-53-29, 25-53-151, 25-53-171, 31-7-10, 63-9-31, 83-1-27, 83-2-33, 83-2-35, 83-5-17, 83-5-41, 83-5-45, 83-5-69, 83-5-72, 83-5-73, 83-5-77, 83-9-3, 83-17-71, 83-17-519, 83-19-21, 83-21-1, 83-37-29, 83-39-3, 83-73-9, 45-6-15, 53-1-77, 53-11-23, 53-1-7, 53-1-73, 53-3-13, 25-9-141, 7-9-22, 7-3-59, 23-15-5, 23-15-169.7, 29-1-95, 77-3-87, 77-1-6, 77-1-15, 77-1-29, 77-1-53, 77-3-8, 77-3-89, 77-3-503, 77-3-507, 77-3-509, 77-7-127, 77-7-333, 77-7-339, 77-7-337, 77-9-489, 77-11-201, 99-18-1, 27-19-179, 11-46-17, 71-3-100, 7-5-61, 25-9-119 AND 27-104-103, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL TRAFFIC AND CRIMINAL ASSESSMENTS SHALL BE DEPOSITED INTO THE STATE GENERAL FUND; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Mississippi Budget Transparency and Simplification Act of 2016."

SECTION 2. From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received. The provisions of this section shall not apply (a) to grants, contracts, pass-through funds, project fees or other charges for services between state agencies and the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State

EXHIBIT

"5"



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT

DEPARTMENT OF FINANCE AND ADMINISTRATION

LAURA D. JACKSON
EXECUTIVE DIRECTOR

July 5, 2016

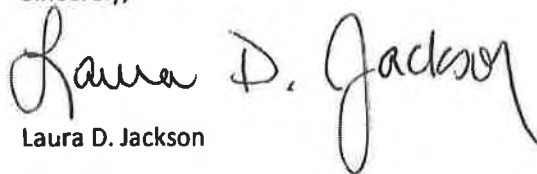
Andrew Gilich, Mayor
City of Biloxi
140 Lameuse Street
Biloxi, Mississippi 39533

Dear Mayor Gilich:

We are in receipt of your Notice of Claim letter dated June 24, 2016 regarding the Point Cadet Leasing Funds and the amended letter dated July 1, 2016. As you are aware, House Bill 878 (2016 Regular Legislative Session) instructed the State Fiscal Officer to transfer certain funds to the Capital Expense Fund during Fiscal Year 2016. The Treasury fund that received and distributed the Point Cadet Leasing Fund payments was among the funds listed in the legislation. The Secretary of State and the former State Fiscal Officer complied with the directive in the legislation and as a result, approximately \$1.6 million was transferred from the Point Cadet Leasing Fund.

As of today, July 1, 2016, there are insufficient funds in the Point Cadet Leasing Fund to make the payment of \$1,378,284.10 as stated in your July 1 demand letter. Since Friday, July 1, 2016 was my first day on the job as the State Fiscal Officer, please allow me to contact the legislative leadership to gain a better understanding of their intent. I will be in further contact with you in the next week.

Sincerely,


Laura D. Jackson

LDJ/la

Cc: Hon. Delbert Hosemann, Secretary of State
Gerald Blessey, Biloxi City Attorney

EXHIBIT

“6”

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

June 13, 2016

Honorable Delbert Hosemann
Secretary of State
Post Office Box 136
Jackson, MS 39205

Re: Effects of Senate Bill 2362 (2016) on nine funds administered by the Secretary of State

Dear Secretary Hosemann:

Attorney General Hood is in receipt of your request for an official opinion, and has assigned it to me for research and reply. Your request lists nine funds which are currently administered by the Secretary of State, and you ask about the effects of SB 2916, the FY2017 appropriation for the Secretary of State and SB 2362.

Issues Presented and Brief Responses

1. Is the Public Trust Tidelands Fund an exempt trust fund under SB 2362?

Response: Yes. The Public Trust Tidelands Fund is an exempt trust fund and is not abolished by SB 2362.

2. Is the Public Trust Tidelands Assessment Fund an exempt trust fund under SB 2362?

Response: Yes. The Public Trust Tidelands Assessment Fund is an exempt trust fund and is not abolished by SB 2362.

3. Is the Preneed Contract Loss Recovery Fund subject to the provisions of SB 2362?

Response: The Preneed Contract Loss Recovery Fund is not statutorily designated as a "trust fund." If the Preneed Contract Loss Recovery Fund does not contain fees, assessments or other revenues charged for the support of the Office of the Secretary of State, the fund is not abolished by SB 2362.



Honorable Delbert Hosemann
June 13, 2016
Page 2

4. Is the Point Cadet Lease Fund exempt from the provisions of SB 2362 and may the State Treasurer distribute funds pursuant to the terms of the Compromise and Settlement Agreement?

Response: If no funds in the Public Lands Trust Fund are used for the support of the Office of the Secretary of State, the fund is not abolished by SB 2362. Deposits and disbursements should continue as set forth in the Compromise and Settlement Agreement approved by court order.

5. Is the Mississippi Autism Board Fund captured by SB 2362? Should revenue continue to be deposited into the Mississippi Autism Board Fund? May Mississippi Autism Board Funds be used to pay the Board's administrative costs in fiscal year 2017?

Response: If the Mississippi Autism Board Fund does not contain fees, assessments or other revenues charged for the support of the Office of the Secretary of State, the fund is not abolished by SB 2362. Section 73-75-11 authorizes funds therein to be used for the expenses of the Mississippi Autism Board, and was not amended or repealed by SB 2362.

6. Does authority exist for the Office of the Secretary of State to pay counties under Miss. Code Ann. Section 23-15-5 for election related costs?

Response: Absent funds in the Elections Support Fund and absent funds and spending authority in the Secretary of State's FY 2017 appropriation, we see no authority for payments to be made to the counties for election expenses described in Section 23-15-5.

7. As a result of the Secretary of State's appropriation allowing only expenditures for the support and maintenance of the Office of the Secretary of State, does the Secretary have authority to reimburse counties for any unpaid taxes as provided in Section 29-1-95?

Response: The amounts payable to local taxing authorities for reimbursement of unpaid taxes and amounts payable as redemption fees to the county tax collectors and chancery clerks are paid from the Treasury, not from the "Land Records Maintenance Fund" established in Section 29-1-95. Such payments, certified in the manner required in Section 29-1-95, will continue to be made from the State Treasury from and after the effective date of July 1, 2016.

8. Can the Office of the Secretary of State continue to make disbursements to counties under Section 23-15-169.7?

Response: Amendments in SB 2362 to Section 23-15-169.7 redirect revenues for the Help Mississippi Vote Fund to the State General Fund. The Secretary of State will remain authorized to make disbursements under Section 23-15-169.7 to the extent that

Honorable Delbert Hosemann
June 13, 2016
Page 3

any funds are available.

9. Will fees collected pursuant to Miss. Code Ann. Section 7-3-59 continue to be deposited into a special fund in the State Treasury and used to pay debt service?

Response: No. Fees collected under Section 7-3-59 will be deposited into the State General Fund. Chapter 309 of the Laws of 2006 requires the State Treasurer to make these bond payments "from any funds in the State Treasury not otherwise appropriated." In addition, Section 7-9-39 authorizes and directs the State Treasurer to impound or set aside sufficient funds to pay all State bonds and interest thereon.

Applicable Law and Analysis

At the outset, it is important to understand that in MS AG Op., Brown (June 26, 2009) the Attorney General addressed the funding of State government on after July 1, 2009, in the event the Legislature failed to pass appropriation bills prior to that time. This office recognized the Legislature's exclusive power to appropriate funds but also recognized four exceptions to that power. At least one of these exceptions, i.e., agencies responsible for administering funds, trusts or bonds for which the Legislature has authorized continuous funding, is relevant to our analysis below. Previously, the expenditure of these special funds was generally not subject to limitations in appropriation bills because the expenditures were primarily for objects other than the general support of agencies. As such, these funds were considered to be "non-budgeted" by the Department of Finance and Administration.

Succinctly stated, the basic analysis of the effects of SB 2362 is as follows:

1. All State agencies are prohibited from charging another agency a fee, with the exception of education-related agencies.
2. Sixteen designated agencies will be general fund agencies. Any fees, assessments or other revenues charged for the support of these agencies are deposited in the State General Fund. Any special fund or depository established for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund. The basic analysis set forth above is subject to exceptions which may arise from existing or reenacted statutory provisions.
3. If a special fund account maintained by one of the sixteen agencies is a trust fund account, the account is not abolished and the balance is not transferred to the State General Fund.
4. If a special fund account maintained by one of the sixteen agencies is not a trust fund account, and the special fund account was established to receive fees,

Honorable Delbert Hosemann
June 13, 2016
Page 4

assessments or other revenues charged for the support of one of the sixteen designated agencies, then the special fund account shall be abolished and the balance transferred to the State General Fund. The general statement in Section 3 of SB 2362 abolishing an unnamed, unspecified group of funds does not affect funds which were specifically reenacted by the Legislature in SB 2362.

5. If a special fund account maintained by one of the sixteen agencies is not a trust fund account and the special fund account was established to receive monies other than fees, assessments or other revenues charged for the support of one of the sixteen designated agencies, then the special fund account will not be abolished and the balance will not be transferred to the State General Fund.

The basic analysis set forth above is subject to exceptions which may arise from existing or reenacted statutory provisions.

Senate Bill 2362 of the 2016 Regular Session, entitled the "Mississippi Transparency and Simplification Act of 2016," is effective from and after July 1, 2016.¹ Our analysis will largely focus on the relevant sections of SB 2362 and applicable rules of statutory construction. The general analysis set forth above is subject to other exceptions which may arise from existing or reenacted statutory provisions.

Section 2 of SB 2362 provides that "[f]rom and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received...".²

Section 3 of SB 2362 identifies sixteen State agencies, including the Office of the Secretary of State, whose expenses will hereinafter be defrayed by appropriation from the State General Fund. We understand that, prior to the effective date of SB 2362, the

¹ SB 2362 consists of seventy-two (72) sections and one hundred eighty-four (184) pages of text. Section 1 contains the title and Section 72 the effective date. Sections 2 and 3 contain new language. Sections 4 through 70 amend existing Mississippi Code sections by largely reenacting provisions of existing law and adding two subsections. The language in those two subsections is almost identical in each instance and reads as follows:

"From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section."

Section 71 inter alia reenacts existing provisions of Section 99-19-73 specifying recipients of numerous criminal fees and assessments while deleting all individual monetary amounts and adding "total" assessments to be directed to the "General Fund."

² Section 2 exempts certain transactions between state agencies and the Board of Trustees of the State Institutions of Higher Learning, public universities, the Mississippi Community College Board, public community colleges, and the State Department of Education from the general prohibition therein.

Honorable Delbert Hosemann
June 13, 2016
Page 6

expenses of these sixteen State agencies were defrayed, in part or in whole, by appropriation of special funds.³

Section 3 of SB 2362 provides that any fees, assessments or other revenues charged for the support of these sixteen agencies shall be deposited into the State General Fund and any special fund, i.e., "account," or depository established in the State Treasury for the deposit of such fees, assessments, or revenues shall be abolished. Remaining balances in these accounts or depositories will be transferred to the State General Fund.⁴ Further, this section provides that expenses previously paid from these accounts or depositories will be paid from the General Fund Account. Section 3 of SB 2362 does not specifically identify by name or number the accounts and depositories to be abolished.

In addition, Section 3 of SB 2362 expressly provides that its provisions "...shall not apply to any trust fund account that is maintained by..." any of the sixteen agencies. Therefore, any trust funds maintained by the sixteen agencies are not abolished under Section 3 of SB 2362 and will continue as otherwise authorized by existing laws. Non-trust fund accounts must be examined individually to determine whether the abolishment and transfer provisions in Section 3 of SB 2362 are applicable. Section 3 of SB 2362 reads, in relevant part, as follows:

(1) From and after July 1, 2016, the expenses of the following enumerated state agencies shall be defrayed by appropriation of the Legislature from the State General Fund: the State Fire Marshal, the State Fire Academy, the Office of Secretary of State, the Mississippi Public Service Commission, the Mississippi Department of Information Technology Services, the State Personnel Board, the Mississippi Department of Insurance, the Mississippi Law Enforcement Officers' Minimum Standards Board; the Mississippi Tort Claims Board; the Mississippi Gaming Commission; the Mississippi Oil and Gas Board; the Mississippi Department of Revenue - License Tag; the Office of the State Public Defender; the Mississippi Workers' Compensation Commission; the Office of Attorney General; and the Mississippi Department of Finance and Administration. Beginning July 1, 2016, any fees, assessments or other revenues charged for the support of the above-named state agencies shall be deposited into the State General Fund, and any special fund or

³ "Special funds" are defined for purposes of the State budget process as "...all revenues and/or income other than appropriations from the State General Fund, which are received, collected by, or available for the support of or expenditure by any ...[agency]..." and includes "...revolving funds and all funds received from the United States Government by any...[agency]...". See Miss. Code Ann. Sec. 27-103-103.

⁴ A special fund account is generally referred to as a "fund." A special fund account is assigned a name and fund number for accounting purposes, consistent with the legal authority under which the account is established.

Honorable Delbert Hosemann
June 13, 2016
Page 6

depository established within the State Treasury for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund. Expenses heretofore drawn from such special funds or other depositories shall be drawn from the agencies General Fund Account.

* * *

(3) The provisions of this section shall not apply to any trust fund account that is maintained by any above-named agency.

(4) The provisions of this section shall not prohibit any of the above-named agencies from maintaining clearing accounts in approved depositories.

* * *

The fundamental rules of statutory construction can largely be found in *Buokel v. Cheney*, 47 So.3d 148 (Miss. 2010), which states:

The most fundamental rule of statutory construction is the plain meaning rule, which provides that if a statute is not ambiguous, then this Court must apply the statute according to its terms." Likewise, "[i]t is a well-settled rule of statutory construction that 'when two statutes pertain to the same subject, they must be read together in light of legislative intent.'" Furthermore, under the rules of statutory construction, "repeal of statutes by implication is not favored." Statutes "on the same subject, although in apparent conflict, should if possible be construed in harmony with each other to give effect to each." Moreover, "all statutes in pari materia are taken into consideration, and a legislative intent [is] deduced from a consideration as a whole." (Citations omitted; emphasis added).

The rules of statutory interpretation also require that "[i]f possible, courts should construe statutes so as to render them constitutional rather than unconstitutional" *City of Jackson v. Rebuild America, Inc.*, 77 So.3d 1105, 1119 (Miss. App. 2011); MS AG Op. Cantrell (October 1, 2013). Further, statutes are presumed constitutional and are to be construed in a manner which will render them constitutional. *Frazier v. State by and through Pittman*, 504 So.2d 676 (Miss. 1987).⁵

⁵ Section 61 of the Mississippi Constitution requires that "no law shall be revived or amended by reference to its title only, but the section or sections, as amended or revived, shall be inserted at length. Questions have been raised as to whether SB 2362 violates this constitutional provision. We do not address this issue herein and are constrained to follow the presumption of validity afforded all statutes, including SB 2362, and to interpret same in a constitutional manner. The question of the constitutionality of SB 2362 can only be determined by a court of competent jurisdiction.

Honorable Delbert Hosemann
June 13, 2016
Page 7

We will address your questions in the order in which they are presented in accordance with the plain meaning of the language of SB 2362 and the other applicable rules of statutory construction under Mississippi law.

1. Public Trust Tidelands Fund

Is the Public Trust Tidelands Fund an exempt trust fund under SB 2362?

Yes. Mississippi Code Section 29-15-9 creates in the State Treasury "a special fund to be known as the Public Trust Tidelands Fund" to be administered by the Secretary of State as "trustee."

SB 2362 does not amend Section 29-15-9, which establishes this trust fund. Trust fund accounts are expressly exempt from the provisions of SB 2362. Therefore, applying the plain language of SB 2362, we are of the opinion that the Public Trust Tidelands Fund is not abolished by SB 2362 and deposits should continue into this fund in fiscal year 2017 and thereafter as authorized by law.

2. Public Trust Tidelands Assessment Fund

Is the Public Trust Tidelands Assessment Fund an exempt trust fund under SB 2362?

Yes. The Public Trust Tidelands Assessment Fund is created pursuant to Section 29-15-10, which states specifically that "the fund shall be administered by the Secretary of State, as trustee." The purpose of the fund is to ensure monies collected from the public trust tidelands assessments are used for preserving tidelands within certain counties.

Trust fund accounts are expressly exempt from the provisions of Section 3 of SB 2362. Therefore, applying the plain language of SB 2362, we are of the opinion that the Public Trust Tidelands Fund is not abolished under SB 2362 and deposits will continue into this fund in fiscal year 2017 and thereafter as authorized by law.

3. Proneed Contract Loss Recovery Fund

Is the Proneed Contract Loss Recovery Fund subject to the provisions of SB 2362?

Honorable Delbert Hosemann
June 13, 2016

CONFIDENTIAL OPINION

Page 8

This fund is created by Section 75-63-81 to reimburse the beneficiaries of preneed funeral contracts who have suffered financial loss as a result of fraud or insolvency of a registered Mississippi preneed provider. You state that these funds are not used for the support of the Office of the Secretary of State. In addition, we note that Section 75-63-81 was not specifically amended by SB 2362.

Only special fund accounts containing "fees, assessments or other revenues charged for the support" of an agency are subject to the abolishment and transfer provisions of Section 3 of SB 2362. If the Preneed Contract Loss Recovery Fund does not contain fees, assessments or other revenues charged for the support of the Office of the Secretary of State, then applying the plain language of SB 2362, it is our opinion that this fund is not abolished by SB 2362. Deposits will continue into this fund in fiscal year 2017 and thereafter as authorized by law.

4. Point Cadet Lease Fund

Is the Point Cadet Lease Fund exempt from the provisions of SB 2362 and may the State Treasurer distribute funds pursuant to the terms of the Compromise and Settlement Agreement?

OFFICIAL OPINION
Your letter states that the Point Cadet Lease Fund was created by a settlement agreement dated August 15, 2002, and approved by the Chancery Court of Harrison County, Second Judicial District. Pursuant to the settlement agreement, the fund is collected by the Secretary of State, and distributions are made by the State Treasurer, upon the direction of the Secretary of State, to the Institutions of Higher Learning, the City of Biloxi, and the Public Trust Tidelands Fund. You state that no monies deposited into the fund are used for the support of the Office of the Secretary of State.

As noted above, only special fund accounts containing "fees, assessments or other revenues charged for the support" of an agency are subject to the abolishment and transfer provisions of Section 3 of SB 2362. Therefore, applying the plain language of SB 2362, if no such funds are used for the support of the Office of the Secretary of State, we are of the opinion that the Point Cadet Lease Fund is not abolished by SB 2362. Deposits and disbursements should continue as set forth in the Compromise and Settlement Agreement approved by court order. In any event, any amendments thereto may require court approval.

5. Mississippi Autism Board Fund

Is the Mississippi Autism Board Fund captured by SB 2362? Should revenue continue to be deposited into the Fund? May Mississippi Autism Board Funds be used to pay the Board's administrative costs in fiscal year 2017?

Honorable Delbert Hosemann
June 13, 2016
Page 9

A special fund is required by Miss. Code Ann. Section 73-75-11 for the deposit of funds collected to pay the expenses of the Mississippi Autism Board. The Board is assigned to the Office of the Secretary of State for administrative and ministerial purposes. You state that funds contained in the Mississippi Autism Board Fund are not used for the support of the Office of the Secretary of State. Rather, these funds are used for the support of the Mississippi Autism Board. You further state that the Secretary of State's appropriation bill provides only for expenditures from the General Fund appropriation and not from special funds.

Section 73-75-11 states, in part:

(2) The board [Mississippi Autism Board] shall receive and account for all funds received and shall keep such funds in a separate fund. Funds collected under the provisions of this chapter shall be used solely for the expenses of the board and to administer the provisions of this chapter, which may include full or partial financing of continuing education programs promulgated by the board under this chapter. Such funds shall be subject to audit by the Auditor of the State of Mississippi. (Emphasis added).

OFFICIAL OPINION

The Mississippi Autism Board Fund does not contain fees, assessments or other revenues charged for the support of the Office of the Secretary of State. Further, this statute was not amended by SB 2362. Thus, applying the plain language of SB 2362, it is our opinion that this fund is not abolished by SB 2362. Deposits should continue into this fund in fiscal year 2017 and thereafter as authorized by law. With regard to payment of the Mississippi Autism Board's administrative costs, Section 73-75-11 authorizes funds collected to be used for the expenses of the Board and to administer its duties under the chapter.

6. Election Support Fund

Does authority exist for the Office of the Secretary of State to pay counties under Miss. Code Ann. Section 23-15-5 for election related costs?

Mississippi Code Section 23-15-5 creates the "Elections Support Fund" into which fees imposed on limited liability companies under Section 79-29-1203 shall be deposited. Section 23-15-5 provides that the expenditure of these funds are under the direction of the Secretary of State, with fifty percent (50%) of the monies directed to be distributed to counties for conducting elections and the remaining fifty percent (50%) allocated to the Secretary of State to maintain, upgrade or equip the Statewide Elections Management System.

SB 2362, Section 45, reenacts the existing provisions of Section 23-15-5 without changes, and adds the following provisions:

660 HIGH STREET • POST OFFICE BOX 220 • JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 369-3880 • FACSIMILE (601) 369-8025

Honorable Delbert Hosemann
June 13, 2016
Page 10

(3) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section. (Emphasis added)

Reading the plain language of the amended statute as a whole, deposits of fees from limited liability companies will continue to be made into the Elections Support Fund through June 30, 2016. The Secretary of State's obligation to make payments to the counties from the Elections Support Fund during FY 2016 remains unchanged. From and after July 1, 2016, deposits of fees from limited liability companies will be made into the State General Fund. The Elections Support Fund is not abolished.

7. Land Records Maintenance Fund

As a result of the Secretary's appropriation allowing only expenditures for the support and maintenance of the Office of the Secretary of State, does the Secretary have authority to reimburse counties for any unpaid taxes as provided in Section 29-1-95?

Section 29-1-95 provides a mechanism for the State to reimburse local taxing authorities for unpaid taxes on lands sold to the State for taxes. Once such lands are sold by the State and the purchase money is deposited into the Treasury, the Secretary of State certifies to the Department of Finance and Administration and the Treasurer the amount of fees and costs allowed to the county tax collector and chancery clerk under Section 25-7-21 for redemptions. Thereafter, the Department of Finance and Administration issues warrants to the county tax collector and chancery clerk for payment of same. A similar process is followed in order to pay the local taxing authorities for the unpaid taxes. The balance leftover, after paying the fees and taxes authorized, is required to be deposited into the "Land Records Maintenance Fund." This fund is administered by the Secretary of State to maintain the State's land records.

SB 2362, Section 47, reenacts the existing provisions of Section 29-1-95 without changes, and adds the following provisions:

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

Honorable Delbert Hosemann
June 13, 2016
Page 11

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section. (Emphasis added).

The amendment requires all "user charges and fees" authorized under Section 29-1-96 to be deposited in the General Fund from and after July 1, 2016. However, we find no "user charges or fees" collected under Section 29-1-96. The only "fee" referred to therein relates to a fee to be paid to the county tax collector and chancery clerk, not a user charge or fee collected by the Secretary of State from those officers. The amounts payable to local taxing authorities for reimbursement of unpaid taxes and amounts payable as redemption fees to the county tax collectors and chancery clerks are paid from the Treasury, not from the "Land Records Maintenance Fund" established in Section 29-1-96. Such payments, certified in the manner required in Section 29-1-96, will continue to be made from the State Treasury from and after the effective date of July 1, 2016.

8. Help Mississippi Vote Fund

~~Can the Office of the Secretary of State continue to make disbursements to counties under Section 23-15-169.7?~~ **OPINION**

Mississippi Code Section 23-15-169.7 establishes the Help Mississippi Vote Fund and authorizes the Secretary of State to expend monies therein to support the State's maintenance of efforts as required by the federal mandates of the Help America Vote Act of 2002. Fees collected pursuant to Section 7-3-59 serve as the source of funding for the Help Mississippi Vote Fund and the County Voting Systems Assistance Bond Sinking Fund, created in Section 3 of Chapter 309, Laws of 2006.

SB 2362, Section 46, reenacts the existing provisions of Section 23-15-169.7, and adds the following provisions:

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section. (Emphasis added)

As with the Land Records Maintenance Fund discussed above, the amendment requires all "user charges and fees authorized" in 23-15-169.7 to be deposited into the General Fund after July 1, 2016.

Honorable Delbert Hosemann
June 13, 2016
Page 12

The amendment to 23-15-169.7 alters the provisions such that, after July 1, 2016, the fees collected under Section 7-3-59 shall be deposited into the State General Fund. The Fund will not be abolished, however. Therefore, it is the opinion of this office that the amendments to Sections 23-15-169.7 redirect revenues for the Help Mississippi Vote Fund to the State General Fund. The Secretary of State will remain authorized to make disbursements under Section 23-15-169.7 to the extent that funds are available.

9. Bond Fund

Will fees collected pursuant to Miss. Code Ann. Section 7-3-59 continue to be deposited into a special fund in the State Treasury and used to pay debt service?

Chapter 309 of the Laws of 2006 (HB 562, 2006 Regular Session) authorized the issuance of State general obligation bonds to assist counties in purchasing and distributing voting systems and devices. It also created the County Voting Systems Assistance Bond Sinking Fund into which deposits of fees under Section 7-3-59 are made. Pursuant to this chapter, principal and interest payments on the outstanding bonds are to be made from this bond sinking fund.

Section 44 of SB 2362 amends Section 7-3-59 by adding the following provisions:

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

A conflict or ambiguity will exist within Section 7-3-59 between the reenacted language directing remittances into the County Voting Systems Assistance Bond Sinking Fund and subsection (4) directing "all user charges and fees authorized under this section" to be deposited in the State General Fund. This conflict is resolved by harmonizing and giving effect to both provisions, i.e., remittances will continue to be made into the County Voting Systems Assistance Bond Sinking Fund through June 30, 2016 and, from and after July 1, 2016, deposits will be made into the State General Fund.

Regarding repayment of the bonds, Section 9 of Chapter 309 of the Laws of 2006 contains, in part, the following language:

Honorable Delbert Hosemann
June 13, 2016
Page 13

If the funds available in the bond sinking fund and any funds appropriated by the Legislature for such purpose are insufficient to pay the principal of and the interest upon such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated.

If funds are not available in the County Voting Systems Assistance Bond Sinking Fund to pay debt service on the bonds, Chapter 309 requires the State Treasurer to make these bond payments "from any funds in the State Treasury not otherwise appropriated."

In addition, Section 7-9-39 is applicable to all State general obligation bonds and it authorizes and directs the State Treasurer to impound or set aside sufficient funds to pay all State bonds and interest thereon.

Please let us know if this office can be of further assistance.

OFFICIAL Sincerely,
JIM HOOD, ATTORNEY GENERAL

By: 
Chuck Rubloff
Assistant Attorney General

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

**IN THE MATTER OF THE STEWARDSHIP OF
THE PUBLIC TRUST TIDELANDS**

CIVIL ACTION NO. C2402-02-760

**SECRETARY OF STATE, ERIC CLARK,
TRUSTEE AND PETITIONER; CITY OF BILOXI,
A MUNICIPAL CORPORATION; BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING IN ITS
OWN CAPACITY AND ON BEHALF OF THE
UNIVERSITY OF SOUTHERN MISSISSIPPI,
THE GULF COAST RESEARCH LABORATORY,
AND THE J. L. SCOTT MARINE EDUCATION CENTER;
ISLE OF CAPRI CASINOS, INC. AND RIVERBOAT
CORPORATION OF MISSISSIPPI, A MISSISSIPPI CORPORATION,
D/B/A THE ISLE OF CAPRI CASINO;
THE POINT CADET DEVELOPMENT CORPORATION,
A MISSISSIPPI NON-PROFIT CORPORATION, CO-PETITIONERS**

STATE OF MISSISSIPPI

COUNTY OF HARRISON

AFFIDAVIT

Personally appeared before me, the undersigned authority for the above named jurisdiction, the within named Susan Pickich, who, after first being duly sworn on oath, states as follows:

1. My name is Susan Pickich. I am over eighteen years of age and competent to testify to the matters set forth in this Affidavit.
2. I have been employed by the City of Biloxi for over twenty-three years. My current position with the City of Biloxi is Federal Programs Manager.
3. In my position as Federal Programs Manager, I am in charge of records relating to rents due and owing to the City of Biloxi pursuant to leases of various properties at Point Cadet.

This Affidavit is currently limited by the records available to the City in that the Secretary of State's office has not timely provided information to the City. I have also relied upon information provided by Riverboat Corporation of Mississippi relating to the 2015/16 lease year.

4. For many years, the Secretary of State of the State of Mississippi would receive rental income from the various Point Cadet leases. The Secretary of State would then cause checks to be issued to the City of Biloxi for the City of Biloxi's portion of such rental income.

5. Based upon records currently available to the City of Biloxi for the 2014/15 lease year, the Secretary of State failed to remit to the City of Biloxi, the sum of Fifty-Three Thousand Nine Hundred Sixty-Five and 72/100 (\$53,965.72) dollars as required under the Point Cadet Compromise and Settlement Agreement and the Covacevich Compromise and Settlement Agreement. A copy of this computation is attached hereto as Exhibit "A".

6. The Podium Lease has a lease year of August 1 through July. From August, 2015 through May, 2016, the Secretary of State did not remit any portion of the Point Cadet Leasing Fund to the City of Biloxi. In late June, 2016, the Secretary of State caused the State Treasurer to issue a check to the City of Biloxi in the amount of One Million, Two Hundred Ninety-Seven Thousand Six Hundred Twenty and 66/100 (\$1,297,620.66) dollars. As Federal Programs Manager, I applied all of this to the 2015/16 lease year.

7. Based upon my calculations as set forth in Exhibit "B" attached hereto and the information currently available to the City of Biloxi, the State of Mississippi still owes the City of Biloxi the sum of One Million, One Hundred Thirty-Four Thousand, Six Hundred Twenty-Nine and 36/100 (\$1,134,629.36) dollars for the portion of the 2015/16 lease year through June, 2016. This amount does not include percentage rental for June, 2016, as these amounts are not currently available. Additional amounts will be due and payable from the State of Mississippi for

the remainder of the 2015/16 lease year.

8. Based upon the information currently available to the City of Biloxi, for the 2014/15 lease year and the 2015/16 lease year combined, through June 2016, the State of Mississippi owes the City of Biloxi the total sum of One Million One Hundred Eighty-Eight Thousand Five Hundred Ninety-Five and 08/100 (\$1,188,595.08) dollars.

This, the 21st day of July, 2016.

Susan Pickich

SUSAN PICKICH

Sworn to and subscribed before me this, the 21st day of July, 2016.

(SEAL)



Charlene E. Sampson
Notary Public

My Commission Expires 1/24/17

2014-15 CURRENT REVENUE DUE FROM STATE TO CITY OF BILOXI

CK #	Date State Rec	STATE OF MS TIDELANDS FUND	IHL	DUE TO CITY
Lease Year 2014-15 Final Guarantee Lease				
	Year end lease guarantee (these are my calculation)	\$161,897.15	\$53,965.71	\$53,965.72
	interest due	\$19,427.68	\$5,666.40	\$5,666.41
		\$181,324.83		\$59,632.13
	Sep-15	\$2,428.46		
	Oct-15	\$2,428.46		
	Nov-15	\$2,428.46		
	Dec-15	\$2,428.46		
	Jan-16	\$2,428.46		
	Feb-16	\$2,428.46		
	Mar-16	\$2,428.46		
	Apr-16	\$2,428.46		
		\$19,427.68		



7/20/2016 4:20 PM Copy of Point Cadet Leasing Fund Year 15-16 7 20 16 MEW's changes

2015-2016 CASINO-HOTEL RENT COLLECTIONS AND DISBURSEMENTS
(RENT SHARING BEGINS AFTER \$2,733,000)

DATE	CHECK #	BASE RENT	% RENT	AMOUNT	CASINO			HOTEL			CHECK TOTAL	CUMULATIVE TOTAL	BILLOXI			SHARED RENT DISTRIBUTION			IHL DISBURSEMENT	BALANCE	
					BASE	OVERRIDE	OVERRIDE	BASE	OVERRIDE	OVERRIDE			POSTSHARE	DISBURSEMENT	BALANCE	SHARE	DISBURSEMENT	BALANCE			
08/07/15	32169	Aug-15		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$113,607.38	\$113,607.38	\$113,607.38	\$227,214.76							\$113,607.38	\$227,214.76
09/08/15	33048	Sep-15		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$227,214.76	\$244,261.50	\$244,261.50	\$335,957.59							\$335,957.59	\$335,957.59
09/14/15	33210	Sep-15		\$17,046.74	\$5,965.08		\$11,081.66		\$91,696.09	\$335,957.59	\$349,564.97	\$349,564.97	\$449,564.97							\$449,564.97	\$449,564.97
09/21/15	33986	Aug-15		\$91,696.09			\$61,004.17		\$113,607.38	\$449,564.97	\$449,564.97	\$449,564.97	\$449,564.97							\$449,564.97	\$449,564.97
09/28/15	33484	Oct-15		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$517,228.76	\$517,228.76	\$517,228.76	\$67,663.79							\$67,663.79	\$67,663.79
10/28/15	34137	Sep-15		\$67,663.79			\$61,004.17		\$113,607.38	\$630,836.14	\$630,836.14	\$630,836.14	\$716,497.50							\$716,497.50	\$716,497.50
11/09/15	34456	Nov-15		\$113,607.38	\$52,603.21		\$61,004.17		\$85,661.36	\$716,497.50	\$716,497.50	\$716,497.50	\$830,104.88							\$830,104.88	\$830,104.88
11/16/15	34842	Oct-15		\$85,661.36			\$61,004.17		\$113,607.38	\$830,104.88	\$830,104.88	\$830,104.88	\$943,712.26							\$943,712.26	\$943,712.26
		Dec-15		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$943,712.26	\$943,712.26	\$943,712.26	\$1,057,319.64							\$1,057,319.64	\$1,057,319.64
		Jan-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,057,319.64	\$1,057,319.64	\$1,057,319.64	\$1,170,927.02							\$1,170,927.02	\$1,170,927.02
		Feb-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,170,927.02	\$1,170,927.02	\$1,170,927.02	\$1,284,534.40							\$1,284,534.40	\$1,284,534.40
		Mar-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,284,534.40	\$1,284,534.40	\$1,284,534.40	\$1,398,141.78							\$1,398,141.78	\$1,398,141.78
		Apr-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,398,141.78	\$1,398,141.78	\$1,398,141.78	\$1,511,749.16							\$1,511,749.16	\$1,511,749.16
		May-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,511,749.16	\$1,511,749.16	\$1,511,749.16	\$1,625,356.54							\$1,625,356.54	\$1,625,356.54
		Jun-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$1,625,356.54	\$1,625,356.54	\$1,625,356.54	\$1,738,963.92							\$1,738,963.92	\$1,738,963.92
		Nov-15		\$56,880.09			\$176,907.11		\$56,880.09	\$1,738,963.92	\$1,738,963.92	\$1,738,963.92	\$1,855,844.01							\$1,855,844.01	\$1,855,844.01
		Dec-15		\$232,966.85			\$163,401.88		\$56,059.84	\$1,855,844.01	\$1,855,844.01	\$1,855,844.01	\$1,971,803.86							\$1,971,803.86	\$1,971,803.86
		Jan-16		\$215,737.05			\$180,227.02		\$2,335.17	\$1,971,803.86	\$1,971,803.86	\$1,971,803.86	\$2,077,333.25							\$2,077,333.25	\$2,077,333.25
		Feb-16		\$259,637.13			\$190,043.47		\$79,410.11	\$2,077,333.25	\$2,077,333.25	\$2,077,333.25	\$2,276,970.38							\$2,276,970.38	\$2,276,970.38
		Mar-16		\$266,761.33			\$186,085.37		\$76,717.86	\$2,276,970.38	\$2,276,970.38	\$2,276,970.38	\$2,543,731.71							\$2,543,731.71	\$2,543,731.71
		Apr-16		\$268,802.91			\$186,085.37		\$82,717.54	\$2,543,731.71	\$2,543,731.71	\$2,543,731.71	\$2,733,000.00							\$2,733,000.00	\$2,733,000.00
		May-16		\$253,302.98			\$161,969.33		\$91,333.65	\$2,733,000.00	\$2,733,000.00	\$2,733,000.00	\$2,924,333.65							\$2,924,333.65	\$2,924,333.65
		Jun-16		\$113,607.38	\$52,603.21		\$61,004.17		\$113,607.38	\$3,179,444.98	\$3,179,444.98	\$3,179,444.98	\$3,379,444.98							\$3,379,444.98	\$3,379,444.98
06/28/16										\$3,179,444.98	\$3,179,444.98	\$3,179,444.98	\$3,379,444.98	\$1,297,620.66						\$1,297,620.66	\$1,297,620.66
										\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99						\$148,814.99	\$148,814.99
										\$26,511.54	\$26,511.54	\$26,511.54	\$26,511.54	\$26,511.54						\$26,511.54	\$26,511.54
										\$110,945.87	\$110,945.87	\$110,945.87	\$110,945.87	\$110,945.87						\$110,945.87	\$110,945.87
										\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99						\$148,814.99	\$148,814.99
										\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99	\$148,814.99						\$148,814.99	\$148,814.99

