

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4E

Council Meeting Date: January 15, 2019

ITEM TITLE: RESOLUTION
 INTRODUCED BY: Mayor Andrew "FoFo" Gilich
 CONTACT PERSON: E. Michael Leonard, CAO *EM*
 Peter Abide, City Attorney *PA*

SUMMARY EXPLANATION:

Resolution authorizing Mayor to execute Tri-Party Agreement with Howard Avenue Development, LLC and Biloxi Main Street Downtown Economic Development Program incentives for project at 814 Howard Avenue (Kress Building); and for related purposes.

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit "A"

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Mayor recommends approval.

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

RESOLUTION NO. _____

RESOLUTION AUTHORIZING MAYOR TO EXECUTE TRI-PARTY AGREEMENT WITH HOWARD AVENUE DEVELOPMENT, LLC AND BILOXI MAIN STREET FOR BILOXI MAIN STREET DOWNTOWN ECONOMIC DEVELOPMENT PROGRAM INCENTIVES FOR PROJECT AT 814 HOWARD AVENUE (KRESS BLDG.); AND FOR RELATED PURPOSES

WHEREAS, the City has authority to appropriate to Gulf Coast Main Street Corporation dba Biloxi Main Street District ("MAIN STREET") such sums as the City deems necessary and desirable for programs to incent certain downtown economic development by private enterprise, and may also place reasonable conditions on the use of the funds appropriated to MAIN STREET, and otherwise earmark such funds for a specific purpose, pursuant to Miss. Code of 1972, §§ 21-19-44, 21-19-44.1, and 21-17-5, and MS AG Op., Abide (Dec. 14, 2018); and

WHEREAS, MAIN STREET is a 501(c)(3) private non-profit corporation which engages in activities which include, but are not limited to, administration of economic development programs, specifically in this instance the "Biloxi Main Street Downtown Economic Development Program" within the City's central business district (the "Program"), which allows private developers to apply for redevelopment grants to incent the restoration and development of the exterior, interior and grounds of commercial and residential properties and/or vacant lots in the downtown area described as bound on the north by the parcels of property bordering the north edge of Division Street, on the east by the parcels of property bordering the east edge of Lee Street, on the south by the Mississippi Sound and on the west by I-110; and

WHEREAS, the Mayor and City Council approved Resolution No. __-19 on January 15, 2019, authorizing the Mayor to execute and deliver an agreement to support MAIN STREET in establishing and administering the Biloxi Main Street Downtown Economic Development Program in the City's central business district area as defined in the resolution and agreement, for which the project proposed by Howard Avenue Development, LLC, a Mississippi limited liability company (herein "HOWARD") at 814 Howard Avenue (Kress Building), Biloxi, MS 39530 (the "Project"), is eligible; and;

WHEREAS, the City finds it is necessary and desirable to appropriate to MAIN STREET certain sums of ad valorem real property tax (herein "Property Tax") reimbursements and sales tax (herein "Sales Tax") reimbursements for the specific purpose of funding the Main Street Program to incent the Project, as more particularly described in the Tri-Party Agreement for Biloxi Main Street Downtown Economic Development Program Incentives and Related Services (herein "Tri-Party Agreement") attached hereto as Exhibit "A" and made a part of this resolution, as authorized pursuant to Miss. Code of 1972, §§ 21-19-44, 21-19-44.1, & 21-17-5 and MS AG Op., Abide (Dec. 14, 2018); and

WHEREAS, HOWARD has filed with MAIN STREET with a copy to the City an application with transmittal letter and related exhibits, all dated December 20, 2018, (collectively, the "Grant Application") and has requested the City's appropriation to MAIN

STREET'S Program in order to incent the Project; and

WHEREAS, the City Council finds that the Project would be a significant economy development for the City's central business district and would improve the overall economy and development of the whole City and that it is in the best interests of the health, safety, morals and welfare of the residents of the City of Biloxi that the Mayor be authorized to execute and deliver the Tri-Party Agreement in substantially similar form as the document attached to this resolution as Exhibit "A";

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

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

Section Two: The Mayor is hereby authorized to execute and deliver the Tri-Party Agreement for Biloxi Main Street Downtown Economic Development Program Incentives and Related Services in substantially similar form as the document attached to this resolution as Exhibit "A".

Section Three: This resolution shall take effect and be in force from and after adoption.

TRI-PARTY AGREEMENT
FOR BILOXI MAIN STREET DOWNTOWN ECONOMIC DEVELOPMENT PROGRAM
INCENTIVES AND RELATED SERVICES

For Project at 814 Howard Avenue (Kress Bldg.)
by Howard Avenue Development, LLC

This Tri-Party Agreement (herein "Tri-Party Agreement") for Biloxi Main Street Downtown Economic Development Program Incentives and Related Services is entered into as of the ___ day of January, 2019, by and among the City of Biloxi, Mississippi, a Mississippi municipal corporation (herein, "City"), Howard Avenue Development, LLC, a Mississippi limited liability company (herein "HOWARD") and Gulf Coast Main Street Corporation dba Biloxi Main Street District (herein "MAIN STREET"), a 501 (c) (3) private, non-profit Mississippi corporation. Each above entity is a "Party" and collectively they shall be referred to as the "Parties".

WHEREAS, the City has authority to appropriate to MAIN STREET such sums as the City deems necessary and desirable for programs to incent certain downtown economic development by private enterprise, and may also place reasonable conditions on the use of the funds appropriated to MAIN STREET, and otherwise earmark such funds for a specific purpose, pursuant to Miss. Code of 1972, §§ 21-19-44, 21-19-44.1, and 21-17-5, and MS AG Op., Abide (Dec. 14, 2018); and

WHEREAS, the Mayor and City Council approved Resolution No. ___-19 on January ____, 2019, to support MAIN STREET in establishing and administering the Biloxi Main Street Downtown Economic Development Program in the City's central business district area as defined in the resolution, for which HOWARD's Redevelopment Project at 814 Howard Avenue, Biloxi, MS 39530 is eligible; and

WHEREAS, MAIN STREET is a 501(c)(3) private non-profit corporation which engages in activities which include, but are not limited to, administration of economic development programs, specifically in this instance the "Biloxi Main Street Downtown Economic Development Program" within the City's central business district (**herein the "Program"**), which allows private developers to apply for redevelopment grants to incent the restoration and development of the exterior, interior and grounds of commercial and residential properties and/or vacant lots in the downtown area described as bound on the north by the parcels of property bordering the north edge of Division Street, on the east by the parcels of property bordering the east edge of Lee Street, on the south by the Mississippi Sound and on the west by I-110; and

WHEREAS, the City finds it is necessary and desirable to appropriate to MAIN STREET certain amounts of ad valorem property tax reimbursement and sales tax reimbursement under the terms and conditions of, and for the purposes of, the Main Street Program described in this

Tri-Party Agreement, as authorized pursuant to Miss. Code of 1972, §§ 21-19-44, 21-19-44.1, & 21-17-5 and MS AG Op., Abide (Dec. 14, 2018); and

WHEREAS, it is the desire of the City to appropriate to MAIN STREET certain sums of ad valorem real property tax (herein "Property Tax") reimbursements and sales tax (herein "Sales Tax") reimbursements described below for the specific purpose of funding the Program to be used as described below for redevelopment and/or new development of the exteriors and interiors of certain existing building on commercial property owned by HOWARD and located at 814 Howard Avenue, Biloxi, Mississippi 39530, and the grounds thereon, as more particularly described in the legal descriptions and aerial photograph of tax parcels in the pages that comprise Exhibit "A" attached hereto and made a part hereof (the "Project"), which shall be developed by HOWARD as a mixed-use development for the initial purpose of leasing certain spaces to commercial tenants ("Commercial Tenants"), which HOWARD intends, but is not required, to lease to a brewery-restaurant-entertainment venue; and

WHEREAS, it is understood by all parties that the incentive for HOWARD's participation in the Program is based upon the Net Grant Award, as defined herein; and

WHEREAS, HOWARD has filed with MAIN STREET with a copy to the City an application with transmittal letter and related exhibits all dated December 20, 2018 (collectively, the "**Grant Application**") and has requested the City's appropriation to MAIN STREET'S Program in order to incent the Project as described herein;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS MADE HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. HOWARD REPRESENTATIONS, RIGHTS AND DUTIES

1. HOWARD represents that it has acquired the real property and improvements located at 814 Howard Avenue and intends to cause the redevelopment of the building and grounds of the whole property as well as the redesign and redevelopment of the facade of the building on the property, with the façade redesign and redevelopment, other exterior redevelopment, and the interior redesign and redevelopment constituting the Project for the Net Grant Award defined herein, for the purpose of occupying the redeveloped property as landlord for the further purpose of entering leases of some of the spaces within the buildings that are the subject of the Project with multiple tenants, as lessees, for tenants to operate commercial offices, retail businesses, entertainment establishments and/or food and beverage establishments, upon and within the buildings that are the subject of the Project.
2. HOWARD has, in conjunction with this Tri-Party Agreement, completed and filed the Grant Application with MAIN STREET, a copy of which was provided to the City,

which includes, but is not limited to, estimated costs, projected property tax and sales tax increases, development time frame, and other supporting documentation in order to take part in the Program.

3. By entering this Tri-Party Agreement, MAIN STREET acknowledges that HOWARD's Grant Application, as defined herein, for participation in the Program is acceptable and approved, and the City acknowledges that the Grant Application is acceptable and approved by the City.
4. HOWARD will design and construct the Project on the property at 814 Howard Avenue and will document all costs which it incurs in connection with said Project for the purposes stated in this Tri-Party Agreement. Howard **shall begin construction on the improvements to the property no later than October 1, 2019**, failing which this Tri-Party Agreement shall be null and void and automatically terminated without further documentation, unless extended by written agreement approved by the Parties. Further Howard **shall obtain a certificate of occupancy for all of the improved commercial spaces to be open and in operation no later than June 1, 2021**, failing in which this Tri-Party Agreement and HOWARD's participation in the Program shall terminate, unless extended by mutual, written agreement of the Parties. However, in the event HOWARD fails to cause the Project to be completed by June 1, 2021, and such failure is due to an act of God, or other circumstances beyond HOWARD's reasonable control, including but not limited to, hurricane, fire, flood, civil commotion, or war (declared and undeclared), then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable HOWARD to receive its Certificate of Occupancy for all of the buildings on the property that is the subject of the Project and have its premises open for business, provided however, that in no event shall such time extend for a period of more than one hundred eighty (180) days from the conclusion of such event.
5. HOWARD represents that the Project will consist of (a) renovating and replacing the facade of the building facing Howard Avenue according to a design that respects the existing vernacular architecture that occurs around Biloxi's historic downtown district, as depicted in Howard's plans and specifications to be submitted to and approved by the City's Community Development Department, and (b) renovation of the interior of the building to provide spaces for commercial tenants and/or owners. The structure and each space within the structure will require any necessary permitting as may be required by the City and are to be constructed and/or improved in accordance with all City ordinances and building codes in effect at the time such construction and/or improvements are undertaken.

6. **HOWARD represents that the Project would not be commercially feasible but for the Grant Award.**
7. HOWARD acknowledges and agrees that, within 90 days of the City's issuance of the Certificate of Occupancy associated with the building and space within the property that is the subject of the Project, HOWARD will submit to MAIN STREET, with a copy to City, reasonable documentation of project costs for the Project, in accordance with generally accepted accounting principles, for approval in writing by MAIN STREET and the City. **"Project Costs"** are defined as any expenditure incurred on or before the date of the final Certificate of Occupancy (if any units are certified separately) and directly related to capital improvements for the renovation and redevelopment of the facade and building, which may include, but are not limited to, acquisition costs, architectural and engineering fees, building permits and other City-imposed fees, site improvements, landscaping, cost of materials and labor directly related to the reuse and redevelopment of the facade and building, and all costs of renovation and construction pertaining to the façade and building renovation and redevelopment for all of the façade and building renovation and redevelopment improvements that HOWARD has identified in its application for this Grant Award, including, but not limited to, attorney's fees, title abstract fees, title insurance, hazard insurance, prorated taxes, appraisal costs, and financing-related costs.
8. HOWARD acknowledges that it is eligible to participate in the Program administered by MAIN STREET. The Program, as it applies to this Project, shall commence sixty (60) days after the City's receipt of its share of Property Taxes for the first Property Tax year that begins after the first Certificate of Occupancy is issued for this Project, with City appropriations to Main Street and corresponding Main Street Grant Awards payable by Main Street to Howard once per year for a period of up to fifteen (15) consecutive years (the "Program Years"), or until the Grant Cap, as defined herein, is reached, whichever event is the first to occur. The following example of calculating Program Years is provided for illustrative purposes only:

Certificate of Occupancy issued: June 1, 2021
First Property Tax year (also First Program Year): Jan. 1, 2022- Dec. 31, 2022
2022 Property Tax paid by HOWARD: Jan. 1, 2023
City's share received from Harrison County: Feb. 1, 2023
HOWARD's portion of Grant Award payable to HOWARD: Apr. 2, 2023

For purposes of calculating the verified tax increase of Property Taxes, the baseline amount shall be the amount of city taxes collected from the true value of the land and improvements stated on the tax statements of the applicable tax parcel(s) for the calendar tax year immediately prior to the first Program Year (the "Baseline Property Tax".) Subject to the terms and conditions contained herein, HOWARD is eligible to receive an amount equal to a specified percentage for each respective

Program Year of the City's portion of the verified increase in Property Tax (the increase above the Baseline Property Tax) collected for the Program Year on all of HOWARD's land and real property improvements at 814 Howard Avenue, Biloxi, MS, 39530. Likewise, HOWARD is eligible to receive an amount equal to a specified percentage for each respective Program Year of the City's portion of the verified increase in Sales Tax collected by the State and disbursed to the City and directly attributable to sales made by the Commercial Tenants, as more specifically defined herein. The sum of the City's portion of the verified increase in Sales Tax plus the city's portion of the verified increase in Property Tax shall be referred to herein as **the** "Verified Tax Increase." For the first Program Year and first Grant Award, the parties agree that the verified increase in Sales Tax shall be calculated beginning on the date of the first payment of sales tax by any Commercial Tenant to the State and continuing through end of the first Program Year.

The parties agree that HOWARD may apply for incentive rebate(s) under the State's Tourism Project Incentive Program pursuant to Mississippi Code of 1972, Sections 57-26-1, et seq., ("TIP"). HOWARD will provide the City a copy of its application to participate in TIP at the time of submitting it to the State. The City agrees to establish an entertainment district as defined in Section 17-29-3 of the Mississippi Code of 1972, said entertainment district to encompass the Project contemplated herein.

The parties further agree that, in the event all or any part of the City's portion of the verified increase in Sales Tax for the Project is applied to a rebate paid to HOWARD pursuant to TIP, the Grant Cap stated in paragraph I. 10. (b) herein shall be reduced by the total amounts paid by the State to HOWARD under the TIP incentive.

Likewise, the parties agree that in the event any amount of any verified increase in Property Tax for this Redevelopment Project is obligated to debt service for a Tax Increment Financing ("TIF") indenture issued by the City, and provided HOWARD has consented to the obligation of any verified increase in Property Tax for this Project to the debt service for a TIF, then the amount so dedicated shall apply to HOWARD'S Grant Cap herein, thus reducing, by the amount so dedicated, the amount of the Grant Cap stated in paragraph I. 10. (b) herein for this Project.

9. During the term hereof, unless sooner terminated as set forth herein, HOWARD's annual net incentive grant award shall consist of one hundred percent (100%) of the Verified Tax Increase, less MAIN STREET's Administrative Fee, up to the amount of the Grant Cap defined herein (the "Net Grant Award"). MAIN STREET's administrative fee shall be one-half of one percent (0.5%) of 100% of the Verified Tax Increase (the "Administrative Fee"). The sum of the Net Grant Award to HOWARD plus the Administrative Fee to MAIN STREET shall constitute the total appropriation in each respective Program Year for up to and including fifteen Program Years by the City to MAIN STREET, and in each such Program Year MAIN

STREET shall grant the Net Grant Award to HOWARD until the total Net Grant Awards equal the amount of the Grant Cap or Net Grant Awards have been made for fifteen, consecutive Program Years, whichever event occurs sooner.

10. The sum total of HOWARD's net amount received from all annual Net Grant Awards shall not exceed the lower of **(a) forty-eight percent (48%) of HOWARD's total substantiated and approved Project Costs** for the redesign, renovation and redevelopment of the exterior and interior of the building and grounds (the Project) approved by MAIN STREET and the City, **or (b) Two Million Five Hundred Eleven Thousand Three Hundred Seventy-Six and no/100th Dollars (\$2,511,376.00)**, and the lower amount shall be HOWARD's "**Grant Cap**".
11. The parties acknowledge that MAIN STREET is entitled to **an Administrative Fee equivalent to one-half of one percent (0.5%)** of 100% of the Verified Tax Increase. MAIN STREET shall deduct the Administrative Fee from the gross amount of every CITY appropriation to MAIN STREET for this Program earmarked for this Project prior to paying the net balance thereof to HOWARD. Therefore, based upon the foregoing formula for calculations of the City appropriations to Main Street, Administrative Fee, and Net Grant Awards payable to HOWARD, HOWARD understands and agrees that the total amount of principal payments that HOWARD will receive from all annual Net Grant Awards shall not exceed HOWARD's Grant Cap defined herein.
12. In summary, the total amount of the City's appropriation to MAIN STREET for each Program Year for HOWARD's Project, not to exceed the Grant Cap, shall be the sum of:
 - a. 99.5% of the Verified Tax Increase, plus
 - b. Administrative Fee of 0.5% of 100% of the Verified Tax Increase.

The City's annual appropriation to MAIN STREET pertaining to this Program Project shall be made until HOWARD's Grant Cap is paid or payments for fifteen consecutive Program Years have been made, whichever event is sooner, it being understood that the final annual appropriation will be adjusted, if necessary, to a lower amount to meet the limit of HOWARD's Grant Cap.

HOWARD acknowledges and agrees that upon execution of this Tri-Party Agreement, Net Grant Awards will begin in accordance with the provisions of paragraph 8., *inter alia*, of this Tri-Party Agreement. HOWARD shall provide documented proof of the Verified Tax Increases annually to MAIN STREET, with a copy to the City, to the satisfaction of each entity. HOWARD's failure to submit documented proof of each annual Verified Tax Increase will delay the City's annual

appropriation to MAIN STREET, and in turn will delay the payment of the Net Grant Award to HOWARD.

13. HOWARD acknowledges and agrees that the terms and conditions of its lease agreements with its initial commercial tenants and all subsequent tenants, as well as any sub-lease agreements with all sub-tenants, will require all tenants and sub-tenants, as lessees and sub-lessees, to provide certain Verified Tax Increase information and supporting documentation to HOWARD, the City and MAIN STREET on a monthly and annual basis, according to the following procedure: each tenant and sub-tenant shall provide to HOWARD, the City and MAIN STREET at the email addresses stated in the notice provisions herein, or other addresses approved by the Parties to this Tri-Party agreement, each respective monthly sales tax report and each respective annual sales report submitted to the Mississippi Department of Revenue. All tenant and sub-tenant transmissions of the monthly and annual sales tax reports to HOWARD, City and MAIN STREET shall be made on the same day as the transmission of said sales tax reports to the Mississippi Department of Revenue. In addition, each tenant and sub-tenant shall transmit to HOWARD, City and MAIN STREET a copy of the tenant or sub-tenant's application to the Mississippi Department of Revenue for a Sales Tax Number and a copy of the Department's document assigning a Sales Tax Number to the respective tenant or sub-tenant, and the copies of these documents shall be transmitted no later than 20 days after the tenant or sub-tenant receives its Sales Tax Number from the MDOR. The information in the monthly and annual reports by the tenants and sub-tenants shall include, but is not limited to, the tenant's or sub-tenant's sales tax number and the sales tax number of any entity operating on or in the premises of any tenant or sub-tenant and the total Mississippi sales taxes paid, monthly and annually, by the commercial tenants and sub-tenants and any other entities operating within their premises. Further, HOWARD shall require in all such leases and sub-leases a provision that tenants and sub-tenants grant permission, and waive any right to confidentiality, to HOWARD, MAIN STREET and the City to inspect, copy, and obtain from the Mississippi Department of Revenue any and all sales tax reports, information and data pertaining to such tenant or sub-tenant. The parties to this Tri-Party Agreement acknowledge that sales tax information provided by the commercial tenants and sub-tenants may be third-party proprietary information and will not be further released by any Party to this Tri-Party Agreement, unless required by law. HOWARD shall be bound by the duties of this paragraph in the event HOWARD operates any business on the subject property.

14. The following example is provided for illustrative purposes, specific to this Tri-Party Agreement, for calculation of a first annual City appropriation to MAIN STREET and Net Grant Award to HOWARD based on the projected Verified Tax Increase in Property Tax and sales tax as estimated in HOWARD's application for this Program Project and pertaining to HOWARD's first year of operation. In its application,

HOWARD estimated that the increase in Property Tax (excluding any increase in the ad valorem tax on the land value) to be received by the City (not including school and county taxes) would be \$14,324.00 for the first tax year following issuance of the Certificate of Occupancy, being the Property Tax increase on the improvements for the first Program Year, and that the commercial tenants would generate a total of \$875,000 in gross sales tax reported to the Mississippi Department of Revenue within the twelve (12) consecutive months following issuance of the Certificate of Occupancy, being the Sales Tax increase for the first Program Year. The following example of calculations is based on the Parties' agreed tax reimbursement to HOWARD of 99.5% of each category of taxes in the Verified Tax Increase and a 0.5% Administrative Fee to MAIN STREET:

Example of Grant Award 814 Howard Ave.

For First Program Year (2022) to be paid in 2023

(Example of calculations for first annual appropriation that City would make to MAIN STREET and Net Grant Award that MAIN STREET would pay to HOWARD within 60 days after the City receives the Property Taxes for the first Property Tax year (2022) after the first anniversary of the initial Certificate of Occupancy, assuming Project Costs of \$5,232,033.00 and taxes based on HOWARD's application estimates and assuming that the C.O. is issued before June 1, 2021.)

Sales Tax Increase (7% tax paid to State)	\$ 875,000.00
City's portion from DOR @ 18.5%	\$ 161,875.00 MCA 27-65-75(1)
City Property Tax increase:	<u>14,324.00</u>
Total Verified Tax Increase	\$ 176,199.00
99.5% of Verified Tax Increase ("VTI")	\$ 175,318.00
Administrative Fee @ 0.5% of VTI	<u>881.00</u> (See Section I.9)
Appropriation to MAIN STREET	\$ 176,199.00
Less Administrative Fee	<u>881.00</u>
Net Grant to HOWARD	\$ 175,318.00

14. HOWARD represents to the City and MAIN STREET that its proposed Project would not be a commercially prudent and financially feasible project for HOWARD's private investment without the Net Grant Award and that "but for" the incentive of the Net Grant Award, HOWARD would not undertake the Project as described and presented in HOWARD's application.

II. CITY REPRESENTATIONS, RIGHTS, AND DUTIES:

1. City agrees that upon HOWARD's compliance with the above obligations, and as consideration for this Tri-Party Agreement, City will appropriate to MAIN STREET, as Administrator of the Program and earmarked for HOWARD's Project, the annual appropriations in an amount equal to the sum of the annual Administrative Fee plus the Net Grant Award in each of the Program Years. For each applicable Program Year, the City will make the applicable appropriation to MAIN STREET within thirty (30) days after the City has received (a) the Verified Tax Increase in Property tax from the Harrison County Tax Collector, (b) the Verified Tax Increase for sales tax from the Mississippi Department of Revenue, and (c) acceptable copies of documentation from MAIN STREET and HOWARD, respectively, supporting the Verified Tax Increase in Property Tax and Sales Tax. MAIN STREET shall be compensated solely by way of the Administrative Fee. The annual Administrative Fee shall be deducted from the total annual appropriation to MAIN STREET prior to MAIN STREET delivering the Net Grant Award to HOWARD.
2. For HOWARD's successful participation in the Program, the City agrees to provide the annual appropriation to MAIN STREET for a period of fifteen (15) consecutive Program Years, or until the Grant Cap is reached, whichever occurs first, unless sooner terminated in accordance with Paragraphs 5 or 6 of this Section II.
3. The current Governing Authorities of the City by virtue of approving and executing this Tri-Party Agreement have found and determined that they have the authority to bind the City to this Tri-Party Agreement for a term not to exceed fifteen Program Years, but the current Governing Authorities hereby qualify and limit its representation of its authority and do hereby notify HOWARD and MAIN STREET that the current Governing Authorities cannot and do not guarantee that future Governing Authorities elected after the expiration of the term of the current Governing Authorities will not seek to void this Tri-Party Agreement and not make the annual appropriations of the Grant Award to MAIN STREET. The current Governing Authorities represent that only a court of competent jurisdiction can make a final determination about whether the City is bound to the terms of this Tri-Party Agreement for a term not to exceed fifteen Program Years. In the event the future Governing Authorities of the City void this Tri-Party Agreement, or assert that it is void, the City and HOWARD shall immediately release MAIN STREET from all duties hereunder.

HOWARD further acknowledges that the only funds due to HOWARD from MAIN STREET are those which are appropriated to MAIN STREET from the City (less the Administrative Fee), and in the event the City does not appropriate to MAIN STREET the funds associated with any Net Grant Award, for any reason, HOWARD agrees to hold MAIN STREET harmless from any and all claims associated therewith.

4. HOWARD, MAIN STREET and the City will execute and deliver to each other any other documentation consistent with this Tri-Party Agreement that is reasonably necessary to carry out the terms hereof.
5. If HOWARD fails to complete construction of the Project and receive a Certificate of Occupancy by October 1, 2021, then this Tri-Party Agreement will automatically terminate, and the responsibilities of the City and MAIN STREET, as identified in this Tri-Party Agreement, shall terminate effective October 2, 2021, unless extended by mutual agreement of the parties.
6. The City is agreeing to appropriate to MAIN STREET an amount of Sales Tax reimbursement and Property Tax reimbursement equivalent to MAIN STREET'S Administrative Fee plus the Net Grant Award to HOWARD as calculated by the Verified Tax Increases in Property Tax on the improvements and in sales tax resulting from only the improvements to the building and grounds on the real property that is the location of HOWARD'S Project and specifically excludes any increase in Property Tax or Sales Tax resulting from any further expansion or additional development at the site of the Project that was not included on the Grant Application. If at any time during the first five Program Years the fee simple ownership of the real property on which is located HOWARD'S Project is conveyed, transferred or assigned by HOWARD to any other entity, whether by specific act or operation of law, the obligations of MAIN STREET and the City under this Tri-Party Agreement, and the obligations of MAIN STREET under the Program Agreement, shall automatically terminate, unless the City and MAIN STREET have granted their prior written consent to the conveyance, transfer or assignment, which consent may not unreasonably be withheld by City or MAIN STREET. During the first five Program Years, in the event the City and MAIN STREET authorize such conveyance, transfer or assignment, the rights, duties and obligations of HOWARD shall be assigned to and assumed by the party to which the real property of the Project is conveyed, transferred or assigned. After five Program Years, HOWARD may convey, transfer or assign the property and its rights and duties under this Tri-Party Agreement to any other entity, provided the entity accepts and agrees in writing to the terms of this Tri-Party Agreement.
7. The City agrees to establish an entertainment district as that term is defined in Section 17-29-3 of the Mississippi Code of 1972 encompassing at least the Project. Furthermore, the City agrees to consent to the diversion of the City's portion of sales tax rebates for HOWARD'S participation in TIP. Additionally, in the event the City and HOWARD determine that the grant structure contemplated hereby is not feasible, the City agrees to utilize the Regional Economic Development Act in connection with TIF or any other incentive available under Mississippi law to provide the requested incentives for the Redevelopment Project, subject to final approval of reasonable grant agreements.

III. MAIN STREET REPRESENTATIONS, RIGHTS AND DUTIES

1. MAIN STREET and City provided a grant application form to HOWARD for participation in MAIN STREET's Program in the City of Biloxi, and MAIN STREET and the City have approved HOWARD's completed application.
2. MAIN STREET will administer the Program to ensure that HOWARD meets all requirements and obligations identified herein prior to distribution of any Net Grant Award.
3. MAIN STREET's administration of the Program includes receipt of the annual appropriation from the City, determining (in conjunction with the City) the appropriate amount of funds due to MAIN STREET for its Administrative Fee and due to HOWARD from Main Street's Net Grant Award, if any, and disbursing the Net Grant Award to HOWARD in accordance with this Tri-Party Agreement.
4. Upon MAIN STREET's annual receipt of the appropriation, MAIN STREET shall prepare a report to HOWARD and the City (the "Annual Report") which will include, but is not limited to: (a) the Verified Tax Increase for the year and documentation supporting the amounts of sales taxes paid by tenants and sub-tenants to the Mississippi Department of Revenue and Property Tax to the City, county and school district and the calculations to determine the Verified Tax Increase; (b) the amount of the Net Grant Award for the year; (c) the amount of the Administrative Fee retained by MAIN STREET; and (d) the amount of total eligible incentive award (the Net Grant Award) to HOWARD remaining under the Grant Cap after each annual Net Grant Award.

IV. GENERAL PROVISIONS

1. All notices, requests, demands, and other communications which may or are required to be delivered hereunder will be in writing and will be delivered by messenger, by a nationally-recognized overnight mail delivery service or by certified mail, return receipt requested, and by email to the following:

CITY OF BILOXI
Attn: A. M. Gilich, Jr., Mayor
140 Lameuse Street
Biloxi, MS 39530
Email: mayor44@biloxi.ms.us

With a copy to
Peter Abide, City attorney
149 Lameuse Street

Biloxi, MS 39530
PAbide@curriejohnson.com

HOWARD AVENUE DEVELOPMENT, LLC
Attn: Lee Young, Manager
10278 Gorenflo Road, Suite B
D'Iberville, MS 39540
Email: lyoung@cableone.net

With a copy to:
Chris G. Gouras, Jr.
PO Box 1465
Ridgeland, MS 39158
chrisgouras@gourasandassociates.com

BILOXI MAIN STREET
Attn: Kay Miller, Executive Director
932 Howard Avenue
Biloxi, MS 39530
kmiller@biloxi.ms.us

2. A modification or amendment of this Tri-Party Agreement, or any of the provisions herein, will not become effective unless executed in writing by all Parties.

3. Except for disclosure to legal counsel, accountant or financial advisors, no Party to this Tri-Party Agreement shall disclose the terms hereof and HOWARD'S applications documents to any person who is not a Party or signatory hereto, unless disclosure thereof is required by law or otherwise authorized by this Tri-Party Agreement or consented to by all Parties in writing. Unauthorized disclosure of the terms of this Tri-Party Agreement and HOWARD'S application documents shall be a material breach hereof. The Parties understand and agree that this Tri-Party Agreement will be presented to a public meeting of the Biloxi City Council for consideration and adoption and that it is and will continue to be a public record under Mississippi law. Also, the Parties understand and agree that HOWARD'S application documents will be subject to review by the Biloxi City Council, will remain on file in City's records as confidential, proprietary information unless disclosure thereof is required by law or otherwise authorized by this Tri-Party Agreement or consented to by all Parties in writing.

4. Nothing contained in this Tri-Party Agreement shall be construed as constituting any Parties as principal and agent, partners or joint venturers.

5. If any provision of this Tri-Party Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision herein is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

6. This Tri-Party Agreement shall be construed in accordance with the laws of the State of Mississippi. Any and all disputes arising hereunder shall be tried in a court of competent jurisdiction in the Second Judicial District of Harrison County, Mississippi. By execution hereof, each Party consents to jurisdiction in and venue in the Second Judicial District of Harrison County, Mississippi, and waives any and all defenses or objections to jurisdiction or venue in the Second Judicial District of Harrison County, Mississippi.

7. This Tri-Party Agreement may be executed in separate counterparts, each of whom so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. The Parties stipulate that a photocopy of an executed original shall be admissible in evidence for all purposes in any proceeding as between the Parties.

8. This Tri-Party Agreement has been jointly drafted by all Parties, and in the event of any ambiguity, such ambiguity shall not be construed against any drafting Party.

_____ **Signature Page Follows** _____

AGREED:

City of Biloxi, Mississippi:

By: _____
A. M. GILICH, Jr. MAYOR

DATE: _____

HOWARD AVENUE DEVELOPMENT, LLC:

By: _____
LEE YOUNG, MANAGER

DATE: _____

BILOXI MAIN STREET DISTRICT

By: _____
KAY MILLER, EXECUTIVE DIRECTOR

DATE: _____

EXHIBIT "A"



Legal Descriptions of all parcels that are subject to this Agreement are attached on the following pages: