

(03/18/14 – SOS)



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MAR 25 2014
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Document Prepared by

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USE AGREEMENT

(GULFPORT SMALL CRAFT HARBOR) ("PREMISES")

GRANTOR (STATE)

Secretary of State
Public Lands Division
700 North Street
Jackson, Mississippi 39202
(601) 359-6373

GRANTEE (CITY)

City of Gulfport, Mississippi
By the City Council
2309 13th Street
Gulfport, Mississippi 39501
Telephone: 228-868-5700

Indexing Instructions

Fractional Section 9 and 10, Township 8 South, Range 11 West, City of Gulfport, First Judicial District of Harrison County, Mississippi.

This document contains 26 pages with the cover page(s) included as an integral part of the document.
If there is not enough space for all required information on this page, continue to the next page.

(03/18/14 – SOS)

STATE OF MISSISSIPPI
COUNTY OF HARRISON

USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI
(Gulfport Small Craft Harbor) ("PREMISES")

THIS AGREEMENT, made and entered into this the 1st day of December, 2013, by and between the

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

With approval of the GOVERNOR,

("STATE")

AND

CITY OF GULFPORT, MISSISSIPPI,
By the City Council,
Post Office Box 1780
Gulfport, Mississippi 39502
Telephone: (228) 868-5700

With approval of the Mayor

("CITY")

IN CONSIDERATION of the covenants, conditions, and obligations herein provided and to be observed and performed by CITY, STATE does hereby provide for CITY use pursuant to the authority of MISS. CODE ANN. §29-1-107 (Supp. 2011), and CITY does hereby accept for use pursuant to MISS. CODE ANN. §59-15-1 (Supp. 2011) the following described submerged lands and tidelands, hereinafter referred to as THE PREMISES, to-wit:

All of the submerged lands and tidelands described in Exhibit 2 attached to this AGREEMENT and depicted on Exhibit 3 attached to this AGREEMENT. No other public lands of the State of Mississippi other than those described in Exhibit 2 and depicted in Exhibit 3 are subject to the terms of this AGREEMENT. This AGREEMENT is subject to that certain Boundary Agreement between CITY and STATE concerning THE PREMISES and filed contemporaneously with this AGREEMENT.

1. TERM.

1.1 The PRIMARY TERM of this AGREEMENT shall be for forty (40) years, beginning on the 1st day of December, 2013, and terminating on the 30th day of November, 2053.

1.2 If at the expiration of the PRIMARY TERM, CITY has faithfully complied with all terms, covenants, conditions, and obligations of this AGREEMENT, then CITY shall have the option to extend this AGREEMENT for an additional twenty-five (25) years (SECONDARY TERM) subject to the same AGREEMENT terms and conditions or such terms and provisions as may then be agreed upon by STATE and CITY.

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

1.4 If at the end of the PRIMARY TERM or SECONDARY TERM of this AGREEMENT for whatever reason the AGREEMENT is not extended and the CITY is not in default pursuant to Paragraph 5.1 of Exhibit 5, the parties hereto shall revert back to whatever positions they would have been in had this AGREEMENT never been executed and in effect and any rights, interests, and defenses or claims owned, possessed, assumed by, afforded, conferred upon, or enjoyed by the parties hereto shall at that point not be waived by the execution of this AGREEMENT or by its execution or existence and shall then be given full effect. This provision and the provisions in Paragraph 26 shall survive this AGREEMENT and the agreed dismissal with prejudice of the suit pending in the Chancery Court of Harrison County, Mississippi of *City of Gulfport v. The Secretary of State of the State of Mississippi*, No. 24 CH1:11-cv-01388.

2. USE OF THE PREMISES.

2.1 It is specifically agreed CITY will use THE PREMISES for the purposes of the Gulfport Small Craft Harbor, also known as the Bert Jones Small Craft Harbor, (hereinafter referred to as "HARBOR") (HARBOR USE or USE), consisting of (i) municipal harbor and marina; (ii) boat slips for recreational and commercial boating; (iii) recreational fishing, (iv) commercial charter operations for Ship Island or other Mississippi barrier islands; and (v) harbor infrastructure, to include wharfs, piers, docks, boat slips, boat launches, marine fuel and supply service dock, harbor master office, and like facilities; all in compliance with existing zoning regulations or ordinances.

2.2 It is agreed that exercise of USES of the tidelands will not unreasonably impede or detract from the right of any member of the general public, and will compliment the access of the public, to use and enjoy the harbor, waterfront, fishing piers, park, sand beach and adjacent lands, and will not unreasonably impede or detract from the existence and beauty of the adjacent sand beach (PUBLIC USE).

2.3 STATE and CITY agree that gambling, gaming operations, games of chance and casinos are not permitted uses under the terms of this AGREEMENT.

2.4 and 2.5 Paragraphs not used.

2.6 Except as provided in Paragraph 12 hereof, if CITY abandons permitted USES defined in Paragraph 2.1, above, of THE PREMISES for a period of more than two years, then this AGREEMENT may be terminated by STATE upon one-hundred eighty (180) days notice. If after receiving notice of cancellation, CITY within said one-hundred eighty (180) day period, provides STATE with a viable plan for resumption of permitted USES of THE PREMISES and thereafter undertakes and continues, without unreasonable delay, work to resume such USES, then this AGREEMENT shall not be cancelled by STATE.

3. CONSIDERATION.

3.1 The CITY and STATE agree:

(a) THE PREMISES contains approximately 40.90 acres of submerged land, more or less, and may be increased pursuant to Paragraph 9.9.

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

(c) The CITY, in conjunction with the operation of THE PREMISES for HARBOR USE, may rent boat slips upon such terms and conditions as the CITY deems proper and appropriate. The terms and conditions, including the rental and fee amounts, of the boat slip rental agreements between the CITY and any occupant of a boat slip (SLIP AGREEMENTS) shall be established by the CITY in compliance with applicable laws.

3.2 The CITY shall be entitled to retain all revenues from rentals and fees from SLIP AGREEMENTS within THE PREMISES, so long as such revenues are used by the CITY for the operation, debt service and maintenance cost of THE PREMISES pursuant to the guidance provided in Exhibit 1 attached to this AGREEMENT.

4. and 5. PARAGRAPHS NOT USED.

6. TRANSFERABILITY OF AGREEMENT.

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

(a) The City of Gulfport may enter into an agreement providing for operations (including the collection of rents), improvements, and management of the Harbor, the terms of which shall not be inconsistent with the terms of this AGREEMENT.

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

(c) CITY may sublease or transfer its interest in THE PREMISES under this AGREEMENT to the Gulfport Redevelopment Commission or another entity created pursuant to Title 43, Chapter 35 of the Mississippi Code 1972 for commercial development uses and purposes under terms as are contained within this AGREEMENT. Any such sublease or transfer shall contain a provision for reversion to CITY of all interest in THE PREMISES upon termination of the uses and purposes for which it is subleased or transferred or upon dissolution of the sublessee or transferee. The sublessee or transferee in any such sublease or transfer shall hold THE PREMISES subject to all the terms and conditions of this AGREEMENT.

7. and 8. PARAGRAPHS NOT USED.

9. IMPROVEMENTS AND MAINTENANCE, FUTURE DEVELOPMENT.

9.1 STATE acknowledges that the improvements which exist on THE PREMISES on the effective date of this AGREEMENT or which may be constructed on THE PREMISES by the CITY under the terms of this AGREEMENT are not and shall not be the property of STATE unless forfeited to STATE pursuant to Paragraph 23.

9.2 The improvements which exist on THE PREMISES on the effective date of this AGREEMENT are consistent with the higher public purpose of the Tidelands Act of 1989.

9.2 thru 9.8 Paragraph not used

9.9 (a) During the TERM of this AGREEMENT or any SECONDARY TERM in effect, STATE, if requested by CITY, will amend this AGREEMENT or enter into a public trust lands agreement in substantially the same form as this AGREEMENT, to include:

(1) the area, more or less, designated as "Yacht Basin Expansion Area" on the attached and incorporated Exhibit 4.

(2) the area, more or less, designated as "Park Expansion Area" on the attached and incorporated Exhibit 4.

(b) STATE shall not lease the area on the attached and included Exhibit 4 without first offering said area(s) to CITY on terms consistent with this AGREEMENT.

10. thru 12. PARAGRAPHS NOT USED.

13. PROTECTION OF THE PREMISES.

13.1 CITY and any CITY lessee shall exercise due diligence in the protection of THE PREMISES or other property of STATE in the vicinity of THE PREMISES against damage or waste from any and all causes. Failure to comply with such laws and regulations shall be deemed to be a material breach of this AGREEMENT.

14. PARAGRAPH NOT USED.

15. QUIET AND PEACEFUL POSSESSION.

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

15.2 For the purpose of grant applications for projects on THE PREMISES, CITY shall have use and control of THE PREMISES subject to and so long as CITY is in compliance with the terms and provisions of this AGREEMENT.

16. thru 22. PARAGRAPH NOT USED.

23. CANCELLATION OR TERMINATION OF AGREEMENT.

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

23.2 Paragraph not used.

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

23.4 thru 23.6 Paragraphs not used.

24. and 25. PARAGRAPHS NOT USED.

26. CITY and STATE agree that:

(a) This AGREEMENT and its exhibits will not operate as evidence in any judicial action to determine ownership of THE PREMISES.

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

(c) CITY by entering this AGREEMENT does not waive any right for any period after the PRIMARY TERM or SECONDARY TERM which may exist by virtue of Miss. Code Ann. § 59-25-1, et seq. (Rev. 2004), nor does CITY waive or release any rights, interests, and defenses or claims which it might otherwise have in or to THE PREMISES or any part or portion thereof; provided, however, so long as this AGREEMENT or any renewal thereof is in effect or if CITY is in default pursuant to Paragraph 5.1 of Exhibit 5, CITY shall not assert its claims or rights of title or ownership. In the event this AGREEMENT and all renewals expire or are terminated due to default by the STATE without fault by the CITY, CITY shall be entitled to thereafter assert its claims of right or title to THE PREMISES. CITY shall not assert its claims of rights or title in and to THE PREMISES if this AGREEMENT is terminated by STATE in accordance with Section 5.1 (under the title heading of "DEFAULT") of Exhibit "5" to the AGREEMENT herein.

27. GENERAL TERMS AND CONDITIONS

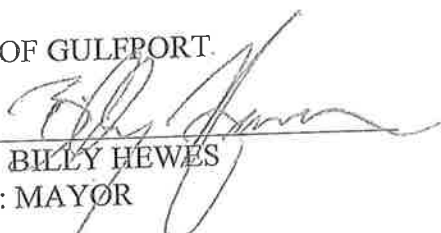
This USE AGREEMENT is further subject to the terms and conditions contained in Exhibit 5 and are incorporated herein.

(Remainder of Page Intentionally Left Blank; Signatures Begin on Following Page)


(03/18/14-SOS)

IN WITNESS WHEREOF, this AGREEMENT is executed by STATE and CITY, this
the 24th day of March, 2014.

CITY:
CITY OF GULFPORT.

BY: 
Name: BILLY HEWES
Office: MAYOR

Attested By:


Name: Scott Wilson
Office: Municipal Clerk

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said county and state, on this 24th day of March, 2014, within my jurisdiction the within named BILLY HEWES and SCOTT WILSON, personally known to me to be the duly elected Mayor and the duly appointed and serving Municipal Clerk, respectively, of the CITY OF GULFPORT, MS, who acknowledged that he/she executed the above and foregoing AGREEMENT as the act and deed of said CITY OF GULFPORT, on the date and for the purposes therein stated, being first duly authorized to so do.


NOTARY PUBLIC

My Commission Expires:



**USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI**

(Gulfport Small Craft Harbor) ("PREMISES")

EXHIBIT 1

1. The revenues from USE of THE PREMISES (the "Revenues") shall be placed in the Gulfport Harbor account pursuant to Paragraph 3.2 of the AGREEMENT and may be used for any and all expenses related to harbor operations, maintenance and debt service at Gulfport Small Craft Harbor. Revenues may also be used for any and all expenses related to harbor operations, maintenance and debt service for that area known as Jones Park and for CITY owned property located north of the Gulfport Small Craft Harbor and U.S. Highway 90, west of 20th Avenue, east of U.S. Highway 49 (also known as 25th Avenue), and south of 15th Street if acquired, owned managed or leased by CITY, and only if used for public purposes that promote the use of the PARK and SMALL CRAFT HARBOR shall be a proper use of the Revenues.

2. The following categories and examples are not to be construed as all inclusive or to be read as a limitation. The categories and examples are provided as a guide to the type of expenditures which would normally be associated with a small craft harbor in the nature of that made subject to the AGREEMENT. When the need for records or documentation is indicated, records or documents which conform to the annual audit standards for an audit as identified in Paragraph 3.3 of the AGREEMENT will be sufficient. If employees, vehicles, machinery, equipment or other items or expenses are not solely dedicated to or related to Harbor operations and maintenance, records should be maintained and sound accepted accounting principles should be used to assign the share of costs and expenses to be paid from the Revenues.

a. Salaries: Salaries for employees, to include the harbor master, and others assigned whether full time or part time to the operation and maintenance of the Gulfport Small Craft Harbor can be paid from the Revenues.

b. Employee Benefits: Normal and usual employee benefits associated with a compensation package or which are normally and regularly paid by an employer if a part of a compensation plan used by a government entity of the State of Mississippi, to include employee related retirement benefits, medical insurance benefits, and life insurance benefits; taxes normally and usually assess to an employer to include worker's compensation insurance, unemployment insurance, and social security payments can be paid from the Revenues. Withholdings which are normally and usually paid from the employee's earnings may not be paid from the Revenues.

c. Vehicles, Machinery and Equipment: Expenses related to vehicles, machinery and equipment which are used in the operations and maintenance of the harbor may be paid from the Revenues. Vehicles should be those which are necessary and essential for harbor operations and maintenance, and may not be used for personal or non-business reasons. At the discretion of the CITY for twenty-four hour or on call operations by the harbor master or other employee, CITY may provide transportation. Vehicles should not be provided for employee transportation to and from work. Machinery and equipment should be required for the repair and upkeep of the harbor, to include bulkheads, piers, utilities, safety devices, landscape adjacent to and in the

immediate vicinity of the harbor, and buildings at the harbor and related to harbor operations. Payment of mileage for use of personal vehicle is a decision left to the CITY, but any off site (away from the harbor) travel should be accomplished with harbor dedicated vehicles. Equipment can include city owned small boats and necessary motors in order to access harbor areas from the water for maintenance and repair.

d. Fuel & Oil: Expenses for fuel and oil which are related to vehicles, machinery and equipment used in the operations and maintenance of the Gulfport Small Craft Harbor as outlined in this Exhibit can be paid from the Revenues. Fuel and oil paid from the Revenues cannot be sold to any person.

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

f. Utilities: Expenses for gas, electricity, cable and sewer directly related to the operations of the harbor master's office and related facilities and equipment, piers and docks, boat launches, safety equipment and operations, and other operation and maintenance activities directly related to the Gulfport Small Craft Harbor can be paid from the Revenues. Utilities associated with boats berthed in the harbor's rental slips cannot be paid from the Revenues unless such costs are collected as a portion or part of the berth or slip rental. If so, then the amount collected as a portion or part of the berth or slip rental should be determined using a method reasonably designed to fully cover the rental's associated cost.

g. Telephone: Expenses for telephones, facsimile devices, computer services, marine radios, and other similar communication devices and services directly related to the operations of the Gulfport Small Craft Harbor, to include those services and items necessary for the efficient operations of the harbor master's office can be paid from the Revenues. Such costs associated with boats berthed in the harbor's rental slips cannot be paid from the Revenues unless such costs are collected as a portion or part of the berth or slip rental. If so, then the amount collected as a portion of the berth or slip rental should be determined using a method reasonably designed to fully cover the rental's associated cost. At the discretion of the CITY, the harbor master and harbor personnel can be provided cellular equipment and service for harbor business.

h. Garbage: Expenses for refuse collection or garbage service and the necessary refuse collection cans directly related to maintaining a safe, attractive and sanitary harbor can be paid from the Revenues. Such collection or service associated with boats berthed in the harbor's rental slips should not be paid from the Revenues unless such costs are collected as a portion or part of the berth or slip rental. If so, then the amount collected as a portion or part of the berth or slip rental should be determined using a method reasonably designed to fully cover the rental's associated cost.

i. Insurance: Expenses for building, contents and equipment insurance related to the operations and maintenance of the Gulfport Small Craft Harbor can be paid from the Revenues, including insurance to meet the requirements of Paragraph 18 and paragraph 2.b of this exhibit.

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

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

**USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI**

**(Gulfport Small Craft Harbor) ("PREMISES")
EXHIBIT 2**

LEGAL DESCRIPTION: HARBOR BOTTOM LANDS PER USE AGREEMENT

All of the bottom lands situated and being located within the confines of the Gulfport Small Craft Harbor, less those bottom lands described in the Boundary Agreement to L & V Enterprises, Inc. (Marine Life) (Instrument #2005-12989-D-J1), less those bottom lands described in Deed Book 904, Pages 524-527 (City of Gulfport to Mississippi Coast Marine, Inc.), less those bottom lands leased by the Secretary of State to Gulfport Yacht Racing Association (Gulfport Yacht Club), less the option bottom land lease parcel to Gulfport Yacht Racing Association (Gulfport Yacht Club), and less any bottom lands within the boundary of property of the U. S. Coast Guard and less those bottom lands being within or otherwise contained in the Deed of conveyance from Grace Jones Stewart to the City of Gulfport on July 23, 1935, as recorded in Deed Book , pages 202-205, in the Land Records of the Chancery Clerk of Harrison County, First Judicial District, Mississippi and being a parcel of land situated and being located in Fractional Section 9, Township 8 South, Range 11 West, City of Gulfport, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

Beginning at a point having Grid Coordinates North 314982.45 and East 904333.99 of the Mississippi State Plane Coordinate System, East Zone, NAD '83 being a point at the easterly end of the bulkhead that borders the northerly confines of the Gulfport Small Craft Harbor; thence run South 68 degrees 37 minutes 25 seconds West 532.35 feet along the said bulkhead and the northerly confines of the Gulfport Small Craft Harbor to the westerly end of said bulkhead; thence run generally Westerly 65 feet, more or less, along the concrete rip-rap on the meandering mean high water line of the northerly confines of the Gulfport Small Craft Harbor to a point on the east end of the concrete boat launch ramp; thence run South 69 degrees 17 minutes 41 seconds West 135.22 feet along the mean high water line of the northerly confines of the Gulfport Small Craft Harbor to a point on the west end of the concrete boat launch ramp; thence run generally Westerly 67 feet, more or less, along the concrete rip-rap on the meandering mean high water line of the northerly confines of the Gulfport Small Craft Harbor to a point on the bulkhead that borders the northerly confines of the Gulfport Small Craft Harbor; thence run South 68 degrees 42 minutes 48 seconds West 171.57 feet along the said bulkhead and the northerly confines of the Gulfport Small Craft Harbor to the southerly boundary of the "Jones Conveyance"; thence run along the southerly boundary of the "Jones Conveyance" the following courses and distances: South 19 degrees 28 minutes 15 seconds West 152.74 feet and South 20 degrees 50 minutes 15 seconds West 226.14 feet to the northerly boundary of the U. S. Coast Guard; thence run the following courses and distances along the northerly and easterly boundary of the U. S. Coast Guard and the easterly limits of the boundary agreement of L & V Enterprises, Inc. (Marine Life) and the easterly most line per the conveyance to Mississippi Coast Marine in Deed Book 904 at Page 524-27 and the easterly limits of the Bottomland Lease Parcel of the Gulfport Yacht Racing Association (Gulfport Yacht Club), South 89 degrees 59 minutes 44 seconds East 5.05 feet; thence run South 01 degrees 30 minutes 24 seconds East 171.00 feet; thence run South 35 degrees 49 minutes 45 seconds West 35.80 feet; thence run South 00 degrees 04 minutes 51 seconds East 50.50 feet; thence run South 40 degrees 49 minutes 41

seconds East 5.70 feet; thence run South 00 degrees 02 minutes 49 seconds East 84.97 feet; thence run South 21 degrees 11 minutes 19 seconds West 10.11 feet; thence run South 00 degrees 04 minutes 51 seconds East 7.23 feet; thence run North 89 degrees 55 minutes 09 seconds East 160.00 feet; thence run South 00 degrees 04 minutes 51 seconds East 204.48 feet; thence run South 70 degrees 23 minutes 01 seconds West 29.17 feet; thence run South 17 degrees 43 minutes 04 seconds East 164.27 feet; thence run North 52 degrees 40 minutes 08 seconds East 170.92 feet; thence run South 32 degrees 59 minutes 10 seconds East 418.22 feet; thence run South 02 degrees 44 minutes 50 seconds West 208.56 feet to the Northeast corner of the option bottom land lease parcel of Gulfport Yacht Racing Association (Gulfport Yacht Club); thence run the following courses and distances along the easterly limits of the option bottom land lease parcel, South 13 degrees 47 minutes 46 seconds West 260.89 feet; thence run South 44 degrees 28 minutes 29 seconds East 1120.46 feet to a point on the mouth of the entrance into the Gulfport Small Craft Harbor; thence run North 08 degrees 07 minutes 18 seconds West 292.07 feet across the mouth of the entrance to the Gulfport Small Craft Harbor to a point on the mean high water line at the southerly end of the breakwater of Urie Pier; thence run generally Northwesterly and Northerly 1103 feet, more or less, along the meandering mean high water line of the breakwater that borders the easterly confines of the Gulfport Small Craft Harbor to the southerly end of a bulkhead that borders the easterly confines of the Gulfport Small Craft Harbor; thence run the following courses and distances along the bulkhead that borders the easterly confines of the Gulfport Small Craft Harbor, North 00 degrees 02 minutes 02 seconds East 215.18 feet; thence run North 45 degrees 12 minutes 47 seconds East 546.35 feet; thence run North 00 degrees 14 minutes 00 seconds East 902.19 feet; thence run North 42 degrees 59 minutes 01 seconds West 267.09 feet to the Point of Beginning.

DESCRIPTION OF PIER AREA "A" BY USE AGREEMENT:

A parcel of land situated and being located in Fractional Section 10, Township 8 South, Range 11 West, City of Gulfport, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

BEGINNING at a point on the mean high water line of the Mississippi Sound/Gulf of Mexico at the easternmost tip of Moses Pier, said, point having Grid Coordinates North 313434.61 and East 905686.57 of the Mississippi State Plane Coordinate System, East Zone, NAD '83; thence run from said POINT OF BEGINNING, North 90 degrees 00 minutes 00 seconds East 171.00 feet; thence run South 00 degrees 00 minutes 00 seconds East 225.00 feet; thence run North 90 degrees 00 minutes 00 seconds West 350.00 feet; thence run North 00 degrees 00 minutes 00 seconds East 225.00 feet; thence run North 90 degrees 00 minutes 00 seconds East 107.03 feet to a point on the mean high water line of the Mississippi Sound/Gulf of Mexico on the southerly side of Moses Pier; thence run generally Southeasterly, Easterly, and Northeasterly 84 feet, more or less, along the southerly side of Moses Pier and along the meandering mean high water line of the Mississippi Sound/Gulf of Mexico to the POINT OF BEGINNING.

DESCRIPTION OF PIER AREA "B" BY USE AGREEMENT:

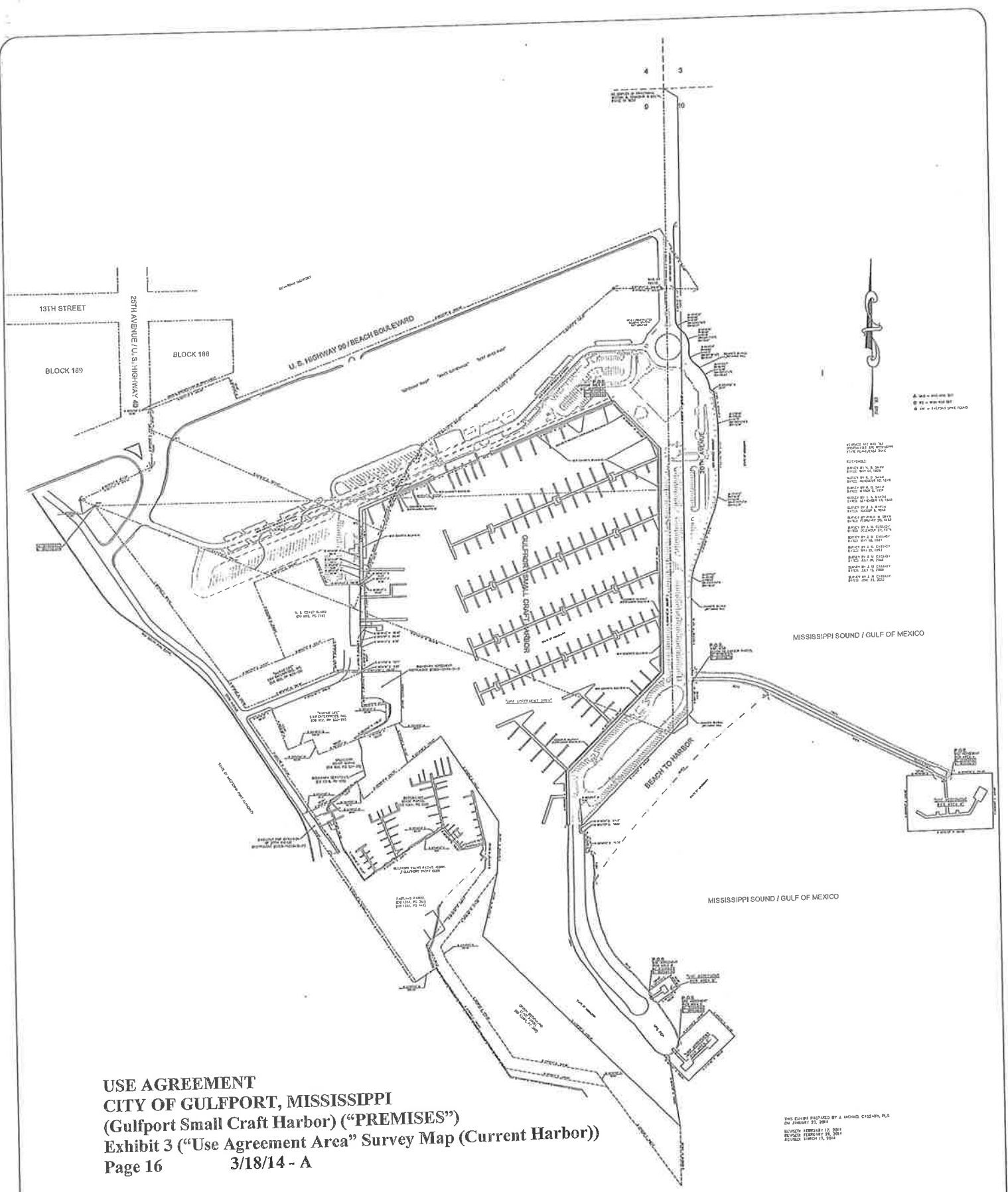
A parcel of land situated and being located in Fractional Sections 9 and 10, Township 8 South, Range 11 West, City of Gulfport, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

BEGINNING at a point on the mean high water line of the Mississippi Sound/Gulf of Mexico on the northerly side of Urie Pier, said point having Grid Coordinates North 312599.22 and East 904441.00 of the Mississippi State Plane Coordinate System, East Zone, NAD '83; thence run from said POINT OF BEGINNING, North 55 degrees 43 minutes 25 seconds East 100.00 feet; thence run South 34 degrees 16 minutes 35 seconds East 60.00 feet; thence run South 55 degrees 43 minutes 25 seconds West 100.00 feet to a point on the mean high water line of the Mississippi Sound/Gulf of Mexico on the northerly side of Urie Pier; thence run generally Northwesterly 60 feet, more or less, along the northerly side of Urie Pier and along the meandering mean high water line of the Mississippi Sound/Gulf of Mexico to the POINT OF BEGINNING.

DESCRIPTION OF PIER AREA "C" BY USE AGREEMENT:

A parcel of land situated and being located in Fractional Sections 9 and 10, Township 8 South, Range 11 West, City of Gulfport, First Judicial District of Harrison County, Mississippi and being more particularly described as follows, to-wit:

BEGINNING at a point on the mean high water line of the Mississippi Sound/Gulf of Mexico on the northerly side of Urie Pier, said point having Grid Coordinates North 312398.02 and East 904558.34 of the Mississippi State Plane Coordinate System, East Zone, NAD '83; thence run from said POINT OF BEGINNING, North 47 degrees 44 minutes 56 seconds East 170.00 feet; thence run South 42 degrees 15 minutes 04 seconds East 150.00 feet; thence run South 47 degrees 44 minutes 56 seconds West 260.00 feet; thence run North 42 degrees 15 minutes 04 seconds West 146.51 feet to a point on the mean high water line of the Mississippi Sound/Gulf of Mexico on the southerly side of Urie Pier; thence run generally Southeasterly, Easterly, and Northeasterly 106 feet, more or less, along the southerly side of Urie Pier and along the meandering mean high water line of the Mississippi Sound/Gulf of Mexico to the POINT OF BEGINNING.

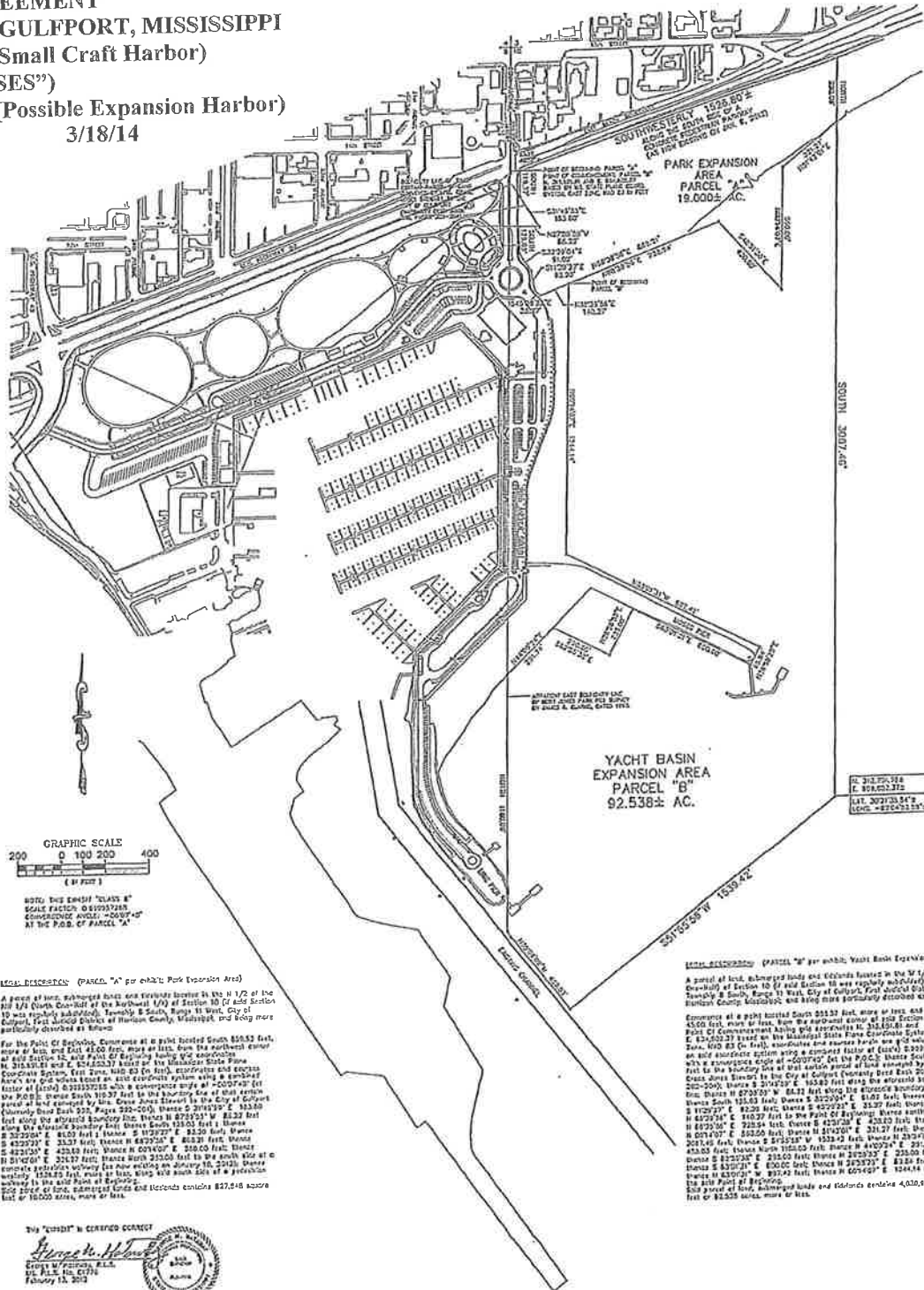


USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI
(Gulfport Small Craft Harbor) ("PREMISES")
Exhibit 3 ("Use Agreement Area" Survey Map (Current Harbor))
Page 16 **3/18/14 - A**

THIS EXHIBIT PREPARED BY A MECHANICAL REPRODUCER
 ON JANUARY 21, 2014
 SURVEYED FEBRUARY 17, 2014
 SURVEYED FEBRUARY 18, 2014
 SURVEYED FEBRUARY 19, 2014

Settlement/PLD/eng Sheet 1 of 1	Drawn By: JET Checked By: JMC Date: 07/10/08 Scale: 1"=100' Job No: 88733-08	For: Secretary of State Gulfport Small Craft Harbor/Bert Jones Park Gulfport, Mississippi "Use Agreement Area" Exhibit Survey		CASSADY & ASSOCIATES, INC. E. Patrick Cassady - 1912-1981 Since 1947 J. Michael Cassady, P.L.S. 1714 Twenty Second Avenue Phone (228) 898-2155 Professional Land Surveyors Fax (228) 898-8405 Post Office Box 7201 (39508) E-Mail: surveys@cassadyassociates.com Gulfport, Mississippi 39501	REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Rev.</th> <th>Date</th> <th>By</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	Rev.	Date	By			
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USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI
(Gulfport Small Craft Harbor)
("PREMISES")
Exhibit 4 (Possible Expansion Harbor)
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**USE AGREEMENT
CITY OF GULFPORT, MISSISSIPPI
(Gulfport Small Craft Harbor) ("PREMISES")**

Exhibit 5

1. ADDITIONAL PROVISIONS CONCERNING TERM.

1.1 It is expressly agreed and understood that during the SECONDARY TERM of this AGREEMENT and during the term of any future AGREEMENTS entered pursuant to Paragraph 1.3 of the AGREEMENT, CITY shall fully comply with all laws of the State of Mississippi governing the use of submerged lands and tidelands in effect at the time of renewal pertaining to the PREMISES.

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

2. GAMING.

STATE and CITY agree that any lease of THE PREMISES or any Public Trust Lands for GAMING shall, in addition to all other determinations or permissions of other agencies as required by law, including proper zoning as allowed and required by CITY, require a first party lease between the gaming entity and the State of Mississippi acting by and through the Secretary of State with the approval of the Governor as STATE. STATE reserves the exclusive authority and right to execute leases for GAMING on THE PREMISES, and all rights under this AGREEMENT shall be subservient to any lease for GAMING executed by STATE in its sole discretion.

3. ADDITIONAL PROVISIONS CONCERNING CONSIDERATION.

3.1 All revenues received from SLIP AGREEMENTS shall be deposited in an already existing separate account used for harbor operations such as an identified harbor enterprise account. The account used shall be deemed a public account and shall be subject to audit by the State Auditor. The account shall be used for the operations, maintenance costs and debt service for capital improvements to the HARBOR pursuant to the guidance in Exhibit 1. If city funds from other sources are placed in this account, funds retained from SLIP AGREEMENTS shall be first used for any maintenance and operational expenses.

3.2 All revenues received for SLIP AGREEMENTS not expended in the use year will be held in trust by CITY for capital improvements and for the benefit of the Gulfport Small Craft Harbor. The account shall be deemed a public account and shall be subject to audit by the State Auditor. Said funds shall be accumulated to be used for capital improvements and repairs, including maintenance dredging, and operational expenses, maintenance costs and other

expenses as suggested in Exhibit 1 including recovery and rebuilding on THE PREMISES after Catastrophic Destruction.

3.3 Upon request, CITY shall provide to STATE:

(a) A copy of budget or similar documents, such as the City of Gulfport annual budget as it relates to the revenues and expenses of the operation and maintenance of THE PREMISES as a result of the USE of THE PREMISES contemporaneous with the documents being produced by the CITY.

(b) A copy of any audit report, such as the City of Gulfport annual audit report, concerning all activities affecting operating account and trust account pertaining to THE PREMISES contemporaneous with the documents being produced by or provided to the CITY.

3.4 Except as provided in Paragraph 3.3 of this Exhibit or by the State Auditor or the State of Mississippi, the CITY will not be required to produce reports or audits to the STATE.

3.5 (a) The STATE at its own expense shall have the right to an accounting and audit of the records related to the revenues and expenses of the operations and maintenance of THE PREMISES. Notice of said accounting and audit shall be made in writing with ten (10) business days notice to the CITY at the address provided in this AGREEMENT. The STATE shall designate the persons or agencies who shall conduct the accounting or audit.

(b) CITY shall make available to STATE all required documents and information required by STATE'S auditors.

4. PUBLIC ACCESS ASSURED.

CITY agrees to maintain public access to THE PREMISES during the term of the AGREEMENT, subject to rules and regulations reasonably necessary to ensure the safety, security, protection and convenience of all users, including boat owners and their invitees as well as members of the general public, all property, including boats docked in the harbor, and normal operations of the Harbor

5. DEFAULT.

5.1 The parties expressly agree that in the event of default in any term, provision, condition, covenant or condition imposed on CITY under this AGREEMENT, enforcement shall be pursuant to the following methods. STATE shall give notice to the CITY of the default of the AGREEMENT provisions in writing as provided in Paragraph 11 of this Exhibit 5. CITY shall have ninety (90) days from receipt of the written notification of the default(s) in which to seek a judicial determination by a proceeding in a court of competent jurisdiction of the existence of the default(s). During such ninety (90) days, the STATE shall not initiate any action to terminate this AGREEMENT. Should CITY seek a judicial determination of the existence of the default(s), any further stay of action by the STATE to enforce or terminate the AGREEMENT shall be determined by the court in which the CITY sought the judicial determination. If CITY does not seek a judicial determination of the existence of the default(s) or cure the default(s) within the

provided ninety (90) day period, STATE may proceed to enforce or terminate this AGREEMENT. STATE shall have all rights and remedies available at law or in equity, including but not limited to, the right to restrain violations, compel compliance or terminate this AGREEMENT, and the election to pursue one remedy shall not be deemed to have waived other available remedies.

5.2 If any leases by the CITY are in effect at the time of cancellation, termination or forfeiture of this AGREEMENT, then such leases shall remain in full force and effect subject to state law, and all rights of CITY under said leases shall accrue to STATE.

6. IMPROVEMENTS AND MAINTENANCE.

(a) CITY agrees to provide STATE a complete set of construction plans and specifications as well as a full and complete written description of the PUBLIC USE of any proposed material or substantial improvements, alterations or additions to THE PREMISES prior to STATE evaluating the proposal as a PUBLIC USE.

(b) STATE will, within thirty (30) days of receipt of a full and complete set of construction plans and specifications as well as a full and complete written description of the PUBLIC USE of the proposed improvement, alteration or addition to THE PREMISES, provide to the CITY written consent or objection to the proposed improvement. Any consent or objection to a proposed improvement not timely provided shall be deemed to be consent to the project.

(c) If CITY and STATE cannot reach mutual agreement within thirty (30) days of such notice that a material or substantial improvement, alteration or addition proposed by CITY, as set out in Paragraph 6(a), above, is PUBLIC USE, then either CITY or STATE may apply to a court of State of Mississippi of competent jurisdiction and venue for a judicial determination that the proposed improvement, alteration or addition is a Public Use consistent with the terms of this Agreement.

(d) No material or substantial improvement, alteration or addition to THE PREMISES shall be constructed, placed or assembled and maintained on THE PREMISES until CITY has first submitted such proposed improvement, alteration or addition in writing to STATE pursuant to Paragraph 6 (a) and STATE has agreed pursuant to Paragraph 6 (b), or STATE has not provided consent or objection within the thirty (30) day time limit set out above herein, or upon judicial determination as provided in Paragraph 6 (c) that such improvement, alteration or addition is a public use, and thereafter CITY may proceed to construct such improvements.

(e) CITY agrees to promptly provide STATE with a complete set of "as built" plans showing all material or substantial improvements, alterations or additions, including an "as built" survey as it exists on the date of execution of this AGREEMENT.

(f) Such modifications must (1) be consistent with USES allowed under this AGREEMENT, (2) not violate any local, state or federal law or regulation, (3) be approved by all required permitting authorities, and (4) not be inconsistent with or prohibited by any term or provision of this AGREEMENT.

(g) STATE and CITY share in the public interest in establishing and maintaining an attractive view of the waterfront on the Mississippi Sound and the Sand Beach. Accordingly, STATE and CITY agrees that any material or substantial improvements, alterations or additions to THE PREMISES shall be constructed and maintained for visual and aesthetic appeal. CITY agrees that it shall, at all times, maintain said view of the waterfront in a first class manner consistent with the public interests and intentions set forth in this USE AGREEMENT. Without limitation, CITY acknowledges this is a material provision of this AGREEMENT.

7. CATASTROPHIC DESTRUCTION.

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

7.2 In the event of catastrophic destruction by natural causes of any CITY owned improvements on THE PREMISES, CITY may, but shall not be obligated to, restore or replace any portion of such improvements lost or damaged. The CITY may use funds from the capital improvements funds held in trust for rebuilding and recovery from Catastrophic Destruction on THE PREMISES.

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

7.4 In the event that this AGREEMENT is terminated by STATE under Paragraph 7.3 of this Exhibit 5, CITY agrees to remove any and all debris from THE PREMISES if the CITY receives federal or state funding for such debris removal.

7.5 The parties understand and agree that the ability of CITY to rebuild after catastrophic damage to improvements will depend upon the availability of federal funding, and that the timing of the availability of that funding for reconstruction is beyond the control of either party. The time period beginning when CITY files a Project Worksheet with the federal government (FEMA or its successor agency) for the reconstruction project to the time when the federal government either grants or denies funding for that Project Worksheet shall not be counted against the time period for resumption of use.

8. STATE NOT RESPONSIBLE.

CITY assumes full responsibility for the condition of THE PREMISES and STATE shall not be liable or responsible for any damages or injuries caused by any vices or defects to the CITY or to any occupant or to anyone on THE PREMISES who derives his right to be thereon from CITY subject to Paragraph 12.2 of this Exhibit 5.

9. RESERVATION OF MINERAL RIGHTS.

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

10. WAIVER NOT A DISCHARGE.

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

11. NOTICE.

(a) All notifications or submissions required under the terms of this AGREEMENT including the notification of all parties of a change of notice recipient or address shall be made by U.S. Mail, by rapid delivery courier service, or by other signature required service to the parties at the following addresses:

Secretary of State:

Assistant Secretary of State
Public Lands Division

(By U. S. Mail)
Post Office Box 136
Jackson, Mississippi 39205-0136

(By courier)
700 North Street
Jackson, Mississippi 39207

Telephone: (601) 359-6373
Facsimile: (601) 359-461

City of Gulfport

Attention: Mayor.

(By U.S. Mail)
Post Office Box 1780
Gulfport, Mississippi 39502

(By courier)
2309 13th Street
Gulfport, Mississippi 39501
Telephone: 228-868-5700

With Copy to:
City Attorney
Post Office Box 1780
Gulfport, Mississippi 39502
Telephone: 228-868-5811

(b) Notices shall be effective upon receipt by the receiving party. Upon written request, STATE and CITY agree that they will promptly acknowledge in writing to the other receipt of any notice received pursuant to any provision of this AGREEMENT.

12. COMPLIANCE WITH APPLICABLE LAWS AND RESTRICTIONS ON USE.

12.1 CITY shall comply with any and all federal, state, county or city laws, statutes, regulations, building codes, building requirements, safety or conservation regulations, fire codes, ordinances, environmental and health laws and regulations, coastal wetlands regulations, zoning regulations and permits applicable to the CITY and THE PREMISES subject to this AGREEMENT or other property belonging to the State of Mississippi adjacent to or adjoining THE PREMISES (collectively "RESTRICTIONS").

12.2 Both Parties are covered by the Mississippi Torts Claim Act, and subject to the limitations and immunities allowed there under.

12.3 CITY shall not under the terms of this AGREEMENT construct any building or structure or pier of any type on State property other than THE PREMISES without a Tidelands Lease.

13. RIGHT OF ENTRY / INSPECTION RIGHTS.

STATE or its authorized representative shall have the right to enter onto THE PREMISES or improvements thereon, and CITY grants unto STATE rights of ingress and egress over, across and through the uplands owned or controlled by CITY at any reasonable hour to inspect THE PREMISES for purposes of verifying compliance with the terms and provisions of this AGREEMENT.

14. LAWS OF MISSISSIPPI TO GOVERN.

14.1 This AGREEMENT and any lease by the CITY under this AGREEMENT are to be governed by the laws of the State of Mississippi.

14.2 Jurisdiction and venue shall be as provided by law.

15. ADDITIONAL PROVISIONS – CANCELLATION OR TERMINATION.

15.1 Immediately upon the cancellation or termination of this AGREEMENT for any reason, STATE shall be entitled to take possession of the PREMISES, custom and usage to the contrary notwithstanding, subject to the terms and conditions set forth in Paragraph 15.2.

15.2 (a) Upon termination and cancellation of this AGREEMENT, the STATE may but shall not be obligated to purchase CITY owned improvements on THE PREMISES for fair market value as determined by appraisal done in the same manner as required by law for the acquisition of property by STATE. Purchase of improvements by STATE is contingent upon legislative approval and appropriation of sufficient funds. If STATE elects not to purchase improvements, STATE will give notice to CITY and CITY shall have one hundred and eighty (180) days to either remove CITY'S improvements, structures and equipment from THE PREMISES, or CITY may, before the end of the one hundred and eighty (180) day period, sell, transfer or convey the improvements to one or more third parties (ENTITY). The period for removal or sale by CITY may be extended upon mutual agreement.

(b) If for any reason CITY does not remove the improvements, structures or equipment or does not sell, transfer or convey the same, then said improvements, structure and equipment will be deemed forfeited by CITY, and may be removed and/or sold by STATE. The manner and time of removal for said improvements, structures, materials and equipment shall be in the discretion of the Secretary of State and in accordance with State law. In the event of such forfeiture by CITY, STATE shall not be obligated to remove said improvements, structures and equipment or bear any liability to CITY in the event same are not removed. Any costs incurred by STATE in the removal of such improvements, structures and equipment or restoring THE PREMISES shall be paid for from the proceeds of sale of such improvements, structures and equipment. If at the time of cancellation or termination of this AGREEMENT, CITY is entitled to receive funds from the federal government or from the state for such removal and thereafter receives such funds, then said funds shall be used for the removal of said improvements, structures and equipment and restoration of THE PREMISES, notwithstanding this AGREEMENT was previously terminated.

16. MISCELLANEOUS.

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

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

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

16.4 No amendments or additions to AGREEMENT shall be binding unless in writing, officially approved and signed by all parties.

16.5 Except as otherwise may be set forth in the AGREEMENT or its exhibits, amendments thereof, all covenants and agreements herein shall bind and inure to the benefit of

the parties hereto and to their successors and assigns.

16.6 STATE and CITY, for all purposes under this AGREEMENT, accept the description and survey of THE PREMISES attached hereto as Exhibits 2 and 3.

16.7 This instrument constitutes the entire agreement between STATE and CITY and supersedes all prior understandings, previous negotiations, and any memoranda or understanding with respect USE AGREEMENT for THE PREMISES.

16.8 Each individual executing this AGREEMENT on behalf of CITY represents and warrants that he is duly authorized to do so on behalf of said CITY and CITY shall, at STATE'S request, deliver a certified copy of its City Council's resolution authorizing said execution.

17. DEFINITIONS.

17.1 Paragraph not used.

17.2 HARBOR USE or USE shall have the meaning set forth in Paragraph 2.1(a) of the USE AGREEMENT.

17.3 AGREEMENT shall mean that agreement by and between the State of Mississippi, by the Secretary of State, with the approval of the Governor, and the City of Gulfport, Mississippi, effective November 1, 2013, for certain lands referred to as THE PREMISES.

17.4 THE PREMISES shall mean the applicable bottom lands below the water as set forth and described in Exhibit 2 and as depicted in Exhibit 3. If necessary, Exhibits 2 and 3 will be amended and attached to include any additional new area pursuant to Paragraph 9.9 of the AGREEMENT.

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

17.6 CITY shall mean City of Gulfport, Mississippi.

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

17.8 PUBLIC USE shall have the meaning set forth in Paragraph 2.2 of the AGREEMENT.

17.9 RESTRICTIONS shall mean any and all federal, state, county, district or city laws, statutes, regulations, building codes, building requirements, safety or conservation regulations, fire codes, ordinances, environmental and health laws and regulations, zoning regulations and permits applicable to CITY'S use of and activities on THE PREMISES.

17.10 SECONDARY TERM shall have the meaning set forth in Paragraph 1.2 of the AGREEMENT.

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

17.12 USES shall have the meaning set forth in Paragraph 2.1 of the AGREEMENT.

18. STATE LAW.

18.1 (a) In the event the laws of the State of Mississippi are changed or amended to grant ownership of the PREMISES to CITY or any of the areas referenced herein, those laws shall be incorporated, effective with the effective date of the law, into the AGREEMENT or if an agreement is no longer required by Mississippi law, this AGREEMENT shall terminate on the effective date of said law.

(b) In the event the laws of the State of Mississippi are changed or amended to allow for or in the event there is a final judicial determination that the term of any agreement or lease of state public trust tidelands to a county or city for a county, city or municipal harbor subject to Section 29-15-13 to be for a period not exceeding eighty (80) years, the CITY may request this AGREEMENT be amended to that term.

18.2 In the event STATE executes a Public Trust Tidelands Lease agreement for a municipal small craft harbor containing more favorable terms than contained in this AGREEMENT, then CITY may request the same terms and STATE will amend this AGREEMENT accordingly.