CITY OF BILOXI
AGENDA ITEM
FACT SHEET

Item No.: 5 H

Council Meeting Date: December 5, 2017

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO

David Wheeler, Special Counsel

SUMMARY EXPLANATION:

Resolution Authorizing Execution of Agreement Regarding Trunk Infrastructure and Roadways with Pitcher Point Investments, LLC and WM MS Investments, LLC

Resolution ✓ **Ordinance** ____ **Public Hearing** ____ **Routine Agenda** ____

Exhibits for Review

Contract ✓ **Minutes** ____ **Plans/Maps** ____ **Deed** ____ **Lease** ____

Other (Specify): Exhibit 1: Agreement Regarding Trunk Infrastructure and Roadways

Submittal Authorization: **Council President** ____ **Mayor** ✓

STAFF RECOMMENDATION: **Staff recommends approval**

COUNCIL ACTION: **Motion By:** ____ **Second By:** ____

Vote: Councilmember	Yes	No	Other	Councilmember	Yes	No	Other
Lawrence				Tisdale			
Gines				Glavan			
Newman				Barrett			
Deming							

ACTION TAKEN:

PA/rq 120517dcon

Resolution No.

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT REGARDING TRUNK INFRASTRUCTURE AND ROADWAYS WITH PITCHER POINT INVESTMENTS, LLC AND WM MS INVESTMENTS, LLC

WHEREAS, the City of Biloxi, Mississippi, has negotiated an Agreement Regarding Truck Infrastructure and Roadways (the "Agreement") with Pitcher Point Investments, LLC, and WM MS Investments, LLC shown in Exhibit "1" attached hereto; and,

WHEREAS, under the terms of the Agreement Pitcher Point Investments, LLC and SM MS Investments, LLC will donate to the City of Biloxi (1) 4.02 +/- acres (2.488 +/- lineal feet), being a 72 foot right of way sufficient to construct a roadway from the current terminus of Belle La Vie Parkway in a northerly and northeasterly direction into the Belle La Vie Development to the proposed CCRC facility, which the City of Biloxi obligates itself to construct; (2) 15.97 +/- acres (6,979 +/- lineal feet), being a 100 foot right of way sufficient to construct an east/west roadway from Lorraine Road on the east to Old Woolmarket Road on the west, which the City of Biloxi is not obligated to construct but will use its best efforts to do so; (3) 30 +/- acres to develop an Innovative Center, which the City of Biloxi is not obligated to construct, but will use its best efforts to do so; and (4) 66.49 +/- acres for other trunk infrastructure, roadways, fire stations, parks, community centers or other stated uses, all of which the City of Biloxi is not obligated to construct, but will use its best efforts to do so; and

WHEREAS the trunk infrastructure increments will allow the development of numerous side streets and neighborhood access to allow for the development of additional lots in density and in accordance with the Master Plan; and

WHEREAS, all of the optional increments are independent of each and the City of Biloxi may elect to proceed with one or more optional increments in its sole and absolute discretion; and all of the deadlines stated in the Agreement can be extended by the parties pursuant to the terms of the Agreement; and

WHEREAS, under the terms of the Agreement if the City of Biloxi elects not to construct any optional Increments set forth under the terms of the Agreement other than the extension of the Belle La Vie Parkway, the donated property will be re-conveyed to Pitcher Point Investments, LLC and WM MS Investments, LLC; and

WHEREAS, the City Council of the City of Biloxi, Mississippi having given full consideration, and finding it in the best interest of the City of Biloxi, Mississippi to:

Authorize the Mayor to execute the Agreement Regarding Trunk Infrastructure and Roadways attached hereto as Exhibit "1" pending confirmation of good title and proper survey as provided in the Agreement, and proper legal description provided by survey.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

Section 1: The findings, conclusions, and statements of fact contained in the preamble of this resolution are hereby ratified, approved, and adopted.

Section 2: The execution by the City of Biloxi of the Agreement Regarding Infrastructure Roadways shown in Exhibit "1", with Pitcher Point Investments, LLC and WM MS Investments, LLC is hereby approved pending confirmation of good title and proper survey, and the Mayor and Municipal Clerk are hereby authorized to execute all documents and instruments, including but not limited to the Agreement Regarding

Infrastructure and Roadways described in Exhibit "1" to effectuate the purpose and intent of this resolution.

STATE OF MISSISSIPPI
COUNTY OF HARRISON

AGREEMENT REGARDING
TRUNK INFRASTRUCTURE AND ROADWAYS

This AGREEMENT REGARDING TRUNK INFRASTRUCTURE AND ROADWAYS (the "AGREEMENT") is hereby entered into this ___ day of _____, 2017 by and between PITCHER POINT INVESTMENTS, LLC, a Mississippi limited liability company (hereinafter "PPI"), WM MS INVESTMENTS, LLC, a Florida limited liability company (hereinafter "WM MS") and the CITY OF BILOXI, MISSISSIPPI, a political subdivision of the State of Mississippi (hereinafter "CITY") for the purposes outlined herein.

WHEREAS, PPI and WM MS (collectively "GRANTOR"), by virtue of their ownership of separately owned parcels, own approximately 780± acres in the Woolmarket area of Biloxi, Mississippi and 363± adjacent acres in Harrison County; and

WHEREAS, CITY annexed approximately 154+/- acres of property owned by PPI in 1999 and 626+/- acres of property owned by PPI on or about September 22, 2014; and

WHEREAS, the aforementioned 780± acres annexed by the CITY has no CITY trunk roads or trunk infrastructure serving the property; and

WHEREAS, PPI is developing a master planned community known as Belle la Vie Master Planned Community (hereinafter "BLV"); and

WHEREAS, PPI has platted a subdivision which is part of BLV known as Hidden Springs Subdivision; and

WHEREAS, on June 9, 2017 the Final Subdivision Plat for Hidden Springs, Phase 1 was recorded by Hidden Springs I, LP with Harrison County; and

WHEREAS, a main roadway through Hidden Springs, Phase 1 named Belle la Vie Parkway which extends approximately 750.0± feet into BLV has been constructed by Hidden Springs I, LP; and

Exhibit 1

WHEREAS, GRANTOR and the CITY wish to formalize an agreement regarding the construction of main (trunk) roads, utilities and other improvements within BLV; and

WHEREAS, GRANTOR acknowledges and understands that no enforceable agreement with the CITY can be executed without first obtaining the approval of the City Council of the City of Biloxi (hereinafter "COUNCIL"); and

WHEREAS, GRANTOR and the CITY deem it in the best interest of the parties to set forth the proposed duties and obligations of each party hereto.

NOW THEREFORE, GRANTOR and the CITY agree as follows:

Section 1 – Findings, Conclusions, and Statements of Fact

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

Section 2 – Purpose

1. This AGREEMENT reflects all agreements and understandings between the parties with respect to the CITY'S incremental construction of Trunk Infrastructure (as defined below), as well as other improvements, to provide certain city services to BLV. To facilitate the installation of the Trunk Infrastructure and other improvements, GRANTOR agrees to donate, in accordance with the terms of this AGREEMENT, certain real property identified and defined below as the Increments and Donation Properties. The CITY'S execution of this AGREEMENT obligates the CITY to construct the Trunk Infrastructure and other improvements set forth in Section 4(1)(a), being Increment 1, and obligates the CITY to use its best efforts to construct the Trunk Infrastructure and other improvements set forth in Section 4(1)(b), being Increment 2-A, and the Innovation District in Section 5, within the time frames stated therein, subject to potential extensions of said time frames as set out hereinbelow and gives the CITY the Option, in the CITY'S sole and absolute discretion, to construct additional Trunk Infrastructure and other improvements set forth in Section 6 below.

Section 3A – Definitions

The capitalized terms used in this AGREEMENT, unless defined elsewhere, shall have the following meanings:

1. **Trunk Infrastructure.** Shall be defined as systems for water distribution (including if necessary, water storage), sewer collection (including lift stations and force mains), underground electricity distribution (through the appropriate electric utility company), natural gas distribution (through the appropriate natural gas utility company), underground drainage (including water detention), roads (including road surface, subgrade, curb/gutter, sidewalks, street lighting and landscaping) as well as any/all necessary appurtenances thereto.
2. **Increments**. Those portions/divisions of the overall Trunk Infrastructure as described herein and reflected on **Exhibit "A"** ("CITY TRUNK INFRASTRUCTURE INCREMENTS") attached hereto and incorporated herein.
3. **Utility Support Areas**. GRANTOR and CITY shall mutually agree on reasonable acreage quantities and location(s) for "Utility Support Areas" (i.e., sewer lift station areas and water detention areas) associated with the construction of Trunk Infrastructure upon respective Increments, in any instance not to exceed a total of twenty (20) overall acres for all Utility Support Areas.
4. **Donation Properties (or Donation Property singularly)**. Those areas identified and reflected generally on **Exhibit "A"** ("CITY TRUNK INFRASTRUCTURE INCREMENTS") including the Innovation District, CITY Park 1, CITY Park 2, CITY Park 3, and CITY Fire Station as well as Utility Support Areas. The future use of any Donation Property which is conveyed to and retained by the CITY shall be limited to the purposes identified herein for each unless otherwise agreed by the parties.
5. **Costs**. Any and all costs and expenses including, without limitation, planning and engineering fees, surveying fees, legal fees, costs of preparing deeds of dedication, easements and vacations and other development documents for any improvements anticipated hereunder, recording fees, permit fees, mitigation costs, costs imposed by the U.S. Army Corp of Engineers, bonding fees and related

bond release costs, performance bond fees, inspection fees, contract negotiation costs, construction costs, signalization and signage costs, construction manager fees, project personnel, review fees, approval and filing fees, consulting fees and other miscellaneous fees paid to third parties incurred in connection with (1) the CITY's responsibilities under this AGREEMENT (2) the conveyance of Trunk Infrastructure Increments and the Donation Properties and (3) the planning, permitting and construction of all Trunk Infrastructure, all other improvements associated with the Trunk Infrastructure, the conveyance of the Donation Properties and construction of all anticipated improvements upon the Donation Properties.

6. **Commencement of Construction Date**. For the purposes of this AGREEMENT, "Commencement of Construction Date" shall mean that the CITY has:
    a. procured all necessary civil engineering plans and the same are approved by the CITY Engineer; and
    b. procured all other necessary project approvals to commence construction; and
    c. procured all necessary project management services by contract; and
    d. procured all necessary project funding, with such funding in place without contingency; and
    e. procured all contracts/agreements for the construction of the applicable Increment and related Donation Properties with a duly qualified contractor, which executed contract/agreement requires all work thereunder to be bonded and the contractor's completion of the related improvements within one (1) year of its execution;
    f. begun physical construction of the related improvements.
7. **Notice**. Within ten (10) calendar days of receiving written request (sent by mail carrier or by email) from GRANTOR, CITY shall provide to GRANTOR copies of "Notice(s) to Proceed" (delivered by CITY to contractors in connection with this Agreement) and copies of approved civil engineering plans and contracts (as specified in Section 3(A)6 above).

Section 3B – General Obligations

1. **Trunk Infrastructure and Other Construction.** Subsequent to the conveyance of all Increments and related Donation Properties as called for under this AGREEMENT, the CITY shall construct all Trunk Infrastructure within the designated Increments set forth herein for the benefit and enjoyment of the CITY, its residents and the public. Increments 1 and 2-A and the Innovation District are obligatory and shall be constructed by the CITY as described in this AGREEMENT. Increments 2-B, 3, 4, 5, 6 and 7 are optional Increments that may be elected by the CITY as described in this AGREEMENT. All construction within each Increment shall be completed to a municipal level standard of service. Such construction shall be supported by design, studies and/or clearances, engineering and project management services necessary to affect the construction to ensure the delivery of services in quantities sufficient to serve the BLV project. All Trunk Infrastructure and all other construction called for in this AGREEMENT shall be designed and constructed in accordance with all applicable City, County, State and Federal standards, codes, ordinances, laws and regulations. All improvements constructed upon any Increment and related Donation Property shall be designed, engineered, constructed and maintained so as to be and remain: 1) aesthetically pleasing; 2) commensurate in quality with BLV; and 3) equal to or better in quality than other such facilities within the CITY. Immediately following completion, all roadways and related utility easements shall be dedicated to the use of the public and publicly maintained.

2. **Engineering and Surveying.** Within two (2) weeks of approval of this AGREEMENT by the COUNCIL and execution by the Mayor of the CITY and GRANTOR, CITY shall hire a surveyor and/or engineer licensed in the State of Mississippi to survey and provide legal descriptions for the rights-of-way for Increments 1, 2-A, 2-B and the Innovation District (the exact location of which to be determined by agreement of the parties hereto, but generally located in the areas depicted on Exhibit "A"). All surveys prepared shall be reviewed and/or verified by GRANTOR. GRANTOR, its successors and/or assigns shall be consulted on any/all proposed site plans, civil/construction plans and architectural and landscape architecture plans, regarding any/all proposed projects within

any portion of an Increment or Donation Property. GRANTOR's reasonable requests with respect to the foregoing shall be satisfied by the CITY.

3. **Conveyance of Properties.** Once the CITY has provided a survey for any obligatory Increment and related Donation Property, or any properly optioned Increment and related Donation Property, and such survey has been reviewed and/or verified by GRANTOR, PPI or WM MS, as appropriate, shall convey to the CITY the Increment as well as the related Donation Property in accordance with the terms and conditions of this AGREEMENT to the extent, and only to the extent, such property is owned by either PPI or WM MS. Any such conveyance to the CITY shall be made "as-is, where-is" with no obligation on the conveying party to cure any title defect or alter, modify or improve the condition of title for such property prior to conveyance. In no instance shall the conveying party be required to convey any property not owned by it as of the execution of this AGREEMENT.
4. **Easement Rights.** Until the same are dedicated to the public, GRANTOR is herein granted and shall retain a blanket access easement across all properties conveyed to the CITY for the purpose of allowing GRANTOR to facilitate the further development of BLV. The CITY's construction of all improvements upon Increments and Donation Properties shall be conducted in such a manner to ensure GRANTOR's easement right granted herein is not unreasonably impaired.
5. **Cost Responsibility.** All Costs, as defined above, shall be the sole responsibility of the CITY, with no contribution expected or required from GRANTOR.
6. **Completion Date Adjustment.** If the CITY has accomplished all components of a Commencement of Construction Date related to the improvements anticipated within any given Increment but it appears that a one (1) year time frame for the completion of such Increment related improvements, as referenced in Section 3-A, Paragraph 6(e) (§3-A, ¶6(e)), is not reasonably feasible in light of professionally accepted standards of construction practices, and the CITY's Project Engineer delivers to the parties a detailed, written professional opinion reflecting a reasonable completion date and the support for such determination, the one (1) year time frame for contractor's completion of the Increment related improvements may be extended by mutual consent

of the parties in writing; which consent shall not be unreasonably withheld. Regardless, all Increment related improvements must be completed within two and one-half (2.5) years following the relevant Commencement of Construction Date.

7. **Progress Reporting.** CITY and GRANTOR shall track progress related to this AGREEMENT and shall provide written, bi-weekly status reports to one another. In the event either party does not provide the required bi-weekly status report to the other party, an in-person meeting between the parties shall be held (the attendees present at which shall have the authority to act on behalf of their respective entity regarding the subject matter of the meeting) within seven (7) days after the omitted report was due. Additionally, CITY and GRANTOR shall meet as reasonably necessary (but at least quarterly) to review progress and to affect the fulfillment of this AGREEMENT.

8. **Re-conveyance Obligation.** In the event CITY fails to accomplish Commencement of Construction Date for any given Increment within the time frames required under this AGREEMENT, the CITY shall, within 14-calendar days following the set Commencement of Construction Date for such Increment, re-convey any Increment in accordance with this AGREEMENT (including all Donation Properties associated therewith) for no consideration, free of any/all encumbrances, liens, assessments or any other matter which affects or clouds the title to the re-conveyed property. Should the parties determine that substantial efforts have been made toward the Commencement of Construction Date for a specific Increment or related Donation Property, the timeframe for Commencement of Construction Date for that Increment or Donation Property may be extended by written consent of both parties. The CITY shall also be required to re-convey to the conveying party, under the terms of this AGREEMENT, any Donation Property that is intended to be used, or is used by the CITY for a purpose other than as anticipated herein unless otherwise agreed by the parties in writing. Should CITY encumber any property required to be re-conveyed to a conveying party, CITY shall cause all such encumbrances to be satisfied and released, at CITY'S sole cost and expense, prior to re-conveying the property to the conveying party, which encumbrance satisfaction and release shall not delay re-conveyance. If CITY fails to

re-convey property as stated herein, the conveying party will be entitled to specific performance without the necessity of establishing irreparable harm or posting any bond. This provision shall specifically survive any termination of this AGREEMENT.

9. **Court Costs and Attorney's Fees.** The prevailing party in any legal action which arises out of or results from this AGREEMENT shall be entitled to court costs, expert witness fees and attorney's fees.

10. **Assignment.** CITY may not assign or transfer any rights, interests or obligations under this AGREEMENT in whole or in part, by operation of law or otherwise, without the written consent of GRANTOR, such consent to not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to an assignment, no such assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. PPI or WM MS may assign or transfer its rights, interests or obligations under this AGREEMENT in whole or in part, in its sole discretion, provided the assignee assumes in writing all obligations and liabilities of the assignor under this AGREEMENT, in which event the assignor will be relieved of all obligations and liabilities under this AGREEMENT.

11. **Binding Effect.** Upon execution hereof, GRANTOR and CITY are each hereby bound under this AGREEMENT, unless terminated under the terms of this Agreement, as well as the parties' successors, executors, administrators, and permitted assigns, to the extent allowed by law.

Section 4 – Increments 1 and 2-A

1. CITY shall construct Trunk Infrastructure in accordance with the terms of this AGREEMENT for the following Increments as follows:

    a. **Increment 1** (4.02± acres / 2,488± lineal feet / 72' ROW)

        i. The CITY'S construction of Trunk Infrastructure upon Increment 1 hereunder is obligatory.

        ii. The Commencement of Construction Date for Increment 1 shall be within one (1) year of the execution of this AGREEMENT.

b. **Increment 2-A** (15.97± acres / 6,979.0± lineal feet / 100' ROW)

i. The CITY'S construction of Trunk Infrastructure upon Increment 2-A hereunder is obligatory.

ii. The Commencement of Construction Date for Increment 2-A shall be on or before June 1, 2021.

Section 5 –Innovation District

1. **Conveyance and Construction.** After reviewing and/or verifying the correctness of the survey and legal description provided by the CITY for same, and subject to the terms of this AGREEMENT, WM MS and/or PPI, to the extent of their interest, shall convey by Warranty Deed to the CITY 30.0± acres of land in BLV, in the general area depicted on **Exhibit "A"** ("CITY TRUNK INFRASTRUCTURE INCREMENTS") attached hereto, for the construction (to CITY standards and at no cost to WM MS, its successors or assigns) of specific facilities (as hereinafter described) for the benefit and enjoyment of the CITY, Harrison County, the State of Mississippi, their residents and the public ("Innovation District").

a. The CITY'S construction of the Innovation District is obligatory.

b. The Commencement of Construction Date for the "First Phase" of the Innovation District shall be on or before June 1, 2021. If CITY does not meet this Commencement of Construction Date for the "First Phase", CITY shall be obligated to re-convey the Innovation District and any related Donation Property in accordance with Section 3B, Paragraph 8 (§3B, ¶8) hereof. The "First Phase" shall be defined as an area no smaller than 10 acres. In the event CITY meets the Commencement of Construction Date for the First Phase, the re-conveyance provision affecting the Innovation District and any related Donation Property shall be terminated and the CITY no longer obligated to re-convey the Innovation District and any related Donation Property.

2. **Innovation District Covenants, Conditions & Restrictions.** All property and all projects in the Innovation District will be subject to, and must at all times be compliant with the Innovation District Covenants, Conditions, & Restrictions, attached hereto as **Exhibit "B"** ("INNOVATION DISTRICT CC&R'S").
    a. The INNOVATION DISTRICT CC&R'S shall be legally binding, shall run with the land, and shall be recorded in the appropriate Courthouse(s) in Harrison County, Mississippi.
    b. An irrevocable provision of the INNOVATION DISTRICT CC&R'S shall be that they may not, and shall not be changed, altered or dissolved without the express, written consent of WM MS, its successors and/or assigns.
    c. A copy of the INNOVATION DISTRICT CC&R'S shall accompany all deeds for any property conveyed in the Innovation District.
3. **Innovation District Uses.** In the absence of a written amendment to this AGREEMENT, duly executed by the parties hereto, the uses within the Innovation District may be comprised of for profit and not-for-profit entities but shall be limited to the following:
    a. Computers &Technology
    b. Aerospace
    c. Business Incubators
    d. Higher Education to include Universities and/or Colleges
    e. Vocational Education
    f. Workforce-Training
    g. Light Industrial (Conditional Use Only)
    h. Hospital and/or Medical Services
    i. Other uses as mutually agreed by the parties in writing

Section 6 – Optional Increments 2-B, 3, 4, 5, 6, 7 and Related Donation Property

1. CITY may elect to construct additional Trunk Infrastructure and other improvements, in accordance with the terms of this AGREEMENT, upon one or more Increment and related Donation Properties as described on **Exhibit "A"** ("CITY TRUNK INFRASTRUCTURE INCREMENTS") as follows:
    a. **Increment 2-B** (13.17± acres / 6,064.0± lineal feet / 100' ROW)
        i. The Commencement of Construction Date for Increment 2-B shall be on or before June 1, 2021.
        ii. Despite the optional nature of Increment 2-B, WM MS and/or PPI, to the extent of their interest, shall convey by Warranty Deed such Increment to the CITY, subject to the terms of this AGREEMENT, upon completion and approval of the survey for such land.
    b. **Increment 3** (4.74± acres / 2,820± lineal feet / 72' ROW)
    c. **Increment 4** (2.83± acres / 1,975.0± lineal feet / 72' ROW)
    d. **Increment 5** (4.05± acres / 2,446.0± lineal feet / 72' ROW)
        i. CITY Park 1 (1.90± acres) shall be donated by PPI along with the right-of-way for Increment 5 subject to the terms of this AGREEMENT. The Commencement of Construction Date for CITY Park 1 shall be on or before June 1, 2021 following the CITY exercising the option for Increment 5. Prior to construction of CITY Park 1, CITY shall maintain such Donation Property such that it is reasonably cleared, grassed and mowed regularly.
    e. **Increment 6** (2.12± acres / 1,274.0± lineal feet / 50' ROW)
        i. CITY Park 2 (7.90± acres) shall be donated by PPI along with the right-of-way for Increment 6 subject to the terms of this AGREEMENT. The Commencement of Construction Date for CITY Park 2 shall be on or before June 1, 2021 following the CITY exercising the option for Increment 6. Prior to construction of CITY Park 2, CITY shall maintain such Donation Property such that it is reasonably cleared, grassed and mowed regularly.

ii. CITY Park 3 (6.10± acres) shall be donated by PPI along with the right-of-way for Increment 6 subject to the terms of this AGREEMENT. The Commencement of Construction Date for CITY Park 3 shall be on or before June 1, 2021 following the CITY exercising the option for Increment 6. Prior to construction of CITY Park 3, CITY shall maintain such Donation Property such that it is reasonably cleared, grassed and mowed regularly.

f. **Increment 7** (2.81± acres / 1,738.0± lineal feet / 72' ROW)

i. CITY Fire Station (4.70± acres) shall be donated by PPI along with the right-of-way for Increment 7 subject to the terms of this AGREEMENT. The Commencement of Construction Date for CITY Fire Station shall be on or before June 1, 2021 following the CITY exercising such option for Increment 7. Prior to construction of CITY Fire Station, CITY shall maintain such Donation Property such that it is reasonably cleared, grassed and mowed regularly.

ii. This CITY Fire Station Donation Property may also be used to construct a CITY Police Station and/or a CITY Community Center (either or both of which shall be subject to the terms of this AGREEMENT if and only if the CITY first or contemporaneously constructs a fire station on this Donation Property.

2. The CITY shall possess under this AGREEMENT an option to proceed with each optional Increment (collectively the "Options" and singularly an "Option"). If the CITY elects to exercise an Option for any optional Increment under this Section, 6 (§6), CITY shall notify GRANTOR in writing. Such written notice shall include a statement that CITY will be able to meet the Commencement of Construction Date(s) set forth herein for each optioned Increment and any related Donation Property. Once elected by the CITY's Mayor, such Option(s) shall be binding upon the CITY as otherwise stated in this AGREEMENT.

3. Should the CITY elect an Option for any optional Increment and not desire to accept the conveyance of any related Donation Property, the CITY's Option notice provided above shall state

the same. In such event, no survey of the related Donation Property(ies) shall be required. As regards any Option related Donation Property that is (i) declined by the CITY, or (ii) re-conveyed to the conveying party by virtue of not meeting the Commencement of Construction Date(s) or otherwise, the conveying party may use such Donation Property for any desired purpose or use that is otherwise in compliance with the zoning applicable to such Donation Property.

4. Any Donation Property conveyed to the CITY and not re-conveyed to a conveying party within the time frames of this AGREEMENT shall be used to satisfy open space requirements for BLV on an acre-per-acre basis. This subsection shall not in any manner alter the CITY's requirement to re-convey any Donation Property pursuant to the terms and conditions of this AGREEMENT.

5. The CITY's right to elect all Options granted in this Section 6 shall expire on June 1, 2020, unless extended by mutual written consent of the parties, which consent GRANTOR shall not unreasonably withhold, provided that CITY has fully complied with the provisions of this AGREEMENT. The parties agree that a nine (9) month extension would not be unreasonable. The parties further agree that GRANTOR shall be under no obligation whatsoever, to consent to an extension of the CITY's right to elect all Options hereunder beyond such potential nine (9) month extension. In the event that the parties extend the CITY's Option period granted in this Section 6, the Commencement of Construction Dates shall be extended consistently therewith.

<u>REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURES FOLLOW ON NEXT PAGE</u>

WITNESS OUR SIGNATURES, this _____ day of _____, 2017.

CITY OF BILOXI, MISSISSIPPI

BY: _____

Andrew "FoFo" Gilich, Mayor

PITCHER POINT INVESTMENTS, LLC

BY: NORTHSLOPE, LLC, Its Managing Member

BY: _____

James C. Frisby, Managing Member

WM MS INVESTMENTS, LLC

BY: _____

Andre' F. Hickman, Manager

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY, appeared before me, the undersigned authority in and for the aforesaid County and State, on this the ____ day of _____, 2017, within my jurisdiction, the within named ANDREW "FOFO" GILICH, who acknowledged that he is Mayor of the City of Biloxi, Mississippi, and that for and on behalf of said municipality he executed the foregoing instrument as its act and deed, after first having been duly authorized by said municipality so to do.

GIVEN under my hand and official seal this the ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires:

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the aforesaid County and State, on this the ____ day of _____, 2017, within my jurisdiction, the within named JAMES C. FRISBY, who acknowledged that he is the Managing Member of NORTHSLOPE, LLC, the Managing Member of PITCHER POINT INVESTMENTS, LLC, a Mississippi limited liability company, and that for and on behalf of said company, as its act and deed, he executed the foregoing instrument, after first having been duly authorized by said company so to do.

GIVEN under my hand and official seal this the ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires:

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY appeared before me, the undersigned authority in and for the aforesaid County and State, on this the ____ day of _____, 2017, within my jurisdiction, the within named ANDRE' F. HICKMAN, who acknowledged that he is the Manager of WM MS INVESTMENTS, LLC, a Florida limited liability company, and that for and on behalf of said company, as its act and deed, he executed the foregoing instrument, after first having been duly authorized by said company so to do.

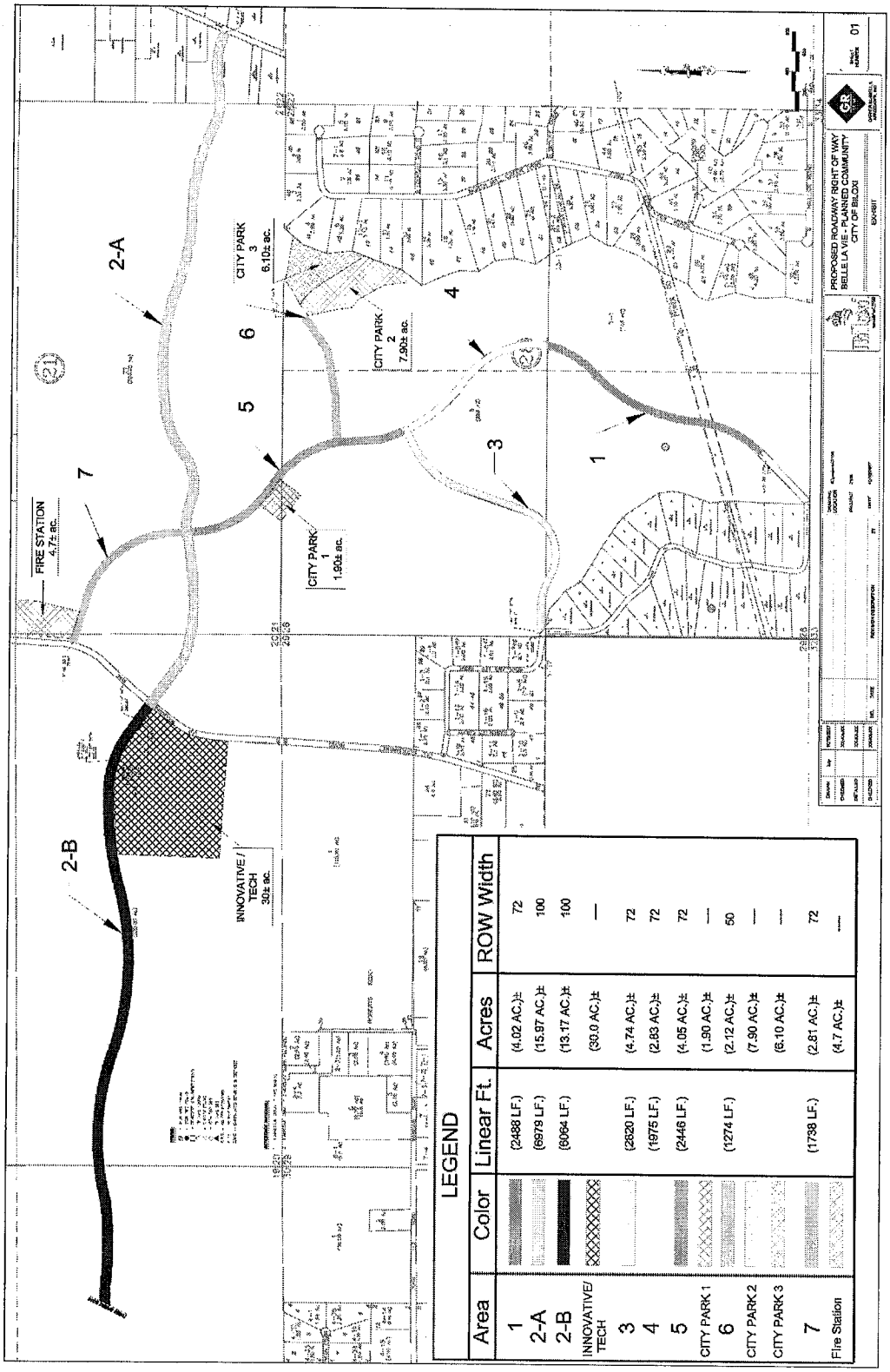
GIVEN under my hand and official seal this the ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires:

AGREEMENT REGARDING TRUNK INFRASTRUCTURE AND ROADWAYS

Exhibit "A" – CITY TRUNK INFRASTRUCTURE INCREMENTS



AGREEMENT REGARDING TRUNK INFRASTRUCTURE AND ROADWAYS

Exhibit "A" – CITY TRUNK INFRASTRUCTURE INCREMENTS

1. **Increment 1** (4.02± acres / 2,488± lineal feet / 72' ROW)
   Originating at the current, northern termination point of Belle la Vie Parkway in Hidden Springs, Phase 1 and continuing in a northeast direction for a distance of approximately 2,488.0± lineal feet to its intersection with the southern termination point of Increment 4.

2. **Increment 2-A** (15.97± acres / 6,979.0± lineal feet / 100' ROW)
   Originating on the east at its intersection point with Lorraine Road and continuing west for a distance of approximately 6,979.0± lineal feet to its intersection point with Old Woolmarket Road.

3. **Increment 2-B** (13.17± acres / 6,064.0± lineal feet / 100' ROW)
   Originating on the east at its intersection point with Old Woolmarket Road and continuing west for a distance of approximately 6,064.0± lineal feet to its intersection point with Three Rivers Road.

4. **Innovation District** (30.0± acres)
   WM MS shall convey to CITY 30.0± acres adjacent to and west of Old Woolmarket Road and adjacent to and south of Increment 2-B (the exact location of which to be determined by agreement of the parties hereto) to be developed by the CITY as a technology/innovation park.

5. **Increment 3** (4.74± acres / 2,820± lineal feet / 72' ROW)
   Originating at the northwest entrance of Hidden Springs Subdivision at its intersection point with Woodland Hills Drive and continuing northeast for a distance of approximately 2,820.0± lineal feet to its intersection with the northern commencement point of Increment 4.

6. **Increment 4** (2.83± acres / 1,975.0± lineal feet / 72' ROW)
   Originating at its intersection with the northern termination point of Increment 3 and continuing in a south-southeast direction for a distance of approximately 1,975.0± lineal feet to its intersection with the northern termination point of Increment 1.

7. **Increment 5** (4.05± acres / 2,446.0± lineal feet / 72' ROW)
   Originating on the north at its intersection point with Increment 2-A and continuing in a south-southeast direction for a distance of approximately 2,446.0± lineal feet to its intersection with a shared northern termination point of Increment 3 and Increment 4.

   a. **CITY Park 1** (1.90± acres)
      Adjacent to and west of Increment 5 and as shown hereon. The property deed shall clearly state that CITY Park 1 shall be maintained by the CITY as a city park in perpetuity.

8. **Increment 6** (2.12± acres / 1,274.0± lineal feet / 50' ROW)
   Originating on the west at its intersection point with Increment 5 and continuing east for a distance of approximately 1,274.0± lineal feet to its east termination point connecting to CITY Park 2.

a. **CITY Park 2** (7.90± acres)
Adjacent to and east of Increment 6 and as shown hereon. The property deed shall clearly state that CITY Park 2 shall be maintained by the CITY as a city park in perpetuity.

b. **CITY Park 3** (6.10± acres)
Adjacent to and east of CITY Park 2 and as shown hereon. The property deed shall clearly state that CITY Park 3 shall be maintained by the CITY as a city park in perpetuity.

9. **Increment 7** (2.81± acres / 1,738.0± lineal feet / 72' ROW)
Originating on the north at its intersection point with Old Woolmarket Road and continuing south-southeast for a distance of approximately 1,738.0± lineal feet to its intersection with Increment 2-A.

a. **CITY Fire Station** (4.70± acres)
Adjacent to and east of Old Woolmarket Road and adjacent to and north of Increment 7; as shown hereon. This property may also be used to construct a CITY Police Station and/or a CITY Community Center if the CITY first or contemporaneously constructs a fire station at this location. The property deed shall clearly state that CITY Fire Station property shall be maintained by the CITY in accordance with this Paragraph, in perpetuity.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BILOXI INNOVATION DISTRICT

THE STATE OF MISSISSIPPI	§	
	§	KNOW ALL MEN BY THESE PRESENTS
COUNTY OF HARRISON	§	

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made on the date hereinafter set forth by WM MS INVESTMENTS, LLC, a Florida limited liability company (hereinafter referred to as the "Declarant"), including its successors and assigns, for the purpose of evidencing the covenants, conditions and restrictions contained herein.

W I T N E S S E T H:

WHEREAS, Declarant is the sole owner, in fee simple of certain real property located in Harrison County, Mississippi constituting 30± acres as more particularly described in "Attachment 1", attached hereto and incorporated herein, the same being the land described in that certain AGREEMENT REGARDING TRUNK INFRASTRUCTURE AND ROADWAYS of _____, 2017 (hereinafter "Infrastructure Agreement") as the Innovation District (hereinafter the "Innovation District"). Declarant desires to donate the Innovation District to the City of Biloxi (hereinafter "City") in accordance with the Infrastructure Agreement, for City's use as a Center for Innovation, Technology and Imagination, and;

WHEREAS, as a condition precedent to the Declarant's aforementioned donation of the Innovation District, Declarant hereby subjects said Innovation District to the provisions of this Declaration for the purpose of establishing covenants, restrictions, guidelines and procedures for the development, management, maintenance, preservation, use and enjoyment and to preserve the value of said real property as an Innovation District within the Belle la Vie Master Planned Community (hereinafter "BLV"), and;

WHEREAS, the purpose of the Innovation District is to promote research, education, development and economic development, assist in the growth of new ventures, attract quality, image-conscious companies to the area and foster the inspiration of bold new ideas, and;

NOW THEREFORE, Declarant hereby declares that all of the Innovation District shall be held, sold and conveyed subject to the terms and conditions of this Declaration. This Declaration shall run with the land and be an appurtenance to the Innovation District, and shall be binding on all parties having or acquiring any right, title or interest in the Innovation District or any part thereof, their heirs, successors

and assigns, and shall inure to the benefit of Declarant and each owner, or occupant thereof (hereinafter an "Owner").

Article I. PREAMBLE

The above-reflected Whereas Clauses are confirmed as true and correct and are hereby incorporated herein.

Article II. DECLARATION

Section 2.01 Declaration

Declarant hereby declares that the Innovation District, including all improvements constructed thereon, and any other real property made subject to this Declaration (if any, in the sole discretion of Declarant), shall be bound by and shall be subject to the terms and conditions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject thereto. This Declaration shall run with the land and be binding upon all persons having any right, title, claim or interest in all or any portion of the Innovation District, their respective heirs, legal representatives, successors, and assigns; they shall run with and be an appurtenance to the land; and shall inure to the benefit of the Declarant and each and every Owner of all or any portion thereof.

Section 2.02 Duration

The provisions of this Declaration shall remain in effect perpetually, to the extent permitted by law; provided, however, should any provision of Mississippi law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this section.

Section 2.03 Tenancies

In the event an Owner leases its property within the Innovation District, the governing lease shall contain a covenant that the lessee acknowledges that its occupancy is subject to this Declaration and that it is familiar with the provisions hereof and the uses and restrictions contained herein, and agrees to abide by all such provisions. The Owner shall be liable and fully responsible for all acts of Owner's lessee(s) and responsible for the compliance of the lessee(s) with all provisions of this Declaration.

Article III. GENERAL

Section 3.01 Conditions of Ownership, Occupancy

(a) Each lot shall contain a minimum frontage of 100 feet on each public street.

(b) The division of any lot, area or tract of land within the Innovation District for any purpose, whether immediate or future, for conveyance, transfer, improvement or sale, shall not result in the creation of any parcel of less than 1 acre in size. No division of land or lot line adjustment in

contravention with the preceding sentence or Section 3.01(a) shall occur without the prior, written approval of the Declarant.

(c) Standards for the development of the Innovation District will govern the creation of a consistent, visual appearance to structures, give the area a comfortable sense of community and enhance walkability.

(d) On-street parking and loading is not permitted. All parking and loading must be accommodated on the individual lots within the Innovation District.

(e) Nothing contained herein shall nullify any of the requirements of federal, state or local laws, regulations or ordinances. In instances where applicable laws, regulations or ordinances and these protective covenants conflict, the more restrictive shall apply.

Article IV. APPROVED LAND USES

The permitted uses ("Permitted Uses") within the Innovation District may be undertaken by for-profit and not-for-profit entities who are Owners or tenants of Owners, but shall be limited to the following (the "Land Use Restrictions"):

Section 4.01 Land Use Restrictions / Permitted Uses

(a) Computers and Technology
(b) Aerospace
(c) Business Incubators
(d) Higher Education, to include Universities and/or Colleges
(e) Vocational Education
(f) Workforce Training
(g) Light Industrial (Conditional Use Only, with Declarant approval in writing)
(h) Hospital and/or Medical Services
(i) Other uses as mutually agreed to by Declarant and City in writing

Section 4.02 Prohibited Uses:

(a) Uses which would cause a nuisance per Article XI, Nuisance Control.
(b) Outdoor storage yards as a primary use.
(c) Mini-warehouses or similar storage facilities.
(d) Gasoline, oil or other fuel production or distribution operations.
(e) Ammunition, ordnance or explosives detonation and/or discharge, production, distribution or storage operations.
(f) Insecticide or pesticide production, distribution, or storage, (except that rodent or insect control products may be kept on site for the exclusive use of Owners to control rodents or insects upon its premises).
(g) Asphalt plants, including but not limited to component parts.
(h) Glue or acid manufacture or distribution operations.
(i) Cement, lime or gypsum or related manufacturing operations.
(j) Junk yards, salvage yards.

Section 4.03 Interpretation of Land Use Restrictions and Prohibited Uses

(a) In cases where it is unclear as to whether a particular proposed use is a Permitted Use or Prohibited Use, it will be presumed that the use is prohibited unless otherwise agreed by the Declarant.

Article V. DEVELOPMENT, ARCHITECTURAL AND BUILDING STANDARDS

Section 5.01 Submission of Plans

No building, improvement, or use shall be erected, placed, or altered on any lot in the Innovation District until the site plan and building plans have been approved by the appropriate local jurisdiction. Site plans and building plans shall be prepared and reviewed in accordance with: 1) the Land Development Ordinance of the local jurisdiction (as same may be amended from time to time); and 2) with this Declaration. Declarant will be provided with site plan and building plans 30 days before submission to the local jurisdiction. If Declarant objects to the site plan and/or building plans, the Declarant and user/Owner will meet in good faith and use best efforts to resolve any differences.

Section 5.02 Construction Materials and Appearance

(a) No asbestos materials may be used in the construction of any structures within the Innovation District.
(b) No non-decorative concrete blocks, tin or metal shall be used on the exterior of any building or structure.
(c) At least 40 percent – but not more than 75 percent of the street façade shall be comprised of masonry materials such as stone, brick, cast stone, or colored fancy concrete masonry units.
(d) On corner lots, both sides of the building facing the streets shall be faced as described in Section 5.02(c).
(e) All parking, driveways, sidewalks, and storage areas shall be paved with asphalt or concrete, and shall be completed prior to building occupancy.
(f) Building and structure height including rooftop and properly screened, permitted equipment shall not exceed 70 feet.

Section 5.03 Buildings and Structures

(a) The front façade of buildings, as defined by the primary entrance, shall be oriented toward the street from which the building derives its street address.
(b) The street-facing façade of buildings shall have well-defined main entrances from the sidewalk for pedestrians.
(c) Property
    (i) Buildings adjacent to required open spaces shall have at least one entrance facing the open space set-aside.

Section 5.04 Minimum Building, Parking, and Fencing Setbacks

(a) Building Setbacks
    (i) Front – The building setback is the distance between the front lot line and the nearest wall of the building. The front setback shall not be less than 30 feet.

(ii) Side/Rear – Side and rear building setbacks shall be as set forth in the local zoning ordinance, which may be amended from time to time except that if the side or rear of a building faces a street, such setback shall not be less than 30 feet.

(b) Parking Setbacks

(i) The minimum front setback for parking of customer, visitor or employee vehicles is 30 feet. The minimum side/rear setbacks for parking lots shall be not less than 10 feet. Front, side and rear setback areas shall be landscaped. The parking of company vehicles, trucks and equipment shall be sited behind the extended line of the front building wall.

(c) Fence Setbacks

(i) The minimum front setback for any fence is 50 feet.

(ii) On corner lots, all sides of the lot facing the streets shall be subject to a 50-foot fencing setback.

(iii) Fences shall not protrude beyond the front building line; on corner lots all sides of the lot facing the streets shall be subject to this provision.

Section 5.05 Outdoor Storage, Loading and Service Areas

(a) In addition to the other forms of required landscaping, screening shall be required to conceal specific areas of high visual or auditory impact or hazardous areas from off-site views. Such areas shall be screened at all times, regardless of adjacent uses, districts, or other proximate landscaping material.

(b) Outdoor storage buildings/structures shall not exceed 20 feet in height including properly screened, permitted rooftop equipment.

(c) Outdoor storage areas shall be maintained in a neat and orderly manner, be located only to the rear of the building, and be effectively screened by opaque fencing (maximum 10 feet in height) and landscaping. Nothing stored in outside storage areas shall exceed the height of the opaque fencing and landscaping screening the same.

(d) Outdoor storage shall not be located between the front and/or side building lines (extended) and the adjacent streets.

(e) All trash containers, including dumpsters, must be enclosed by a wall of solid materials that match the building façade. Such wall shall be maintained so as to present a good appearance at all times. Furthermore, such enclosures shall be equipped with a gate constructed of solid materials so as to prevent trash containers and dumpsters from being visible.

(f) Outdoor storage areas shall be maintained in an orderly, debris-free condition.

(g) Loading, outdoor storage, and service areas (including, but not limited to, appliances, building materials, equipment, raw materials, and above-ground storage tanks, ground-level mechanical equipment and utility meters) shall be appropriately fenced, landscaped, and/or screened.

Section 5.06 Antennas

(a) No exterior antennas of any kind (including, but not limited to cell/communication towers) shall be placed, allowed, or maintained without the prior written consent of Declarant. Declarant may approve the installation of radio antennas and satellite dishes that are necessary to the Owner's operations, which antennas and satellite dishes do not protrude above the roof line and are not visible from the street. Each Owner acknowledges that this provision benefits all Owners and each Owner agrees to comply with this provision despite the fact that the erection of any outdoor

antenna or similar device may be the most cost-effective way to transmit or receive the signals to be transmitted or received.

Section 5.07 Utilities

(a) The location of utility lines and easements shall be as shown on the approved site plan.

(i) All electric distribution lines, all telephone lines, and all television cable lines and other utilities installed within the Innovation District shall be underground. Associated equipment and facilities which are appurtenant to underground electric and communications systems, such as but not limited to, pad-mounted transformers, pad-mounted sectionalizing switches and above-grade pedestal-mounted boxes may be located above ground if properly screened in accordance with this Declaration. Electric substations shall not be permitted within the Innovation District without the express written approval of Declarant. Temporary overhead facilities may be installed to serve a construction site.

Article VI. DRAINAGE AND EROSION CONTROL

Section 6.01 No land shall be developed, and no use shall be permitted, that results in the flooding, erosion, or sedimentation of adjacent properties or drainage ways. Erosion control measures must be taken during and after construction. All runoff shall be properly channeled into a storm drain, watercourse, storage area, or other storm water management facility in conformance with the drainage portion of the approved site plan.

(a) All elements of the drainage control system shall be constructed and maintained in accordance with the approved site plan.

(b) All roof storm water must be collected and discharged less than 2 feet above grade at the building or be conducted directly to the drainage system. Alternatively, roof storm water may be discharged without collection, but must be discharged in such a way as to prevent erosion and protect water quality

(c) Each Owner shall take the necessary precautions to ensure that storm drainage from their site is not contaminated with motor vehicle fuels and lubricants, scale or other chemical compounds.

Section 6.02 Site Grading

(a) The grading of individual lots and construction sites shall be the responsibility of the property Owner and shall be in accordance with the approved site plan.

Article VII. SIGNS

(a) Only Owners of property in the Innovation District shall be entitled to place signs in the Innovation District. The sole purpose of such signs shall be to identify and/or direct people to their business. Billboards of any kind are strictly prohibited. Temporary signs, other than real estate signs meeting local ordinances, and placed by an Owner or its authorized representative, are prohibited.

(b) Corporate identity signs must be placed on a building façade or on a ground mounted panel. No roof mounted signs will be permitted.

(c) Ground mounted corporate signs must be placed on panels with a solid base constructed of materials used on the visible elevations of the building (aluminum, glass, masonry or steel).

(d) Sign lighting, if desired, must be ground mounted hidden from view from the street. Individual letters may be internally illuminated. See also Article IX – Lighting Guidelines.

Article VIII. FENCES AND SCREENING

Section 8.01 Fencing Guidelines

(a) Fences shall not be permitted in or across any utility easements or the drainage ways designated on each lot's approved site plan.

(b) Approved fencing material
- (i) Brick
- (ii) Stone
- (iii) Concrete (when covered with stucco or similar finish)
- (iv) Vinyl (decorative upon approval)
- (v) Wooden boards

(c) Prohibited fencing materials
- (i) Barbed Wire
- (ii) Chain-link
- (iii) Concertina Wire
- (iv) Electrified Fences
- (v) Debris
- (vi) Junk
- (vii) Rolled Plastic
- (viii) Sheet Metal
- (ix) Plywood
- (x) Other Waste Materials

(d) All fencing shall be kept in good repair and condition.

Section 8.02 Screening

(a) The following items are permitted for use as screening materials, and more than one method may be used on a lot/development site.
1) Vegetative materials that provide a fully opaque screen to the minimum height necessary to fully screen the facility from off-site views.
2) Alternative screening materials that are not listed, or alternative configurations, may be proposed if the alternative materials or configuration provide an equivalent or superior screening function.

(b) Where vegetative materials are used for screening a site feature in accordance with this subsection, the vegetative materials shall:
1) Be planted around the perimeter of the site feature in a manner that screens it from all off-site views.
2) Consist of upright, large, evergreen shrubs capable of reaching at least six feet in height within three years of planting.
3) Be spaced no farther than 5' feet on-center.

(c) All screening shall be kept in good repair and condition.

Article IX. LIGHTING GUIDELINES

Section 9.01 All exterior lighting in the Innovation District, whether approved as originally installed or added subsequently, shall be governed by the following requirements. Unapproved exterior lighting shall not be permitted:

(a) A lighting plan shall be submitted with an application for approval of a site plan or temporary use permit, as appropriate.
   (i) Lighting shall be installed to maintain adequate lighting levels and to provide for security on site while limiting negative lighting impacts on adjacent lands.
   (ii) Illumination of signs within 50 ft. of and facing an adjoining property shall be diffused or indirect, and designed to prevent direct rays of light from illuminating the adjoining property, and shall not be flashing.

(b) Owner shall regulate lighting to assure that excessive light spillage and glare are not directed at adjacent properties, neighboring areas, and motorists.

(c) Wall packs on buildings may be used at entrances to a building to light unsafe areas. They are not intended to draw attention to the building or provide general building or site lighting. Wall packs on the exterior of the building shall be fully shielded (e.g., true cut-off type bulb or light source not visible from off-site) to direct the light vertically downward and have a light output of 1,000 lumens or less. Wall pack light sources visible from any location off the site are prohibited.

(d) Reasonable seasonal decorative lights between November 21st and January 5th shall be permitted.

Article X. LANDSCAPING

Section 10.01 Landscape Plan and Installation

(a) To ensure compliance with the standards of this section, a landscape plan must be submitted to Declarant and local jurisdiction as part of the required site plan approval prior to building construction.

(b) All areas on any site not used for building, storage, parking, walks, access roads, and loading areas shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas with groundcover, flowers, trees and shrubs.

(c) Lots areas abutting Old Woolmarket Road and Infrastructure Increment 2-B (Infrastructure Agreement, Exhibit "A" ("CITY TRUNK INFRASTRUCTURE INCREMENTS")) shall require additional landscaping for aesthetic purposes, including, at a minimum, one deciduous tree of minimum 2 inch caliper every 50 feet, and including additional trees and shrubs as required in the site plan approval process.

(d) Required landscaping must be completed prior to building occupancy.

Section 10.02 Landscape Maintenance

(a) The Owner shall be responsible for the maintenance of all landscape areas on the Owner's Lot along with all contiguous street right-of-way to the edge of pavement, and all contiguous drainage and easement areas. Such areas shall be maintained in accordance with the approved landscape

plan and shall present a healthy and orderly appearance free from refuse and debris. All plant life shown on an approved landscape plan shall be replaced if it dies, is seriously damaged, or is removed.

(b) Owners shall be required to replant or replace the vegetation or landscape element if the landscaping standards are not being met. The Owner shall have one growing season to replace or replant.

(c) The Owner shall take all actions necessary to protect trees and landscaping from unnecessary damage during construction and all facility and site maintenance operations. Plants shall be maintained in a way that does not obstruct sight distances at roadway and driveway intersections, obstruct traffic signs or devices, or interfere with the use of bikeways, sidewalks, or pedestrian trails.

(d) All required trees (whether canopy, understory, or otherwise) shall be maintained in their characteristic natural shape, and shall not be severely pruned, sheared, topped, or shaped as shrubs. Trees (including, but not limited to, crepe myrtles) that have been severely pruned, sheared, topped, or shaped as shrubs no longer serve the intended buffering or screening function and shall be considered as damaged vegetation, and shall be replaced within one growing season.

(e) The natural death of existing vegetation within any required landscape area shall require re-vegetation to replace the plant material.

Article XI. NUISANCE CONTROL

Section 11.01 Any business activity within the Innovation District must be performed or carried out in a manner that will not cause or produce a nuisance detrimental to adjacent Owners or properties beyond the Innovation District. No operation, process, manufacturing activity, or building use in the Innovation District shall produce or create noise, light, odors, smoke, dust, gas, vibration, heat, industrial waste, toxic matter, or other measurable external nuisance. Regarding Permitted Uses and, to the extent that a light industrial, conditional use is approved (in accordance with Article IV, Section 4.01, Land Use Restrictions / Permitted Uses), in addition to the requisite conditions of such approved use, the following shall apply:

(a) Air Pollution. No person or activity shall emit any fly ash, dust, fumes, vapors, mists or gases.

(b) Fire and Explosive Hazards. All activities involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazards of fire and explosion and with state-of-the-art fire-fighting and fire-suppression equipment and devices that are leading edge/vanguard in the industry. No materials that range from active to intense burning shall be manufactured, utilized, processed, or stored in the Innovation District.

(c) Glare and Heat. No activity shall emit glare or heat that is visible or measurable outside an Owner's lot. All operations producing intense glare or heat shall be conducted within a completely enclosed building. Exposed sources of light shall be shielded so as not to be visible outside their premises.

(d) Water Quality Protection. No activity shall store or discharge, or permit the discharge of, any treated, untreated, or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances

such as oil or scum; objectionable color, odor, taste; unsightliness; or be harmful to human, animal, plant or aquatic life.

(e) Noise. All noises shall be so muffled or otherwise controlled as not to be objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness.

(f) Odors. No activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful.

(g) Radioactivity and Electrical Disturbances. No activity shall emit radioactivity or electrical disturbances.

(h) Vibration. No activity shall emit vibrations which are discernible without instruments outside and Owner's lot.

Article XII. MAINTENANCE RESPONSIBILITIES

Section 12.01 Each lot Owner shall keep their property, all contiguous street right-of-way to the edge of pavement, and all contiguous drainage and easement areas, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

(a) The removal of all litter, trash, refuse and wastes.

(b) Maintenance in compliance with the plant and weed control ordinance of the local jurisdiction, including the mowing of all grass areas, and the care and pruning of trees and shrubbery within property boundaries and all terrace trees in the street right-of-way adjacent to the property.

(c) Maintenance of exterior lighting, signs and mechanical facilities.

(d) Keeping all exterior building surfaces in a clean, well-maintained condition.

(e) Striping and sealing of parking and driveway areas.

(f) Removal of unlicensed or inoperable vehicles.

(g) Maintenance of all contiguous drainage ways including the removal of all debris, weeds and silt.

(h) During construction, it shall be the responsibility of each Owner to ensure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials; and that construction materials, trailers and the like are kept in a neat and orderly manner. Burning of excess or scrap construction materials is prohibited. Construction site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution of air or water during construction.

(i) The Owner of any undeveloped lots shall maintain said lots in a sodded or seeded grassed condition, free of rubbish, weeds and mosquito breeding pond conditions.

Article XIII. AMENDMENT OF DECLARATION OF RESTRICTIONS AND COVENANTS

This Declaration may be amended only upon the execution and recording of a written instrument to said effect. Such amendment must be signed by all Owners within the Innovation District and duly recorded in the Public Records. For the first fifteen (15) years following the effective date of this Declaration, no Amendment shall be effective without the consent to and execution thereof by the Declarant.

Article XIV. ENFORCEMENT

Section 14.01 Abatement, Injunction and Suit

Violation or breach of any restriction or covenant herein contained shall give to the City and any and every Owner of property within the Innovation District, as well as Declarant, the right to pr`osecute a proceeding

at law or in equity against the person or persons who have violated or attempted to violate any of these restrictions and covenants to enjoin or prevent them from doing so, and to cause said violation to be removed or remedied and to recover damages for said violation, including the attorneys' fees of the prevailing party or parties, and such amount as may be fixed by the Court in such proceedings.

Section 14.02 Self-Help

In addition to any other remedies provided for herein, Declarant or its duly authorized agent shall have the power to exercise all lawful means of self-help. Prior to Declarant exercising the protections afforded under Self-Help, Declarant shall notify City of the violation or breach which gives rise to the Self-Help remedy and City shall have 30 days to commence such action as it deems necessary to remedy the violation or breach. If the City has not cured the violation or breach within 120 days, Declarant is authorized to proceed under this Section.

Section 14.03 Easement for Entry

Declarant shall have the right, but shall not be obligated, to enter upon any property within the Innovation District in the event of an emergency, or apparent security and/or safety issue. Except in an emergency situation or apparent security and/or safety issue, entry shall only be during reasonable hours and after ten (10) calendar days written notice to the Owner. Without limitation, it is intended that this right of entry shall include the right of Declarant to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails or refuses to cure the condition upon request by Declarant.

Section 14.04 Environmental Requirements

Each Owner will assume the responsibility for adherence to the regulations of U.S. Army Corps of Engineers, the Mississippi Department of Environmental Quality and other jurisdictional and/or environmental regulatory agencies for all parties performing work before, during or after any and all site-work and the construction of any structures being built or to be built. To the extent permitted by law, each Owner will indemnify Declarant from all costs, actions, fees, sanctions, penalties, or other consequences that are a result of or are adversely affected by any site-work or construction activities. Each Owner will install and maintain Best Management Practices standards during the entire period that construction activities are in progress.

Article XV. WAIVERS

Section 15.01 Declarant, its successors or assigns, reserve the right to waive any violations of the terms and conditions contained in this Declaration in the event Declarant shall determine, in its sole discretion, that such violations are minor or dictated by the peculiarities of a particular lot configuration or topography. Additionally, the Declarant shall have the ability to grant waivers of architectural, development and use standards set forth herein so long as the granting of such waiver does not create or permit a use, structure or plan which would conflict with the general community standards established herein.

Article XVI. DECLARANT'S RIGHTS

Section 16.01 At the expiration of fifteen (15) years from the effective date of this Declaration, any rights possessed by the Declarant hereunder shall expire, unless Declarant retains ownership of any portion of the Innovation District. In such event, Declarant's rights shall be the same as any other Owner within the Innovation District.

Section 16.02 Any and all rights, powers, duties and reservations of Declarant herein may be assigned to any person or organization which will assume the same from Declarant and, upon any such person or organization evidencing its assumption of same in writing, such assignee, to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given and assumed by Declarant herein.

DECLARANT:

WM MS Investments, LLC, a Florida limited
liability company

_____

Andre' F. Hickman, Manager

STATE OF FLORIDA }
COUNTY OF ORANGE }

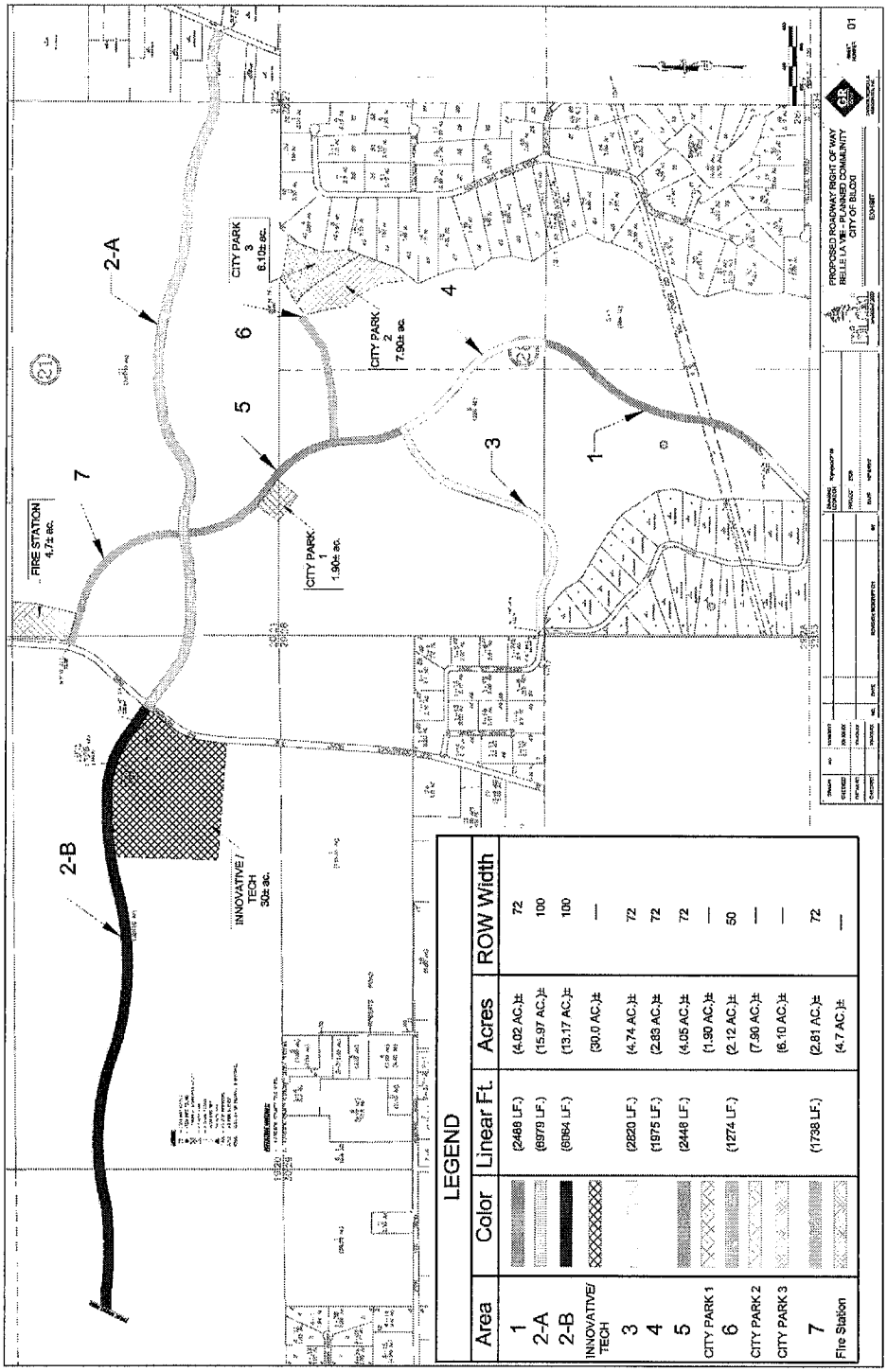
BEFORE ME, the undersigned authority, personally appeared, Andre' F. Hickman, as Manager of **WM MS INVESTMENTS, LLC**, a Florida limited liability company, who acknowledged before me that he, on behalf of and as an act of the company, made and executed the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS freely and voluntarily for the purposes mentioned therein.

IN WITNESS WHEREOF I have hereunto set my hand and official seal in the County and State last aforesaid this _____ day of _____, 2017.

(SEAL)

_____

Notary Public, State of Florida



Innovation District (30.0± acres)

30.0± acres adjacent to and west of Old Woolmarket Road and adjacent to and south of Increment 2-B (the exact location of which to be determined by agreement of the parties hereto) to be developed by the CITY as a technology/innovation park.