

IN THE CIRCUIT COURT OF
POPE COUNTY, ARKANSAS

DIVISION 4

BEN CROSS, IN HIS OFFICIAL
CAPACITY AS COUNTY JUDGE AND
ON BEHALF OF POPE COUNTY,
ARKANSAS; AND
LEGENDS RESORT AND CASINO, LLC

PLAINTIFFS

v. Case No. 58CV-20-429

ARKANSAS RACING COMMISSION,
ALEX LIEBLING, MARK LAMBERTH,
BUTCH RICE, DENNY EAST, MICHAEL
POST, BO HUNTER and STEVE LANDERS,
Commissioners, in their official capacities;
AND GULFSIDE CASINO PARTNERSHIP

DEFENDANTS

**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION AND INCORPORATED BRIEF IN SUPPORT**

Comes now Legends Resort and Casino, LLC ("Legends") and Ben Cross, in his official capacity as County Judge and on behalf of Pope County, AR ("Pope County"), by and through undersigned counsel, and for their Motion for Temporary Restraining Order and Preliminary Injunction and Incorporated Brief in Support, states and alleges as follows:

INTRODUCTION

1. Plaintiffs incorporate in its entirety Plaintiffs' Verified Petition filed on this same day pursuant to Ark. R. Civ. P. 10(c).
2. Plaintiffs filed their Verified Petition to require the Arkansas Racing

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BEN CROSS

Commission (“ARC”) to adhere to its own rules and Amendment 100, and enjoin it from authorizing the construction and operation of a temporary annex casino by Gulfside Casino Partnership (“Gulfside”). The Petition also seeks to enjoin Gulfside’s attempt to construct a temporary annex casino and to declare that Gulfside is not a qualified applicant pursuant to Amendment 100.

3. Plaintiff Legends is an Arkansas limited liability company with an office in Pope County, AR. It is an applicant for a casino license in Pope County and meets the minimum qualifications set forth in Amendment 100 of the Arkansas Constitution. Legends has been denied a license to operate a casino license in Pope County and is currently in the administrative appeals process awaiting orders from the ARC on Legends’ appeal. The ARC has not issued its formal order and findings of fact or conclusions of law as required by the APA. Assuming the ARC denies Legends’ appeal, litigation will ensue pursuant to the APA. Legends’ claims in this matter are restricted to the unlawful authorization and construction/operation of a temporary annex casino, as the claims regarding Gulfside’s qualifications to hold a casino license have not been adjudicated by the ARC.

4. Pope County, AR is a County and political subdivision within the State of Arkansas. Ben Cross is the County Judge of Pope County, Arkansas, where the temporary annex casino is to be located. Neither Ben Cross nor the Quorum Court of Pope County has issued a letter or resolution of support necessary for Gulfside to be considered by the ARC or operate a casino, much less a temporary annex casino, in Pope County, AR. Conversely, Ben Cross and the Quorum Court have both issued

letters and a resolution of support in favor of Legends pursuant to Amendment 100.

5. Gulfside is a partnership formed under the laws of the State of Mississippi. Gulfside's casino license is attached to the Plaintiff's Verified Petition for Declaratory Judgment and Injunctive Relief (herein the "**Verified Petition**") as **Exhibit A** and its redacted application as **Exhibit B** therein.

6. Defendant Alex Lieblong is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Faulkner County, Arkansas.

7. Defendant Mark Lamberth is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Independence County, Arkansas.

8. Defendant Butch Rice is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of White County, Arkansas.

9. Defendant Denny East is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Crittenden County, Arkansas.

10. Defendant Michael Post is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Franklin County, Arkansas.

11. Defendant Bo Hunter is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Sebastian County, Arkansas.

12. Defendant Steve Landers is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Pulaski County, Arkansas.

FACTUAL BACKGROUND

I. Amendment 100

13. Amendment 100 of the Arkansas Constitution, enacted by voters in the

2018 general election, mandates that the Arkansas Racing Commission shall issue four casino licenses, including one in Pope County, Arkansas.

14. Amendment 100 states that “[t]he Arkansas Racing Commission shall adopt rules necessary to carry out the purposes of this Amendment and perform its duties under this Amendment.” Ark. Const. Amend. 100, § 4(c).

15. The ARC’s rules are subject to the APA. Ark. Const. Amend. 100, § 4(d).

16. Amendment 100 requires the Arkansas Racing Commission (“ARC”) to adopt rules governing “[t]he manner in which the Arkansas Racing Commission considers applications for issuance of casino licenses.” Ark. Const. Amend. 100, § 4(e)(2).

17. Pursuant to the authority and requirement to promulgate rules set forth by Amendment 100, the ARC promulgated the Casino Gaming Rules.

18. Nothing in the Casino Gaming Rules addresses or contemplates the construction and operation of the proposed temporary annex casino.

II. Incumbent Support Required

19. Amendment 100 states that the ARC “shall require all casino applicants for a casino license in Pope County and Jefferson County to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located. . . .” Ark. Const. Amend. 100, § 4(n).

20. “Casino applicant” is defined as “any individual, corporation, partnership, association, trust, or other entity applying for a license to conduct casino gaming at a casino.” Ark. Const. Amend. 100, § 2(b) (emphasis added).

21. Legends is the only casino applicant that has submitted a letter of support from the County Judge or a resolution of support from the Quorum Court in office at the time of submission of the casino application, which is the time that the entity by definition becomes a casino applicant as contemplated by Ark. Const. Amend. 100, § 2(b).

22. The ARC began accepting applications in May 2019 pursuant to Casino Gaming Rule 2.13.4(b). At that time, Gulfside tendered a letter from a former County Judge of Pope County. **See Verified Petition, Exhibit C.** It did not offer any support from incumbent officials in office at the time it submitted its application or any time thereafter.

23. Further, the County Judge of Pope County – Ben Cross – expressly withdrew any support that Gulfside previously enjoyed from the office of the Pope County Judge prior to Gulfside submitting its application. **See Verified Petition, Exhibit D.**

24. County Judge Ben Cross and the Pope County Quorum Court, both in office from January 2019 to present – which includes the entirety of the casino application process which began in May 2019 – have only supported Legends.

25. The ARC rejected Gulfside’s application based on Gulfside not having support from the incumbent at the time the application was submitted. Litigation ensued, and Gulfside ultimately prevailed on March 24, 2020 at the circuit court level (Case No. 60CV-19-5832) with the Circuit Court finding the Casino Gaming Rule and

related statute requiring incumbent local official support unconstitutional. The State Defendants, specifically this Commission, chose not to appeal that ruling.

26. Although Case No. 60CV-19-5832 pertained to the wording of ARC's rule and related statute requiring incumbent support (which is required by the plain language of Amendment 100), Legends' owner CNB was denied intervention in that case (the denial of intervention is now before the Arkansas Supreme Court). Thus, the Circuit Court's judgment does not apply to or bind this Court in this action as Legends and Pope County were not parties to that judgment. Further, Legends' claims, as clarified above and throughout, do not pertain to the issue of whether Gulfside meets Amendment 100's requirements on local support.

27. In addition to Gulfside failing to satisfy the plain language of Amendment 100's requirement for local support, County Judge Ben Cross rescinded his office's support (by former County Judge Jim Ed Gibson) for Gulfside prior to Gulfside submitting its May 2019 application and becoming a "casino applicant" as defined above.

28. Thus, the County Judge of Pope County effectively withdrew any support for Gulfside and Gulfside submitted its application without any actual support from Pope County or the County Judge of Pope County.

29. In contrast, Legends has obtained multiple letters of support from incumbent County Judge Ben Cross and a resolution of support from the Quorum Court of Pope County. **See Verified Petition, Exhibits E - I.** Legends is the only applicant with continuous support from incumbent county officials and the only

applicant that has executed an economic development agreement with Pope County. **See Verified Petition, Exhibit J.**

30. The economic development agreement requires that Pope County exclusively support Legends, which it has done and defeats any assertion by Gulfside that it has obtained the necessary support required by Amendment 100.

31. Legends' application was accepted by the ARC pursuant to Casino Gaming Rule 2.13.4(b). Because Legends is the only applicant that enjoys continuous support from the Pope County Judge and the Quorum Court – and the only applicant that has been supported by Pope County since the application process began in May 2019 – it is the only qualified applicant under Amendment 100.

III. June 18, 2020 Presentations

32. On June 18, 2020, the ARC held a meeting to receive presentations from both applicants and determine scores for each application. Pursuant to the Casino Gaming Rules, the ARC designated all of the Commissioners as the Review Panel to review and score the applications.

33. Gulfside misrepresented at the presentations the cost and size of its project. Gulfside's increase in project size and cost directly contradicted representations it has made to the ARC by its application and otherwise. **See Verified Petition, Exhibit K.**

34. Gulfside, without leave of the ARC or authority under the Casino Gaming Rules, changed its application to a one phase project instead of a three-phase project.

35. Gulfside also made promises of eventually expanding its proposed hotel to 900 rooms.

36. Nothing in the Casino Gaming Rules authorized this last-minute amendment, nor do the Casino Gaming Rules authorize the ARC to consider the information Gulfside provided at the June 18, 2020 hearing.

37. But regardless of which project Gulfside may intend to ultimately execute, neither project, nor the ARC Casino Gaming Rules, contemplate a temporary annex casino that was never presented to the ARC through application or otherwise prior to the issuance of a casino license.

38. Following the presentations of both applicants, the ARC Review Panel began the process of scoring the applications based on the four merit criteria outlined by Casino Gaming Rule 2.13.9: (1) experience in gaming; (2) financial stability; (3) Pope County project specifications; and (4) timeline for opening.

39. On the same date, the ARC and Review Panel issued the scores (*see Verified Petition, Exhibit L*) and pursuant to Casino Gaming Rule 2.13.9(d) issued letters to the applicants notifying them of their scores.

40. Gulfside initially had a higher score, 637, to CNB's 572.

41. Thereafter, various events transpired, including the disqualification of Commissioner Butch Rice for his bias against Legends (which alone would have caused Legends to have the higher score total), the disqualification of Chairman Alex Lieblong (which resulted in Gulfside remaining the recipient of the highest score), and the July 30, 2020 appeal hearing.

42. Ultimately, the license was issued to Gulfside on July 31, 2020 (*see Verified Petition, Exhibit A*) and Legends' appeal is still awaiting a final order and findings of fact from the ARC before future litigation on that administrative appeal.

IV. Gulfside's Plans to Build a Temporary Annex Casino

43. On August 11, 2020, Gulfside presented to the Russellville City Council that it intends to build a temporary casino annex on property currently located outside of Russellville, AR and within unincorporated land within Pope County, AR. A transcript of this presentation is attached to the **Verified Petition** as **Exhibit M** therein.

44. In Mr. Green's presentation, he represents that Gulfside intends to build the temporary annex casino and that his attorneys assure him Gulfside has a "ninety-nine percent chance" of keeping the license.

45. Thereafter, on September 28, 2020, Gulfside submitted detailed plans to the Russellville Planning Commission regarding constructing a temporary annex casino in unincorporated territory of Pope County, AR. **See Verified Petition, Exhibits N – Q**, which includes a staff report by the City of Russellville.

46. The temporary annex casino, as proposed, is approximately 33,000 square feet and includes predominately slot machines. **See Verified Petition, Exhibit P.**

47. The proposed temporary annex casino was not included in Gulfside's application.

48. The proposed temporary annex casino is not consistent with either Gulfside's application or its amended project presented at the June 18, 2020 presentations.

49. The proposed temporary annex casino is not located within the real property description set forth on the casino license.

50. The Casino Gaming Rules do not contemplate a temporary casino annex being constructed and operated.

51. Therefore, because Gulfside is not a qualified applicant and since the Casino Gaming Rules and casino gaming license do not authorize the proposed temporary casino annex, Plaintiffs seek a temporary restraining order and preliminary injunction pursuant to Ark. R. Civ. P. 65 to prevent the ARC and Gulfside from violating the Casino Gaming Rules and Amendment 100.

BRIEF IN SUPPORT

Plaintiffs are entitled to a temporary restraining order and preliminary injunction preventing the ARC from authorizing, and Gulfside constructing and operating, a temporary annex casino or operating casino gaming in Pope County in general. Plaintiffs are likely to prevail on the merits and certain to suffer irreparable injury if this motion is not granted.

STANDARD OF REVIEW

In order to obtain a preliminary injunction or temporary restraining order pursuant to Ark. R. Civ. P. 65, a movant must establish two things: (1) that irreparable harm will result in the absence of an injunction or restraining order, and

(2) that movant is likely to succeed on the merits. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175, 72 S.W.3d 95, 100 (2002). Regarding the first element, “[t]he prospect of irreparable harm or lack of an otherwise adequate remedy is the foundation of the power to issue injunctive relief.” *Id.*, quoting *Wilson v. Pulaski Ass’n of Classroom Teachers*, 330 Ark. 298, 302, 954 S.W.2d 221, 224 (1997). Regarding the second element, “[t]he test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation.” *Id.* at 175, 72 S.W.3d at 101.

ARGUMENT

I. Plaintiffs Are Likely To Prevail On The Merits.

Plaintiffs’ claims are straightforward: (1) Gulfside is not a qualified applicant pursuant to the minimum requirements of Amendment 100 (claim by Plaintiff Pope County); and (2) the Casino Gaming Rules do not authorize, and in fact prohibit, the construction and operation of the temporary annex casino.

Arkansas law is well settled that a state agency is subject to injunctive relief. “A state agency may be enjoined in a suit in equity if it can be shown the pending action of the agency is ultra vires or without the authority of the agency.” *Arkansas State Game and Fish Commission v. Eubank*, 256 Ark. 930, 931, 512 S.W.2d 540, 541 (1974), *see also Arkansas Game and Fish Commission v. Heslep*, 2019 Ark. 226, 577 S.W.3d 1. “The agency can also be enjoined if it is about to act in bad faith, arbitrarily, capriciously, and in a wantonly injurious manner.” *Id.* Unlawful pending actions and continuing deprivations of rights are both subject to injunctive relief. *Heslep*, 2019

Ark. at 8, 577 S.W.3d at 6. Further, “a declaration that [a state agency] exceeded its constitutional authority is not barred by sovereign immunity.” *Id.*

*a. Gulfside’s Casino License Does Not Authorize The
Construction And Operation Of A Temporary Annex Casino*

Nothing in the Casino Gaming Rules contemplates the construction and operation of a temporary annex casino. Casino Gaming Rule 2.13.5(d) states that “Casino applicants shall provide a complete application with responses for each required item.” Pursuant to the Casino Gaming Rules, the ARC may issue a casino license based on a merit review of the application. Casino Gaming Rule 2.13.9. Moreover, “[a] casino license shall only be valid at the location for which it was originally issued by the Commission.” Casino Gaming Rule 2.13.17(a).

In the State of Arkansas, agencies are bound to their own rules. *City of Benton v. Arkansas Soil and Water Conservation Com’n*, 345 Ark. 249, 255, 45 S.W.3d 805, 809 (2001). To do otherwise constitutes an unlawful procedure. *Id.* “The fact that a regulation as written does not provide the agency a quick way to reach a desired result does not authorize it to ignore the regulation.” *Stueart v. Arkansas State Police Com’n*, 329 Ark. 46, 51, 945 S.W.2d 377, 379 (1997).

The temporary annex casino is not contemplated as a location for casino gaming within Gulfside’s application or within the casino license itself. As stated by the Casino Gaming Rules, “[a] casino license shall only be valid at the location for which it was originally issued by the Commission.” Casino Gaming Rule 2.13.17(a). The proposed property for the temporary annex casino is depicted on **Exhibit O**

attached to the Plaintiff's **Verified Petition**. The deeds for the proposed property for the temporary annex casino setting forth the real property descriptions are depicted on **Exhibits R and S** which are attached hereto. However, the casino license does not authorize casino gaming at this location. The casino license authorizes gaming on two separate tracts of land: 5.16 acres in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 2, Township 7 North, Range 20 West and 61.41 acres in the North Half of the NE $\frac{1}{4}$ of Section 2, Township 7 North, Range 20 West. **See Verified Petition, Exhibit A.** The proposed temporary annex casino is to be located on a separate tract of land within Section 2, Township 7 North, Range 20 West. Therefore, it is expressly prohibited by the Casino Gaming Rules.

Further, Gulfside's application does not reference or contemplate the construction of a temporary annex casino. The Casino Gaming Rules do not authorize an applicant to submit, or the ARC to accept, an amendment to an application after licensure, and the Casino Gaming Rules do not otherwise authorize a temporary annex casino. The ARC, and Gulfside, are both restricted to the Casino Gaming Rules and thereby the application and casino license of Gulfside. Stated simply, neither Gulfside's application nor the unlawful amendments proposed at the June 18, 2020 presentations contemplated a temporary annex casino, and again the casino license does not authorize gaming at the proposed location for the temporary annex casino.

As stated above, it is settled that a state agency is subject to injunctive relief. "A state agency may be enjoined in a suit in equity if it can be shown the pending action of the agency is ultra vires or without the authority of the agency." *Eubank*,

256 Ark. at 931, 512 S.W.2d at 541 (1974). Because the ARC's authorization of the temporary annex casino would be without authority, it should be enjoined. Likewise, because Gulfside has no authority to construct and operate a temporary annex casino, in general and at the proposed location, it must be enjoined as well.

*b. Gulfside Fails To Satisfy Amendment 100 Requirements
(claim by Plaintiff Pope County)*

Applying the *Eubank* and *Heslep* standard to the current facts, it is clear that the pending action – Gulfside's construction and operation of a temporary casino annex – is “without the authority of the agency” and should be enjoined. Similarly, the continued deprivation of Plaintiff Pope County's rights – for example, the disregard for County's and County Judge's express right and discretion under Amendment 100 to decide who it supports (and thus who is eligible) to operate a casino in Pope County and the interference of the economic development agreement between Legends and Pope County – is based upon actions taken by the ARC without authority. The ARC only has the authority provided it by Amendment 100, and Amendment 100 requires that an “applicant” have support from the County Judge or the Quorum Court. Gulfside has neither and is not qualified to conduct casino gaming in Pope County.

The fundamental rule when interpreting the Constitution “is that the words of the constitution . . . should ordinarily be given their obvious and natural meaning.” *Kimbrell v. McCleskey*, 2012 Ark. 443, 8, 424 S.W.3d 844, 850. Amendment 100 is not silent or ambiguous in regards to what local official support is necessary to satisfy

its minimum requirements; it specifically says an “applicant” must submit a letter from “the county judge” – not “a county judge”. “Casino applicant” is defined by Amendment 100 “as any individual, corporation, partnership, association, trust, or other entity **applying for a license** to conduct casino gaming at a casino.” Amendment 100, § 2(b) (emphasis added). Because one is obviously not an applicant until it applies for a license, Amendment 100 specifically contemplates “the county judge” as being a public official in office at the time of submission of the application.

Gulfside’s letter of support, at the time of its application and the time it became an “applicant”, was not from “the county judge” – rather, Gulfside’s letter was from a former county judge. Using Gulfside’s interpretation that this suffices, if an application was not submitted for another ten years, a county judge in office on the effective date of the amendment could write a letter and that would satisfy the requirements of Amendment 100. At the very least, Gulfside’s interpretation concludes with its letter of support from the former county judge being sufficient in perpetuity. Consider the following hypothetical: Legends is granted the casino gaming license but closes in five years. Thereafter, the ARC opens an application process for the Pope County Casino License. Per Gulfside’s position that its letter of support, issued by an official not in office at the time Gulfside became an applicant in May 2019, suffices for purposes of Amendment 100, Gulfside’s letter of support would still be valid five years later in a subsequent application period. Such is not supported by the plain language of Amendment 100 or case law.

Finding Gulfside's letter of support sufficient would destroy one of the primary purposes of Amendment 100: local control via support from local elected officials (the County Judge or the Quorum Court). That purpose is not fulfilled by support from a former county official. That purpose is only fulfilled by approval, at the time of application, by the current county official(s), which is expressly contemplated by the plain language. When an application is submitted to the ARC, the ARC should be confident that Pope County, either through the County Judge or the Quorum Court, supports the applicant conducting casino gaming in Pope County. Gulfside has no evidence that the County Judge or Quorum Court supports its endeavor to operate a casino in Pope County; in fact, the current Quorum Court and County Judge Ben Cross have expressly disfavored Gulfside, as is apparent from the filing of this action. Amendment 100's purpose would be defeated if Gulfside operates a casino, especially a temporary annex casino, when no local officials support Gulfside.

Plaintiff Pope County's argument is simple: at time of submission of an application, and thereby becoming an "applicant" as defined by Amendment 100, the applicant should have the required documented support from current county officials. That is precisely what Legends (and in Jefferson County, the current license holder Downstream) has done – it submitted letters and a resolution of support from local officials who were in office at the time of its application (and remain in office today). To be clear, Plaintiff Pope County only argues that the letter and resolution of support be from local officials who were authorized to issue such support and in office at the

time of submission of application – not that an entity is required to be an applicant at the time letters or resolutions of support are issued.

Simply stated, a person is not “the county judge” if he or she is a former county judge at the time the application is submitted. Acceptance of the letter of support submitted by Gulfside, and the continued authorization and regulation of gaming by an unqualified entity, is error and contrary to Amendment 100’s plain language: That an “applicant” submit a letter from “the” county judge. Stated again, an entity is not an “applicant” until it tenders an application, and a former county judge cannot be “the” county judge. As Judge Gibson was not “the county judge” when the application was submitted, Gulfside is not qualified to operate any casino in Pope County, much less a temporary annex casino.

Further, County Judge Ben Cross has rescinded any prior support for Gulfside to the extent such support has any legal relevance. Amendment 100 grants authority to “the County Judge” to issue a letter of support. Ark. Const. Amend. 100 § 4(n). This is a delegation to a person holding a political office. Ark. Const. Amend. 55 § 3. At various times different people have held the office of County Judge, but at the time of Gulfside’s application only one person was empowered to exercise the authority of the office of County Judge of Pope County: Ben Cross. That person also has the power to change certain actions by the previous office holder. Ark. Const. Amend. 55 § 3; Ark. Code Ann. § 14-14-1102(a). For example, a county judge can terminate the employment of persons hired under the prior county judge. *Horton v. Taylor*, 767 F.2d 471 (8th Cir. 1985).

Nothing in Amendment 100 binds the incumbent county judge to any letter of support issued by a predecessor in office before the casino application is submitted. Indeed, Ben Cross as the incumbent County Judge (January 2019 – present) could act well within his power to revoke whatever support his predecessor in office may have expressed for a potential casino operator. In the case of Gulfside, County Judge Ben Cross did just this. From his first day in office through the application period, he made clear that he would not and did not support Gulfside’s application for a casino license. And in addition to this, Pope County has executed an economic development agreement with Legends where Pope County is bound to exclusively support Legends.

To now act without authority and contrary to Amendment 100 – specifically the construction and operation of a temporary annex casino by an entity that does not meet the minimum requirements of Amendment 100 and the continued authorization for such entity to operate a casino in general – is to act in a manner not authorized by law and is ultra vires, arbitrary and capricious. Therefore, Plaintiff Pope County will likely succeed on the merits.

II. Plaintiffs Will Face Irreparable Harm Absent Injunction.

If a temporary annex casino is constructed and operated, Plaintiffs will undoubtedly suffer irreparable harm. Without doubt, both Plaintiffs – Legends and Pope County – will suffer significant injury if a temporary restraining order and preliminary injunction are not imposed.

Plaintiff Legends has a legitimate expectation that it be awarded a casino license as the only qualified applicant. Obviously, to allow a competing entity to

operate a casino while Legends' administrative appeal is pending will irreparably harm Legends and its ability to operate a casino in Pope County. Further, Legends has an office in Pope County and has a substantial interest that no unlawful business transpire in Pope County, including unlawful casino gaming.

Pope County will suffer significant injury. Legends executed an economic development contract with Pope County where Pope County agreed to support Legends, and only Legends, in its application for a casino license, and Legends agreed to provide economic development support to various government and non-profit entities within Pope County and including Pope County itself. **See Verified Petition, Exhibit J.** Specifically, the agreement is worth more than \$40,000,000.00 to Pope County. Thus, Pope County will be irreparably harmed if an unqualified applicant is allowed to move forward with a temporary casino annex or any casino and interfere with the presently enforceable economic development agreement.

Moreover, Amendment 100 expressly gives local control to Pope County through its County Judge and Quorum Court. As evident by the mere filing of this litigation, Pope County is vehemently against Gulfside operating a casino, temporary or otherwise, in Pope County. Gulfside's temporary annex casino would completely obliterate the local control contemplated by Amendment 100 and the wishes of Pope County.

For these reasons, the Plaintiffs will suffer irreparable harm in the absence of a temporary restraining order and preliminary injunction.

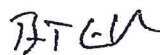
CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court issue a temporary restraining order and preliminary injunction preventing the construction and operation of an unlawful temporary annex casino in Pope County, AR by an entity not qualified pursuant to Amendment 100 to operate a casino.

RESPECTFULLY SUBMITTED,

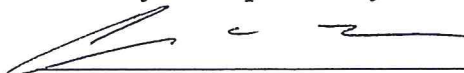
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DIANE WILLOUT, CIRCUIT CLERK
DEBBIE J. PRICE, D.C.

PAGES: 4
FEE: \$ 30.00

RECORDING LEGEND
PLEASE RECORD IN THE APPROPRIATE
REAL ESTATE RECORDS

GRANTOR(s)
SAYPHONE SOUVANNAKHOTH AND
UNKNOWN HEIRS OF KHAMPHANH
SOUVANNAKHOTH

GRANTEE(s)
PORTIA BALLARD-SHORT

COMMISSIONER'S DEED

THIS INDENTURE, made this 11 day of May, 2017, by and between Diane Willcutt as Commissioner in Circuit, party of the first part hereto, and Portia Ballard-Short, party of the second part hereto.

WITNESSETH

WHEREAS, the Pope County Circuit Court, on February 7, 2017, among other things, ordered, adjudged, and decreed in a certain civil action in equity then pending therein, between Bank of America, N.A., as Plaintiff, and Sayphone Souvannakhoth; Unknown Heirs of Khamphanh Souvannakhoth and; H&R Block Mortgage Corporation, as Defendants, Case No. 58CV-15-375, that the Plaintiff have judgment in the sum of \$174,786.63, with interest accruing after January 31, 2017 at the monthly rate of \$434.49, as well as all foreclosure and sale expenses, taxes, insurance and property preservation costs incurred after the entry of said Order and Decree, and that in default of the payment of said sum or any portion thereof, on or before ten days after the rendition of said decree, that all right, title, interest, and equity of redemption of the Defendants, and all right and possibility of dower, curtesy and homestead of the Defendant, Sayphone Souvannakhoth, in and to the following-described real property, to-wit:

Tax ID Number(s): 863-00111-000R Land situated in the County of Pope in the State of AR. Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter of Section 2, Township 7 North, Range 20 West, Pope County, Arkansas, more particularly described as follows: Commencing at the NW corner of said NE 1/4 of the SE 1/4; thence North 89 degrees 20 minutes 08 seconds East along the North line of said NE 1/4 of SE 1/4 538.13 feet to the point of beginning; thence North 03 degrees 08 minutes 50 seconds West 330.28 feet; thence North 89 degrees 20 minutes 08 seconds East 147.13 feet; thence South 08 degrees 47 minutes 26 seconds East 666.65 feet; thence South 89 degrees 20 minutes 08 seconds West 212.75 feet; thence North 03 degrees 08 minutes 50 seconds West 330.29 feet to the point of beginning.

MWZM # 15-000741-570

Exhibit R

the property is more commonly known as 138 Bradley Cove Road, Russellville, AR 72802 and being situated in Pope County, Arkansas, be foreclosed and forever barred; that after the Commissioner shall have given notice of the time, place, and terms of the sale, in the manner and for the time prescribed in said decree, the said land be sold by Diane Willcutt, party of the first part hereto (who was by said Court in said decree nominated and appointed Commissioner of said Court for that purpose), at public venue, to the highest bidder, on a credit of three months, at the main entrance of the Courthouse of Pope County, Arkansas, in which said Court is held, between the hours prescribed by law for judicial sales, on a day to be fixed by said Commissioner; and

WHEREAS, the said sum of money, interest, and costs aforesaid, for the period of ten days after the rendition of said decree did remain wholly unpaid; and said party of the first part, as such Commissioner, pursuant to the order and directions contained in said decree, gave notice of the time, place, and terms for the sale of said real property by the publication of an advertisement and posting thereof, prescribed by the terms of said decree in *The Courier*, a newspaper printed and published in said County of Pope and having a bona fide circulation therein, would on April 12, 2017, between the hours, at the place, and on the terms set forth in said advertisement and posting, offer said land and premises for sale; and on that day, between the hours prescribed by law for judicial sales, said Commissioner did offer said parcel of land and premises for sale at public venue to the highest bidder, on a credit of three months, at the main entrance of the Courthouse of said Pope County; and at such offering so made the said party of the second part did bid and offer for said parcel of land and premises the sum of \$118,677.00; and Portia Ballard-Short being the highest bidder, the same was then and there publicly struck off and sold to Portia Ballard-Short for that sum; and

WHEREAS, the undersigned, as such Commissioner, did make a written report of the sale so held by the Commissioner, to the Circuit Court, and the same was by it in all things approved and the sale confirmed, and the undersigned as such Commissioner, was ordered to make a deed to the said purchaser, as will appear by reference to the duly entered order of said Court in said action.

NOW, THEREFORE, the undersigned, as Commissioner in Circuit as aforesaid, and as party of the first part to these presents, in order to carry into effect the sale made as aforesaid in pursuance of the decree of said Circuit Court, to convey the title of the parties hereinafter named to said land and premises, pursuant to the orders of said Court, and in consideration of the premises and of the said sum of \$118,677.00 paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said Portia Ballard-Short, party of the second part hereto, all the right, title, interest, or claim, either in law or equity, of the Defendants, and anyone claiming by, through, or under them, in and to said parcel of land, with all improvements thereon and all and singular the rights, privileges, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said tract or parcel of land and premises, together with all improvements thereon, and all privileges and appurtenances thereunto belonging, or in anywise appertaining unto the said party of the second part, Portia Ballard-Short, and unto her heirs, successors, and assigns forever.

IN TESTIMONY WHEREOF, I, Diane Willcutt, the said party of the first part, hereunto subscribe my name and affix my seal as such Commissioner in Circuit on the day and year first hereinabove written.



Diane Willcutt
Commissioner in Circuit

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF Pope

BE IT REMEMBERED that on this 11TH day of May, 2017, personally appeared before me, a Notary Public within and for the state and county aforesaid, Diane Willcutt, a Commissioner of the Pope County Circuit Court, to me personally well known as the person named in the foregoing instrument, and who acknowledged that the same was executed for the consideration, uses, and purposes therein mentioned and set forth.

Laura McGuire
Notary Public County Clerk by KS

My Commission Expires: 12/31/18

Buyer's Address:

Portia Ballard-Short
16 Pleasant Hills Drive
Russellville, AR 72802



COMMISSIONER'S SALE NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the order of the Circuit Court of Pope County, Arkansas, made and entered on February 7, 2017 in a certain cause No. 58CV-15-375, then pending between Bank of America, N.A. Plaintiff, and Sayphone Souvannakoneh et al. Defendants, the undersigned as Commissioner of said Court, will offer for sale at public venue to the highest bidder, at the Pope County Courthouse at which said Court is held, located in Russellville, Arkansas, within the hours prescribed by law, for judicial sale, on April 12, 2017 at 10:00 AM, the following described real estate situated in Pope County, Arkansas:

Tax ID Number(s): 265 03111-0008 Land situated in the County of Pope in the State of AR. Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter of Section 2, Township 7 North, Range 20 West, Pope County, Arkansas, more particularly described as follows: Commencing at the NW corner of said NE 1/4 of the SE 1/4, thence North 89 degrees 20 minutes 08 seconds East along the North line of said NE 1/4 of SE 1/4 530.13 feet to the point of beginning, thence North 03 degrees 05 minutes 50 seconds West 350.28 feet, thence North 89 degrees 20 minutes 08 seconds East 147.13 feet, thence South 08 degrees 47 minutes 26 seconds East 688.68 feet, thence South 05 degrees 20 minutes 08 seconds West 212.75 feet, thence North 03 degrees 05 minutes 50 seconds West 350.28 feet to the point of beginning.

The property is more commonly known as 102 Bradley Cove Road, Russellville, AR 72802.

TERMS OF SALE: On a credit of three months, provided the purchaser shall execute a non-judicial corporate surety bond as required by law and the order and decree of said Court in said cause, with approved security, bearing interest at the maximum legal rate per annum from date of sale until paid, and a lien being retained on the premises sold to secure the payment of the purchase money. The property will be sold subject to any and all property taxes due and payable.

GIVEN under my hand this 13th day of February, 2017.

Diane Willcutt
Commissioner in Circuit

Approved by:
Trevor Starnes (Bar #2008064)
MACKIE WOLF, FIDELITY & MANN, P.C.
1200 Capital Avenue, Suite 1560
Little Rock, AR 72201

This legal published in The Courier 02/17/2017

PROOF OF PUBLICATION

STATE OF ARKANSAS
COUNTY OF POPE

SS:

I, Misty Liles
of The Courier, a newspaper published at Russellville, Arkansas, and having a bona fide circulation in Pope County, Arkansas, for one year next preceding the first insertion of, and during the publication of the Notice hereto attached, do solemnly swear that said Notice was published in the above named

paper 1 issues consecutively bearing date of

February 17 2017
Sale

Printer's Fee \$ 115.00

Subscribed and sworn to before the undersigned, this

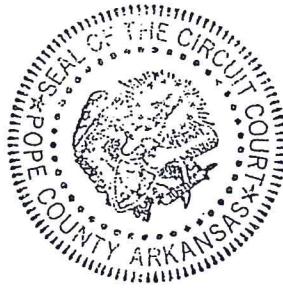
day of February 2017

My commission expires 10-01-2020

SHEILA PORTER

Notary Public,
YELL COUNTY, ARKANSAS
My Commission Expires 10-01-2020
Commission # 12378433

Notary Public



This instrument prepared by:
David L. Eddy, P.A.
Attorney at Law
P.O. Box 1144
Russellville, AR 72811
479-968-5557

CLERKS CERTIFICATE OF RECORD
STATE OF ARKANSAS - COUNTY OF POPE
I, FERN TUCKER, Circuit Clerk and Recorder of
the County attested do hereby certify that this
instrument was filed for record the 06/28/2011 a
03:29:21 PM, and the same is now
duly recorded in Miscellaneous Book 2011-28 Page
387 - 388
Witness my hand and the seal of said court this
the 06/28/2011
Fern Tucker - Circuit Clerk and Recorder
By Jane Collins D.C.

TRUSTEE'S DEED

KNOW ALL MEN BY THESE PRESENTS:

That Ervin Baumann, Trustee of the Katie B. Whorton Living Trust dated October 22, 2010, GRANTOR, for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION (\$10 OG&VC), paid by Keith Thomas, GRANTEE, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Keith Thomas, GRANTEE and unto his heirs and assigns forever the following lands lying in the County of Pope and State of Arkansas, to-wit:

Part of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 2 Township 7 North, Range 20 West, Pope County, Arkansas, more particularly described as follows: Beginning at the Northeast Corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 2; thence North 0°01'34" East, 330.00 ft; thence South 89°20'08" West, 660.63 ft; thence South 9°47'53" East, 666.65 feet; thence North 89°20'08" East, 347.97 feet; thence North 0°13'35" East, 210.00 feet; thence North 89°20'08" East, 211.31 feet; thence North 0°01'34" East, 120.00 feet to the point of beginning and containing 8.04 acres more or less. **LESS AND EXCEPT:** A part of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2, Township 7 North, Range 20 West, Pope County, Arkansas, more particularly described as follows: Commencing at the NE Corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$; thence S 0° 01' 34" W, along the East line thereof, 120.0 ft.; thence S 89° 20' 08" W, 211.31 ft. to the point of beginning; thence S 0° 13' 35" E, 210.00 ft.; thence S 89° 20' 08" W, 155.57 ft.; thence N 0° 13' 35" W, 210.00 ft.; thence N 89° 20' 08" E, 155.57 ft. to the point of Beginning. Containing 0.75 acres, more or less.

Subject to all mineral reservations and conveyances filed of record. Also, subject to all easements and restrictions of record.

To have and to hold the same unto the said GRANTEE and unto GRANTEE'S heirs and assigns forever, with all appurtenances thereunto belonging.

And GRANTOR hereby covenants with said GRANTEE that he will forever warrant and defend the title to said lands against all lawful claims whatever.

WITNESS my hand and seal on this 14th day of June, 2011



ERVIN BAUMANN, TRUSTEE OF
THE KATIE B. WHORTON
LIVING TRUST DATED
OCTOBER 22, 2010

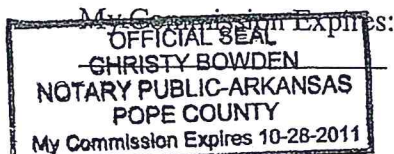
ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF POPE)

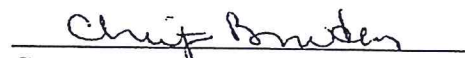
On this the 14th day of June, 2011, before me, the undersigned officer, personally appeared, Ervin Baumann, known to me (or satisfactorily proven) to be the person whose name is subscribed in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.


NOTARY PUBLIC



I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.


Grantee (or agent)

206 Bradley Cove Rd.
Grantee's address

Russellville, AR 72802