

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4B

Council Meeting Date: December 23, 2025

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: Richard Weaver, Chief Administrative Officer
Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution authorizing entry into Consent and Lease Agreement for Property in connection with building a public pier, by and between the City of Biloxi, Mississippi and Biloxi Capital, LLC.

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease

Other (Specify): Exhibit A: Lease Agreement
Exhibit B: 2024 Lease Agreement

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	Councilmember	Yes	No	AFR	ABST	Councilmember	Yes	No	AFR	ABST
	Gray	___	___	___	___	Tisdale	___	___	___	___
	Marshall	___	___	___	___	Glavan	___	___	___	___
	Nail	___	___	___	___	Shoemaker	___	___	___	___
	Creel	___	___	___	___					

ACTION TAKEN:

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH BUILDING A PUBLIC PIER, BY AND BETWEEN THE CITY OF BILOXI, MISSISSIPPI AND BILOXI CAPITAL, LLC

WHEREAS, Biloxi Capital, LLC, a Delaware limited liability company (hereinafter "Tivoli"), currently owns that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli Property") extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, which grants Tivoli fee simple title to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel, casino and resort with food service, entertainment, and recreational enterprises that will be contiguous to Harrison County's (the "County") and the City of Biloxi's (the "City") existing East Biloxi Boardwalk located south of the right of way of Highway 90 and that the Lease will further provide public access to Tivoli's proposed new public pier located where a previous pier existed. The new pier will serve the general public, tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development as opposed to purely private access to such new pier thereby increasing access to the general public to the Mississippi Sound/Gulf of Mexico;

WHEREAS, Tivoli estimates that the construction cost of its project, both on the north and south side of Highway 90, will have a cost of Seven Hundred Fifty Million (\$750,000,000) Dollars and bring 2000 permanent jobs as well as construction jobs, increased ad valorem tax revenue, and sales tax revenue;

WHEREAS, a copy of the proposed lease between Biloxi Capital, LLC and the City is

attached hereto as Exhibit "A." The County has previously entered into a Lease with Biloxi Capital and such lease is attached hereto as Exhibit "B." The County has plenary power over the sand beach. The County's execution and delivery of the Lease is final and unappealable;

WHEREAS, the City, County and Tivoli negotiated the Lease based upon prior rental values set forth in that certain Lease for Constructing a Public/Private pier with RW Development, LLC and that certain Lease for Constructing a Public/Private pier with Tullis Gardens, LLC; with both of these comparable leases having similar terms as set forth in the Lease. The Lease requires Tivoli to construct, maintain, insure and operate the new public pier at no cost to the City and County. Such lease terms provide capital improvements to create infrastructure for the City and County to develop, cost free to the taxpayers, infrastructure to aid commerce and navigation in the development of the City and County's "blue economy" along the waterfront of the County and the City. Accordingly, the City and County are obtaining increased access to the Mississippi Sound/Gulf of Mexico for the public and obtaining valuable infrastructure to promote and develop commerce and navigation along the Mississippi Sound/Gulf of Mexico;

WHEREAS, the City has the authority to enter into the Lease pursuant to the Mississippi Supreme Court's ruling in State v. R.W. Development, LLC, 357 So.3d 1028 (Miss. 2023) along with Miss. Code Ann. §59-15-1 and §59-7-405 with such authority being reaffirmed by the Circuit Court of Harrison County. The Mississippi Secretary of State's signature on the Lease is not necessary as the Mississippi Legislature has delegated authority to the City to enter into such lease;

WHEREAS, entry into the Lease is in furtherance of a higher public purpose as opposed to the current non-productive condition of such property. The area of land leased

currently produces no income for the City, County or State other than a small amount of ad valorem tax revenue. The Lease will bring increased public access to the site and the Mississippi Sound, increase jobs, create infrastructure to access the Mississippi Sound/Gulf of Mexico and promote and develop a new 1,300 room hotel, casino and resort;

WHEREAS, the Lease requires Tivoli to pay to the State of Mississippi's Public Trust Tidelands Fund "in lieu" payments pursuant to Miss. Code Ann. §29-1-107. Tivoli estimates the "in lieu" payment as in excess of Six Hundred Thousand Dollars (\$600,000.00) per year for the Public Trust Tidelands Fund. Tivoli would not otherwise be required to make such an "in lieu" payment as the Lease is with political subdivisions of the State. Accordingly, the State of Mississippi is also benefitting from the Lease and the reclamation of the non-productive property the State has been unable to develop; and

WHEREAS, the term of the Lease is necessary for Tivoli to recoup its costs and expenses in constructing, maintaining and insuring the pier.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

SECTION ONE: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted as findings of substantial evidence leading the City to adopt this Resolution and approve the re-execution of the Lease agreement. The City specifically notes that the land side and pier developments by Tivoli promotes economic activity for the development of the City's blue economy, ports and harbors, serves a higher public purpose of taking stagnate land and making the same productive for not only the City and County but also the

State, and promotes development of necessary infrastructure using private capital as opposed to public funds.

SECTION THREE: The Mayor, on behalf of the City of Biloxi, is hereby authorized to execute the lease with an effective date as between the City and Biloxi Capital LLC of August 7, 2024 and deliver the same to Tivoli and the County.

SECTION FOUR: This resolution shall take effect and be in force from and after adoption.



Prepared by and return to: Peter C. Abide
2355 Pass Road
Biloxi, MS 39531
(228) 385-1010

INDEXING INSTRUCTIONS: Section 33, Township 7 South, Range
9 West Second Judicial District Harrison Mississippi

STATE OF MISSISSIPPI
COUNTY OF HARRISON, SECOND JUDICIAL DISTRICT

CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH BUILDING
A PUBLIC PIER

THIS CONSENT AND LEASE AGREEMENT ("Agreement") is made, executed, and entered by
and between

GRANTOR:

City of Biloxi, Mississippi,
a political subdivision of the State of Mississippi (the "City")
P.O. Box 429
Biloxi, MS 39530
(228) 435-6254,
and

GRANTEE:

Biloxi Capital, LLC, ("Tivoli"),
a Delaware limited liability company ("Lessee")
c/o Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532
(228) 365-1941

and shall be effective as of August 7, 2024("Effective Date" of Agreement).

PREAMBLE:

WHEREAS, Grantor and Grantee specifically acknowledge and agree that Tivoli currently owns
that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli" Property)

extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, as more fully described in that certain legal description attached hereto as Exhibit " A " which grants Tivoli fee simple title (Parcel A by Warranty and Parcel B by Quitclaim) to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel and casino with food service, entertainment and recreational enterprises that will be contiguous to the County and City's existing East Biloxi Boardwalk located south of the ROW of Highway 90 and that further will provide public pedestrian access to Tivoli's proposed new municipal public pier located where a previous pier existed as shown in the photographs attached hereto and authorized in this Agreement and in that certain Consent and Lease Agreement for Property In Connection with Building a Public Pier entered into between Grantee and Harrison County, Mississippi on, or about, August 5, 2024 copy attached as Exhibit "D" and incorporated herein that will serve tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development;

WHEREAS, based on various statutes, court decisions and precedent the County exclusively and perpetually controls the sand beach located South of the toe of the seawall to the Mississippi Sound, within the Property owned by Tivoli. Additionally, the State has granted the City and the County the authority:

(a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of upland fee simple parcels like the Tivoli Property and likewise seaward of the toe of the seawall and across the surface of the Harrison County sand beach; and

(b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Consent and Lease Agreement, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

WHEREAS, in addition to the Tivoli's authority to develop and use its own property and the City's and County ' s authority to develop, use, and lease Public Trust Tidelands by virtue of the ports and harbors statutes cited in the preceding "Whereas" paragraph of this Lease, Tivoli, by virtue of its ownership in fee simple of the parcel of uplands constituting the Tivoli Property and all appurtenances thereunto belonging, is vested with littoral rights within the area designated in this Agreement, including, but not limited to, the right to construct, or cause to be constructed, own, and maintain, or cause to be maintained, a pier for joint public and private recreational and tourism economic development uses, and the right to construct such pier without Tivoli or the City having to pay any rent to the State or having to obtain a tidelands lease from the Secretary of State for these leased premises, which rights are more fully defined in the *Miss. Code of 1972* sections cited in the preceding "Whereas" paragraph, and as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use.... and encourage commerce on the water....we find that the position of Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90] has merit in that they do enjoy certain littoral rights....") and *Miss. State Highway Comm'n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) ("They [Gilich] still have the [littoral] rights pursuant to statute... to construct any beach structures they desire .");

WHEREAS, in order to alleviate concerns from the State and certain Coastal cities that this development would not make payments to the State Tidelands Fund, the parties expressly state that Grantee will pay the "in lieu" payment to the Public Trust Tide Lands Assessment Fund" as required by statute, upon issuance of a certificate of occupancy for a casino on the Tivoli Property;

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site and holds the sand beach easement in trust for the public (the "Sand Beach Easement"), as is more fully defined in the County's *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment ("This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid"), and in the Final Judgment dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) ("The record owners of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights. Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom." [Final Judgment. 4]; "[T]he rights defined herein are subject to the reasonable exercise of any power vested in municipalities, to create, operate and maintain piers and other such facilities" [Final Judgment, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court's Final Judgment and Addendum: *US. v. Harrison County*, 399 F. 2d 485 (5th Cir. 1968), and *US. v. Harrison County*, 414 F. 2d 784 (5th Cir. 1969);

WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the County the authority, without the County or its assigns having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, where such uses serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51, 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5; §29-15-13;

WHEREAS prior owners of the Tivoli Property built and maintained a pier on the Leased Premises for many years, as evidenced by the photos identified as Exhibit "B" without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, Grantor has determined that this Consent and Lease Agreement along with the County's Consent and Lease Agreement for Property in Connection with Building a Public Pier, and Tivoli's subsequent redevelopment of, and enhancements to, a municipal pier on the subject property will, within and for the City, County, and State, increase employment and tax revenue, promote economic development; and serve higher public purposes of the Public Trust for Tidelands through providing and facilitating public access to the tidelands and the Mississippi Sound for recreation, fishing, and marine commerce; further, Grantor has determined that it is in the best interests of the health, safety, and welfare of the citizens of the City, County, and State of Mississippi for the City, in addition to the lease entered into between the County and Grantee to enter into this Agreement with Tivoli;

NOW THEREFORE, the Grantor and Grantee do hereby agree that the findings, conclusions, and statements of fact contained in the foregoing Preamble are hereby adopted, ratified, and incorporated in this Agreement, and do hereby agree to the following terms and conditions of this Agreement:

ARTICLE 1 GRANT

Section 1.1 Land and Improvements. For and in consideration of the mutual promises, covenants, and conditions stated in this Agreement and further in consideration of Ten Dollars (\$10 .00) cash in hand paid and the payments as contemplated by this Agreement to be made by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby consents and Lease to Grantee, and Grantee hereby accepts from Grantor the right to lease and control access over that area identified in Exhibit "C") controlled by Grantor and the County, (herein referred to as the Premises"). The Premises consists of certain sand beach lying above lands owned by Grantee. The grant of the Premises is subject to the covenants and conditions for public use and access stated in this Agreement and that Consent and Lease Agreement for Property in Connection with Building a Public Pier entered into by Grantee and Harrison County, Mississippi and includes (a) the City and County's interests, as political subdivisions of the State subject to the covenants and conditions of the County's Sand Beach Ordinance and the Final Judgment and Addendum to the Final Judgment of the U.S. District Court for the S. Dist. Of Miss., S. Div., in *United States of America v. Harrison County, Mississippi, et al.*, Civil Action Number 2262 entered October 8, 1970, and (c) the non-exclusive use of the County's Seawall Easement and East Biloxi Boardwalk. Grantee shall have reasonable access to the roadways of the City of Biloxi for egress and ingress to the Premises to accommodate Grantee's operations.

ARTICLE 2 TERM

Section 2.1 Term and Renewal Term. The Term of the Agreement shall be forty (40) years (the "term"). The Term of the Agreement shall commence upon the Effective Date. Upon sixty (60) days notices to the Grantor and Harrison County, Mississippi prior to the expiration of the Term of this Agreement the Grantee may renew the Agreement for an additional twenty-five (25) years (the "Renewal Term") under the same terms and conditions as the original Term. Notwithstanding the foregoing, in the event that Grantee is unable to construct its proposed project north of Highway 90, Grantee may elect with ninety (90) days written notice to the Grantor and the County to terminate this agreement, in which event, this agreement shall terminate and the parties shall have no further obligations to one another following termination, other than indemnity provisions which survive termination, and the Grantor and the County shall retain all other consideration paid to them prior to the termination.

ARTICLE 3 CONSIDERATION

Section 3.1 Base consideration. Grantee shall pay Grantor and the County as follows;

- A. Grantee shall pay the sum of Five Thousand Dollars (\$5,000.00) to the Grantors and the County upon execution of this Agreement, as consideration for execution of the Agreement.
- B. Grantee shall also pay to Grant and the County the sum of One Thousand Dollars (\$1,000.00) per month (the "Base Rent"), payable in advance on the first day of each month, beginning on the Commencement Date defined in this Agreement.

Section 3.2 Commencement Date. The Consideration shall commence on the first day of the calendar month following Grantee's completion of the proposed pier signified by the issuance of a permanent certificate of occupancy to Grantee for the pier by the City (the "Commencement Date").

Tivoli shall pay Consideration monthly on or before the tenth (10th) day of the month from and after the Commencement Date.

Tivoli shall pay the Consideration to the County and the City simultaneously by paying each of them one-half (1/2) of the Consideration due for the month of payment. The Grantee further reserves the

right to prepay any portion as it may deem appropriate.

All Consideration shall be payable at the seat of government addresses stated in this Agreement for the City and County, respectively, or at such other place as Grantor and the County may designate in writing.

Five (5) years after the Commencement Date and for each five-year period thereafter, the Consideration shall be increased by the amount of the increase of the Consumer Price Index, All Urban, for the prior five-year period, as published in the Wall Street Journal. In the event the Consumer Price Index, All Urban, is no longer available, the Grantor and the County shall designate an alternate index rate which is the closest in nature and calculation of the Consumer Price Index, All Urban, in effect on the Effective Date.

Section 3.3 Triple Net. It is the intention and agreement of Grantor and Grantee that the Consideration herein specified shall be net, net, net to Grantor in each year during the Term of this Agreement and any renewal term; that all costs, expenses, taxes, charges, utilities, and obligations of every kind relating to the Premises (excluding maintaining the Sand Beach), including, but not limited to the costs of maintaining and repairing the pier constructed on the Premises from and after the Commencement Date, which may arise or become due during the Term of this Agreement, shall be paid by Grantee; and that Grantor shall be indemnified by Grantee against such costs, taxes, expenses, utilities, charges and other obligations.

Section 3.4 In Lieu Payment to State of Mississippi Public Trust Tidelands Fund: In addition to the Consideration paid by Grantee to Grantor and Harrison County, Mississippi, Grantee shall pay to the State of Mississippi Public Trust Tidelands Fund the annual "in lieu" tidelands assessment to the Public Trust Tidelands Fund as required by *Miss. Code Ann. §29-1-107*.

ARTICLE 4 CONSTRUCTION, ALTERATIONS AND EQUIPMENT

Section 4.1 General. Grantee shall at its own cost and expense, renovate the existing damaged pier pilings and construct a new public municipal pier on the Premises for the uses described in Article 5 below. Grantee shall submit to the City and County a rendering of the proposed construction for the pier prior to commencement thereof. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state, and local governmental bodies and agencies having jurisdiction over the performance of such construction work. Grantor shall cooperate with Grantee's efforts in obtaining governmental consents, approvals and permits, provided all permit fees shall be paid by Grantee.

Section 4.2 Initial Construction. Prior to Initial Construction, final building plans and specifications shall be submitted to Grantor and the County for approval. Provided such plans and specifications are in substantial performance with the drawings, renderings and/or plans furnished by Grantee as set forth in Section 4.1, such approval shall not be unreasonably conditioned, withheld or delayed.

Section 4.3 Time to submit plans, Commence Construction and Complete Construction. Grantee shall submit final building plans and specifications for the pier to the appropriate building department(s) with buildings plans for the hotel described herein.

Section 4.4 Mechanics or Workman's Liens. Grantee shall (1) keep the Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Grantee, and (2) at all times fully protect and indemnify Grantor and the County

against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Grantee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Grantor and the County a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Grantee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Grantor and/or the County, Grantors shall keep the Premises free of same, indemnify Grantee, furnish Grantee with a bond, and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Grantee aforesaid.

ARTICLE 5 USE

Section 5.1 General. Subject to the conditions for public use and access provisions defined in Section 1. 1 (the Grant of Premises) of this Agreement for joint public and private use of: and access to the Premises, Grantee shall be entitled to the use and possession of the Premises from and after the Effective Date of this Agreement for the purposes and uses provided in this Agreement. Grantee shall use the Premises, for non-gaming recreation purposes, facilities and activities including, but not limited to, reclamation, renovation, construction, operation and maintenance of a public municipal pier and other incidental marine and recreational purposes and shall be included as an integral amenity to any development proposed by Grantee on its property North of Highway 90 and serving public purposes of the Public Trust for Tidelands to enhance, *inter alia*, the public and private opportunities for recreation, fishing, sailing, boating and marine sports, and make available public and private use and enjoyment of the municipal pier on the Premises. Grantee shall not use the Premises in such a manner as to violate any applicable law, rule, ordinance, or regulation of any governmental body. No gaming shall be allowed on the municipal pier, nor any vessel docked or berthed at the area, nor any other area of the Premises.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Premises are accepted by Grantee "as is" in their present condition. Except as otherwise provided herein, Grantee shall at all times during the Term of this Agreement and at its own expense keep the Premises in good order, condition, and repair, and shall make all repairs thereto, ordinary, and extraordinary, that may be required during the Term hereof, except for maintenance and repair of the sand beach which shall continue to be the responsibility of the County. Grantee shall indemnify and save harmless Grantor against and from any loss, costs, damage, and reasonable expenses arising out of or in connection -with Grantee's use of the Premises, or any part thereof.

Section 6.2 Grantor's Obligation. Grantor shall have no obligation to maintain the pier on the Premises. However, Grantor shall provide easements for the necessary utilities to service the improvements made by Grantee, should such easements be necessary.

Section 6.3 Grantee's Obligation. Grantee shall, as required by this Agreement, maintain, repair, and replace the items comprising the pier on the Premises, including but not limited to pilings, boards steps, and structural portions of the pier to be constructed upon the Premises , and all wiring, plumbing, conduits, and other utilities which service the pier and the Premises. Grantee shall deliver the Premises to Grantors on the expiration or termination of this Agreement in good repair and condition, reasonable wear and tear excepted and free and clear of all materialmen's liens or encumbrances created or claimed by reason of transactions made by Grantee.

Section 6.4 Repair and Maintenance. Grantee shall, as its own expense, make all repairs and replacements to all improvements constructed by Grantee on the Premises which may be from time to time become necessary, including but not limited to repairs to any of the following that may become part of the

final approved plans and specifications pertaining to the pier and access to the pier: the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Premises. All such repairs and replacements shall be made promptly, as and when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Grantee to make such repairs or replacements, Grantor may, but shall not be required to, make such repairs and replacements for Grantee's account, and the expense thereof shall constitute and be collectable as additional Consideration; provided, however, Grantor must first give notice to Grantee to cure such default (i.e., make the repair) within a reasonable amount of time.

ARTICLE 7 UTILITIES

Section 7.1 Initial Connections. Grantor warrants to Grantee that Grantor will cause the necessary mains and conduits in order that water and sewer facilities, electricity, telephone, internet, and other utilities necessary to initial conduct of Grantee's intended business to be made available for connection within the Premises. It is understood that all services hereunder shall be furnished by public utilities and not by Grantor.

Section 7.2 Grantee's Obligations for Charges. The Grantee shall be solely responsible for and shall promptly pay all charges, when due, for water, sewer, electricity, telephone, and any other utility used upon or furnished to the Premises. The Grantee's obligation to pay for such utilities shall commence as of the commencement of operation of activity.

ARTICLE 8 TAXES AND ASSESSMENTS

Section 8.1 Real Property Taxes. Grantee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Premises, if any.

Section 8.2 Personal Property Taxes. Grantee shall pay, prior to delinquency, any and all personal property taxes, if any, levied against Grantee's improvements, fixtures, equipment, furniture, and other personal property located upon the Premises.

Section 8.3 Contests. Grantee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

ARTICLE 9 INSURANCE AND INDEMNIFY

Section 9.1 Indemnification. Grantor shall not be liable to Grantee or Grantee's employees, agents or visitors, or to any other person whosoever, for any injury to person or damage to property in or occurring upon the Premises or of any other person entering the Premises under express or implied invitation of Grantee, or caused by the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Grantor's negligence or misconduct or breach of its obligations hereunder) and Grantee agrees to carry general liability insurance as set forth in this Agreement for the purpose of saving Grantor and the County harmless to the extent of such coverage.

Section 9.2 General Liability Insurance. Grantee agrees to indemnify and save Grantor and the County harmless from all claims for damages, to goods, merchandise, persons, and other property in or upon the Premises, and any platforms of Grantee, arising out of or occasioned by Grantee's use or occupancy, except such damages resultant from the negligence of Grantor and the County, its agents,

servants, or employees, or caused by Grantor's or the County's failure to perform any of its obligations.

Grantee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Premises. Such insurance may be carried under a blanket policy covering the Premises as well as other locations in which Grantee or any of its affiliated or subsidiary corporations or other entities may be interested. Grantee will promptly furnish Grantor with a certificate of said coverage when requested by the Grantor. In the year following each five-year interval of the Initial Term and any renewal term of this Agreement, the Grantee shall adjust the amount of general liability insurance to be an amount reasonable sufficient to reflect the consumer price index increases during such interval.

Section 9.3 Additional Named Insured: Act of Default. All policies of insurance required hereby shall include Grantor and the County as an additional named insured.

Failure to have Grantor and the County included and named as an additional named insured on any such policy shall be considered an act of default.

Notwithstanding the provisions of Section 16 of this Agreement, should such default continue for a period often days after notice of default by Grantor and/or the County to Grantee, Grantor may, but is under no obligation, purchase insurance coverage to protect Grantor's interests only in the premises and its improvements, in which case the cost of such insurance shall be considered as additional consideration due immediately from Grantee.

The Grantor shall have the right to terminate the Agreement upon the expiration of ninety (90) days from the date of such Notice of Default should Grantee fail to correct such omission or exclusion and have Grantor and the County added as an additional named insured under such policy.

Should any loss occur at a time when Grantor and/or the County are not included as an additional named insured under Grantee's insurance policy Grantor shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss, to the extent allowed by law.

Section 9.4 No Hazardous Use. Grantee will not permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk ultra hazardous, it being understood and agreed that the use of the Premises and pier to be constructed thereon in the proper and ordinary conduct of Grantee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.5 Waiver of Subrogation. Recognizing that Grantor and the County are governmental subdivisions of the State of Mississippi, and thus to the extent but only to the extent allowed under law, Grantor and Grantee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Grantor and Grantee, as the case may be, their respective property, or to the Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only, Grantor and Grantee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Grantor and Grantee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting there from to pay such additional

costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.6 Indemnification for Host Liquor Liability. Grantee will defend, indemnify, save free and hold harmless the Grantor for any action or damages, including, attorney's fees and costs, resulting from a claim relating to host liquor liability.

ARTICLE 10 SIGNS

Section 10.1 General. With the prior approval of Grantor and the County, which such approval shall not be unreasonably conditioned, withheld or delayed, Grantee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Premises which otherwise comply with applicable laws.

ARTICLE 11 ASSIGNMENT, SUBLETTING

Section 11.1 General. Grantee may not assign this Agreement, or any interest herein, or sublet the whole or any part of the Premises, nor transfer majority interest or effective control of or interest in Grantee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Grantee, without the prior written approval of Grantor, which shall not be unreasonably conditioned, withheld or delayed. Any such approval by Grantor will only be with the approval of the intended Assignee by Grantor and will be conditioned upon the express assumption by such assignee or purchaser of all of the Grantee's obligations and liabilities hereunder. No request for approval of assignment or transfer of the Agreement or any interest therein or in Grantee will be allowed or effective unless Grantee is in all respects in compliance with all obligations hereof. Notwithstanding the foregoing, the Grantee shall have the right to pledge and/or assign this Agreement as collateral to any Lender who is providing financing on the project described herein without the prior written consent of the Grantor. In the event of any such assignment Grantee shall provide Grantor with written notice of the same.

ARTICLE 12 RIGHT OF ENTRY

Section 12.1 Right of Entry and Obligation to Make Repairs. Grantor reserves the right during the Term of this Agreement to enter the Premises at reasonable hours and with reasonable prior notice, and for the purpose of inspecting the Premises and to make such repairs, additions, or improvements as Grantor may deem necessary for the protection and preservation of the improvements and Premises; but Grantor is not bound to make any repairs whatever except as hereinafter stated, nor to be held liable for any damage in consequences of leaks, nor for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, nor for any other defects about the pier and Premises, Grantee having examined the same and being satisfied therewith, but should such leaks, obstructions, frozen pipes, stoppages, or other defects about the pier and Premises occurring during the Term of this Agreement, or while Grantee is occupying the Premises, then Grantee shall remedy the same promptly at Grantee's expense, unless Grantor and/or the County by written instrument undertakes to do the same promptly. Grantee shall maintain the Premises in good order and repair, other than the sand beach which it is not required to maintain.

ARTICLE 13 CASUALTY

Section 13.1 Substantial Destruction. If the improvements to be located on the Premises are materially damaged or destroyed by fire, hurricane, storm, or other casualty (50% or more of replacement cost), Grantee shall have the option to (a) terminate the Agreement with written notice to the Grantor and the County; or (b) to repair and restore the Premises, in which event this Agreement shall remain in full

force and effect while Grantee proceeds with due diligence to repair and restore the Premises to substantially the same or better condition as prior to such casualty. In the event Grantee elects to continue with the Agreement, Grantee shall promptly commence repair and restoration of the improvements it installed on the Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration as quickly as is commercially reasonable to do.

Section 13.2 Partial Destruction. In the event the improvements to be located on the Premises should be damaged or destroyed by fire, hurricane, storm, or other casualty, Grantee shall give written notice thereof to Grantor and the County within a reasonable time, not to exceed five (5) business days. If the Premises shall be damaged by fire, hurricane, storm, or other casualty, but not to such extent as to be substantially destroyed (50% or more of replacement cost) and such rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Grantee shall proceed with reasonable diligence to rebuild and repair the improvements it made to the Premises to substantially the condition, or better, in which it existed prior to such casualty, subject however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Premises and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third-party approvals cannot be obtained within said time or if all infrastructure for required utilities remains unavailable to the Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction as the election of the Grantee.

ARTICLE 14 DEFAULT OF GRANTEE

Section 14.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Grantee under the Agreement:

14.1.1 Grantee shall fail to pay any installment of the consideration and such failure shall continue for a period of thirty (30) days after the due date of such installment.

14.1.2 Grantee shall fail to comply with any term, provision, or covenant of this Agreement, other than the payment of consideration or insurance, and such failure shall continue for a period of thirty (30) days after Grantors' written notice thereof to Grantee.

14.1.3 Grantee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Grantee shall be adjudged bankrupt or insolvent in proceedings filed against Grantee thereunder.

14.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Grantee; provided, however, that no default shall occur under this Section 14.1.4 so long as Grantee continues to pay the Consideration and is not otherwise in default under any other provision of this Agreement.

14.1.5 If Grantee elects in writing to abandon the Premises and ceases to pay the Consideration.

14.1.6 Assignment or subletting by Grantee shall be an act of default unless such assignment or subletting is first approved in writing by Grantors or unless otherwise permitted under this Agreement under Article 11 hereof.

14.1.7 Grantee shall fail to have in effect or maintain insurance herein required on Premises which includes Grantors as a named insured along with Grantee, in which case the provisions of Article 9 shall apply.

Section 14.2 Remedies of Grantor. Except as otherwise provided herein, upon the occurrence of any act of default, Grantor shall provide written notice of such default to Grantee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Grantee shall have thirty (30) days from the date of such notice to cure any default under the agreement, unless the cure cannot reasonably be completed within thirty (30) days, in which event the Grantee shall have an additional reasonable period of time to complete the cure provided it commenced the cure within the original thirty (30) day period and has continued with reasonable commercial efforts. Should Grantee fail to cure any default hereunder, Grantor shall have the option to pursue any one or more of the following remedies after giving written notice to Grantee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

14.2.1 Terminate this Agreement, in which event Grantee shall immediately surrender the Premises to Grantor and the County, and if Grantee fails so to do, Grantor and the County may, without prejudice to any other remedy which it may have for possession or arrearage in Consideration, enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Grantee agrees to pay to Grantor on demand the amount of all loss and damage which Grantor may suffer by reason of such termination, whether through inability to re-let the Premises on satisfactory terms or otherwise.

14.2.2 Enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying the Premises or any part thereof, by force if necessary; and Grantee agrees to pay to Grantor on demand any deficiency that may arise by reason of such re-letting.

Section 14.3 Operation of Agreement. It shall be considered an act of default if after the initial construction of the pier is complete and open to the public, the pier or any replacement fails to be open and usable for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial Destruction or Partial Destruction as described above.

ARTICLE 15 CONSIDERATION PAYMENT AND NOTICE

Section 15.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Grantee to Grantor shall be deemed to be complied with when and if the following steps are taken. All Consideration and other payments required to be made by Grantee to Grantor hereunder shall be payable in cash to the City and County (with one-half (1/2) of the total of each rent payment to be paid to each to the City and County) either (a) by electronic transfer to City and County bank accounts, respectively, for which City and County shall within a reasonable time after executing this Agreement notify the Grantee in writing of the account numbers and electronic transfer information; or (b) by checks delivered to their respective seats of government at the following addresses:

City of Biloxi, Mississippi City Hall
140 Lameuse Street
Biloxi, MS 39531

Harrison County, Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

or at such other address as Grantors may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith) and shall be deemed received only when actual collected funds are in the accounts of Grantors. In the event any check or instrument drawn by Grantee and delivered to Grantor as payment for any sum due hereunder is dishonored or refused payment, it shall be treated as if no payment had been made.

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested. Alternatively, notice may be delivered hereunder by personal service on the parties or by successfully transmitted facsimile addressed to the parties hereto at the respective addresses set out opposite their names below, or such other addresses as they have theretofore specified by written notice delivered in accordance herewith:

Grantee:

Biloxi Capital, LLC
Daniel O. Conwill IV, Member
400 Poydras Street, Suite 3100
New Orleans, LA 70130

·with a copy to

Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532

Grantor:

City of Biloxi
c/o Mayor of Biloxi
City Hall
140 Lameuse St.
Biloxi, MS 39530
With a copy to:

Peter Abide, City Attorney, City Hall
140 Lameuse St.
Biloxi, Mississippi 39530

Harrison County, Mississippi
c/o President, Board of Supervisors
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

With a copy to:

Tim Holleman, Attorney for Bd. of Supervisors
1801 23rd Avenue
Gulfport, Mississippi 39501

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Tax Incentives. The parties agree that Grantee shall be entitled to apply for all tax incentives, credits, or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Grantee's work in and/or on the Premises.

Section 16.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Agreement or in any way affect this Agreement.

Section 16.3 Consent. Whenever the consent of either party is required to take an action under the terms of this Agreement, unless otherwise provided herein such consent shall not be unreasonably conditioned, withheld nor delayed.

Section 16.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 16.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Agreement. To the extent not prohibited by law for a governmental body, each of the parties agrees to indemnify the other against and hold it harmless, from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of reasonable attorneys' fees in connection therewith).

Section 16.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Agreement, including the rights herein granted to terminate this Agreement, shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Grantor and Grantee set forth herein be deemed both a covenant and a condition.

Section 16.7 Governing Law, Jurisdiction and Venue. This Agreement shall be interpreted and construed under the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

Section 16.8 No Partnership. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Grantor and Grantee, and neither the method of computation of consideration nor any other provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Grantors and Grantee other than the relationship of Grantor and Grantee.

Section 16.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 16.10 Entire Agreement Amendments. As of the execution hereof, this Agreement contains all covenants and agreements between Grantor and Grantee exclusively relating in any manner to the use and occupancy of the Premises and the other matters set forth in this Consent and Lease Agreement. No prior agreement or understanding, written or oral, pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Agreement cannot be altered, changed, modified, or added to, except in writing signed by Grantor and Grantee. No renewal after this Agreement terminates shall be binding on either party unless it be in writing and signed by the Grantor and Grantee.

Section 16.12 Severability; Invalidity of Whole. Any provision or provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect. If a court of competent jurisdiction determines in a final, non-appealable judgment that all of the provisions of this Agreement are invalid, void or illegal, then, as of the date of such final, non-appealable judgment, this Agreement shall be terminated, cancelled and considered void *ab initio* and the parties shall have no duties, obligations, or liability of any kind to any of the other parties for any claims, damages, injuries, or losses of any kind arising out of the Agreement.

Section 16.12 Waste and Nuisances. The Grantee agrees not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Premises and will, when requested by the proper authorities, abate all nuisances at its own expense.

Section 16.13 Late Fee and Charges, Should Grantee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Grantor shall charge as late fees an additional one and one-half percent (1.50 %) of the outstanding balance due, commencing as of the date such amounts were originally due.

Section 16.14 Proof of Payment. No set-off in the payment of the consideration herein shall be allowed unless signed by Grantor, its legal representative or assigns, and the proof of the payment of rent shall be on Grantee in all controversies.

Section 16.15 Quiet Enjoyment. Grantor warrants and guarantees that Grantor has the full right and authority to enter into and perform this Agreement and to grant the rights herein, and the Grantor covenants and agrees that at all times during the term of this Agreement, including any extension thereof, Grantee, subject to the County Sand Beach Ordinance and the provisions, covenants, and requirements for public use and access defined in this Agreement, the Lessee shall have quiet and peaceful enjoyment of the Premises and of all Grantee's rights, easements, appurtenances and privileges belonging or otherwise

appertaining thereto and shall not be disturbed or interfered with by Grantor or any person; provided, however, Grantor does not warrant and guarantee quiet enjoyment as against the State of Mississippi.

Section 16.16 Time is the Essence. Time is of the essence with respect to all matters provided in this Agreement.

Section 16.17 Concurrent Rights. Nothing in this Lease is intended to circumvent or supersede any concurrent rights that Harrison County, the State of Mississippi, or any state or federal agency may have in the circumstances that may be applicable to the Premises or to the Grantee.

Section 16.18 Reservation of Rights. Nothing in this Agreement is intended to grant, convey, recognize, or otherwise consent to any claim by the State as to any portion of the Tivoli Property, all of which claims are expressly reserved to Grantor and Grantee, who deny any right by the State.

-----END OF TEXT OF LEASE-SIGNATURE PAGE FOLLOWS-----

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the dates beside the signatures of their authorized representatives below.

Grantor:

CITY OF BILOXI, MISSISSIPPI

BY: _____
A.M. GILICH, JR., MAYOR

DATE: _____

Grantee:

BILOXI CAPITAL, LLC

BY: _____
DANIEL O. CONWILL IV, MEMBER

DATE: _____

EXHIBIT "A"

DESCRIPTION OF OVERALL PROPERTY
OWNED BY TIVOLI

Description:

Parcel "A" (BCL CONTROLLED PROPERTY NORTH OF US HWY. 90 FEE SIMPLE OWNED BY BCL BY WARRANTY DEED)

Beginning at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of: N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run N-00°51'01"-W along said East margin of Holley Street, 1081.29 feet to an "X" Mark in concrete at the intersection of said East margin of Holley Street and the South margin of Howard Avenue; thence run N-85°39'24"-E along said South margin of Howard Avenue, 226.58 feet to a point; thence run N-88°21'03"11-E along said South margin of Howard Avenue, 67.09 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 262.68 feet, a chord of which bears S-78 °47'55"-E, 98.66 feet, an distance of 99.25 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 1108.42 feet, a chord of which bears S-65°45'28"-E, 44.32 feet, an distance of 44.32 feet to a point; thence run S-60°05'31"-E Southeasterly along said South margin of Howard Avenue, 93.46 feet to a point; thence run S-53°14'41"-E along said South margin of Howard Avenue, 75.25 feet to a point; thence run S-48°58'05"-E along said South margin of Howard Avenue, 92.23 feet to a point; thence run S-48°59'33"-E along said South margin of Howard Avenue, 280.89 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the left having a radius of 350.00 feet, a chord of which bears S- 69°27'26"-E, 244.74 feet, an arc distance of 250.02 feet to a point; thence run S-89°55'19"-E along said South margin of Howard Avenue, 205.71 feet to the intersection of said South margin of Howard Avenue and the West margin of Kuhn Street; thence run S-00 °18'28"-E along said West. margin of Kuhn Street, 159.51 feet to a point; thence run S-89°58'09"-W leaving said West margin of Kuhn Street, 108.70 feet to a point; thence run S-00°56'03"-E, 264.05 feet to a point on the North margin of Meaut Street; thence run N-89°47'12"-W along said North margin of Meaut Street, 89.26 feet to a point; thence run S-01°53'38"-W leaving said North margin of Meaut Street, 318.64 feet to a point on said North margin of U.S. Highway 90; thence run N- 85°11'56"-W along said North margin of U.S. Highway 90, 331.55 feet to a point; thence run N- 89°06'53"-W along said North margin of U.S. Highway 90, 313.04 feet to a point; thence run N- 80°47'54" -W along said North margin of U.S. Highway 90, 430.70 feet to the Point of Beginning, containing 25.80 acres, more or less.

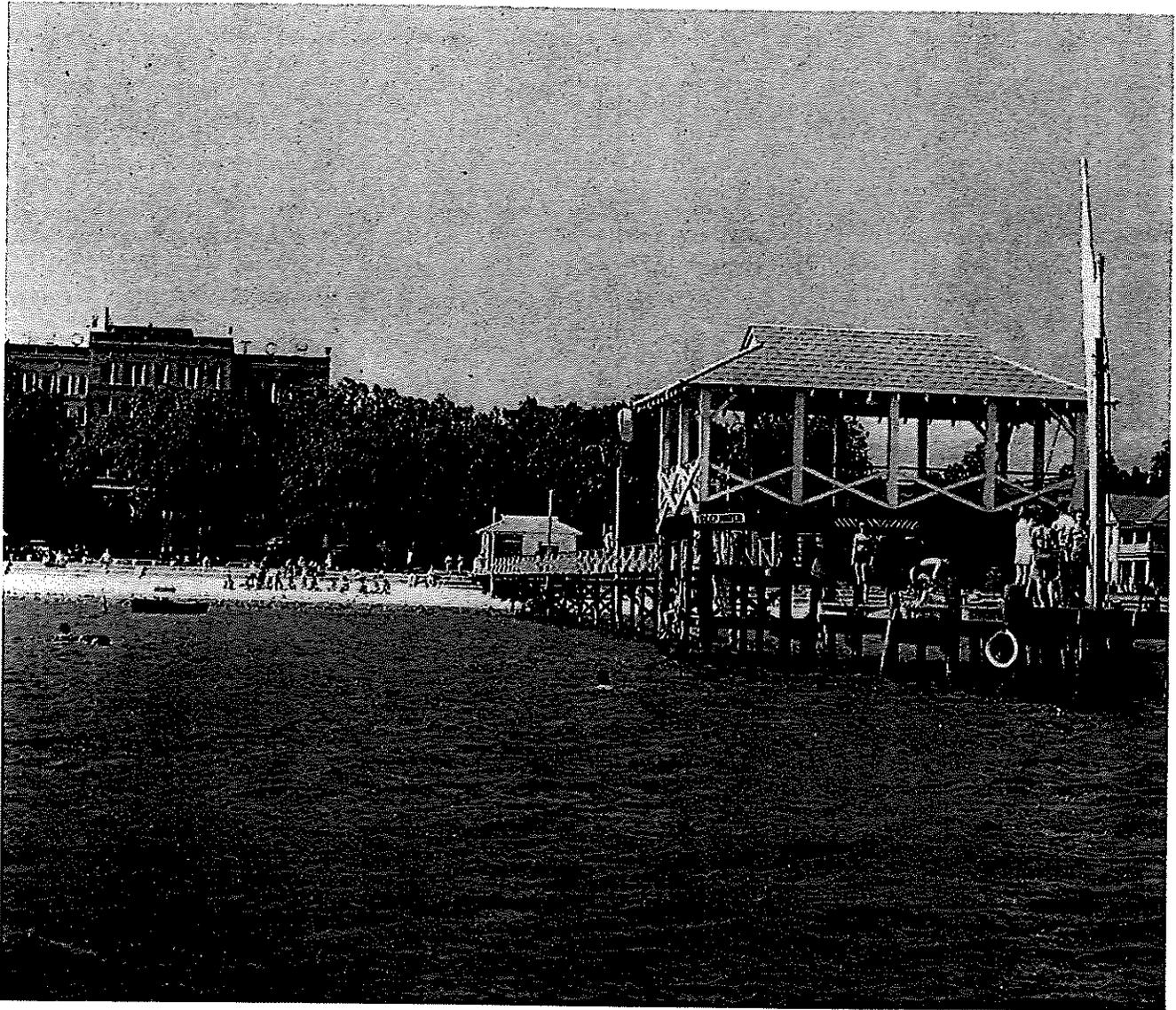
Parcel "B" (BCL CONTROLLED PROPERTY SOUTH OF US HWY. OWNED BY BCL BY QUITCLAIM DEED)

Commencing at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of: N=32/1985.2686 feet, E=970627.9823 feet (datum NAD83); thence run S-00°51'01"-E leaving said North margin of U.S. Highway 90, 157.83 feet to a point on the South margin of said U.S. Highway 90 and the outside face of an existing seawall; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the left having a radius of 1859.01 feet, a chord of which bears S-84°9'18"-E, 162.56 feet, an arc

distance of 162.61 feet to a point, then run S-86°36'51"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 201.77 feet to a point; then run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the right having a radius of 2863.78 feet, a chord of bears S-83°38'11"-E, 308.70 feet, an arc distance of 308.85 feet to a point; thence run S-80°18'26"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 396.50 feet to a point; thence run S-01°40'33"-E, 189.57 feet to a point on the North margin of the Mississippi Sound (Gulf of Mexico); then run along said North margin of the Mississippi Sound (Gulf of Mexico) the following S-86°56'20"-W, 14.55 feet; S-81°28'59"-W, 108.42 feet; N-79°56'06"W, 72.69 feet; N-75°59'45"-W, 108.73 feet; N-71°41'10"-W, 51.14 feet; N-63°03'15"-W, 48.27 feet; N-71°05'08", 95.35 feet; N-78°57'22"-W, 45.78 feet; N-82°45'56"-W, 50.91 feet; N-84°51'58"-W, 43.30 feet; N-87°18'12"-W, 52.46 feet; N-88°47'51"-W, 52.39 feet; N-85°56'50"-W, 43.12 feet; S-88°59'08"-W, 101.14 feet; N-88°06'06"-W, 50.24 feet; S-88°22'36"-W, 88.23 feet; N-85°38'57"-W, 45.87 feet to a point; thence run N-00°51'01"-W leaving said North margin of the Mississippi Sound (Gulf of Mexico), 201.40 feet to the Point of Beginning, containing 4.75 acres; more of less.

EXHIBIT "B"

PHOTOS



Tivoli Hotel, one of Biloxi's great hotels from the 1920's, took a hit from a barge in Katrina which smashed the facade on the right side. Near this structure was the incomplete George Ohr Museum and the Pleasant Reed House, an African-American structure recently removed to the Ohr compound. Katrina gutted the museum and destroyed the Pleasant Reed House. Photo from Mississippi Gulf Coast Community College C.C. "Tex" Hamill Down South Magazine Collection.

*On March 11, 2006, the Tivoli with its smashed face still stood derelict and condemned.
Charles L. Sullivan*

Update (February 2008) The Tivoli Hotel has been razed.

1992 Photo

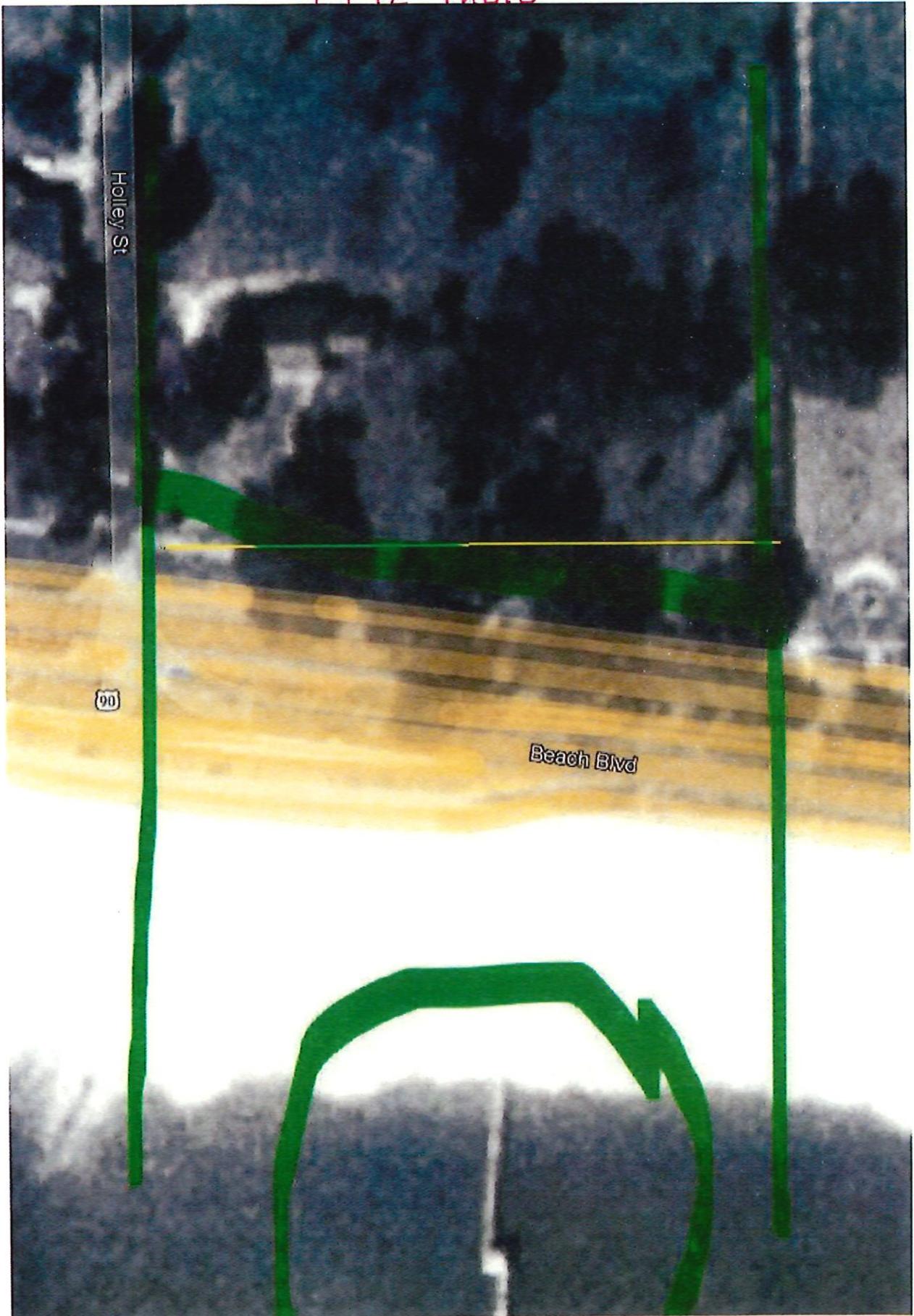
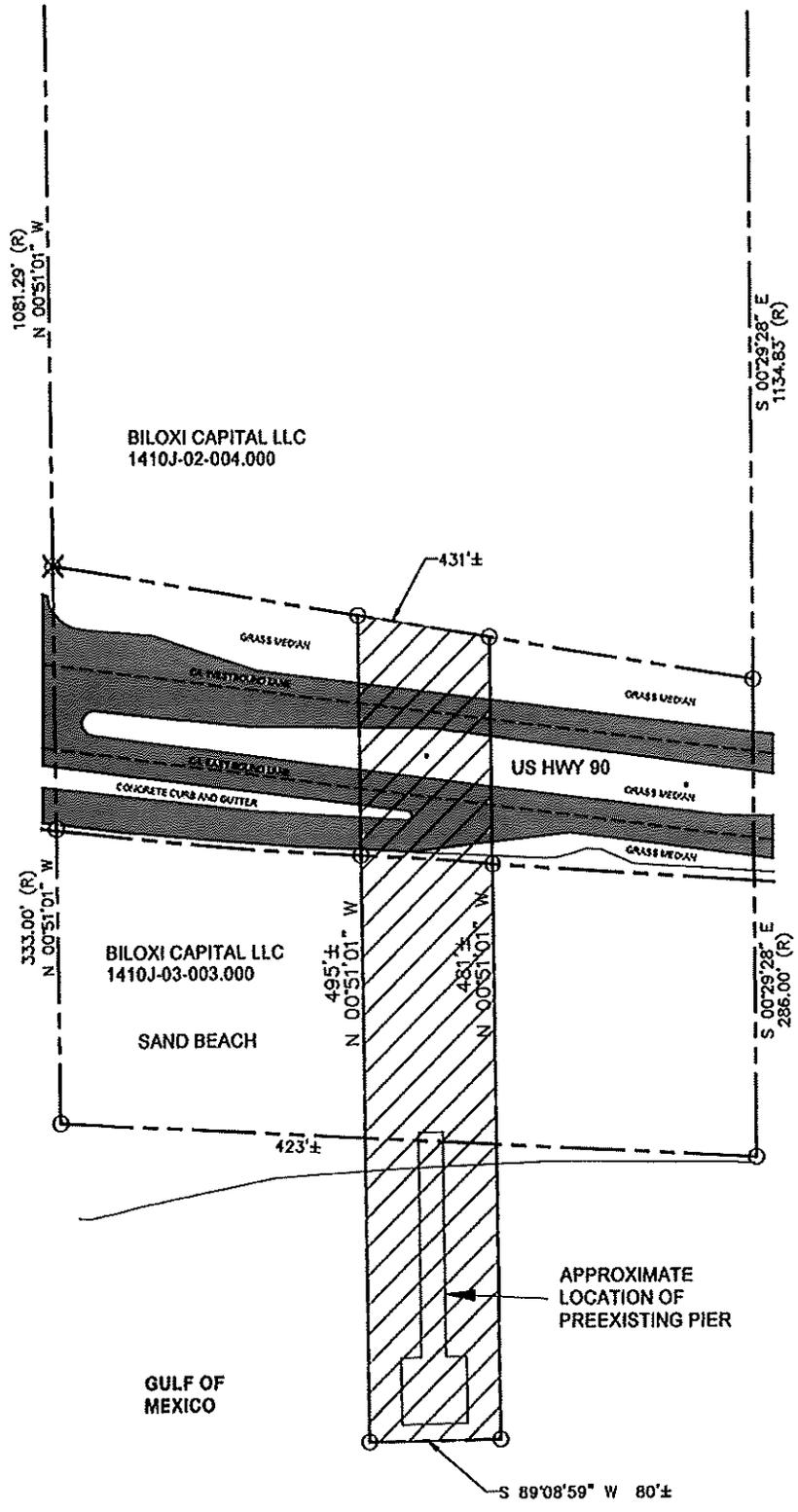


EXHIBIT "C"

**LEGAL DESCRIPTION OF "PREMISES"
(SAND BEACH)**





SCANNED



Amelia Hines 2nd JUDICIAL DISTRICT
Instrument 2024-0004962-D-J2
Filed/Recorded 08/19/2024 11:08:01 AM
Total Fees 112.00
91 Pages Recorded

Prepared by and return to: Peter C. Abide
2355 Pass Road
Biloxi, MS 39531
(228) 385-1010

INDEXING INSTRUCTIONS: Section 33, Township 7 South, Range 9 West Second Judicial District of Harrison Mississippi

STATE OF MISSISSIPPI
COUNTY OF HARRISON, SECOND JUDICIAL DISTRICT

CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH BUILDING A PUBLIC PIER

THIS CONSENT AND LEASE AGREEMENT ("Agreement") is made, executed, and entered by and between the

GRANTORS:

City of Biloxi, Mississippi,
a political subdivision of the State of Mississippi (the "City")
P. O. Box 429
Biloxi, MS 39530
(228) 435-6254,
and
Harrison County, Mississippi,
a political subdivision of the State of Mississippi (the "County")
P. O. Drawer CC
Gulfport, Mississippi 39502
(228) 865-4116,

GRANTEE:

Biloxi Capital, LLC, ("Tivoli"),
a Delaware limited liability company ("Lessee")
c/o Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532
(228) 365-1941

and shall be effective upon the latest date of the full execution of this Agreement on the signature page of this Agreement by the County, City and Tivoli. ("Effective Date" of Agreement).

PREAMBLE:

WHEREAS, Grantors and Grantee specifically acknowledge and agree that Tivoli currently owns that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli" Property) extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, as more fully described in that certain legal description attached hereto as Exhibit "A", which grants Tivoli fee simple title (Parcel A by Warranty and Parcel B by Quitclaim) to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel and casino with food service, entertainment and recreational enterprises that will be contiguous to the County and City's existing East Biloxi Boardwalk located south of the ROW of Highway 90 and that further will provide public pedestrian access to Tivoli's proposed new municipal public pier located where a previous pier existed as shown in the photographs attached hereto and authorized in this Agreement that will serve tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development;

WHEREAS, based on various statutes, court decisions and precedent the County exclusively and perpetually controls the sand beach located South of the toe of the seawall to the Mississippi Sound, within the Property owned by Tivoli. Additionally, the State has granted the City and the County the authority:

(a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of upland fee simple parcels like the Tivoli Property and likewise seaward of the toe of the seawall and across the surface of the Harrison County sand beach; and

(b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Consent and Lease Agreement, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

WHEREAS, in addition to the Tivoli's authority to develop and use its own property and the City's and County's authority to develop, use, and lease Public Trust Tidelands by virtue of the ports and harbors statutes cited in the preceding "Whereas" paragraph of this Lease, Tivoli, by virtue of its ownership in fee simple of the parcel of uplands constituting the Tivoli Property and all appurtenances thereunto belonging, is vested with littoral rights within the area designated as the in this Agreement, including, but not limited to, the right to construct, or cause to be

constructed, own, and maintain, or cause to be maintained, a pier for joint public and private recreational and tourism economic development uses, and the right to construct such pier without Tivoli or the City having to pay any rent to the State or having to obtain a tidelands lease from the Secretary of State for these leased premises, which rights are more fully defined in the *Miss. Code of 1972* sections cited in the preceding "Whereas" paragraph, and as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use.... and encourage commerce on the water....we find that the position of ... Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90] has merit in that they do enjoy certain littoral rights....") and *Miss. State Highway Comm'n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) ("They [Gilich] still have the [littoral] rights, pursuant to statute... to construct any beach structures they desire.");

WHEREAS, in order to alleviate concerns from the State and certain Coastal cities that this development would not make payments to the State Tidelands Fund, the parties expressly state that Grantee will pay the "in lieu" payment to the Public Trust Tidelands Assessment Fund" as required by statute, upon issuance of a certificate of occupancy for a casino on the Tivoli Property;

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site and holds the sand beach easement in trust for the public (the "Sand Beach Easement"), as is more fully defined in the County's *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment ("This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid"), and in the Final Judgment, dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi, et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) ("The record owners ... of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights....Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom." [Final Judgment. 4]; "[T]he rights defined herein are subject to the reasonable exercise of any power vested in....municipalities, to create, operate and maintain....piers and other such facilities" [Final Judgement, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court's Final Judgment and Addendum: *U.S. v. Harrison County*, 399 F. 2d 485 (5th Cir. 1968), and *U.S. v. Harrison County*, 414 F. 2d 784 (5th Cir. 1969);

WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the County the authority, without the County or its assigns having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, where such uses serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5;

§29-15-13;

WHEREAS prior owners of the Tivoli Property built and maintained a pier on the Leased Premises for many years, as evidenced by the photos identified as Exhibit "B" without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, the Grantors have determined that this Consent and Lease Agreement and Tivoli's subsequent redevelopment of, and enhancements to, a municipal pier on the subject property will, within and for the City, County, and State, increase employment and tax revenue, promote economic development; and serve higher public purposes of the Public Trust for Tidelands through providing and facilitating public access to the tidelands and the Mississippi Sound for recreation, fishing, and marine commerce; further, Grantors have determined that it is in the best interests of the health, safety, and welfare of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with Tivoli;

NOW THEREFORE, the Grantors and Grantee do hereby agree that the findings, conclusions, and statements of fact contained in the foregoing Preamble are hereby adopted, ratified, and incorporated in this Agreement, and do hereby agree to the following terms and conditions of this Agreement:

ARTICLE 1 GRANT

Section 1.1 Land and Improvements. For and in consideration of the mutual promises, covenants, and conditions stated in this Agreement and further in consideration of Ten Dollars (\$10.00) cash in hand paid and the payments as contemplated by this Agreement to be made by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantors hereby consent and Lease to Grantee, and Grantor hereby accepts from Grantors the right to lease and control access over that area identified in Exhibit "C") controlled by Grantors, (herein referred to as the Premises"). The Premises consists of certain sand beach lying above lands owned by Grantee. The grant of the Premises is subject to the covenants and conditions for public use and access stated in this Agreement and includes (a) the City and County's interests, as political subdivisions of the State subject to (b) the covenants and conditions of the County's Sand Beach Ordinance and the Final Judgment and Addendum to the Final Judgment of the U.S. District Court for the S. Dist. of Miss., S. Div., in *United States of America v. Harrison County, Mississippi, et al.*, Civil Action Number 2262 entered October 8, 1970, and (c) the non-exclusive use of the County's Seawall Easement and East Biloxi Boardwalk. Grantee shall have reasonable access to the roadways of the City of Biloxi for egress and ingress to the Premises to accommodate Grantee's operations.

ARTICLE 2 TERM

Section 2.1 Term and Renewal Term. The Term of the Agreement shall be forty (40) years (the "Term"). The Term of the Agreement shall commence upon the Effective Date. Upon sixty (60) days notices to the Grantors prior to the expiration of the Term of this Agreement, the Grantee may renew the Agreement for an additional twenty-five (25) years (the "Renewal Term") under the same terms and conditions as the original Term. Notwithstanding the foregoing, in the event that

Grantee is unable to construct its proposed project north of Highway 90, Grantee may elect with ninety (90) days written notice to the Grantors to terminate this agreement, in which event, this agreement shall terminate and the parties shall have no further obligations to one another following termination, other than indemnity provisions which survive termination, and the Grantors shall retain all other consideration paid to them prior to the termination.

ARTICLE 3 CONSIDERATION

Section 3.1 Base consideration. Grantee shall pay Grantors as follows:

- A. Grantee shall pay the sum of Five Thousand Dollars (\$5,000.00) to the Grantors upon execution of this Agreement, as consideration for execution of the Agreement.
- B. Grantee shall also pay to Grantors One Thousand Dollars (\$1,000.00) per month (the "Base Rent"), payable in advance on the first day of each month, beginning on the Commencement Date defined in this Agreement.

Section 3.2 Commencement Date. The Consideration shall commence on the first day of the calendar month following Grantee's completion of the proposed pier signified by the issuance of a permanent certificate of occupancy to Grantee for the pier by the City (the "Commencement Date".)

Tivoli shall pay Consideration monthly on or before the tenth (10th) day of the month from and after the Commencement Date.

Tivoli shall pay the Consideration to the County and the City simultaneously by paying each of them one-half (1/2) of the Consideration due for the month of payment. The Grantee further reserves the right to prepay any portion as it may deem appropriate.

All Consideration shall be payable at the seat of government addresses stated in this Agreement for the City and County, respectively, or at such other place as Grantors may designate in writing.

Five (5) years after the Commencement Date and for each five-year period thereafter, the Consideration shall be increased by the amount of the increase of the Consumer Price Index, All Urban, for the prior five-year period, as published in the Wall Street Journal. In the event the Consumer Price Index, All Urban, is no longer available, the Grantors shall designate an alternate index rate which is the closest in nature and calculation of the Consumer Price Index, All Urban, in effect on the Effective Date.

Section 3.3 Triple Net. It is the intention and agreement of Grantors and Grantee that the Consideration herein specified shall be net, net, net to Grantors in each year during the Term of this Agreement and any renewal term; that all costs, expenses, taxes, charges, utilities, and obligations of every kind relating to the Premises (excluding maintaining the Sand Beach), including, but not limited to the costs of maintaining and repairing the pier constructed on the

Premises from and after the Commencement Date, which may arise or become due during the Term of this Agreement, shall be paid by Grantee; and that Grantors shall be indemnified by Grantee against such costs, taxes, expenses, utilities, charges and other obligations.

ARTICLE 4 CONSTRUCTION, ALTERATIONS AND EQUIPMENT

Section 4.1 General. Grantee shall at its own cost and expense, renovate the existing damaged pier pilings and construct a new public municipal pier on the Premises for the uses described in Article 5 below. Grantee shall submit to the City and County a rendering of the proposed construction for the pier prior to commencement thereof. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state, and local governmental bodies and agencies having jurisdiction over the performance of such construction work. Grantors shall cooperate with Grantee's efforts in obtaining governmental consents, approvals and permits, provided all permit fees shall be paid by Grantee.

Section 4.2 Initial Construction. Prior to Initial Construction, final building plans and specifications shall be submitted to Grantors for approval. Provided such plans and specifications are in substantial performance with the drawings, renderings and/or plans furnished by Grantee as set forth in Section 4.1, such approval shall not be unreasonably conditioned, withheld or delayed.

Section 4.3 Time to submit plans, Commence Construction and Complete Construction. Grantee shall submit final building plans and specifications for the pier to the appropriate building department(s) with buildings plans for the hotel described herein.

Section 4.4 Mechanics or Workman's Liens. Grantee shall (1) keep the Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Grantee, and (2) at all times fully protect and indemnify Grantors against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Grantee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Grantors a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Grantee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Grantors, Grantors shall keep the Premises free of same, indemnify Grantee, furnish Grantee with a bond, and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Grantee aforesaid.

ARTICLE 5 USE

Section 5.1 General. Subject to the conditions for public use and access provisions defined in Section 1.1 (the Grant of Premises) of this Agreement for joint public and private use of, and

access to the Premises, Grantee shall be entitled to the use and possession of the Premises from and after the Effective Date of this Agreement for the purposes and uses provided in this Agreement. Grantee shall use the Premises, for non-gaming recreation purposes, facilities and activities including, but not limited to, renovation, construction, operation and maintenance of a public municipal pier and other incidental marine and recreational purposes and shall be included as an integral amenity to any development proposed by Grantee on its property North of Highway 90 and serving public purposes of the Public Trust for Tidelands to enhance, *inter alia*, the public and private opportunities for recreation, fishing, sailing, boating and marine sports, and make available public and private use and enjoyment of the municipal pier on the Premises. Grantee shall not use the Premises in such a manner as to violate any applicable law, rule, ordinance, or regulation of any governmental body. No gaming shall be allowed on the municipal pier, nor any vessel docked or berthed at the area, nor any other area of the Premises.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Premises are accepted by Grantee "as is" in their present condition. Except as otherwise provided herein, Grantee shall at all times during the Term of this Agreement and at its own expense keep the Premises in good order, condition, and repair, and shall make all repairs thereto, ordinary, and extraordinary, that may be required during the Term hereof, except for maintenance and repair of the sand beach which shall continue to be the responsibility of the County. Grantee shall indemnify and save harmless Grantors against and from any loss, costs, damage, and reasonable expenses arising out of or in connection with Grantee's use of the Premises, or any part thereof.

Section 6.2 Grantors' Obligation. Grantors shall have no obligation to maintain the pier on the Premises. However, Grantors shall provide easements for the necessary utilities to service the improvements made by Grantee, should such easements be necessary.

Section 6.3 Grantee's Obligation. Grantee shall, as required by this Agreement, maintain, repair, and replace the items comprising the pier on the Premises, including but not limited to pilings, boards, steps, and structural portions of the pier to be constructed upon the Premises, and all wiring, plumbing, conduits, and other utilities which service the pier and the Premises. Grantee shall deliver the Premises to Grantors on the expiration or termination of this Agreement in good repair and condition, reasonable wear and tear excepted and free and clear of all material liens or encumbrances created or claimed by reason of transactions made by Grantee.

Section 6.4 Repair and Maintenance. Grantee shall, as its own expense, make all repairs and replacements to all improvements constructed by Grantee on the Premises which may be from time to time become necessary, including but not limited to repairs to any of the following that may become part of the final approved plans and specifications pertaining to the pier and access to the pier: the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Premises. All such repairs and replacements shall be made promptly, as and

when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Grantee to make such repairs or replacements, Grantors may, but shall not be required to, make such repairs and replacements for Grantee's account, and the expense thereof shall constitute and be collectable as additional Consideration; provided, however, Grantors must first give notice to Grantee to cure such default (i.e., make the repair) within a reasonable amount of time.

ARTICLE 7 UTILITIES

Section 7.1 Initial Connections. Grantors warrant to Grantee that Grantors will cause the necessary mains and conduits in order that water and sewer facilities, electricity, telephone, internet, and other utilities necessary to initial conduct of Grantee's intended business to be made available for connection within the Premises. It is understood that all services hereunder shall be furnished by public utilities and not by Grantors.

Section 7.2 Grantee's Obligations for Charges. The Grantee shall be solely responsible for and shall promptly pay all charges, when due, for water, sewer, electricity, telephone, and any other utility used upon or furnished to the Premises. The Grantee's obligation to pay for such utilities shall commence as of the commencement of operation of activity.

ARTICLE 8 TAXES AND ASSESSMENTS

Section 8.1 Real Property Taxes. Grantee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Premises, if any.

Section 8.2 Personal Property Taxes. Grantee shall pay, prior to delinquency, any and all personal property taxes, if any, levied against Grantee's improvements, fixtures, equipment, furniture, and other personal property located upon the Premises.

Section 8.3 Contests. Grantee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

ARTICLE 9 INSURANCE AND INDEMNITY

Section 9.1 Indemnification. Grantors shall not be liable to Grantee or Grantee's employees, agents or visitors, or to any other person whatsoever, for any injury to person or damage to property in or occurring upon the Premises or of any other person entering the Premises under express or implied invitation of Grantee, or caused by the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Grantors' negligence or misconduct or breach of its obligations hereunder) and Grantee agrees to carry general liability insurance as set forth

in this Agreement for the purpose of saving Grantors harmless to the extent of such coverage.

Section 9.2 General Liability Insurance. Grantee agrees to indemnify and save Grantors harmless from all claims for damages, to goods, merchandise, persons, and other property in or upon the Premises, and any platforms of Grantee, arising out of or occasioned by Grantee's use or occupancy, except such damages resultant from the negligence of Grantors, its agents, servants, or employees, or caused by Grantors' failure to perform any of its obligations hereunder.

Grantee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Premises. Such insurance may be carried under a blanket policy covering the Premises as well as other locations in which Grantee or any of its affiliated or subsidiary corporations or other entities may be interested. Grantee will promptly furnish Grantors with a certificate of said coverage when requested by the Grantors. In the year following each five-year interval of the Initial Term and any renewal term of this Agreement, the Grantee shall adjust the amount of general liability insurance to be an amount reasonable sufficient to reflect the consumer price index increases during such interval.

Section 9.3 Additional Named Insured: Act of Default. All policies of insurance required hereby shall include Grantors as an additional named insured.

Failure to have Grantors included and named as an additional named insured on any such policy shall be considered an act of default.

Notwithstanding the provisions of Section 16 of this Agreement, should such default continue for a period of ten days after notice of default by Grantors to Grantee, Grantors may, but are under no obligation, purchase insurance coverage to protect Grantors' interests only in the premises and its improvements, in which case the cost of such insurance shall be considered as additional consideration due immediately from Grantee.

The Grantors shall have the right to terminate the Agreement upon the expiration of ninety (90) days from the date of such Notice of Default should Grantee fail to correct such omission or exclusion and have Grantors added as an additional named insured under such policy.

Should any loss occur at a time when Grantors are not included as an additional named insured under Grantee's insurance policy Grantors shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss, to the extent allowed by law.

Section 9.4 No Hazardous Use. Grantee will not permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk ultra hazardous, it being understood and agreed that the use of the Premises and pier to be constructed thereon in the proper and ordinary conduct of Grantee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.5 Waiver of Subrogation. Recognizing that Grantors are governmental subdivisions of the State of Mississippi, and thus to the extent but only to the extent allowed under

law, Grantors and Grantee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Grantors and Grantee, as the case may be, their respective property, or to the Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only, Grantors and Grantee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Grantors and Grantee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting there from to pay such additional costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.6 Indemnification for Host Liquor Liability. Grantee will defend, indemnify, save free and hold harmless the Grantors for any action or damages, including, attorney's fees and costs, resulting from a claim relating to host liquor liability.

ARTICLE 10 SIGNS

Section 10.1 General. With the prior approval of Grantors, which such approval shall not be unreasonably conditioned, withheld or delayed, Grantee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Premises which otherwise comply with applicable laws.

ARTICLE 11 ASSIGNMENT, SUBLETTING

Section 11.1 General. Grantee may not assign this Agreement, or any interest herein, or sublet the whole or any part of the Premises, nor transfer majority interest or effective control of or interest in Grantee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Grantee, without the prior written approval of Grantors, which shall not be unreasonably conditioned, withheld or delayed. Any such approval by Grantors will only be with the approval of the intended Assignee by Grantors and will be conditioned upon the express assumption by such assignee or purchaser of all of the Grantee's obligations and liabilities hereunder. No request for approval of assignment or transfer of the Agreement or any interest therein or in Grantee will be allowed or effective unless Grantee is in all respects in compliance with all obligations hereof. Notwithstanding the foregoing, the Grantee shall have the right to pledge and/or assign this Agreement as collateral to any Lender who is providing financing on the project described herein without the prior written consent of the Grantors. In the event of any such assignment Grantee shall provide Grantors with written notice of the same.

ARTICLE 12 RIGHT OF ENTRY

Section 12.1 Right of Entry and Obligation to Make Repairs. Grantors reserves the right during the Term of this Agreement to enter the Premises at reasonable hours and with reasonable prior notice, and for the purpose of inspecting the Premises and to make such repairs, additions, or improvements as Grantors may deem necessary for the protection and preservation of the improvements and Premises; but Grantors are not bound to make any repairs whatever except as hereinafter stated, nor to be held liable for any damage in consequences of leaks, nor for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, nor for any other defects about the pier and Premises, Grantee having examined the same and being satisfied therewith, but should such leaks, obstructions, frozen pipes, stoppages, or other defects about the pier and Premises occurring during the Term of this Agreement, or while Grantee is occupying the Premises, then Grantee shall remedy the same promptly at Grantee's expense, unless Grantors by written instrument undertakes to do the same promptly. Grantee shall maintain the Premises in good order and repair, other than the sand beach which it is not required to maintain.

ARTICLE 13 CASUALTY

Section 13.1 Substantial Destruction. If the improvements to be located on the Premises are materially damaged or destroyed by fire, hurricane, storm, or other casualty (50% or more of replacement cost), Grantee shall have the option to (a) terminate the Agreement with written notice to the Grantors; or (b) to repair and restore the Premises, in which event this Agreement shall remain in full force and effect while Grantee proceeds with due diligence to repair and restore the Premises to substantially the same or better condition as prior to such casualty. In the event Grantee elects to continue with the Agreement, Grantee shall promptly commence repair and restoration of the improvements it installed on the Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration as quickly as is commercially reasonable to do.

Section 13.2 Partial Destruction. In the event the improvements to be located on the Premises should be damaged or destroyed by fire, hurricane, storm, or other casualty, Grantee shall give written notice thereof to Grantors within a reasonable time, not to exceed five (5) business days. If the Premises shall be damaged by fire, hurricane, storm, or other casualty, but not to such extent as to be substantially destroyed (50% or more of replacement cost) and such rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Grantee shall proceed with reasonable diligence to rebuild and repair the improvements it made to the Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third-party approvals cannot be obtained within said time or if all infrastructure for required utilities

remains unavailable to the Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction as the election of the Grantee.

ARTICLE 14 DEFAULT OF GRANTEE

Section 14.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Grantee under the Agreement:

14.1.1 Grantee shall fail to pay any installment of the consideration and such failure shall continue for a period of thirty (30) days after the due date of such installment.

14.1.2 Grantee shall fail to comply with any term, provision, or covenant of this Agreement, other than the payment of consideration or insurance, and such failure shall continue for a period of thirty (30) days after Grantors' written notice thereof to Grantee.

14.1.3 Grantee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Grantee shall be adjudged bankrupt or insolvent in proceedings filed against Grantee thereunder.

14.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Grantee; provided, however, that no default shall occur under this Section 14.1.4 so long as Grantee continues to pay the Consideration and is not otherwise in default under any other provision of this Agreement.

14.1.5 If Grantee elects in writing to abandon the Premises and ceases to pay the Consideration.

14.1.6 Assignment or subletting by Grantee shall be an act of default unless such assignment or subletting is first approved in writing by Grantors or unless otherwise permitted under this Agreement under Article 11 hereof.

14.1.7 Grantee shall fail to have in effect or maintain insurance herein required on Premises which includes Grantors as a named insured along with Grantee, in which case the provisions of Article 9 shall apply.

Section 14.2 Remedies of Grantors. Except as otherwise provided herein, upon the occurrence of any act of default, Grantors shall provide written notice of such default to Grantee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Grantee shall have thirty (30) days from the date of such notice to cure any default under the agreement, unless the cure cannot reasonably be completed within thirty (30) days, in which event the Grantee shall have an additional reasonable period of time to complete the cure provided it commenced the cure within the original thirty (30) day period and has continued with reasonable

commercial efforts. Should Grantee fail to cure any default hereunder, Grantors shall have the option to pursue any one or more of the following remedies after giving written notice to Grantee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

14.2.1 Terminate this Agreement, in which event Grantee shall immediately surrender the Premises to Grantors, and if Grantee fails so to do, Grantors may, without prejudice to any other remedy which it may have for possession or arrearage in Consideration, enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Grantee agrees to pay to Grantors on demand the amount of all loss and damage which Grantors may suffer by reason of such termination, whether through inability to re let the Premises on satisfactory terms or otherwise.

14.2.2 Enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying the Premises or any part thereof, by force if necessary; and Grantee agrees to pay to Grantors on demand any deficiency that may arise by reason of such re-letting.

Section 14.3 Operation of Agreement. It shall be considered an act of default if after the initial construction of the pier is complete and open to the public, the pier or any replacement fails to be open and usable for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial Destruction or Partial Destruction as described above.

ARTICLE 15 CONDISERATION PAYMENT AND NOTICE

Section 15.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Grantee to Grantors shall be deemed to be complied with when and if the following steps are taken. All Consideration and other payments required to be made by Grantee to Grantors hereunder shall be payable in cash to the City and County (with one-half (1/2) of the total of each rent payment to be paid to each to the City and County) either (a) by electronic transfer to City and County bank accounts, respectively, for which City and County shall within a reasonable time after executing this Agreement notify the Grantee in writing of the account numbers and electronic transfer information; or (b) by checks delivered to their respective seats of government at the following addresses:

City of Biloxi, Mississippi City Hall
140 Lameuse Street
Biloxi, MS 39531

Harrison County, Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

or at such other address as Grantors may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith) and shall be deemed received only when actual collected funds are in the accounts of Grantors. In the event any check or instrument drawn by Grantee and delivered to Grantors as payment for any sum due hereunder is dishonored or refused payment, it shall be treated as if no payment had been made.

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested. Alternatively, notice may be delivered hereunder by personal service on the parties or by successfully transmitted facsimile addressed to the parties hereto at the respective addresses set out opposite their names below, or such other addresses as they have theretofore specified by written notice delivered in accordance herewith:

Grantee:

Biloxi Capital, LLC
Daniel O. Conwill IV, Member
400 Poydras Street, Suite 3100
New Orleans, LA 70130

with a copy to

Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532

Grantors:

City of Biloxi
c/o Mayor of Biloxi
City Hall
140 Lameuse St.
Biloxi, MS 39530
With a copy to:

Peter Abide, City Attorney, City Hall
140 Lameuse St.
Biloxi, Mississippi 39530

Harrison County, Mississippi
c/o President, Board of Supervisors
Harrison County Courthouse 1801 23rd Avenue
Gulfport, Mississippi 39501

With a copy to:

Tim Holleman, Attorney for Bd. of Supervisors Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Tax Incentives. The parties agree that Grantee shall be entitled to apply for all tax incentives, credits, or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Grantee's work in and/or on the Premises.

Section 16.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Agreement or in any way affect this Agreement.

Section 16.3 Consent. Whenever the consent of either party is required to take an action under the terms of this Agreement, unless otherwise provided herein such consent shall not be unreasonably conditioned, withheld nor delayed.

Section 16.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 16.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Agreement. To the extent not prohibited by law for a governmental body, each of the parties agrees to indemnify the other against and hold it harmless, from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of reasonable attorneys' fees in connection therewith).

Section 16.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Agreement, including the rights herein granted to terminate this Agreement, shall be construed as cumulative and no one of them shall be exclusive of any of the

others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Grantors and Grantee set forth herein be deemed both a covenant and a condition.

Section 16.7 Governing Law, Jurisdiction and Venue. This Agreement shall be interpreted and construed under the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

Section 16.8 No Partnership. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Grantors and Grantee, and neither the method of computation of consideration nor any other provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Grantors and Grantee other than the relationship of Grantors and Grantee.

Section 16.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 16.10 Entire Agreement; Amendments. As of the execution hereof, this Agreement contains all covenants and agreements between Grantors and Grantee exclusively relating in any manner to the use and occupancy of the Premises and the other matters set forth in this Consent and Lease Agreement. No prior agreement or understanding, written or oral, pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Agreement cannot be altered, changed, modified, or added to, except in writing signed by Grantors and Grantee. No renewal after this Agreement terminates shall be binding on either party unless it be in writing and signed by the Grantors and Grantee.

Section 16.12 Severability; Invalidity of Whole. Any provision or provisions of this Agreement which shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. If a court of competent jurisdiction determines in a final, non-appealable judgment that all of the provisions of this Agreement are invalid, void or illegal, then, as of the date of such final, non-appealable judgment, this Agreement shall be terminated,

cancelled and considered void *ab initio* and the parties shall have no duties, obligations, or liability of any kind to any of the other parties for any claims, damages, injuries, or losses of any kind arising out of the Agreement.

Section 16.12 Waste and Nuisances. The Grantee agrees not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Premises and will, when requested by the proper authorities, abate all nuisances at its own expense.

Section 16.13 Late Fee and Charges, Should Grantee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Grantors shall charge as late fees an additional one and one-half percent (1.50%) of the outstanding balance due, commencing as of the date such amounts were originally due.

Section 16.14 Proof of Payment. No set-off in the payment of the consideration herein shall be allowed unless signed by Grantors, its legal representative or assigns, and the proof of the payment of rent shall be on Grantee in all controversies.

Section 16.15 Quiet Enjoyment. Grantors warrant and guarantee that they have the full right and authority to enter into and perform this Agreement and to grant the rights herein, and the Grantors covenant and agree that at all times during the term of this Agreement, including any extension thereof, Grantee, subject to the County Sand Beach Ordinance and the provisions, covenants, and requirements for public use and access defined in this Agreement, the Lessee shall have quiet and peaceful enjoyment of the Premises and of all Grantee's rights, easements, appurtenances and privileges belonging or otherwise appertaining thereto and shall not be disturbed or interfered with by Grantors or any person; provided, however, Grantors do not warrant and guarantee quiet enjoyment as against the State of Mississippi.

Section 16.16 Time is the Essence. Time is of the essence with respect to all matters provided in this Agreement.

Section 16.17 Concurrent Rights. Nothing in this Lease is intended to circumvent or supersede any concurrent rights that Harrison County, the State of Mississippi, or any state or federal agency may have in the circumstances that may be applicable to the Premises or to the Grantee.

Section 16.18 Reservation of Rights. Nothing in this Agreement is intended to grant, convey, recognize, or otherwise consent to any claim by the State as to any portion of the Tivoli Property, all of which claims are expressly reserved to Grantors and Grantees, who deny any right by the State.

-----END OF TEXT OF LEASE- SIGNATURE PAGE FOLLOWS-----

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the dates beside the signatures of their authorized representatives below.

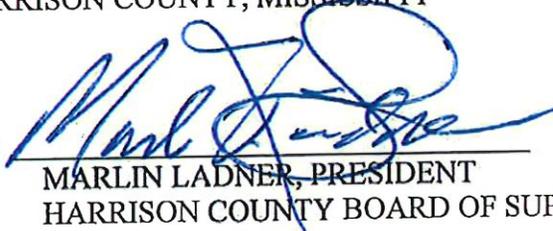
Grantors:

CITY OF BILOXI, MISSISSIPPI

BY: 
A. M. GILICH, JR., MAYOR

DATE: 8-7-24

HARRISON COUNTY, MISSISSIPPI

BY: 
MARLIN LADNER, PRESIDENT
HARRISON COUNTY BOARD OF SUPERVISORS

DATE: 8/5/24

Grantee:

BILOXI CAPITAL, LLC

BY: 
DANIEL O. CONWILL IV, MEMBER

DATE: 8/2/2024

EXHIBIT "A"
DESCRIPTION OF OVERALL PROPERTY
OWNED BY TIVOLI

Description:

Parcel "A" (BCL CONTROLLED PROPERTY NORTH OF US HWY. 90 FEE SIMPLE OWNED BY BCL BY WARRANTY DEED)

Beginning at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run N-00°51'01"-W along said East margin of Holley Street, 1081.29 feet to an "X" Mark in concrete at the intersection of said East margin of Holley Street and the South margin of Howard Avenue; thence run N-85°39'24"-E along said South margin of Howard Avenue, 226.58 feet to a point; thence run N-88°21'03"-E along said South margin of Howard Avenue, 67.09 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 262.68 feet, a chord of which bears S-78°47'55"-E, 98.66 feet, an distance of 99.25 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 1108.42 feet, a chord of which bears S-65°45'28"-E, 44.32 feet, an distance of 44.32 feet to a point; thence run S-60°05'31"-E Southeasterly along said South margin of Howard Avenue, 93.46 feet to a point; thence run S-53°14'41"-E along said South margin of Howard Avenue, 75.25 feet to a point; thence run S-48°58'05"-E along said South margin of Howard Avenue, 92.23 feet to a point; thence run S-48°59'33"-E along said South margin of Howard Avenue, 280.89 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the left having a radius of 350.00 feet, a chord of which bears S-69°27'26"-E, 244.74 feet, an arc distance of 250.02 feet to a point; thence run S-89°55'19"-E along said South margin of Howard Avenue, 205.71 feet to the intersection of said South margin of Howard Avenue and the West margin of Kuhn Street; thence run S-00°18'28"-E along said West margin of Kuhn Street, 159.51 feet to a point; thence run S-89°58'09"-W leaving said West margin of Kuhn Street, 108.70 feet to a point; thence run S-00°56'03"-E, 264.05 feet to a point on the North margin of Meaut Street; thence run N-89°47'12"-W along said North margin of Meaut Street, 89.26 feet to a point; thence run S-01°53'38"-W leaving said North margin of Meaut Street, 318.64 feet to a point on said North margin of U.S. Highway 90; thence run N-85°11'56"-W along said North margin of U.S. Highway 90, 331.55 feet to a point; thence run N-89°06'53"-W along said North margin of U.S. Highway 90, 313.04 feet to a point; thence run N-80°47'54"-W along said North margin of U.S. Highway 90, 430.70 feet to the Point of Beginning, containing 25.80 acres, more or less.

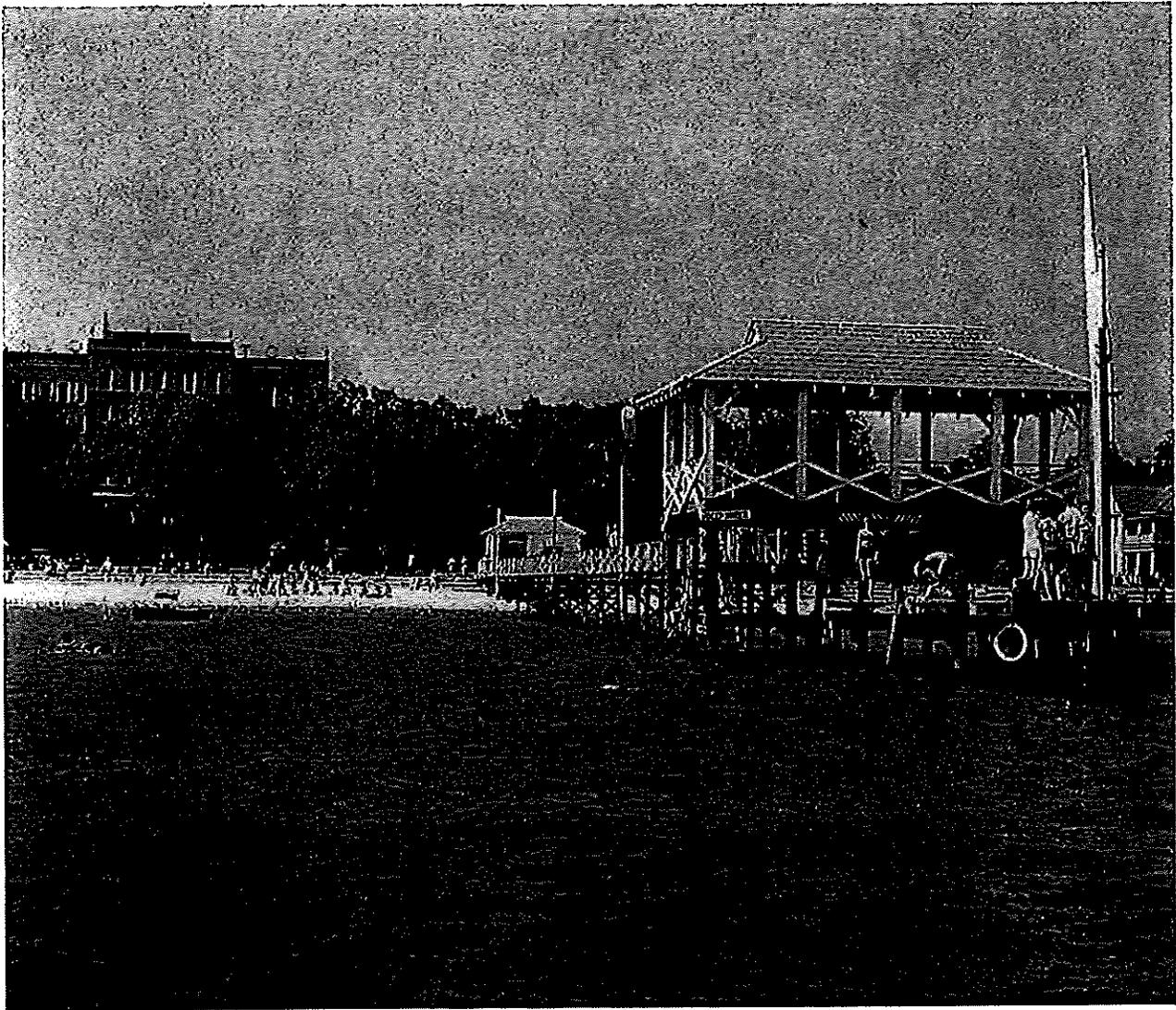
Parcel "B" (BCL CONTROLLED PROPERTY SOUTH OF US HWY. OWNED BY BCL BY QUITCLAIM DEED)

Commencing at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run S-00°51'01"-E leaving said North margin of U.S. Highway 90, 157.83 feet to a point on the South margin of said U.S. Highway 90 and the outside face of an existing seawall; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the left having a radius of

1859.01 feet, a chord of which bears S-84°09'18"-E, 162.56 feet, an arc distance of 162.61 feet to a point; thence run S-86°36'51"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 201.77 feet to a point; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the right having a radius of 2863.78 feet, a chord of bears S-83°38'11"-E, 308.70 feet, an arc distance of 308.85 feet to a point; thence run S-80°18'26"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 396.50 feet to a point; thence run S-01°40'33"-E, 189.57 feet to a point on the North margin of the Mississippi Sound (Gulf of Mexico); thence run along said North margin of the Mississippi Sound (Gulf of Mexico) the following: S-86°56'20"-W, 14.55 feet; S-81°28'59"-W, 108.42 feet; N-79°56'06"-W, 72.69 feet; N-75°59'45"-W, 108.73 feet; N-71°41'10"-W, 51.14 feet; N-63°03'15"-W, 48.27 feet; N-71°05'08"-W, 95.35 feet; N-78°57'22"-W, 45.78 feet; N-82°45'56"-W, 50.91 feet; N-84°51'58"-W, 43.30 feet; N-87°18'12"-W, 52.46 feet; N-88°47'51"-W, 52.39 feet; N-85°56'50"-W, 43.12 feet; S-88°59'08"-W, 101.14 feet; N-88°06'06"-W, 50.24 feet; S-88°22'36"-W, 88.23 feet; N-85°38'57"-W, 45.87 feet to a point; thence run N-00°51'01"-W leaving said North margin of the Mississippi Sound (Gulf of Mexico), 201.40 feet to the Point of Beginning, containing 4.75 acres, more or less.

EXHIBIT "B"

PHOTOS



Tivoli Hotel, one of Biloxi's great hotels from the 1920's, took a hit from a barge in Katrina which smashed the facade on the right side. Near this structure was the incomplete George Ohr Museum and the Pleasant Reed House, an African-American structure recently removed to the Ohr compound. Katrina gutted the museum and destroyed the Pleasant Reed House. Photo from Mississippi Gulf Coast Community College C.C. "Tex" Hamill Down South Magazine Collection.

*On March 11, 2006, the Tivoli with its smashed face still stood derelict and condemned.
Charles L. Sullivan*

Update (February 2008) The Tivoli Hotel has been razed.

1992 Photo

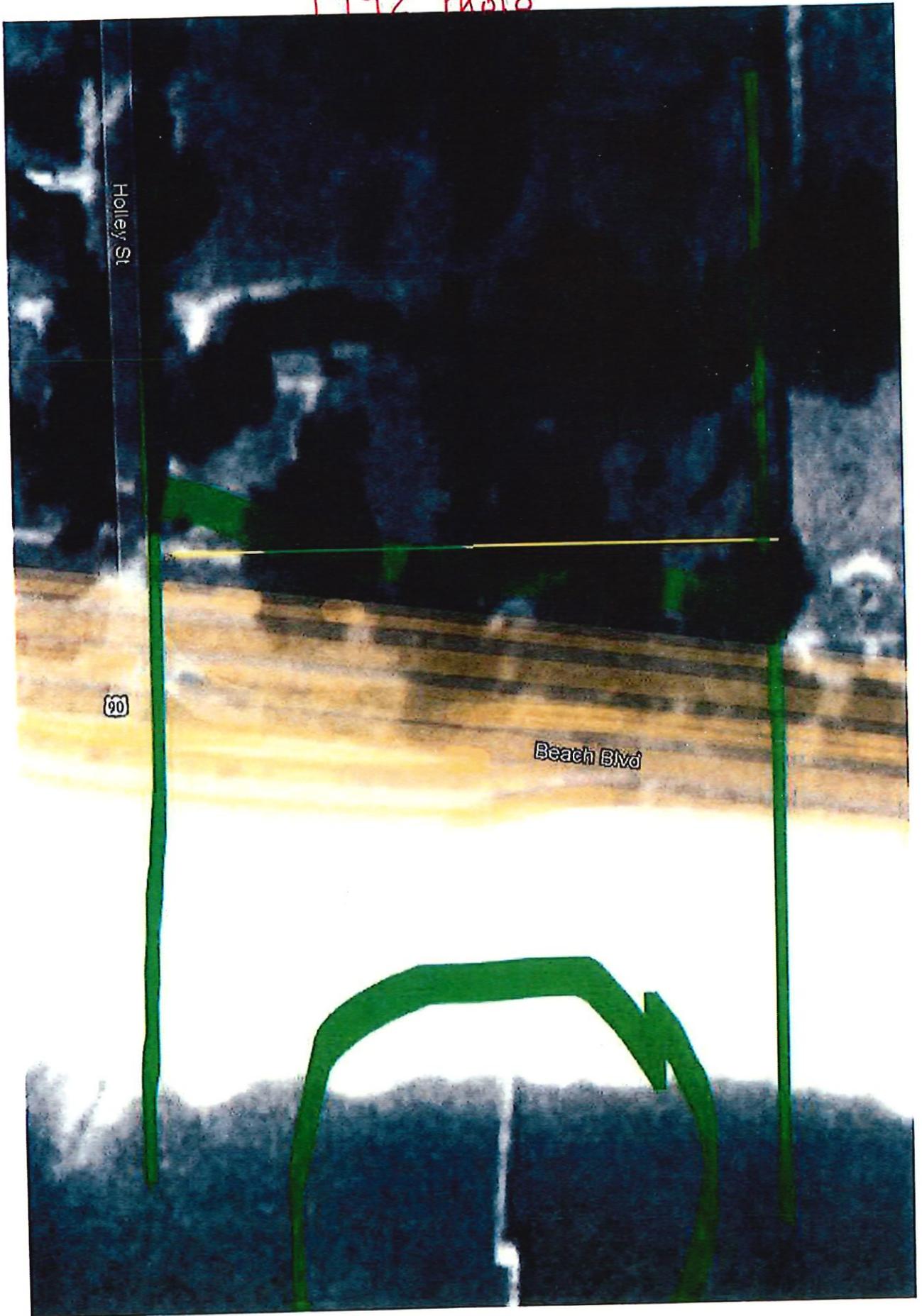
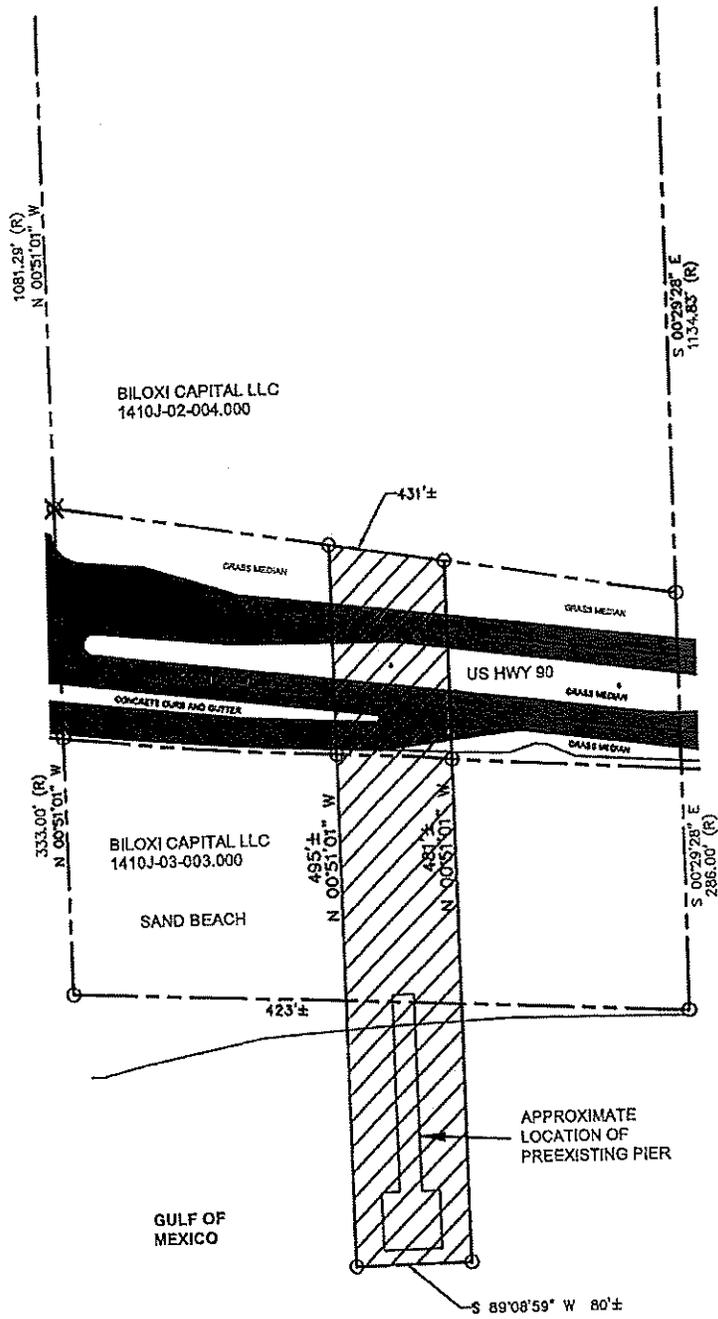


EXHIBIT "C"
LEGAL DESCRIPTION OF "PREMISES"
(SAND BEACH)

TIVOLI LEASE DESCRIPTION

COMMENCING at the intersection of the North margin of U. S. Highway 90, and the East margin of Holley Street; from said point run thence S80°47'54"E a distance of 187.9 ft. to the **POINT OF BEGINNING**; thence run S00°51'01"E a distance of 495.1 ft., more or less, to a point; thence run N89°08'59"E a distance of 80 ft., more or less, to a point; thence run N00°51'01"W a distance of 480.9 ft., more or less, to the North margin of U. S. Highway 90; thence run N80°47'54"W a distance of 81.25 ft. To **THE POINT OF BEGINNING**. Said parcel containing 39,039 square feet, more or less.



EASEMENT SKETCH
 SCALE = 1:80

Supervisor **DAN CUEVAS** moved the adoption of the following Order:

**ORDER APPROVING THE CONSENT AND LEASE AGREEMENT FOR
PROPERTY IN CONNECTION WITH BUILDING A PUBLIC PIER (TIVOLI)**

**ORDERED BY THE BOARD OF SUPERVISORS OF HARRISON COUNTY,
MISSISSIPPI**, that the Board does consent to, authorize and approve the Consent and Lease Agreement for Property in Connection with Building a Public Pier as attached hereto as Exhibit "A," and authorizes the execution thereof.

Supervisor **KENT JONES** seconded the motion to adopt the above and foregoing Order, whereupon the question was put to a vote with the following results:

Supervisor DAN CUEVAS	voted	AYE
Supervisor REBECCA POWERS	voted	AYE
Supervisor MARLIN R. LADNER	voted	AYE
Supervisor KENT JONES	voted	AYE
Supervisor NATHAN BARRETT	voted	AYE

The majority of the members present, having voted in the affirmative, the motion was declared carried and the Order adopted on this, the 5th day of August 2024.



Prepared by and return to: Peter C. Abide
2355 Pass Road
Biloxi, MS 39531
(228) 385-1010

INDEXING INSTRUCTIONS: Section 33, Township 7 South, Range
9 West Second Judicial District of Harrison Mississippi

STATE OF MISSISSIPPI
COUNTY OF HARRISON, SECOND JUDICIAL DISTRICT

**CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH
BUILDING A PUBLIC PIER**

THIS CONSENT AND LEASE AGREEMENT ("Agreement") is made, executed, and
entered by and between the

GRANTORS:

City of Biloxi, Mississippi,
a political subdivision of the State of Mississippi (the "City")
P. O. Box 429
Biloxi, MS 39530
(228) 435-6254,

and

Harrison County, Mississippi,
a political subdivision of the State of Mississippi (the "County")
P. O. Drawer CC
Gulfport, Mississippi 39502
(228) 865-4116,

and

GRANTEE:

Biloxi Capital, LLC, ("Tivoli"),
a Delaware limited liability company ("Lessee")
c/o Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532
(228) 365-1941



and shall be effective upon the latest date of the full execution of this Agreement on the signature page of this Agreement by the County, City and Tivoli. ("Effective Date" of Agreement).

PREAMBLE:

WHEREAS, Grantors and Grantee specifically acknowledge and agree that Tivoli currently owns that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli Property") extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, as more fully described in that certain legal description attached hereto as Exhibit "A", which grants Tivoli fee simple title (Parcel A by Warranty and Parcel B by Quitclaim) to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel and casino with food service, entertainment and recreational enterprises that will be contiguous to the County and City's existing East Biloxi Boardwalk located south of the ROW of Highway 90 and that further will provide public pedestrian access to Tivoli's proposed new municipal public pier located where a previous pier existed as shown in the photographs attached hereto and authorized in this Agreement that will serve tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development;

WHEREAS, based on various statutes, court decisions and precedent the County exclusively and perpetually controls the sand beach located South of the toe of the seawall to the Mississippi Sound, within the Property owned by Tivoli. Additionally, the State has granted the City and the County the authority:

(a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of upland fee simple parcels like the Tivoli Property and likewise seaward of the toe of the seawall and across the surface of the Harrison County sand beach; and

(b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Consent and Lease Agreement, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

WHEREAS, in addition to the Tivoli's authority to develop and use its own property and the City's and County's authority to develop, use, and lease Public Trust Tidelands by virtue of the ports and harbors statutes cited in the preceding "Whereas" paragraph of this Lease, Tivoli, by virtue of its ownership in fee simple of the parcel of uplands constituting the Tivoli Property and all appurtenances thereunto belonging, is vested with littoral rights within the area designated as the in this Agreement, including, but not limited to, the right to construct, or cause to be

constructed, own, and maintain, or cause to be maintained, a pier for joint public and private recreational and tourism economic development uses, and the right to construct such pier without Tivoli or the City having to pay any rent to the State or having to obtain a tidelands lease from the Secretary of State for these leased premises, which rights are more fully defined in the *Miss. Code of 1972* sections cited in the preceding "Whereas" paragraph, and as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use... and encourage commerce on the water...we find that the position of ... Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90] has merit in that they do enjoy certain littoral rights....") and *Miss. State Highway Comm'n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) ("They [Gilich] still have the [littoral] rights, pursuant to statute... to construct any beach structures they desire.");

WHEREAS, in order to alleviate concerns from the State and certain Coastal cities that this development would not make payments to the State Tidelands Fund, the parties expressly state that Grantee will pay the "in lieu" payment to the Public Trust Tidelands Assessment Fund" as required by statute, upon issuance of a certificate of occupancy for a casino on the Tivoli Property;

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site and holds the sand beach easement in trust for the public (the "Sand Beach Easement"), as is more fully defined in the County's *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment ("This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid"), and in the Final Judgment, dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi, et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) ("The record owners... of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights...Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom." [Final Judgment, 4]; "[T]he rights defined herein are subject to the reasonable exercise of any power vested in...municipalities, to create, operate and maintain...piers and other such facilities" [Final Judgment, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court's Final Judgment and Addendum: *U.S. v. Harrison County*, 399 F.2d 485 (5th Cir. 1968), and *U.S. v. Harrison County*, 414 F. 2d 784 (5th Cir. 1969);

WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trust, has granted the County the authority, without the County or its assignees having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, where such uses serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, et seq.; 59-7-401, et seq.; 59-13-1, et seq.; 49-15-9; 29-15-5;

§29-15-13;

WHEREAS prior owners of the Tivoli Property built and maintained a pier on the Leased Premises for many years, as evidenced by the photos identified as Exhibit "B" without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, the Grantors have determined that this Consent and Lease Agreement and Tivoli's subsequent redevelopment of, and enhancements to, a municipal pier on the subject property will, within and for the City, County, and State, increase employment and tax revenue, promote economic development; and serve higher public purposes of the Public Trust for Tidelands through providing and facilitating public access to the tidelands and the Mississippi Sound for recreation, fishing, and marine commerce; further, Grantors have determined that it is in the best interests of the health, safety, and welfare of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with Tivoli;

NOW THEREFORE, the Grantors and Grantee do hereby agree that the findings, conclusions, and statements of fact contained in the foregoing Preamble are hereby adopted, ratified, and incorporated in this Agreement, and do hereby agree to the following terms and conditions of this Agreement:

ARTICLE 1 GRANT

Section 1.1 Land and Improvements. For and in consideration of the mutual promises, covenants, and conditions stated in this Agreement and further in consideration of Ten Dollars (\$10.00) cash in hand paid and the payments as contemplated by this Agreement to be made by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantors hereby consent and Lease to Grantee, and Grantor hereby accepts from Grantors the right to lease and control access over that area identified in Exhibit "C" controlled by Grantors, (herein referred to as the Premises"). The Premises consists of certain sand beach lying above lands owned by Grantee. The grant of the Premises is subject to the covenants and conditions for public use and access stated in this Agreement and includes (a) the City and County's interests, as political subdivisions of the State subject to (b) the covenants and conditions of the County's Sand Beach Ordinance and the Final Judgment and Addendum to the Final Judgment of the U.S. District Court for the S. Dist. of Miss., S. Div., in *United States of America v. Harrison County, Mississippi, et al.*, Civil Action Number 2262 entered October 8, 1970, and (c) the non-exclusive use of the County's Seawall Easement and East Biloxi Boardwalk. Grantee shall have reasonable access to the roadways of the City of Biloxi for egress and ingress to the Premises to accommodate Grantee's operations.

ARTICLE 2 TERM

Section 2.1 Term and Renewal Term. The Term of the Agreement shall be forty (40) years (the "Term"). The Term of the Agreement shall commence upon the Effective Date. Upon sixty (60) days notices to the Grantors prior to the expiration of the Term of this Agreement, the Grantee may renew the Agreement for an additional twenty-five (25) years (the "Renewal Term") under the same terms and conditions as the original Term. Notwithstanding the foregoing, in the event that

Grantee is unable to construct its proposed project north of Highway 90, Grantee may elect with ninety (90) days written notice to the Grantors to terminate this agreement, in which event, this agreement shall terminate and the parties shall have no further obligations to one another following termination, other than indemnity provisions which survive termination, and the Grantors shall retain all other consideration paid to them prior to the termination.

ARTICLE 3 CONSIDERATION

Section 3.1 Base consideration. Grantee shall pay Grantors as follows:

- A. Grantee shall pay the sum of Five Thousand Dollars (\$5,000.00) to the Grantors upon execution of this Agreement, as consideration for execution of the Agreement.
- B. Grantee shall also pay to Grantors One Thousand Dollars (\$1,000.00) per month (the "Base Rent"), payable in advance on the first day of each month, beginning on the Commencement Date defined in this Agreement.

Section 3.2 Commencement Date. The Consideration shall commence on the first day of the calendar month following Grantee's completion of the proposed pier signified by the issuance of a permanent certificate of occupancy to Grantee for the pier by the City (the "Commencement Date".)

Tivoli shall pay Consideration monthly on or before the tenth (10th) day of the month from and after the Commencement Date.

Tivoli shall pay the Consideration to the County and the City simultaneously by paying each of them one-half (1/2) of the Consideration due for the month of payment. The Grantee further reserves the right to prepay any portion as it may deem appropriate.

All Consideration shall be payable at the seat of government addresses stated in this Agreement for the City and County, respectively, or at such other place as Grantors may designate in writing.

Five (5) years after the Commencement Date and for each five-year period thereafter, the Consideration shall be increased by the amount of the increase of the Consumer Price Index, All Urban, for the prior five-year period, as published in the Wall Street Journal. In the event the Consumer Price Index, All Urban, is no longer available, the Grantors shall designate an alternate index rate which is the closest in nature and calculation of the Consumer Price Index, All Urban, in effect on the Effective Date.

Section 3.3 Triple Net. It is the intention and agreement of Grantors and Grantee that the Consideration herein specified shall be net, net, net to Grantors in each year during the Term of this Agreement and any renewal term; that all costs, expenses, taxes, charges, utilities, and obligations of every kind relating to the Promises (excluding maintaining the Sand Beach), including, but not limited to the costs of maintaining and repairing the pier constructed on the

Premises from and after the Commencement Date, which may arise or become due during the Term of this Agreement, shall be paid by Grantee; and that Grantors shall be indemnified by Grantee against such costs, taxes, expenses, utilities, charges and other obligations.

ARTICLE 4 CONSTRUCTION, ALTERATIONS AND EQUIPMENT

Section 4.1 General. Grantee shall at its own cost and expense, renovate the existing damaged pier pilings and construct a new public municipal pier on the Premises for the uses described in Article 5 below. Grantee shall submit to the City and County a rendering of the proposed construction for the pier prior to commencement thereof. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state, and local governmental bodies and agencies having jurisdiction over the performance of such construction work. Grantors shall cooperate with Grantee's efforts in obtaining governmental consents, approvals and permits, provided all permit fees shall be paid by Grantee.

Section 4.2 Initial Construction. Prior to Initial Construction, final building plans and specifications shall be submitted to Grantors for approval. Provided such plans and specifications are in substantial performance with the drawings, renderings and/or plans furnished by Grantee as set forth in Section 4.1, such approval shall not be unreasonably conditioned, withheld or delayed.

Section 4.3 Time to submit plans, Commence Construction and Complete Construction. Grantee shall submit final building plans and specifications for the pier to the appropriate building department(s) with buildings plans for the hotel described herein.

Section 4.4 Mechanics or Workman's Liens. Grantee shall (1) keep the Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Grantee, and (2) at all times fully protect and indemnify Grantors against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Grantee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Grantors a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Grantee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Grantors, Grantors shall keep the Premises free of same, indemnify Grantee, furnish Grantee with a bond, and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Grantee aforesaid.

ARTICLE 5 USE

Section 5.1 General. Subject to the conditions for public use and access provisions defined in Section 1.1 (the Grant of Premises) of this Agreement for joint public and private use of, and

access to the Premises, Grantee shall be entitled to the use and possession of the Premises from and after the Effective Date of this Agreement for the purposes and uses provided in this Agreement. Grantee shall use the Premises, for non-gaming recreation purposes, facilities and activities including, but not limited to, renovation, construction, operation and maintenance of a public municipal pier and other incidental marine and recreational purposes and shall be included as an integral amenity to any development proposed by Grantee on its property North of Highway 90 and serving public purposes of the Public Trust for Tidelands to enhance, *inter alia*, the public and private opportunities for recreation, fishing, sailing, boating and marine sports, and make available public and private use and enjoyment of the municipal pier on the Premises. Grantee shall not use the Premises in such a manner as to violate any applicable law, rule, ordinance, or regulation of any governmental body. No gaming shall be allowed on the municipal pier, nor any vessel docked or berthed at the area, nor any other area of the Premises.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Premises are accepted by Grantee "as is" in their present condition. Except as otherwise provided herein, Grantee shall at all times during the Term of this Agreement and at its own expense keep the Premises in good order, condition, and repair, and shall make all repairs thereto, ordinary, and extraordinary, that may be required during the Term hereof, except for maintenance and repair of the sand beach which shall continue to be the responsibility of the County. Grantee shall indemnify and save harmless Grantors against and from any loss, costs, damage, and reasonable expenses arising out of or in connection with Grantee's use of the Premises, or any part thereof.

Section 6.2 Grantors' Obligation. Grantors shall have no obligation to maintain the pier on the Premises. However, Grantors shall provide easements for the necessary utilities to service the improvements made by Grantee, should such easements be necessary.

Section 6.3 Grantee's Obligation. Grantee shall, as required by this Agreement, maintain, repair, and replace the items comprising the pier on the Premises, including but not limited to pilings, boards, steps, and structural portions of the pier to be constructed upon the Premises, and all wiring, plumbing, conduits, and other utilities which service the pier and the Premises. Grantee shall deliver the Premises to Grantors on the expiration or termination of this Agreement in good repair and condition, reasonable wear and tear excepted and free and clear of all material liens or encumbrances created or claimed by reason of transactions made by Grantee.

Section 6.4 Repair and Maintenance. Grantee shall, as its own expense, make all repairs and replacements to all improvements constructed by Grantee on the Premises which may be from time to time become necessary, including but not limited to repairs to any of the following that may become part of the final approved plans and specifications pertaining to the pier and access to the pier: the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Premises. All such repairs and replacements shall be made promptly, as and

when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Grantee to make such repairs or replacements, Grantors may, but shall not be required to, make such repairs and replacements for Grantee's account, and the expense thereof shall constitute and be collectable as additional Consideration; provided, however, Grantors must first give notice to Grantee to cure such default (i.e., make the repair) within a reasonable amount of time.

ARTICLE 7 UTILITIES

Section 7.1 Initial Connections. Grantors warrant to Grantee that Grantors will cause the necessary mains and conduits in order that water and sewer facilities, electricity, telephone, internet, and other utilities necessary to initial conduct of Grantee's intended business to be made available for connection within the Premises. It is understood that all services hereunder shall be furnished by public utilities and not by Grantors.

Section 7.2 Grantee's Obligations for Charges. The Grantee shall be solely responsible for and shall promptly pay all charges, when due, for water, sewer, electricity, telephone, and any other utility used upon or furnished to the Premises. The Grantee's obligation to pay for such utilities shall commence as of the commencement of operation of activity.

ARTICLE 8 TAXES AND ASSESSMENTS

Section 8.1 Real Property Taxes. Grantee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Premises, if any.

Section 8.2 Personal Property Taxes. Grantee shall pay, prior to delinquency, any and all personal property taxes, if any, levied against Grantee's improvements, fixtures, equipment, furniture, and other personal property located upon the Premises.

Section 8.3 Contests. Grantee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

ARTICLE 9 INSURANCE AND INDEMNITY

Section 9.1 Indemnification. Grantors shall not be liable to Grantee or Grantee's employees, agents or visitors, or to any other person whatsoever, for any injury to person or damage to property in or occurring upon the Premises or of any other person entering the Premises under express or implied invitation of Grantee, or caused by the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Grantors' negligence or misconduct or breach of its obligations hereunder) and Grantee agrees to carry general liability insurance as set forth

in this Agreement for the purpose of saving Grantors harmless to the extent of such coverage.

Section 9.2 General Liability Insurance. Grantee agrees to indemnify and save Grantors harmless from all claims for damages, to goods, merchandise, persons, and other property in or upon the Premises, and any platforms of Grantee, arising out of or occasioned by Grantee's use or occupancy, except such damages resultant from the negligence of Grantors, its agents, servants, or employees, or caused by Grantors' failure to perform any of its obligations hereunder.

Grantee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Premises. Such insurance may be carried under a blanket policy covering the Premises as well as other locations in which Grantee or any of its affiliated or subsidiary corporations or other entities may be interested. Grantee will promptly furnish Grantors with a certificate of said coverage when requested by the Grantors. In the year following each five-year interval of the Initial Term and any renewal term of this Agreement, the Grantee shall adjust the amount of general liability insurance to be an amount reasonable sufficient to reflect the consumer price index increases during such interval.

Section 9.3 Additional Named Insured: Act of Default. All policies of insurance required hereby shall include Grantors as an additional named insured.

Failure to have Grantors included and named as an additional named insured on any such policy shall be considered an act of default.

Notwithstanding the provisions of Section 16 of this Agreement, should such default continue for a period of ten days after notice of default by Grantors to Grantee, Grantors may, but are under no obligation, purchase insurance coverage to protect Grantors' interests only in the premises and its improvements, in which case the cost of such insurance shall be considered as additional consideration due immediately from Grantee.

The Grantors shall have the right to terminate the Agreement upon the expiration of ninety (90) days from the date of such Notice of Default should Grantee fail to correct such omission or exclusion and have Grantors added as an additional named insured under such policy.

Should any loss occur at a time when Grantors are not included as an additional named insured under Grantee's insurance policy Grantors shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss, to the extent allowed by law.

Section 9.4 No Hazardous Use. Grantee will not permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk ultra hazardous, it being understood and agreed that the use of the Premises and pier to be constructed thereon in the proper and ordinary conduct of Grantee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.5 Waiver of Subrogation. Recognizing that Grantors are governmental subdivisions of the State of Mississippi, and thus to the extent but only to the extent allowed under

law, Grantors and Grantee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Grantors and Grantee, as the case may be, their respective property, or to the Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only, Grantors and Grantee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Grantors and Grantee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting therefrom to pay such additional costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.6 Indemnification for Host Liquor Liability. Grantee will defend, indemnify, save free and hold harmless the Grantors for any action or damages, including, attorney's fees and costs, resulting from a claim relating to host liquor liability.

ARTICLE 10 SIGNS

Section 10.1 General. With the prior approval of Grantors, which such approval shall not be unreasonably conditioned, withheld or delayed, Grantee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Premises which otherwise comply with applicable laws.

ARTICLE 11 ASSIGNMENT, SUBLETTING

Section 11.1 General. Grantee may not assign this Agreement, or any interest herein, or sublet the whole or any part of the Premises, nor transfer majority interest or effective control of or interest in Grantee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Grantee, without the prior written approval of Grantors, which shall not be unreasonably conditioned, withheld or delayed. Any such approval by Grantors will only be with the approval of the intended Assignee by Grantors and will be conditioned upon the express assumption by such assignee or purchaser of all of the Grantee's obligations and liabilities hereunder. No request for approval of assignment or transfer of the Agreement or any interest therein or in Grantee will be allowed or effective unless Grantee is in all respects in compliance with all obligations hereof. Notwithstanding the foregoing, the Grantee shall have the right to pledge and/or assign this Agreement as collateral to any Lender who is providing financing on the project described herein without the prior written consent of the Grantors. In the event of any such assignment Grantee shall provide Grantors with written notice of the same.

ARTICLE 12 RIGHT OF ENTRY

Section 12.1 Right of Entry and Obligation to Make Repairs. Grantors reserves the right during the Term of this Agreement to enter the Premises at reasonable hours and with reasonable prior notice, and for the purpose of inspecting the Premises and to make such repairs, additions, or improvements as Grantors may deem necessary for the protection and preservation of the improvements and Premises; but Grantors are not bound to make any repairs whatever except as hereinafter stated, nor to be held liable for any damage in consequences of leaks, nor for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, nor for any other defects about the pier and Premises, Grantee having examined the same and being satisfied therewith, but should such leaks, obstructions, frozen pipes, stoppages, or other defects about the pier and Premises occurring during the Term of this Agreement, or while Grantee is occupying the Premises, then Grantee shall remedy the same promptly at Grantee's expense, unless Grantors by written instrument undertakes to do the same promptly. Grantee shall maintain the Premises in good order and repair, other than the sand beach which it is not required to maintain.

ARTICLE 13 CASUALTY

Section 13.1 Substantial Destruction. If the improvements to be located on the Premises are materially damaged or destroyed by fire, hurricane, storm, or other casualty (50% or more of replacement cost), Grantee shall have the option to (a) terminate the Agreement with written notice to the Grantors; or (b) to repair and restore the Premises, in which event this Agreement shall remain in full force and effect while Grantee proceeds with due diligence to repair and restore the Premises to substantially the same or better condition as prior to such casualty. In the event Grantee elects to continue with the Agreement, Grantee shall promptly commence repair and restoration of the improvements it installed on the Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration as quickly as is commercially reasonable to do.

Section 13.2 Partial Destruction. In the event the improvements to be located on the Premises should be damaged or destroyed by fire, hurricane, storm, or other casualty, Grantee shall give written notice thereof to Grantors within a reasonable time, not to exceed five (5) business days. If the Premises shall be damaged by fire, hurricane, storm, or other casualty, but not to such extent as to be substantially destroyed (50% or more of replacement cost) and such rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Grantee shall proceed with reasonable diligence to rebuild and repair the improvements it made to the Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third-party approvals cannot be obtained within said time or if all infrastructure for required utilities

remains unavailable to the Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction as the election of the Grantee.

ARTICLE 14 DEFAULT OF GRANTEE

Section 14.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Grantee under the Agreement:

14.1.1 Grantee shall fail to pay any installment of the consideration and such failure shall continue for a period of thirty (30) days after the due date of such installment.

14.1.2 Grantee shall fail to comply with any term, provision, or covenant of this Agreement, other than the payment of consideration or insurance, and such failure shall continue for a period of thirty (30) days after Grantors' written notice thereof to Grantee.

14.1.3 Grantee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Grantee shall be adjudged bankrupt or insolvent in proceedings filed against Grantee thereunder.

14.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Grantee; provided, however, that no default shall occur under this Section 14.1.4 so long as Grantee continues to pay the Consideration and is not otherwise in default under any other provision of this Agreement.

14.1.5 If Grantee elects in writing to abandon the Premises and ceases to pay the Consideration.

14.1.6 Assignment or subletting by Grantee shall be an act of default unless such assignment or subletting is first approved in writing by Grantors or unless otherwise permitted under this Agreement under Article 11 hereof.

14.1.7 Grantee shall fail to have in effect or maintain insurance herein required on Premises which includes Grantors as a named insured along with Grantee, in which case the provisions of Article 9 shall apply.

Section 14.2 Remedies of Grantors. Except as otherwise provided herein, upon the occurrence of any act of default, Grantors shall provide written notice of such default to Grantee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Grantee shall have thirty (30) days from the date of such notice to cure any default under the agreement, unless the cure cannot reasonably be completed within thirty (30) days, in which event the Grantee shall have an additional reasonable period of time to complete the cure provided it commenced the cure within the original thirty (30) day period and has continued with reasonable

commercial efforts. Should Grantee fail to cure any default hereunder, Grantors shall have the option to pursue any one or more of the following remedies after giving written notice to Grantee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

14.2.1 Terminate this Agreement, in which event Grantee shall immediately surrender the Premises to Grantors, and if Grantee fails so to do, Grantors may, without prejudice to any other remedy which it may have for possession or arrearage in Consideration, enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Grantee agrees to pay to Grantors on demand the amount of all loss and damage which Grantors may suffer by reason of such termination, whether through inability to re let the Premises on satisfactory terms or otherwise.

14.2.2 Enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying the Premises or any part thereof, by force if necessary; and Grantee agrees to pay to Grantors on demand any deficiency that may arise by reason of such re-letting.

Section 14.3 Operation of Agreement. It shall be considered an act of default if after the initial construction of the pier is complete and open to the public, the pier or any replacement fails to be open and usable for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial Destruction or Partial Destruction as described above.

ARTICLE 15 CONSIDERATION PAYMENT AND NOTICE

Section 15.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Grantee to Grantors shall be deemed to be complied with when and if the following steps are taken. All Consideration and other payments required to be made by Grantee to Grantors hereunder shall be payable in cash to the City and County (with one-half (1/2) of the total of each rent payment to be paid to each to the City and County) either (a) by electronic transfer to City and County bank accounts, respectively, for which City and County shall within a reasonable time after executing this Agreement notify the Grantee in writing of the account numbers and electronic transfer information; or (b) by checks delivered to their respective seats of government at the following addresses:

City of Biloxi, Mississippi City Hall
140 Lameuse Street
Biloxi, MS 39531

Harrison County, Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

or at such other address as Grantors may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith) and shall be deemed received only when actual collected funds are in the accounts of Grantors. In the event any check or instrument drawn by Grantee and delivered to Grantors as payment for any sum due hereunder is dishonored or refused payment, it shall be treated as if no payment had been made.

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested. Alternatively, notice may be delivered hereunder by personal service on the parties or by successfully transmitted facsimile addressed to the parties hereto at the respective addresses set out opposite their names below, or such other addresses as they have theretofore specified by written notice delivered in accordance herewith:

Grantee:
Biloxi Capital, LLC
Daniel O. Conwill IV, Member
400 Poydras Street, Suite 3100
New Orleans, LA 70130

with a copy to

Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532

Grantors:

City of Biloxi
c/o Mayor of Biloxi
City Hall
140 Lameuse St.
Biloxi, MS 39530
With a copy to:

Peter Abide, City Attorney, City Hall
140 Lameuse St.
Biloxi, Mississippi 39530

Harrison County, Mississippi
c/o President, Board of Supervisors
Harrison County Courthouse 1801 23rd Avenue
Gulfport, Mississippi 39501

With a copy to:

Tim Holleman, Attorney for Bd. of Supervisors Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Tax Incentives. The parties agree that Grantee shall be entitled to apply for all tax incentives, credits, or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Grantee's work in and/or on the Premises.

Section 16.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Agreement or in any way affect this Agreement.

Section 16.3 Consent. Whenever the consent of either party is required to take an action under the terms of this Agreement, unless otherwise provided herein such consent shall not be unreasonably conditioned, withheld nor delayed.

Section 16.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 16.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Agreement. To the extent not prohibited by law for a governmental body, each of the parties agrees to indemnify the other against and hold it harmless, from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of reasonable attorneys' fees in connection therewith).

Section 16.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Agreement, including the rights herein granted to terminate this Agreement, shall be construed as cumulative and no one of them shall be exclusive of any of the

others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Grantors and Grantee set forth herein be deemed both a covenant and a condition.

Section 16.7 Governing Law, Jurisdiction and Venue. This Agreement shall be interpreted and construed under the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

Section 16.8 No Partnership. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Grantors and Grantee, and neither the method of computation of consideration nor any other provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Grantors and Grantee other than the relationship of Grantors and Grantee.

Section 16.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 16.10 Entire Agreement; Amendments. As of the execution hereof, this Agreement contains all covenants and agreements between Grantors and Grantee exclusively relating in any manner to the use and occupancy of the Premises and the other matters set forth in this Consent and Lease Agreement. No prior agreement or understanding, written or oral, pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Agreement cannot be altered, changed, modified, or added to, except in writing signed by Grantors and Grantee. No renewal after this Agreement terminates shall be binding on either party unless it be in writing and signed by the Grantors and Grantee.

Section 16.12 Severability; Invalidity of Whole. Any provision or provisions of this Agreement which shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. If a court of competent jurisdiction determines in a final, non-appealable judgment that all of the provisions of this Agreement are invalid, void or illegal, then, as of the date of such final, non-appealable judgment, this Agreement shall be terminated.

cancelled and considered void *ab initio* and the parties shall have no duties, obligations, or liability of any kind to any of the other parties for any claims, damages, injuries, or losses of any kind arising out of the Agreement.

Section 16.12 Waste and Nuisances. The Grantee agrees not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Premises and will, when requested by the proper authorities, abate all nuisances at its own expense.

Section 16.13 Late Fee and Charges. Should Grantee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Grantors shall charge as late fees an additional one and one-half percent (1.50%) of the outstanding balance due, commencing as of the date such amounts were originally due.

Section 16.14 Proof of Payment. No set-off in the payment of the consideration herein shall be allowed unless signed by Grantors, its legal representative or assigns, and the proof of the payment of rent shall be on Grantee in all controversies.

Section 16.15 Quiet Enjoyment. Grantors warrant and guarantee that they have the full right and authority to enter into and perform this Agreement and to grant the rights herein, and the Grantors covenant and agree that at all times during the term of this Agreement, including any extension thereof, Grantee, subject to the County Sand Beach Ordinance and the provisions, covenants, and requirements for public use and access defined in this Agreement, the Lessee shall have quiet and peaceful enjoyment of the Premises and of all Grantee's rights, easements, appurtenances and privileges belonging or otherwise appertaining thereto and shall not be disturbed or interfered with by Grantors or any person; provided, however, Grantors do not warrant and guarantee quiet enjoyment as against the State of Mississippi.

Section 16.16 Time is the Essence. Time is of the essence with respect to all matters provided in this Agreement.

Section 16.17 Concurrent Rights. Nothing in this Lease is intended to circumvent or supersede any concurrent rights that Harrison County, the State of Mississippi, or any state or federal agency may have in the circumstances that may be applicable to the Premises or to the Grantee.

Section 16.18 Reservation of Rights. Nothing in this Agreement is intended to grant, convey, recognize, or otherwise consent to any claim by the State as to any portion of the Tivoli Property, all of which claims are expressly reserved to Grantors and Grantees, who deny any right by the State.

—————END OF TEXT OF LEASE- SIGNATURE PAGE FOLLOWS—————

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the dates beside the signatures of their authorized representatives below.

Grantors:

CITY OF BILOXI, MISSISSIPPI

BY: _____
A. M. GILICH, JR., MAYOR

DATE: _____

HARRISON COUNTY, MISSISSIPPI

BY: _____
MARLIN LADNER, PRESIDENT
HARRISON COUNTY BOARD OF SUPERVISORS

DATE: _____

Grantee:

BILOXI CAPITAL, LLC

BY: _____
DANIEL O. CONWILL IV, MEMBER

DATE: _____

EXHIBIT "A"
DESCRIPTION OF OVERALL PROPERTY
OWNED BY TIVOLI

Description:

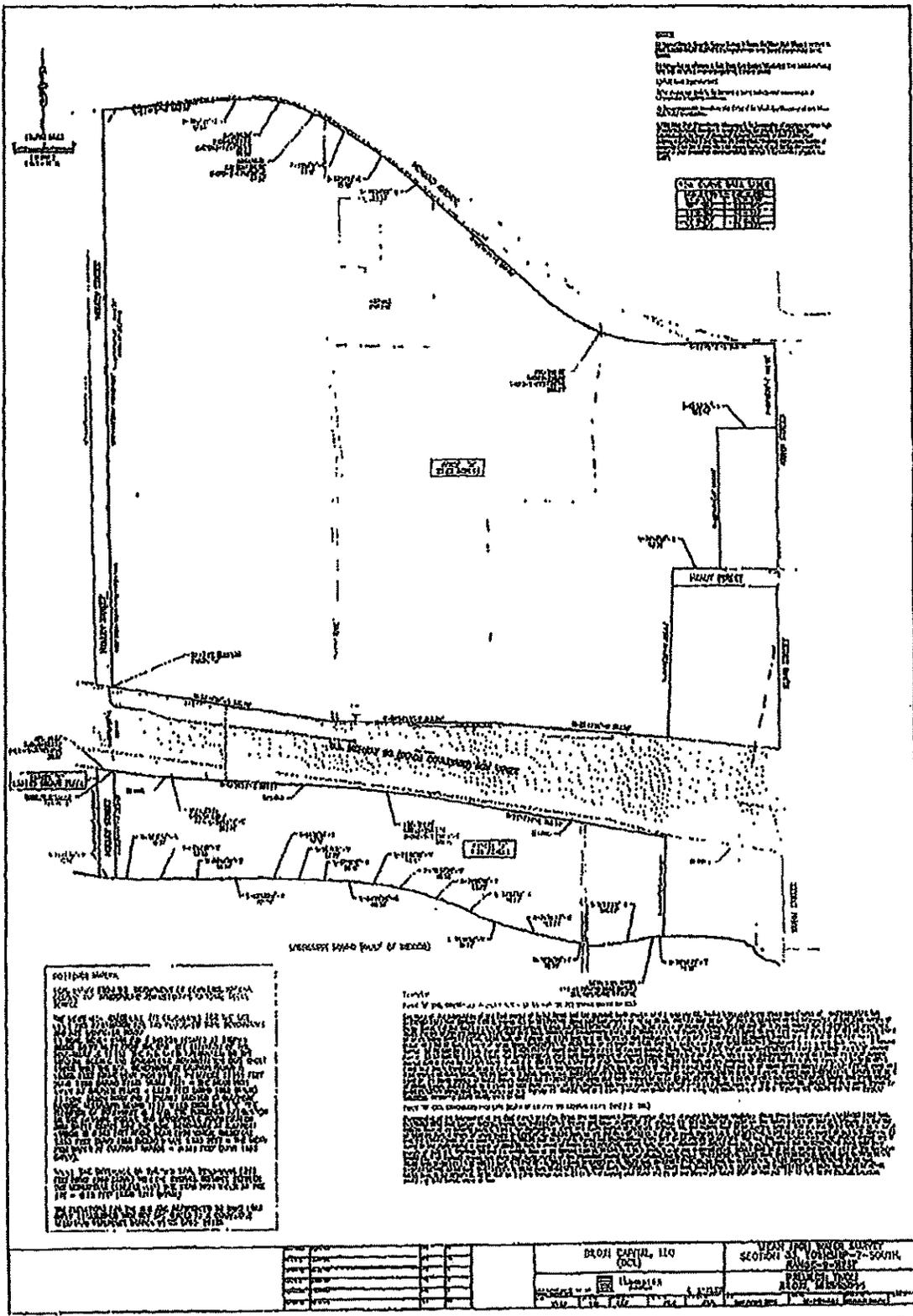
Parcel "A" (BCL CONTROLLED PROPERTY NORTH OF US HWY. 90 FEE SIMPLE OWNED BY BCL BY WARRANTY DEED)

Beginning at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run N-00°51'01"-W along said East margin of Holley Street, 1081.29 feet to an "X" Mark in concrete at the intersection of said East margin of Holley Street and the South margin of Howard Avenue; thence run N-85°39'24"-E along said South margin of Howard Avenue, 226.58 feet to a point; thence run N-88°21'03"-E along said South margin of Howard Avenue, 67.09 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 262.68 feet, a chord of which bears S-78°47'55"-E, 98.66 feet, an distance of 99.25 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 1108.42 feet, a chord of which bears S-65°45'28"-E, 44.32 feet, an distance of 44.32 feet to a point; thence run S-60°05'31"-E Southeasterly along said South margin of Howard Avenue, 93.46 feet to a point; thence run S-53°14'41"-E along said South margin of Howard Avenue, 75.25 feet to a point; thence run S-48°58'05"-E along said South margin of Howard Avenue, 92.23 feet to a point; thence run S-48°59'33"-E along said South margin of Howard Avenue, 280.89 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the left having a radius of 350.00 feet, a chord of which bears S-69°27'26"-E, 244.74 feet, an arc distance of 250.02 feet to a point; thence run S-89°55'19"-E along said South margin of Howard Avenue, 205.71 feet to the intersection of said South margin of Howard Avenue and the West margin of Kuhn Street; thence run S-00°18'28"-E along said West margin of Kuhn Street, 159.51 feet to a point; thence run S-89°58'09"-W leaving said West margin of Kuhn Street, 108.70 feet to a point; thence run S-00°56'03"-E, 264.05 feet to a point on the North margin of Meaut Street; thence run N-89°47'12"-W along said North margin of Meaut Street, 89.26 feet to a point; thence run S-01°59'38"-W leaving said North margin of Meaut Street, 318.64 feet to a point on said North margin of U.S. Highway 90; thence run N-85°11'56"-W along said North margin of U.S. Highway 90, 331.55 feet to a point; thence run N-89°06'53"-W along said North margin of U.S. Highway 90, 313.04 feet to a point; thence run N-80°47'54"-W along said North margin of U.S. Highway 90, 430.70 feet to the Point of Beginning, containing 25.80 acres, more or less.

Parcel "B" (BCL CONTROLLED PROPERTY SOUTH OF US HWY. OWNED BY BCL BY QUITCLAIM DEED)

Commencing at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run S-00°51'01"-E leaving said North margin of U.S. Highway 90, 157.83 feet to a point on the South margin of said U.S. Highway 90 and the outside face of an existing seawall; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the left having a radius of

1859.01 feet, a chord of which bears S-84°09'18"-E, 162.56 feet, an arc distance of 162.61 feet to a point; thence run S-86°36'51"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 201.77 feet to a point; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the right having a radius of 2863.78 feet, a chord of bears S-83°38'11"-E, 308.70 feet, an arc distance of 308.85 feet to a point; thence run S-80°18'26"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 396.50 feet to a point; thence run S-01°40'33"-E, 189.57 feet to a point on the North margin of the Mississippi Sound (Gulf of Mexico); thence run along said North margin of the Mississippi Sound (Gulf of Mexico) the following: S-86°56'20"-W, 14.55 feet; S-81°28'59"-W, 108.42 feet; N-79°56'06"-W, 72.69 feet; N-75°59'45"-W, 108.73 feet; N-71°41'10"-W, 51.14 feet; N-63°03'15"-W, 48.27 feet; N-71°05'08"-W, 95.35 feet; N-78°57'22"-W, 45.78 feet; N-82°45'56"-W, 50.91 feet; N-84°51'58"-W, 43.30 feet; N-87°18'12"-W, 52.46 feet; N-88°47'51"-W, 52.39 feet; N-85°56'50"-W, 43.12 feet; S-88°59'08"-W, 101.14 feet; N-88°06'06"-W, 50.24 feet; S-88°22'36"-W, 88.23 feet; N-85°38'57"-W, 45.87 feet to a point; thence run N-00°51'01"-W leaving said North margin of the Mississippi Sound (Gulf of Mexico), 201.40 feet to the Point of Beginning, containing 4.75 acres, more or less.



This map was prepared by the Surveyor General of the State of New York, under the authority of the Board of Surveyors, and is a true and correct copy of the original map as filed in the office of the Surveyor General.

NO.	ACRES	FRONT FEET	DEPTH FEET
1	1.25	100	100
2	1.25	100	100
3	1.25	100	100
4	1.25	100	100
5	1.25	100	100
6	1.25	100	100
7	1.25	100	100
8	1.25	100	100
9	1.25	100	100
10	1.25	100	100

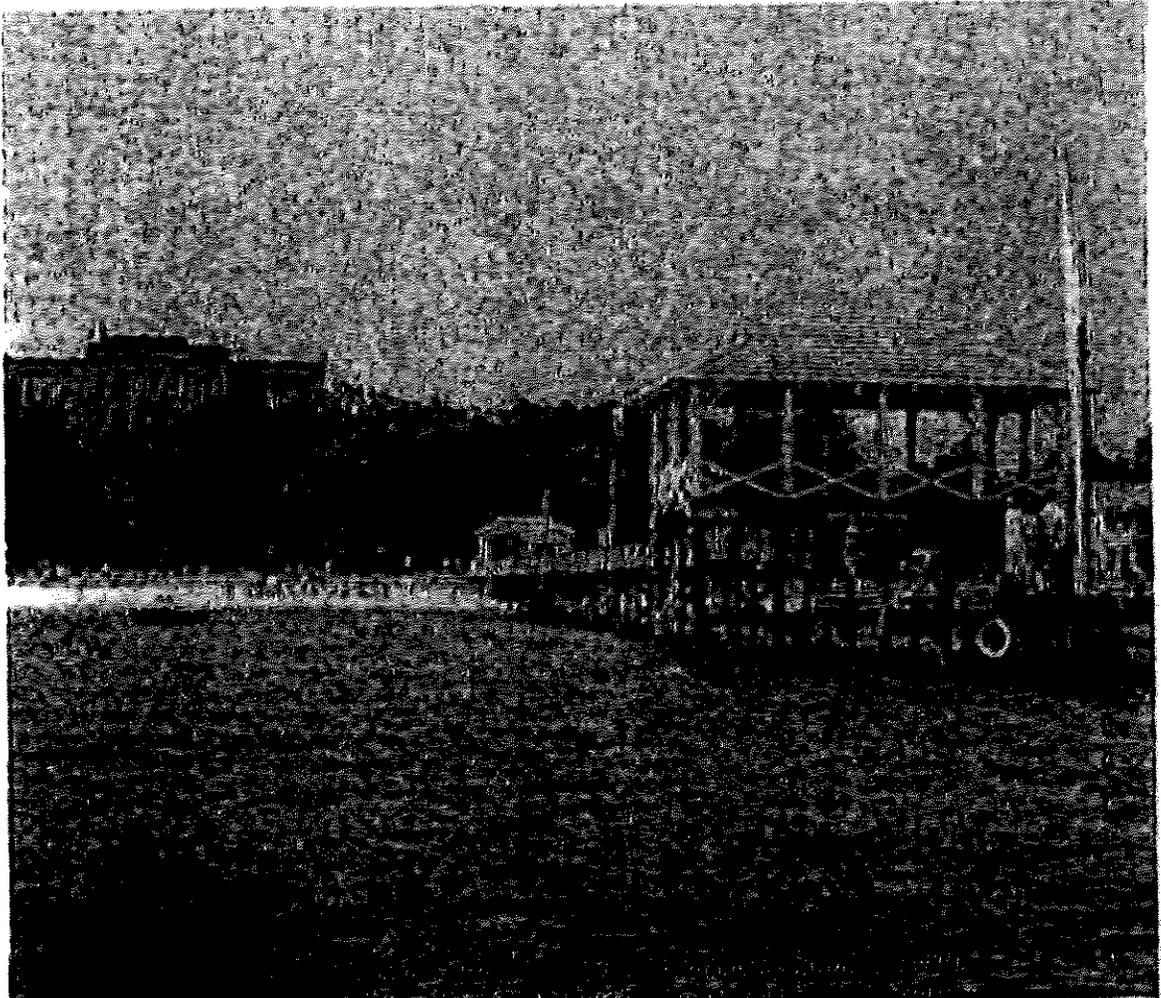
THE SURVEYOR GENERAL OF THE STATE OF NEW YORK, under the authority of the Board of Surveyors, has caused this map to be prepared and filed in his office, and it is hereby certified that it is a true and correct copy of the original map as filed in his office.

This map was prepared by the Surveyor General of the State of New York, under the authority of the Board of Surveyors, and is a true and correct copy of the original map as filed in the office of the Surveyor General.

BROOK CAPITAL, 110 (O.C.L.)	MEAN 1901 WING SURVEY SECTION 31, TOWNSHIP 7-SOUTH, RANGE 8-WEST COUNTY OF OSAGE, STATE OF MISSOURI
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EXHIBIT "B"

PHOTOS



smashed the facade of the Tivoli Hotel. In the foreground is the incomplete George C. Davis Museum and the Pleasant Reed House, an African-American structure recently removed to the Ohr compound. Katrina gutted the museum and destroyed the Pleasant Reed House. Photo from Mississippi Gulf Coast Community College C.C. "Tex" Hamill Down South Magazine Collection.

*On March 11, 2006, the Tivoli with its smashed face still stood derelict and condemned.
Charles L. Sullivan*

Update (February 2008) The Tivoli Hotel has been razed.

1992 Photo

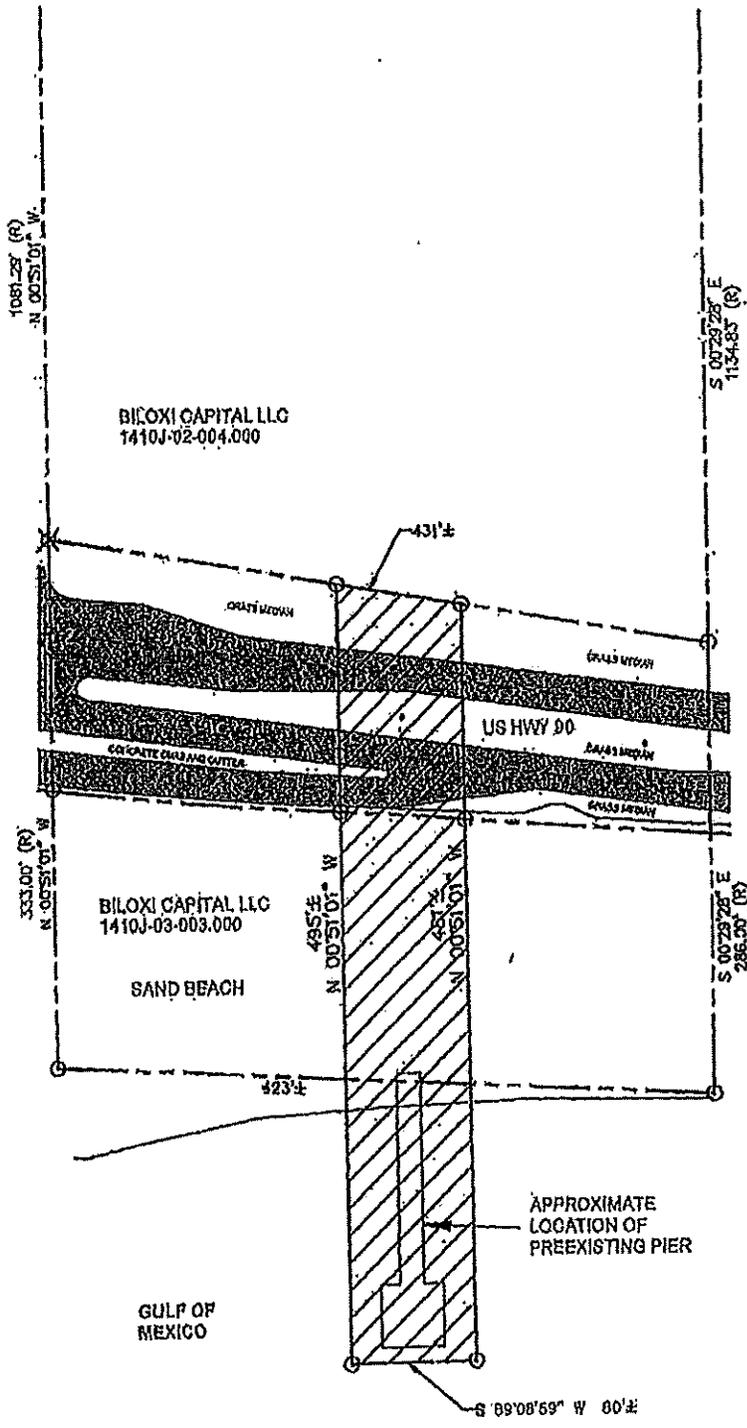


Holden S

(11)

Beacon Blvd

**EXHIBIT
C**





Harrison County, Mississippi

Certified Copy

Order: 24-3923

File Number: 24-3923

ORDER approving the consent and lease agreement for property in connection with building a public pier (Tivoli) and authorizing the Board President to execute the same.

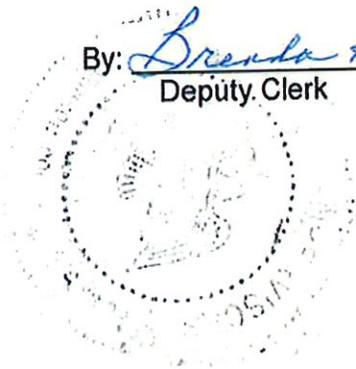
I, Angela Thrash, Chancery Clerk and Ex Officio Clerk of the Board of Supervisors of Harrison County, Mississippi, certify that this is a true copy of Order No. 24-3923, passed by the Board of Supervisors on 8/5/2024.

THIS, the 15th day of August 2024.

Angela Thrash, Chancery Clerk

By: Brenda Anceau

Deputy Clerk



STATE OF MISSISSIPPI

COUNTY OF HARRISON

CITY OF BILOXI

CERTIFICATE

I, the undersigned, Tanner Cook, Deputy Clerk of the Council, of the City of Biloxi, Mississippi, do hereby certify that the attached Resolution Number 542-24 is a true copy of the original Resolution which was placed on the record of the Council Minutes of the City of Biloxi, Mississippi, of a duly held Meeting on the 6th day of August, 2024 and that the original Resolution appears on record in the Clerk of Council's Office from which this copy is taken and compared.

DONE this the 15th day of August, 2024.



Tanner Cook

Resolution No. 542-24

RESOLUTION AUTHORIZING ENTRY OF CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH BUILDING A PUBLIC PIER, BY AND AMONG THE CITY OF BILOXI, HARRISON COUNTY, MISSISSIPPI AND BILOXI CAPITAL, LLC,

WHEREAS, Biloxi Capital, LLC, a Delaware limited liability company (hereinafter, "Tivoli"), currently owns that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli" Property) extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, which grants Tivoli fee simple title to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel and casino with food service, entertainment and recreational enterprises that will be contiguous to Harrison County's (the "County") and City of Biloxi's (the "City") existing East Biloxi Boardwalk located south of the right of way of Highway 90 and that further will provide public pedestrian access to Tivoli's proposed new municipal public pier located where a previous pier existed that will serve tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development;

WHEREAS, based on various statutes, court decisions and precedent, the County exclusively and perpetually controls the sand beach located South of the toe of the seawall to the Mississippi Sound, within the Property owned by Tivoli;

WHEREAS, the State has granted the City and the County the authority (a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of upland fee simple parcels like the Tivoli Property and likewise seaward of the toe of the seawall and across the surface of the

Res. No. 542-24

Harrison County sand beach; and (b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Consent and Lease Agreement, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in Miss. Code of 1972, §§ 21-37-15; 49-15-9; 49-27-1, et seq.; 59-7-1, et seq.; 59-7-401, et seq.; 59-15-1, et seq.; 29-15-5; and 29-15-13;

WHEREAS, in addition to the Tivoli's authority to develop and use its own property and the City's and County's authority to develop, use, and lease Public Trust Tidelands by virtue of the ports and harbors statutes, Tivoli, by virtue of its ownership in fee simple of the parcel of uplands constituting the Tivoli Property and all appurtenances thereunto belonging, is vested with littoral rights, including, but not limited to, the right to construct, or cause to be constructed, own, and maintain, or cause to be maintained, a pier for joint public and private recreational and tourism economic development uses, and the right to construct such pier without Tivoli or the City having to pay any rent to the State or having to obtain a tidelands lease from the Secretary of State for these leased premises, as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use. . . . and encourage commerce on the water. . . . we find that the position of . . . Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90] has merit in that they do enjoy certain littoral rights and *Miss. State Highway Comm'n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) ("They [Gilich] still have the [littoral] rights, pursuant to statute. . . to construct any beach structures they desire.");

Res. No. 542-24

WHEREAS, in order to alleviate concerns from the State and certain Coastal cities that this development would not make payments to the State Tidelands Fund, the parties expressly state that Tivoli will pay the "in lieu" payment to the Public Trust Tidelands Assessment Fund, as required by statute, upon issue of a certificate of occupancy for a casino on the Tivoli Property;

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site of the proposed Leased Premises and holds the sand beach easement in trust for the public (the "Sand Beach Easement"), as is more fully defined in the County's *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment ("This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid"), and in the Final Judgment, dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi, et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) ("The record owners ... of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights....Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom." [Final Judgement, p. 4]; "[T]he rights defined herein are subject to the reasonable exercise of any power vested in....municipalities, to create, operate and maintain....piers and other such facilities" [Final Judgement, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court's Final Judgment and Addendum: *U.S. v. Harrison County*, 399 F. 2d 485 (5th Cir. 1968), and *U.S. v. Harrison County*, 414 F. 2d 784 (5th Cir. 1969);

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WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the County the authority to construct, own, and maintain the public sand beach lying seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and consent to use to third parties the sand beach for joint public and private recreational and tourism economic development uses, like the new municipal handicapped-accessible pier proposed in the Lease, where such uses, like the new municipal handicapped-accessible pier, serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5; §29-15-13;

WHEREAS prior owners of the Tivoli Property built and maintained a pier on the Leased Premises for many years, without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, the City and County have determined that entry into the Consent and Lease Agreement for Property in Connection with Building a Public Pier (the "Agreement"), attached hereto as Exhibit "A," and Tivoli's subsequent redevelopment of, and enhancements to, a municipal pier on the subject property will, within and for the City, County, and State, increase employment and tax revenue, promote economic development; and serve higher public purposes of the Public Trust for Tidelands through providing and facilitating public access to the tidelands and the Mississippi Sound for recreation, fishing, and marine commerce; further, the City and County have determined that it is in the best interests of the health, safety, and welfare of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with Tivoli; and

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WHEREAS, it is the recommendation of Peter C. Abide, Director of the Legal Department, that the City enter into the Agreement with Tivoli.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

SECTION ONE: The findings, conclusions, and statements of fact contained in the preamble of this resolution are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor, on behalf of the City of Biloxi, is authorized to execute and deliver the Consent and Lease Agreement for Property in Connection with Building a Public Pier, in substantially the form attached hereto as Exhibit "A" and made a part of this resolution, by and among the City of Biloxi, Harrison County, Mississippi and Biloxi Capital, LLC.

SECTION THREE: This Resolution shall take effect and be in force from and after adoption.

The foregoing Resolution having first been reduced to writing, was read by the Clerk and moved by Councilmember Lawrence, seconded by Councilmember Gines, and was adopted by the following vote:

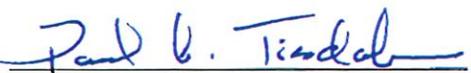
YEAS:	Lawrence	Tisdale	NAYS:	None
	Gines	Glavan		
	McGilvary	Shoemaker		
ABSENT:	Newman			

The President then declared the Resolution adopted this the 6th day of August, 2024.



ATTEST:

CLERK OF THE COUNCIL

APPROVED:

PRESIDENT OF THE COUNCIL

Res. No. 542-24

Submitted to and approved by the Mayor, this the 9th day of August, 2024.

APPROVED:



MAYOR



Prepared by and return to: Peter C. Abide
2355 Pass Road
Biloxi, MS 39531
(228) 385-1010

INDEXING INSTRUCTIONS: Section 33, Township 7 South, Range
9 West Second Judicial District of Harrison Mississippi

STATE OF MISSISSIPPI

COUNTY OF HARRISON, SECOND JUDICIAL DISTRICT

**CONSENT AND LEASE AGREEMENT FOR PROPERTY IN CONNECTION WITH
BUILDING A PUBLIC PIER**

THIS CONSENT AND LEASE AGREEMENT ("Agreement") is made, executed, and entered by and between the

GRANTORS:

City of Biloxi, Mississippi,
a political subdivision of the State of Mississippi (the "City")
P. O. Box 429
Biloxi, MS 39530
(228) 435-6254,

and

Harrison County, Mississippi,
a political subdivision of the State of Mississippi (the "County")
P. O. Drawer CC
Gulfport, Mississippi 39502
(228) 865-4116,

and

GRANTEE:

Biloxi Capital, LLC, ("Tivoli"),
a Delaware limited liability company ("Lessee")
c/o Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532
(228) 365-1941

and shall be effective upon the latest date of the full execution of this Agreement on the signature page of this Agreement by the County, City and Tivoli. ("Effective Date" of Agreement).

PREAMBLE:

WHEREAS, Grantors and Grantee specifically acknowledge and agree that Tivoli currently owns that certain tract of land, commonly known as the former Tivoli Hotel property (the "Tivoli" Property) extending from Howard Avenue southward through Highway 90 to the Mississippi Sound, as more fully described in that certain legal description attached hereto as Exhibit "A", which grants Tivoli fee simple title (Parcel A by Warranty and Parcel B by Quitclaim) to the Tivoli Property including all littoral rights and other appurtenances thereunto belonging, extending southward to the Mississippi Sound;

WHEREAS, on the part of the Tivoli Property north of Highway 90, Tivoli proposes to construct and operate a 1300 room hotel and casino with food service, entertainment and recreational enterprises that will be contiguous to the County and City's existing East Biloxi Boardwalk located south of the ROW of Highway 90 and that further will provide public pedestrian access to Tivoli's proposed new municipal public pier located where a previous pier existed as shown in the photographs attached hereto and authorized in this Agreement that will serve tourists and residents of the City, County and State of Mississippi, as well as patrons of Tivoli's development;

WHEREAS, based on various statutes, court decisions and precedent the County exclusively and perpetually controls the sand beach located South of the toe of the seawall to the Mississippi Sound, within the Property owned by Tivoli. Additionally, the State has granted the City and the County the authority:

(a) to construct or cause to be constructed, own, and maintain or cause to be maintained municipal piers for joint public and private use within the Public Trust Tidelands seaward of upland fee simple parcels like the Tivoli Property and likewise seaward of the toe of the seawall and across the surface of the Harrison County sand beach; and

(b) to develop, use, and lease to third parties state Public Trust Tidelands (including fast lands like the sand beach, and tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in this Consent and Lease Agreement, where such uses, like the new municipal pier, serve and are consistent with the purposes of the Public Trust for Tidelands (the "Trust"), which authority is more fully stated in *Miss. Code of 1972*, §§ 21-37-15; 49-15-9; 49-27-1, *et seq.*; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-15-1, *et seq.*; 29-15-5; and 29-15-13;

WHEREAS, in addition to the Tivoli's authority to develop and use its own property and the City's and County's authority to develop, use, and lease Public Trust Tidelands by virtue of the ports and harbors statutes cited in the preceding "Whereas" paragraph of this Lease, Tivoli, by virtue of its ownership in fee simple of the parcel of uplands constituting the Tivoli Property and all appurtenances thereunto belonging, is vested with littoral rights within the area designated as the in this Agreement, including, but not limited to, the right to construct, or cause to be

constructed, own, and maintain, or cause to be maintained, a pier for joint public and private recreational and tourism economic development uses, and the right to construct such pier without Tivoli or the City having to pay any rent to the State or having to obtain a tidelands lease from the Secretary of State for these leased premises, which rights are more fully defined in the *Miss. Code of 1972* sections cited in the preceding "Whereas" paragraph, and as affirmed in *Bayview Land, Ltd., v. State*, 950 So.2d 966, at 988 (Miss. 2006) ("These [littoral] rights are rights to reasonable use.... and encourage commerce on the water....we find that the position of ... Treasure Bay [regarding littoral rights in the sand beach south of Hwy 90] has merit in that they do enjoy certain littoral rights....") and *Miss. State Highway Comm'n v. Gilich*, 609 20 2d 367, at pp. 375, 376 (Miss. 1992) ("They [Gilich] still have the [littoral] rights, pursuant to statute... to construct any beach structures they desire.");

WHEREAS, in order to alleviate concerns from the State and certain Coastal cities that this development would not make payments to the State Tidelands Fund, the parties expressly state that Grantee will pay the "in lieu" payment to the Public Trust Tidelands Assessment Fund" as required by statute, upon issuance of a certificate of occupancy for a casino on the Tivoli Property;

WHEREAS, the County has certain authority over the seawall and sand beach under Section 65-33-51, *Miss. Code of 1972*, and further the County is vested with an easement to the sand beach countywide and on the site and holds the sand beach easement in trust for the public (the "Sand Beach Easement"), as is more fully defined in the County's *Sand Beach Ordinance*, on p. 1 of the unpublished Addendum to the Final Judgment ("This suit was instituted for the primary purpose of having the easement from the county to the twenty-six mile man made beach declared valid"), and in the Final Judgment, dated October 8, 1970, in *U.S.A. v. Harrison County, Mississippi, et al.*, Civil Action Number 2262, in the U.S. Dist. Ct., S. Dist. Of Miss., S. Div. (1970) ("The record owners ... of the property adjoining and abutting the sand beach are the owners of riparian and littoral rights, including both common law rights and statutory rights....Such rights include all riparian and littoral rights heretofore granted by the state of Mississippi in the beach and in the water southerly therefrom." [Final Judgment. 4]; "[T]he rights defined herein are subject to the reasonable exercise of any power vested in....municipalities, to create, operate and maintain....piers and other such facilities" [Final Judgement, p. 5]); and as further elaborated in the opinions of the 5th U.S. Cir. Ct. of Appeals that preceded and authorized the District Court's Final Judgment and Addendum: *U.S. v. Harrison County*, 399 F. 2d 485 (5th Cir. 1968), and *U.S. v. Harrison County*, 414 F. 2d 784 (5th Cir. 1969);

WHEREAS, the State, as Trustee of the Public Trust Tidelands, acting through its Legislature, which is the sole policy maker for the Trustee, has granted the County the authority, without the County or its assigns having to obtain a tidelands lease from the Secretary of State or pay any rent to the State, to construct, own, and maintain the public sand beach lying seaward of the toe of the seawall, with due respect to any littoral rights, and further to develop, use, and lease to third parties state tidelands (including fast lands like the sand beach, tidelands and submerged lands) for joint public and private recreational and tourism economic development uses, like the new municipal pier proposed in the Agreement, where such uses serve and are consistent with the purposes of the Trust, which authority is more fully stated in *Miss. Code of 1972*, §§59-9-21, 65-33-1, 65-33-47, 65-33-51; 59-7-1, *et seq.*; 59-7-401, *et seq.*; 59-13-1, *et seq.*; 49-15-9; 29-15-5;

§29-15-13;

WHEREAS prior owners of the Tivoli Property built and maintained a pier on the Leased Premises for many years, as evidenced by the photos identified as Exhibit "B" without having a tidelands lease from the State and without paying any rent to the State;

WHEREAS, the Grantors have determined that this Consent and Lease Agreement and Tivoli's subsequent redevelopment of, and enhancements to, a municipal pier on the subject property will, within and for the City, County, and State, increase employment and tax revenue, promote economic development; and serve higher public purposes of the Public Trust for Tidelands through providing and facilitating public access to the tidelands and the Mississippi Sound for recreation, fishing, and marine commerce; further, Grantors have determined that it is in the best interests of the health, safety, and welfare of the citizens of the City, County, and State of Mississippi for the City and County to enter into this Agreement with Tivoli;

NOW THEREFORE, the Grantors and Grantee do hereby agree that the findings, conclusions, and statements of fact contained in the foregoing Preamble are hereby adopted, ratified, and incorporated in this Agreement, and do hereby agree to the following terms and conditions of this Agreement:

ARTICLE 1 GRANT

Section 1.1 Land and Improvements. For and in consideration of the mutual promises, covenants, and conditions stated in this Agreement and further in consideration of Ten Dollars (\$10.00) cash in hand paid and the payments as contemplated by this Agreement to be made by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantors hereby consent and Lease to Grantee, and Grantor hereby accepts from Grantors the right to lease and control access over that area identified in Exhibit "C") controlled by Grantors, (herein referred to as the Premises"). The Premises consists of certain sand beach lying above lands owned by Grantee. The grant of the Premises is subject to the covenants and conditions for public use and access stated in this Agreement and includes (a) the City and County's interests, as political subdivisions of the State subject to (b) the covenants and conditions of the County's Sand Beach Ordinance and the Final Judgment and Addendum to the Final Judgment of the U.S. District Court for the S. Dist. of Miss., S. Div., in *United States of America v. Harrison County, Mississippi, et al.*, Civil Action Number 2262 entered October 8, 1970, and (c) the non-exclusive use of the County's Seawall Easement and East Biloxi Boardwalk. Grantee shall have reasonable access to the roadways of the City of Biloxi for egress and ingress to the Premises to accommodate Grantee's operations.

ARTICLE 2 TERM

Section 2.1 Term and Renewal Term. The Term of the Agreement shall be forty (40) years (the "Term"). The Term of the Agreement shall commence upon the Effective Date. Upon sixty (60) days notices to the Grantors prior to the expiration of the Term of this Agreement, the Grantee may renew the Agreement for an additional twenty-five (25) years (the "Renewal Term") under the same terms and conditions as the original Term. Notwithstanding the foregoing, in the event that

Grantee is unable to construct its proposed project north of Highway 90, Grantee may elect with ninety (90) days written notice to the Grantors to terminate this agreement, in which event, this agreement shall terminate and the parties shall have no further obligations to one another following termination, other than indemnity provisions which survive termination, and the Grantors shall retain all other consideration paid to them prior to the termination.

ARTICLE 3 CONSIDERATION

Section 3.1 Base consideration. Grantee shall pay Grantors as follows:

- A. Grantee shall pay the sum of Five Thousand Dollars (\$5,000.00) to the Grantors upon execution of this Agreement, as consideration for execution of the Agreement.
- B. Grantee shall also pay to Grantors One Thousand Dollars (\$1,000.00) per month (the "Base Rent"), payable in advance on the first day of each month, beginning on the Commencement Date defined in this Agreement.

Section 3.2 Commencement Date. The Consideration shall commence on the first day of the calendar month following Grantee's completion of the proposed pier signified by the issuance of a permanent certificate of occupancy to Grantee for the pier by the City (the "Commencement Date".)

Tivoli shall pay Consideration monthly on or before the tenth (10th) day of the month from and after the Commencement Date.

Tivoli shall pay the Consideration to the County and the City simultaneously by paying each of them one-half (1/2) of the Consideration due for the month of payment. The Grantee further reserves the right to prepay any portion as it may deem appropriate.

All Consideration shall be payable at the seat of government addresses stated in this Agreement for the City and County, respectively, or at such other place as Grantors may designate in writing.

Five (5) years after the Commencement Date and for each five-year period thereafter, the Consideration shall be increased by the amount of the increase of the Consumer Price Index, All Urban, for the prior five-year period, as published in the Wall Street Journal. In the event the Consumer Price Index, All Urban, is no longer available, the Grantors shall designate an alternate index rate which is the closest in nature and calculation of the Consumer Price Index, All Urban, in effect on the Effective Date.

Section 3.3 Triple Net. It is the intention and agreement of Grantors and Grantee that the Consideration herein specified shall be net, net, net to Grantors in each year during the Term of this Agreement and any renewal term; that all costs, expenses, taxes, charges, utilities, and obligations of every kind relating to the Premises (excluding maintaining the Sand Beach), including, but not limited to the costs of maintaining and repairing the pier constructed on the

Premises from and after the Commencement Date, which may arise or become due during the Term of this Agreement, shall be paid by Grantee; and that Grantors shall be indemnified by Grantee against such costs, taxes, expenses, utilities, charges and other obligations.

ARTICLE 4 CONSTRUCTION, ALTERATIONS AND EQUIPMENT

Section 4.1 General. Grantee shall at its own cost and expense, renovate the existing damaged pier pilings and construct a new public municipal pier on the Premises for the uses described in Article 5 below. Grantee shall submit to the City and County a rendering of the proposed construction for the pier prior to commencement thereof. All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state, and local governmental bodies and agencies having jurisdiction over the performance of such construction work. Grantors shall cooperate with Grantee's efforts in obtaining governmental consents, approvals and permits, provided all permit fees shall be paid by Grantee.

Section 4.2 Initial Construction. Prior to Initial Construction, final building plans and specifications shall be submitted to Grantors for approval. Provided such plans and specifications are in substantial performance with the drawings, renderings and/or plans furnished by Grantee as set forth in Section 4.1, such approval shall not be unreasonably conditioned, withheld or delayed.

Section 4.3 Time to submit plans, Commence Construction and Complete Construction. Grantee shall submit final building plans and specifications for the pier to the appropriate building department(s) with buildings plans for the hotel described herein.

Section 4.4 Mechanics or Workman's Liens. Grantee shall (1) keep the Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Grantee, and (2) at all times fully protect and indemnify Grantors against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Grantee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Grantors a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Grantee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Grantors, Grantors shall keep the Premises free of same, indemnify Grantee, furnish Grantee with a bond, and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Grantee aforesaid.

ARTICLE 5 USE

Section 5.1 General. Subject to the conditions for public use and access provisions defined in Section 1.1 (the Grant of Premises) of this Agreement for joint public and private use of, and

access to the Premises, Grantee shall be entitled to the use and possession of the Premises from and after the Effective Date of this Agreement for the purposes and uses provided in this Agreement. Grantee shall use the Premises, for non-gaming recreation purposes, facilities and activities including, but not limited to, renovation, construction, operation and maintenance of a public municipal pier and other incidental marine and recreational purposes and shall be included as an integral amenity to any development proposed by Grantee on its property North of Highway 90 and serving public purposes of the Public Trust for Tidelands to enhance, *inter alia*, the public and private opportunities for recreation, fishing, sailing, boating and marine sports, and make available public and private use and enjoyment of the municipal pier on the Premises. Grantee shall not use the Premises in such a manner as to violate any applicable law, rule, ordinance, or regulation of any governmental body. No gaming shall be allowed on the municipal pier, nor any vessel docked or berthed at the area, nor any other area of the Premises.

ARTICLE 6 MAINTENANCE

Section 6.1 General. The Premises are accepted by Grantee "as is" in their present condition. Except as otherwise provided herein, Grantee shall at all times during the Term of this Agreement and at its own expense keep the Premises in good order, condition, and repair, and shall make all repairs thereto, ordinary, and extraordinary, that may be required during the Term hereof, except for maintenance and repair of the sand beach which shall continue to be the responsibility of the County. Grantee shall indemnify and save harmless Grantors against and from any loss, costs, damage, and reasonable expenses arising out of or in connection with Grantee's use of the Premises, or any part thereof.

Section 6.2 Grantors' Obligation. Grantors shall have no obligation to maintain the pier on the Premises. However, Grantors shall provide easements for the necessary utilities to service the improvements made by Grantee, should such easements be necessary.

Section 6.3 Grantee's Obligation. Grantee shall, as required by this Agreement, maintain, repair, and replace the items comprising the pier on the Premises, including but not limited to pilings, boards, steps, and structural portions of the pier to be constructed upon the Premises, and all wiring, plumbing, conduits, and other utilities which service the pier and the Premises. Grantee shall deliver the Premises to Grantors on the expiration or termination of this Agreement in good repair and condition, reasonable wear and tear excepted and free and clear of all material liens or encumbrances created or claimed by reason of transactions made by Grantee.

Section 6.4 Repair and Maintenance. Grantee shall, as its own expense, make all repairs and replacements to all improvements constructed by Grantee on the Premises which may be from time to time become necessary, including but not limited to repairs to any of the following that may become part of the final approved plans and specifications pertaining to the pier and access to the pier: the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Premises. All such repairs and replacements shall be made promptly, as and

when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Grantee to make such repairs or replacements, Grantors may, but shall not be required to, make such repairs and replacements for Grantee's account, and the expense thereof shall constitute and be collectable as additional Consideration; provided, however, Grantors must first give notice to Grantee to cure such default (i.e., make the repair) within a reasonable amount of time.

ARTICLE 7 UTILITIES

Section 7.1 Initial Connections. Grantors warrant to Grantee that Grantors will cause the necessary mains and conduits in order that water and sewer facilities, electricity, telephone, internet, and other utilities necessary to initial conduct of Grantee's intended business to be made available for connection within the Premises. It is understood that all services hereunder shall be furnished by public utilities and not by Grantors.

Section 7.2 Grantee's Obligations for Charges. The Grantee shall be solely responsible for and shall promptly pay all charges, when due, for water, sewer, electricity, telephone, and any other utility used upon or furnished to the Premises. The Grantee's obligation to pay for such utilities shall commence as of the commencement of operation of activity.

ARTICLE 8 TAXES AND ASSESSMENTS

Section 8.1 Real Property Taxes. Grantee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Premises, if any.

Section 8.2 Personal Property Taxes. Grantee shall pay, prior to delinquency, any and all personal property taxes, if any, levied against Grantee's improvements, fixtures, equipment, furniture, and other personal property located upon the Premises.

Section 8.3 Contests. Grantee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

ARTICLE 9 INSURANCE AND INDEMNITY

Section 9.1 Indemnification. Grantors shall not be liable to Grantee or Grantee's employees, agents or visitors, or to any other person whatsoever, for any injury to person or damage to property in or occurring upon the Premises or of any other person entering the Premises under express or implied invitation of Grantee, or caused by the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Grantors' negligence or misconduct or breach of its obligations hereunder) and Grantee agrees to carry general liability insurance as set forth

in this Agreement for the purpose of saving Grantors harmless to the extent of such coverage.

Section 9.2 General Liability Insurance. Grantee agrees to indemnify and save Grantors harmless from all claims for damages, to goods, merchandise, persons, and other property in or upon the Premises, and any platforms of Grantee, arising out of or occasioned by Grantee's use or occupancy, except such damages resultant from the negligence of Grantors, its agents, servants, or employees, or caused by Grantors' failure to perform any of its obligations hereunder.

Grantee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Premises. Such insurance may be carried under a blanket policy covering the Premises as well as other locations in which Grantee or any of its affiliated or subsidiary corporations or other entities may be interested. Grantee will promptly furnish Grantors with a certificate of said coverage when requested by the Grantors. In the year following each five-year interval of the Initial Term and any renewal term of this Agreement, the Grantee shall adjust the amount of general liability insurance to be an amount reasonable sufficient to reflect the consumer price index increases during such interval.

Section 9.3 Additional Named Insured: Act of Default. All policies of insurance required hereby shall include Grantors as an additional named insured.

Failure to have Grantors included and named as an additional named insured on any such policy shall be considered an act of default.

Notwithstanding the provisions of Section 16 of this Agreement, should such default continue for a period of ten days after notice of default by Grantors to Grantee, Grantors may, but are under no obligation, purchase insurance coverage to protect Grantors' interests only in the premises and its improvements, in which case the cost of such insurance shall be considered as additional consideration due immediately from Grantee.

The Grantors shall have the right to terminate the Agreement upon the expiration of ninety (90) days from the date of such Notice of Default should Grantee fail to correct such omission or exclusion and have Grantors added as an additional named insured under such policy.

Should any loss occur at a time when Grantors are not included as an additional named insured under Grantee's insurance policy Grantors shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss, to the extent allowed by law.

Section 9.4 No Hazardous Use. Grantee will not permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk ultra hazardous, it being understood and agreed that the use of the Premises and pier to be constructed thereon in the proper and ordinary conduct of Grantee's business for the purposes set forth above shall not be considered in violation of this Section.

Section 9.5 Waiver of Subrogation. Recognizing that Grantors are governmental subdivisions of the State of Mississippi, and thus to the extent but only to the extent allowed under

law, Grantors and Grantee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Grantors and Grantee, as the case may be, their respective property, or to the Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only, Grantors and Grantee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Grantors and Grantee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefiting there from to pay such additional costs and, if not paid, such benefiting party will lose the benefit of this Section.

Section 9.6 Indemnification for Host Liquor Liability. Grantee will defend, indemnify, save free and hold harmless the Grantors for any action or damages, including, attorney's fees and costs, resulting from a claim relating to host liquor liability.

ARTICLE 10 SIGNS

Section 10.1 General. With the prior approval of Grantors, which such approval shall not be unreasonably conditioned, withheld or delayed, Grantee shall have the right, at its sole cost and expense, to install such signs as it may desire on the Premises which otherwise comply with applicable laws.

ARTICLE 11 ASSIGNMENT, SUBLETTING

Section 11.1 General. Grantee may not assign this Agreement, or any interest herein, or sublet the whole or any part of the Premises, nor transfer majority interest or effective control of or interest in Grantee which would effectively transfer control of the subject premises to persons or parties other than those currently owning majority interest in and/or exercising effective control of Grantee, without the prior written approval of Grantors, which shall not be unreasonably conditioned, withheld or delayed. Any such approval by Grantors will only be with the approval of the intended Assignee by Grantors and will be conditioned upon the express assumption by such assignee or purchaser of all of the Grantee's obligations and liabilities hereunder. No request for approval of assignment or transfer of the Agreement or any interest therein or in Grantee will be allowed or effective unless Grantee is in all respects in compliance with all obligations hereof. Notwithstanding the foregoing, the Grantee shall have the right to pledge and/or assign this Agreement as collateral to any Lender who is providing financing on the project described herein without the prior written consent of the Grantors. In the event of any such assignment Grantee shall provide Grantors with written notice of the same.

ARTICLE 12 RIGHT OF ENTRY

Section 12.1 Right of Entry and Obligation to Make Repairs. Grantors reserves the right during the Term of this Agreement to enter the Premises at reasonable hours and with reasonable prior notice, and for the purpose of inspecting the Premises and to make such repairs, additions, or improvements as Grantors may deem necessary for the protection and preservation of the improvements and Premises; but Grantors are not bound to make any repairs whatever except as hereinafter stated, nor to be held liable for any damage in consequences of leaks, nor for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, nor for any other defects about the pier and Premises, Grantee having examined the same and being satisfied therewith, but should such leaks, obstructions, frozen pipes, stoppages, or other defects about the pier and Premises occurring during the Term of this Agreement, or while Grantee is occupying the Premises, then Grantee shall remedy the same promptly at Grantee's expense, unless Grantors by written instrument undertakes to do the same promptly. Grantee shall maintain the Premises in good order and repair, other than the sand beach which it is not required to maintain.

ARTICLE 13 CASUALTY

Section 13.1 Substantial Destruction. If the improvements to be located on the Premises are materially damaged or destroyed by fire, hurricane, storm, or other casualty (50% or more of replacement cost), Grantee shall have the option to (a) terminate the Agreement with written notice to the Grantors; or (b) to repair and restore the Premises, in which event this Agreement shall remain in full force and effect while Grantee proceeds with due diligence to repair and restore the Premises to substantially the same or better condition as prior to such casualty. In the event Grantee elects to continue with the Agreement, Grantee shall promptly commence repair and restoration of the improvements it installed on the Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration as quickly as is commercially reasonable to do.

Section 13.2 Partial Destruction. In the event the improvements to be located on the Premises should be damaged or destroyed by fire, hurricane, storm, or other casualty, Grantee shall give written notice thereof to Grantors within a reasonable time, not to exceed five (5) business days. If the Premises shall be damaged by fire, hurricane, storm, or other casualty, but not to such extent as to be substantially destroyed (50% or more of replacement cost) and such rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Grantee shall proceed with reasonable diligence to rebuild and repair the improvements it made to the Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third-party approvals cannot be obtained within said time or if all infrastructure for required utilities

remains unavailable to the Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is unavailable on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction as the election of the Grantee.

ARTICLE 14 DEFAULT OF GRANTEE

Section 14.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Grantee under the Agreement:

14.1.1 Grantee shall fail to pay any installment of the consideration and such failure shall continue for a period of thirty (30) days after the due date of such installment.

14.1.2 Grantee shall fail to comply with any term, provision, or covenant of this Agreement, other than the payment of consideration or insurance, and such failure shall continue for a period of thirty (30) days after Grantors' written notice thereof to Grantee.

14.1.3 Grantee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Grantee shall be adjudged bankrupt or insolvent in proceedings filed against Grantee thereunder.

14.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Grantee; provided, however, that no default shall occur under this Section 14.1.4 so long as Grantee continues to pay the Consideration and is not otherwise in default under any other provision of this Agreement.

14.1.5 If Grantee elects in writing to abandon the Premises and ceases to pay the Consideration.

14.1.6 Assignment or subletting by Grantee shall be an act of default unless such assignment or subletting is first approved in writing by Grantors or unless otherwise permitted under this Agreement under Article 11 hereof.

14.1.7 Grantee shall fail to have in effect or maintain insurance herein required on Premises which includes Grantors as a named insured along with Grantee, in which case the provisions of Article 9 shall apply.

Section 14.2 Remedies of Grantors. Except as otherwise provided herein, upon the occurrence of any act of default, Grantors shall provide written notice of such default to Grantee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Grantee shall have thirty (30) days from the date of such notice to cure any default under the agreement, unless the cure cannot reasonably be completed within thirty (30) days, in which event the Grantee shall have an additional reasonable period of time to complete the cure provided it commenced the cure within the original thirty (30) day period and has continued with reasonable

commercial efforts. Should Grantee fail to cure any default hereunder, Grantors shall have the option to pursue any one or more of the following remedies after giving written notice to Grantee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

14.2.1 Terminate this Agreement, in which event Grantee shall immediately surrender the Premises to Grantors, and if Grantee fails so to do, Grantors may, without prejudice to any other remedy which it may have for possession or arrearage in Consideration, enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Grantee agrees to pay to Grantors on demand the amount of all loss and damage which Grantors may suffer by reason of such termination, whether through inability to re let the Premises on satisfactory terms or otherwise.

14.2.2 Enter upon and take possession of the Premises and expel or remove Grantee and any other person who may be occupying the Premises or any part thereof, by force if necessary; and Grantee agrees to pay to Grantors on demand any deficiency that may arise by reason of such re-letting.

Section 14.3 Operation of Agreement. It shall be considered an act of default if after the initial construction of the pier is complete and open to the public, the pier or any replacement fails to be open and usable for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial Destruction or Partial Destruction as described above.

ARTICLE 15 CONDISERATION PAYMENT AND NOTICE

Section 15.1 General. Each provision of this instrument or of any applicable governmental laws, ordinances regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Grantee to Grantors shall be deemed to be complied with when and if the following steps are taken. All Consideration and other payments required to be made by Grantee to Grantors hereunder shall be payable in cash to the City and County (with one-half (1/2) of the total of each rent payment to be paid to each to the City and County) either (a) by electronic transfer to City and County bank accounts, respectively, for which City and County shall within a reasonable time after executing this Agreement notify the Grantee in writing of the account numbers and electronic transfer information; or (b) by checks delivered to their respective seats of government at the following addresses:

City of Biloxi, Mississippi City Hall
140 Lameuse Street
Biloxi, MS 39531

Harrison County, Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

or at such other address as Grantors may specify from time to time (by twenty (20) days prior written notice delivered in accordance herewith) and shall be deemed received only when actual collected funds are in the accounts of Grantors. In the event any check or instrument drawn by Grantee and delivered to Grantors as payment for any sum due hereunder is dishonored or refused payment, it shall be treated as if no payment had been made.

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested. Alternatively, notice may be delivered hereunder by personal service on the parties or by successfully transmitted facsimile addressed to the parties hereto at the respective addresses set out opposite their names below, or such other addresses as they have theretofore specified by written notice delivered in accordance herewith:

Grantee:

Biloxi Capital, LLC
Daniel O. Conwill IV, Member
400 Poydras Street, Suite 3100
New Orleans, LA 70130

with a copy to

Michael F. Cavanaugh, Esq.
2526 South Shore Drive
Biloxi MS 39532

Grantors:

City of Biloxi
c/o Mayor of Biloxi
City Hall
140 Lameuse St.
Biloxi, MS 39530
With a copy to:

Peter Abide, City Attorney, City Hall
140 Lameuse St.
Biloxi, Mississippi 39530

Harrison County, Mississippi
c/o President, Board of Supervisors
Harrison County Courthouse 1801 23rd Avenue
Gulfport, Mississippi 39501

With a copy to:

Tim Holleman, Attorney for Bd. of Supervisors Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Tax Incentives. The parties agree that Grantee shall be entitled to apply for all tax incentives, credits, or other payment or reimbursement from any governmental or quasi-governmental authority due to the nature and extent of Grantee's work in and/or on the Premises.

Section 16.2 Captions and Section Numbers. The captions and section and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope of intent of such sections or articles of this Agreement or in any way affect this Agreement.

Section 16.3 Consent. Whenever the consent of either party is required to take an action under the terms of this Agreement, unless otherwise provided herein such consent shall not be unreasonably conditioned, withheld nor delayed.

Section 16.4 Expenses and Attorneys' Fees. To the extent not prohibited by law for a governmental body, if either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the prevailing party in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party.

Section 16.5 Brokerage Commissions and Finder's Fees. Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Agreement. To the extent not prohibited by law for a governmental body, each of the parties agrees to indemnify the other against and hold it harmless, from all liabilities arising from any such claim for any such commission or fees arising on account of its acts or omissions (including, without limitation, the cost of reasonable attorneys' fees in connection therewith).

Section 16.6 Remedies, Cumulative. The various rights, options, elections, powers and remedies contained in this Agreement, including the rights herein granted to terminate this Agreement, shall be construed as cumulative and no one of them shall be exclusive of any of the

others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed. It is intended that each of the agreements and covenants of Grantors and Grantee set forth herein be deemed both a covenant and a condition.

Section 16.7 Governing Law, Jurisdiction and Venue. This Agreement shall be interpreted and construed under the laws of the State of Mississippi, with jurisdiction and venue in the Second Judicial District of Harrison County, Mississippi.

Section 16.8 No Partnership. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Grantors and Grantee, and neither the method of computation of consideration nor any other provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Grantors and Grantee other than the relationship of Grantors and Grantee.

Section 16.9 No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder shall impair any such right or power to be construed to be a waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

Section 16.10 Entire Agreement; Amendments. As of the execution hereof, this Agreement contains all covenants and agreements between Grantors and Grantee exclusively relating in any manner to the use and occupancy of the Premises and the other matters set forth in this Consent and Lease Agreement. No prior agreement or understanding, written or oral, pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Agreement cannot be altered, changed, modified, or added to, except in writing signed by Grantors and Grantee. No renewal after this Agreement terminates shall be binding on either party unless it be in writing and signed by the Grantors and Grantee.

Section 16.12 Severability; Invalidity of Whole. Any provision or provisions of this Agreement which shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. If a court of competent jurisdiction determines in a final, non-appealable judgment that all of the provisions of this Agreement are invalid, void or illegal, then, as of the date of such final, non-appealable judgment, this Agreement shall be terminated,

cancelled and considered void *ab initio* and the parties shall have no duties, obligations, or liability of any kind to any of the other parties for any claims, damages, injuries, or losses of any kind arising out of the Agreement.

Section 16.12 Waste and Nuisances. The Grantee agrees not to commit nor to permit to be committed any waste whatever and that it will allow no nuisance to exist on the Premises and will, when requested by the proper authorities, abate all nuisances at its own expense.

Section 16.13 Late Fee and Charges, Should Grantee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Grantors shall charge as late fees an additional one and one-half percent (1.50%) of the outstanding balance due, commencing as of the date such amounts were originally due.

Section 16.14 Proof of Payment. No set-off in the payment of the consideration herein shall be allowed unless signed by Grantors, its legal representative or assigns, and the proof of the payment of rent shall be on Grantee in all controversies.

Section 16.15 Quiet Enjoyment. Grantors warrant and guarantee that they have the full right and authority to enter into and perform this Agreement and to grant the rights herein, and the Grantors covenant and agree that at all times during the term of this Agreement, including any extension thereof, Grantee, subject to the County Sand Beach Ordinance and the provisions, covenants, and requirements for public use and access defined in this Agreement, the Lessee shall have quiet and peaceful enjoyment of the Premises and of all Grantee's rights, easements, appurtenances and privileges belonging or otherwise appertaining thereto and shall not be disturbed or interfered with by Grantors or any person; provided, however, Grantors do not warrant and guarantee quiet enjoyment as against the State of Mississippi.

Section 16.16 Time is the Essence. Time is of the essence with respect to all matters provided in this Agreement.

Section 16.17 Concurrent Rights. Nothing in this Lease is intended to circumvent or supersede any concurrent rights that Harrison County, the State of Mississippi, or any state or federal agency may have in the circumstances that may be applicable to the Premises or to the Grantee.

Section 16.18 Reservation of Rights. Nothing in this Agreement is intended to grant, convey, recognize, or otherwise consent to any claim by the State as to any portion of the Tivoli Property, all of which claims are expressly reserved to Grantors and Grantees, who deny any right by the State.

-----END OF TEXT OF LEASE- SIGNATURE PAGE FOLLOWS-----

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the dates beside the signatures of their authorized representatives below.

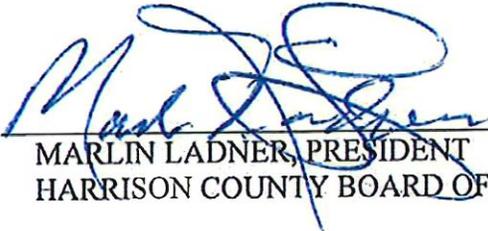
Grantors:

CITY OF BILOXI, MISSISSIPPI

BY: 
A. M. GILICH, JR., MAYOR

DATE: 8/7/24

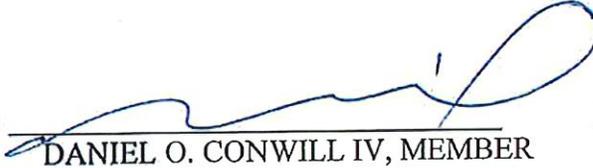
HARRISON COUNTY, MISSISSIPPI

BY: 
MARLIN LADNER, PRESIDENT
HARRISON COUNTY BOARD OF SUPERVISORS

DATE: 8/5/24

Grantee:

BILOXI CAPITAL, LLC

BY: 
DANIEL O. CONWILL IV, MEMBER

DATE: 8/2/24

EXHIBIT "A"
DESCRIPTION OF OVERALL PROPERTY
OWNED BY TIVOLI

Description:

Parcel "A" (BCL CONTROLLED PROPERTY NORTH OF US HWY. 90 FEE SIMPLE OWNED BY BCL BY WARRANTY DEED)

Beginning at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run N-00°51'01"-W along said East margin of Holley Street, 1081.29 feet to an "X" Mark in concrete at the intersection of said East margin of Holley Street and the South margin of Howard Avenue; thence run N-85°39'24"-E along said South margin of Howard Avenue, 226.58 feet to a point; thence run N-88°21'03"-E along said South margin of Howard Avenue, 67.09 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 262.68 feet, a chord of which bears S-78°47'55"-E, 98.66 feet, an distance of 99.25 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the right having a radius of 1108.42 feet, a chord of which bears S-65°45'28"-E, 44.32 feet, an distance of 44.32 feet to a point; thence run S-60°05'31"-E Southeasterly along said South margin of Howard Avenue, 93.46 feet to a point; thence run S-53°14'41"-E along said South margin of Howard Avenue, 75.25 feet to a point; thence run S-48°58'05"-E along said South margin of Howard Avenue, 92.23 feet to a point; thence run S-48°59'33"-E along said South margin of Howard Avenue, 280.89 feet to a point; thence run Southeasterly along said South margin of Howard Avenue and a curve to the left having a radius of 350.00 feet, a chord of which bears S-69°27'26"-E, 244.74 feet, an arc distance of 250.02 feet to a point; thence run S-89°55'19"-E along said South margin of Howard Avenue, 205.71 feet to the intersection of said South margin of Howard Avenue and the West margin of Kuhn Street; thence run S-00°18'28"-E along said West margin of Kuhn Street, 159.51 feet to a point; thence run S-89°58'09"-W leaving said West margin of Kuhn Street, 108.70 feet to a point; thence run S-00°56'03"-E, 264.05 feet to a point on the North margin of Meaut Street; thence run N-89°47'12"-W along said North margin of Meaut Street, 89.26 feet to a point; thence run S-01°53'38"-W leaving said North margin of Meaut Street, 318.64 feet to a point on said North margin of U.S. Highway 90; thence run N-85°11'56"-W along said North margin of U.S. Highway 90, 331.55 feet to a point; thence run N-89°06'53"-W along said North margin of U.S. Highway 90, 313.04 feet to a point; thence run N-80°47'54"-W along said North margin of U.S. Highway 90, 430.70 feet to the Point of Beginning, containing 25.80 acres, more or less.

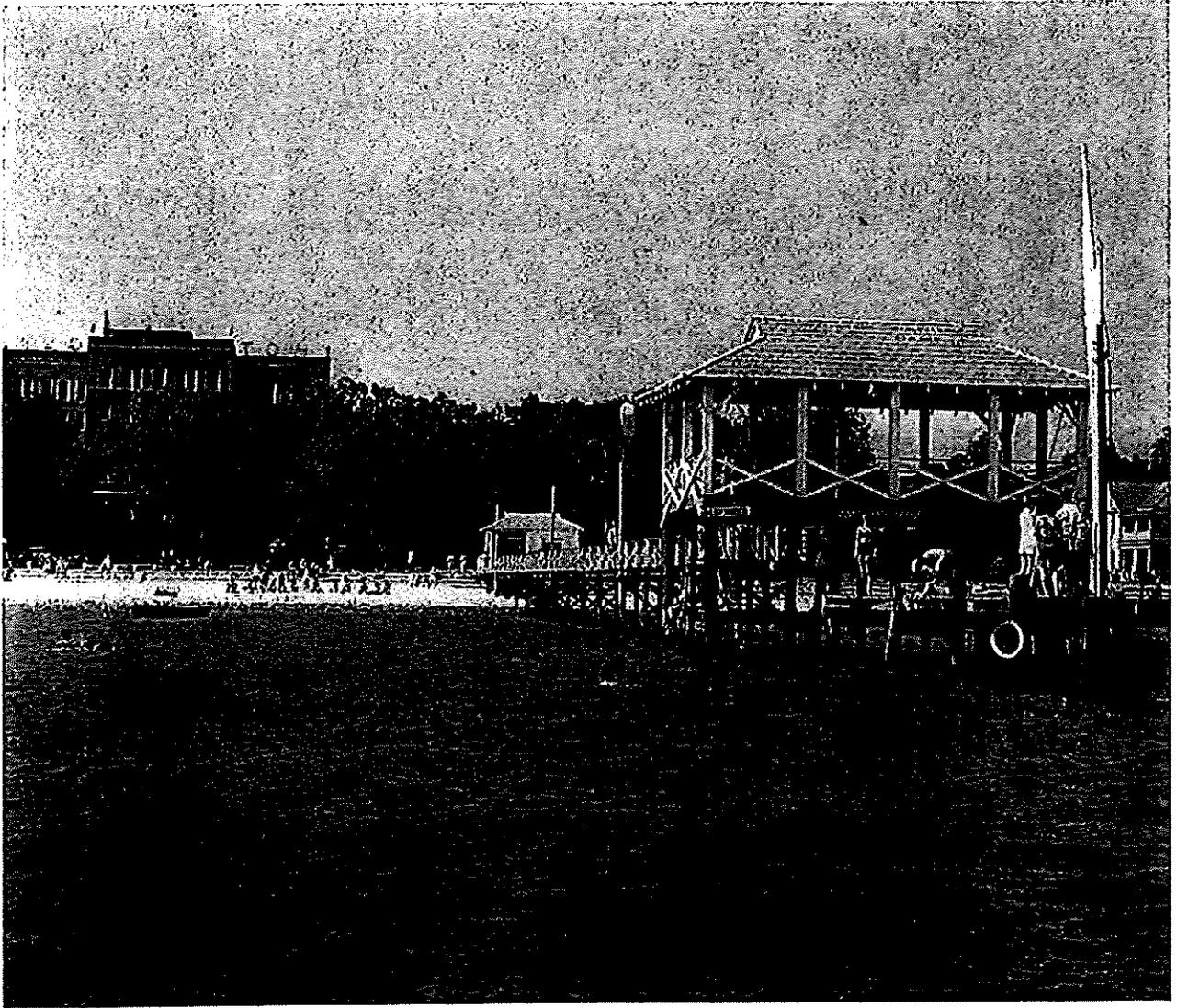
Parcel "B" (BCL CONTROLLED PROPERTY SOUTH OF US HWY. OWNED BY BCL BY QUITCLAIM DEED)

Commencing at the intersection of the East margin of Holley Street and the apparent North margin of U.S. Highway 90, having Mississippi State Plane Coordinates of : N=324985.2686 feet, E=970627.9823 feet (datum NAD83); thence run S-00°51'01"-E leaving said North margin of U.S. Highway 90, 157.83 feet to a point on the South margin of said U.S. Highway 90 and the outside face of an existing seawall; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the left having a radius of

1859.01 feet, a chord of which bears S-84°09'18"-E, 162.56 feet, an arc distance of 162.61 feet to a point; thence run S-86°36'51"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 201.77 feet to a point; thence run Southeasterly along said South margin of said U.S. Highway 90, the outside face of an existing seawall and a curve to the right having a radius of 2863.78 feet, a chord of bears S-83°38'11"-E, 308.70 feet, an arc distance of 308.85 feet to a point; thence run S-80°18'26"-E along said South margin of said U.S. Highway 90 and the outside face of an existing seawall, 396.50 feet to a point; thence run S-01°40'33"-E, 189.57 feet to a point on the North margin of the Mississippi Sound (Gulf of Mexico); thence run along said North margin of the Mississippi Sound (Gulf of Mexico) the following: S-86°56'20"-W, 14.55 feet; S-81°28'59"-W, 108.42 feet; N-79°56'06"-W, 72.69 feet; N-75°59'45"-W, 108.73 feet; N-71°41'10"-W, 51.14 feet; N-63°03'15"-W, 48.27 feet; N-71°05'08"-W, 95.35 feet; N-78°57'22"-W, 45.78 feet; N-82°45'56"-W, 50.91 feet; N-84°51'58"-W, 43.30 feet; N-87°18'12"-W, 52.46 feet; N-88°47'51"-W, 52.39 feet; N-85°56'50"-W, 43.12 feet; S-88°59'08"-W, 101.14 feet; N-88°06'06"-W, 50.24 feet; S-88°22'36"-W, 88.23 feet; N-85°38'57"-W, 45.87 feet to a point; thence run N-00°51'01"-W leaving said North margin of the Mississippi Sound (Gulf of Mexico), 201.40 feet to the Point of Beginning, containing 4.75 acres, more or less.

EXHIBIT 'B'

PHOTOS



Tivoli Hotel, one of Biloxi's great hotels from the 1920's, took a hit from a barge in Katrina which smashed the facade on the right side. Near this structure was the incomplete George Ohr Museum and the Pleasant Reed House, an African-American structure recently removed to the Ohr compound. Katrina gutted the museum and destroyed the Pleasant Reed House. Photo from Mississippi Gulf Coast Community College C.C. "Tex" Hamill Down South Magazine Collection.

*On March 11, 2006, the Tivoli with its smashed face still stood derelict and condemned.
Charles L. Sullivan*

Update (February 2008) The Tivoli Hotel has been razed.

1997 Photo

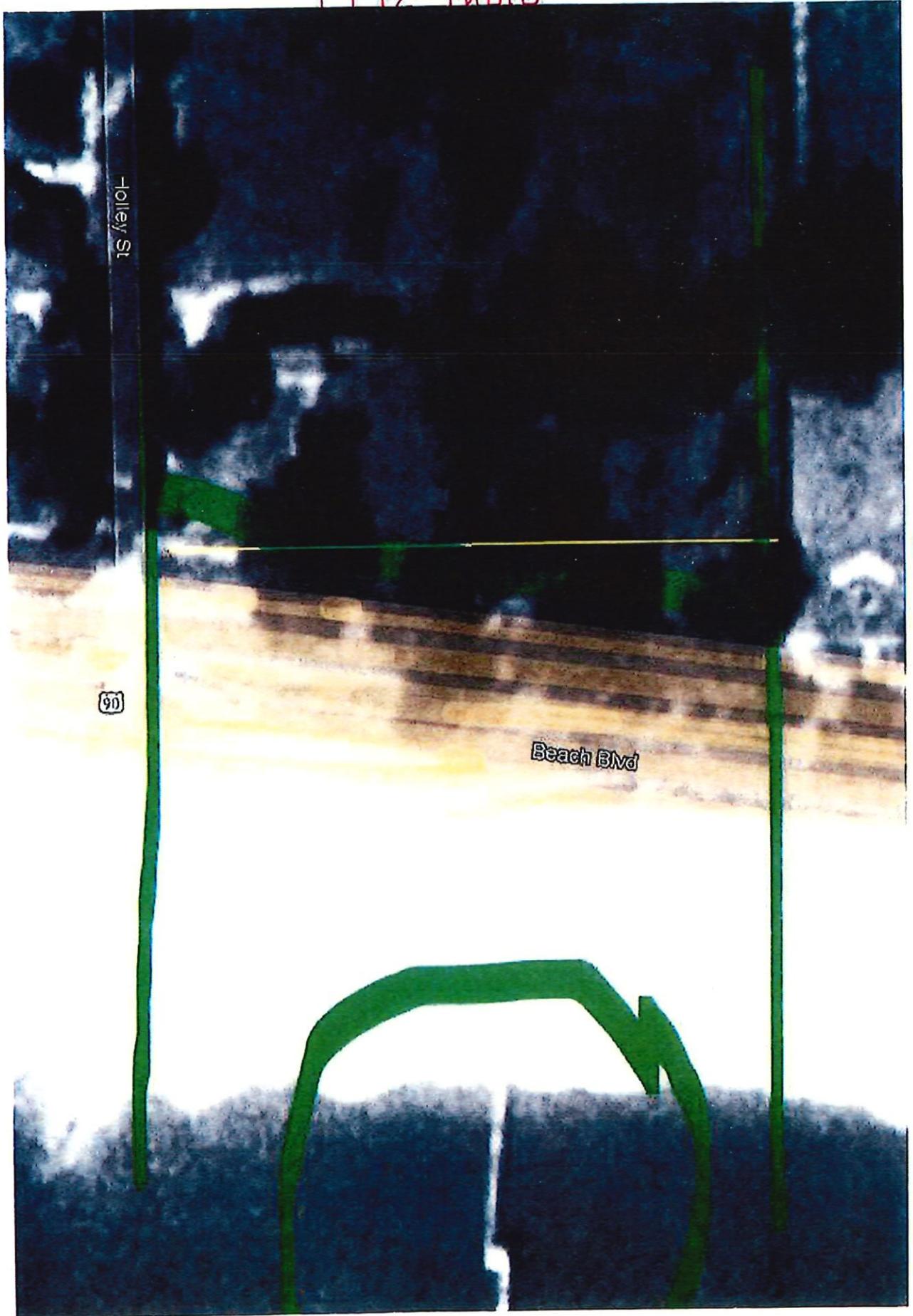


EXHIBIT "C"
LEGAL DESCRIPTION OF "PREMISES"
(SAND BEACH)

TIVOLI LEASE DESCRIPTION

COMMENCING at the intersection of the North margin of U. S. Highway 90, and the East margin of Holley Street; from said point run thence S80°47'54"E a distance of 187.9 ft. to the **POINT OF BEGINNING**; thence run S00°51'01"E a distance of 495.1 ft., more or less, to a point; thence run N89°08'59"E a distance of 80 ft., more or less, to a point; thence run N00°51'01"W a distance of 480.9 ft., more or less, to the North margin of U. S. Highway 90; thence run N80°47'54"W a distance of 81.25 ft. To **THE POINT OF BEGINNING**. Said parcel containing 39,039 square feet, more or less.

EXHIBIT
C

