

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5D

Council Meeting Date: June 23, 2026

ITEM TITLE: RESOLUTION
 INTRODUCED BY: Mayor Andrew "FoFo" Gilich
 CONTACT PERSON: Richard Weaver, Chief Administrative Officer
 Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution authorizing sale of surplus property to SJI Properties, LLC pursuant to Miss. Code Ann. §21-17-1 and §57-1-1 (1972), as amended, and for related purposes

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit 1: Agreement for Sale and Purchase

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

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

ACTION TAKEN:

Resolution No.

RESOLUTION AUTHORIZING SALE OF SURPLUS PROPERTY TO SJI PROPERTIES, LLC,
PURSUANT TO MISS. CODE ANN. §21-17-1 AND §57-1-1 (1972), AS AMENDED, AND
FOR RELATED PURPOSES

WHEREAS, by Resolution No. 262-26, the City Council of Biloxi did declare real property located on Kuhn Street, identified as Tax Parcels No. 1410H-07-029.000 and 1410H-07-030.000, and further described as Exhibit "A" to the Agreement (Exhibit "1") attached hereto, consisting of two (2) parcels adjoining the Kuhn Street Water Tower (the "Property"), to be surplus property that is no longer needed for municipal or related purposes and will not be used in the future for the operation of the City, and ordered the Property to be sold, pursuant to statutory procedures;

WHEREAS, as provided in Miss. Code Ann. §21-17-1(2)(a), and §57-1-1 (1972), as amended, the Mayor and City Council of Biloxi do hereby further find, declare, and determine that the sale of the Property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality and that the use of the Property for the purpose for which it is to be sold and conveyed will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof;

WHEREAS, SJI PROPERTIES, LLC, has offered to purchase the property under the terms and conditions of the proposed Agreement for Sale and Purchase, attached hereto and made a part of this resolution as Exhibit "1", for the purpose of building and renting multifamily housing units, which offer should be accepted as being in the best interest of the City of Biloxi; and

WHEREAS, under the terms of the proposed Agreement (Exhibit "1") and pursuant to Miss. Code Ann. §21-17-1(2)(b)(i) (1972) as amended, the purchase price shall be not less than

the sum of (A) the average of the fair market price for such property as determined by two (2) professional property appraisers selected by the municipality and approved by the purchaser, plus (B) twenty-five percent (25%) of the average of the fair market price determined under (A) in this Whereas paragraph;

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

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

SECTION TWO. The offer made by SJI Properties, LLC, to purchase the real property (the "Property") described above and in the proposed Agreement (Exhibit "1") is hereby accepted, and the Mayor is hereby authorized to execute and deliver the Agreement in substantially the form as the document attached as Exhibit "1" hereto.

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

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT FOR SALE AND PURCHASE (“Agreement”), made as of the Effective Date as provided herein, by and between **SJI PROPERTIES**, a New York limited liability company (“Buyer”), who agrees to buy, and **the CITY OF BILOXI, MISSISSIPPI**, a Mississippi municipal corporation (“Seller”), who agrees to sell, the property hereinafter described on Exhibit “A” to this Agreement, to be more fully described in a survey and legal description as provided herein (the “Property”) according to the terms and conditions set forth herein. The “Effective Date” of this Agreement is the date on which the Mayor signs and delivers this Agreement to the Buyer.

1. PURCHASE PRICE:

- (a) The total purchase price of the Property shall be the sum of the following two amounts:
 - i. The amount determined by the average of the fair market price (fair market value) for the Property as determined by two (2) professional property appraisers selected by the Seller and approved by the Buyer, plus
 - ii. The amount that is twenty-five percent (25%) of the amount determined according to sub-paragraph (i) immediately above.
- (b) The purchase price shall be paid in cash at closing.
- (c) The cost of appraisals that formed the basis for this Purchase Price shall be paid ½ by Buyer and ½ by Seller at Closing.
- (d) The legal description and sketch of the Property stated and depicted in the Survey to be made as provided herein shall be the legal description of the Property conveyed in the Seller’s Warranty Deed to Buyer at Closing.

2. DEPOSIT:

- (a) As security (earnest money) for Buyer’s performance hereunder, Buyer shall deposit the amount of Five Thousand 00/100 Dollars (\$5,000.00) with the Seller upon execution of this Agreement by cash, certified or bank check or by wire transfer (the “Deposit”) within ten (10) days of the date Buyer receives this Agreement executed by the Mayor.
- (b) The Deposit shall be applied as a credit to the Purchase Price due at the Closing.

3. TIME IS OF THE ESSENCE: Unless otherwise indicated, time is expressly made of the essence in this Agreement.

4. TITLE OBJECTIONS: No later than forty-five (45) days prior to Closing, Buyer shall produce, at its expense, a title binder or title certificate in which to furnish Seller with a written statement of any title objections, UCC-1 or UCC-2 Financing Statements, or encroachments, and other facts materially affecting the marketability of the Property as revealed by a current title examination and survey. Seller shall have 30 days from the receipt of such objections (the "Title Cure Period") to cure all valid title objections. Seller shall satisfy any existing liens or monetary encumbrances identified by Buyer as title objections in the preceding sentence. If Seller fails to

cure any other valid material title objections of Buyer within the Title Cure Period (and fails to provide Buyer with evidence of Seller's cure satisfactory to Buyer and to the Title Company), then within five days of the expiration of the Title Cure Period, Buyer may as Buyer's sole remedies: (1) rescind the transaction contemplated hereby, in which case Buyer shall be entitled to the return of Buyer's Deposit; (2) waive any such objections and elect to close the transaction contemplated hereby irrespective of such title objections; or (3) extend the Closing Date for a period of up to fifteen days to allow Seller further time to cure such valid title objections. Buyer shall have the right to re-examine title prior to Closing and notify Seller at closing of any material title objections which appear of record after the date of Buyer's initial title examination and before Closing, which shall be subject to the same procedure for cure.

5. DUE DILIGENCE.

(a) Buyer shall have an initial period of one hundred eighty (180) days from the Effective Date of this Purchase and Sale Agreement (the "Initial Due Diligence Period") to inspect the Property and examine all records, title matters, surveys, environmental conditions, zoning matters, governmental approvals, tax credit applications, bond financing approvals, site feasibility, utility availability, financing opportunities, public incentive opportunities, and all other matters deemed necessary or desirable by Buyer in Buyer's sole and absolute discretion in connection with Buyer's proposed multifamily residential development project.

(b) Buyer shall have the option to extend the Initial Due Diligence Period for two (2) additional periods of ninety (90) days each (each an "Extension Period") by providing written notice to Seller prior to expiration of the then-current Due Diligence Period, and an additional \$5,000.00 earnest money Deposit will apply to each extension. Upon Buyer's exercise of the first Extension Period, the initial earnest money Deposit shall become non-refundable, except in the event of Seller default, failure of title, or failure of contingencies expressly stated herein, but shall remain applicable to the Purchase Price at Closing.

(c) Buyer's obligations under this Agreement, including Buyer's obligation to close, are expressly contingent upon Buyer obtaining, or determining in Buyer's sole and absolute discretion that Buyer is satisfied with the status, likelihood, scope, timing, conditions, economics, and feasibility of obtaining, all governmental approvals required or deemed necessary by Buyer for Buyer's intended development and operation of the Property as a multifamily residential project.

(d) Such governmental approvals may include, without limitation: zoning approvals; rezoning approvals; Planned Development - Infill (PD-I) approvals; Planned Development - Residential (PD-R) approvals; subdivision approvals; variances; site plan approvals; architectural approvals; utility approvals, including without limitation geothermal heating and cooling; drainage approvals; environmental approvals; wetlands approvals; permits; licenses; building permits; rights-of-way approvals; access approvals; and any approvals, consents, permits, authorizations, or agreements required from the City of Biloxi, Harrison County, the State of Mississippi, the Mississippi Home Corporation (including without limitation its approval of tax credits and bond financing), or any federal governmental authority having jurisdiction.

(e) During the Due Diligence Period and any extensions authorized under this Agreement, the Buyer shall have the following rights and duties among others provided in this Agreement:

i) Buyer shall obtain at its expense a survey of the Property identified in Exhibit "A" to this Agreement. The survey ("Survey") shall be made by a registered Mississippi

land surveyor. Seller shall cause the surveyors to be allowed on the Property during normal business hours. The legal description and sketch of the Property stated and depicted in the Survey shall be the legal description of the Property conveyed in the Seller's Warranty Deed to Buyer at Closing.

ii) Buyer shall be entitled to have the Property inspected for environmental damage. Seller shall cause the environmental surveyors to be allowed on the Property during normal business hours. Such inspections shall be at Buyer's own expense

iii) Buyer shall be entitled to conduct such other studies at Buyer's own expense to determine the feasibility of the Property for its business purposes. Seller shall cause such other persons in pursuit of such determination to be allowed on the Property during normal business hours.

iv) Buyer shall not unnecessarily or unreasonably disturb the Property but rather shall leave the Property in substantially the same condition as it exists upon the signing hereof.

6. [LEFT BLANK INTENTIONALLY.]

7. **TERMINATION DURING THE DUE DILIGENCE PERIOD.** Notwithstanding any provisions herein, Buyer shall be entitled to terminate this agreement at any time during the Due Diligence Period and any extension thereof and receive the return of the initial Deposit if termination occurs within the initial Due Diligence Period or receive the return of the extension Deposit(s) if termination occurs during an extension of the Due Diligence Period. Within fourteen (14) days following receipt of said notice of termination, Seller will issue a payment to Buyer, a sum equal to the Deposit then due.

8. **REPRESENTATION AND WARRANTIES BY SELLER.** Seller represents, warrants and covenants to Buyer as follows:

(a) At the time of Closing, Seller shall have the right, title and power to convey good and marketable fee simple title to Buyer of the Property, free and clear of all encumbrances other than those matters set forth and permitted by Buyer according to the process stated in Paragraph 4 of the Agreement.

(b) Prior to the Closing, Seller shall not create or permit to be created any easements, covenants, conditions or restrictions affecting any portion of the Property without the prior written consent of Buyer.

(c) The terms of this paragraph shall survive the closing.

9. **BUYER'S WARRANTIES:** Buyer represents to Seller as follows:

(a) Buyer has full authority to execute, deliver and perform this Agreement and has obtained all consents of any other party that are required for such purpose, if any.

(b) All action required pursuant to this Agreement that is necessary to effectuate the transaction contemplated herein will be taken promptly in good faith by Buyer, and Buyer shall furnish Seller with such further assurances as are reasonably required in connection with the effectuation of the Closing of this transaction.

10. DISCLAIMERS, RELEASE AND INDEMNITY:

(a) It is understood and agreed that Seller and Seller's agents and employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (a) matters of title, (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials (as hereinafter defined) in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any under shoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) usages of adjoining property, (i) access to the Property or any portion thereof, (j) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (k) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances (other than Seller's representation that the Property is eligible for multifamily residential use according to Seller's Land Development Ordinance), codes or other similar laws, (l) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (m) any other matter affecting the stability and integrity of the Property, (n) the potential for further development of the Property, (o) the merchantability of the Property or fitness of the Property for any particular purpose, (p) tax consequences, (q) the income and expenses derived from the use and operation of the Property, or (r) any other matter or thing with respect to the Property or this transaction.

(b) Buyer expressly acknowledges and agrees that Seller shall sell and convey to Purchaser and Buyer shall accept the Property "AS IS, WHERE IS, WITH ALL FAULTS." Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property. Buyer has or will, prior to its Closing of the sale and purchase set forth in this Agreement, conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, any and all financial, physical, and environmental conditions thereof, and shall rely exclusively upon same. Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deems necessary prior to Buyer's closing of the sale and purchase set forth in this Agreement in order to satisfy itself as to the condition of the Property, including, without limitation, the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not

upon any information provided by or on behalf of Seller or its agents or employees with respect thereto. Buyer assumes the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer hereby represents and warrants to Seller that: (a) Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Buyer is purchasing the Property for business, commercial, investment or other similar purpose. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

(c) Buyer acknowledges that prior to its entry into this Agreement, it had the opportunity to inspect the Property in order to observe its physical characteristics and existing conditions and, prior to the closing of the sales set forth in this Agreement will have the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Buyer deems necessary, and Buyer hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation, liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("CERCLA"), regarding the condition, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Buyer further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

(d) For purposes hereof, "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, mold, mildew, biotoxins, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

(e) Buyer agrees to indemnify, defend and hold Seller harmless of and from any and all liabilities, claims, demands, and expenses of any kind or nature which arise or accrue after Closing and which are in any way related to the ownership, maintenance, or operation of the Property by Buyer and its successors and assigns, including, without limitation, in connection with Hazardous Materials. Buyer and Seller hereby specifically agree that Seller shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to, any special or consequential damages, property damage, personal injury, loss of income, emotional distress,

death, loss of use, diminution or loss of value of the Property, economic damages, and adverse health effects relating to, arising from, resulting from or caused by mold and/or mildew accumulation at the Property regardless of the cause of said mold and/or mildew or when same arose.

(f) The terms and conditions of this Paragraph 10 shall expressly survive the Closing.

Buyer acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without the disclaimers and other agreements set forth above.

11. CONVEYANCE:

Seller shall convey title to the Property by fee simple absolute, by a good and sufficient Warranty Deed (the "Deed") to Buyer. The Deed shall convey good, clear and marketable title, subject only to the matters set forth in Paragraph 4. The Deed shall be in proper form for recording and shall be duly executed, acknowledged and delivered by Seller at Closing.

12. CLOSING:

(a) Unless extended pursuant to the terms of this Agreement, the Closing of this transaction, as contemplated hereunder (the "Closing"), shall take place within thirty (30) days following expiration of the Due Diligence Period, including any exercised Extension Periods, unless otherwise agreed to in writing by the parties (the "Closing Date") at the offices of Wheeler & Wheeler, PLLC, 185 Main Street, Biloxi, MS 39530 (the "Closing Attorney"). Buyer may move the Closing Date to an earlier date provided such earlier date is agreeable with Seller. Buyer may extend the Closing Date by up to an additional fifteen (15) days upon written notice given to Seller (the "Extended Closing Date").

(b) Seller shall deliver or cause to be delivered to the Buyer on the Closing Date, at Seller's sole cost and expense the Warranty Deed, in recordable form, and any other documents required under this Agreement or ordinarily required by the Closing Attorney to be executed by Seller at Closing of a transaction of this type.

(c) At the Closing, Buyer shall deliver or cause to be delivered to the Closing Attorney on or before the Closing Date, at Buyer's sole cost and expense, the following:

(i) The Purchase Price and Buyer's closing costs and fees in cash by a wire transfer, same day U.S. federal funds wired for credit into the Closing Attorney's escrow account, or by certified cashier's check, which funds must be delivered in a manner to permit the Closing Attorney to deliver said funds to Seller or its designee on the Closing Date;

(ii) Such conveyance or tax forms or returns, if any, as are required to be delivered or signed by Buyer by applicable state and local law in connection with the conveyance of the Property;

(iii) Evidence of the existence, organization and authority of Buyer and of the authority of the persons executing documents on behalf of Buyer reasonably satisfactory to the underwriter for the title policy; and

(iv) Any other documents required under this Agreement or ordinarily required by the Closing Attorney to be executed by Buyer at Closing of a transaction of this type.

13. **EXPENSES:** Seller shall be responsible for the payment of costs related to preparation of the Deed. Buyer shall be responsible for the cost of all title insurance premiums, expenses associated with any financing, and costs associated with any inspections, tests and investigations conducted by it or on its behalf, as well as all other closing fees and costs. Seller and Buyer shall each pay one-half of the total cost of the two appraisals obtained by the Seller for determining the Purchase Price.

14. **TAXES:** The Seller is exempt from ad valorem taxes on real property. Seller represents that there are no ad valorem taxes due and there will be no ad valorem taxes levied on the Property for the tax year of the sale.

15. **DEFAULT:**

(a) In the event of any material default by Seller of its obligations hereunder, Buyer, following delivery of five (5) days' notice to Seller to cure, shall have only the following rights and remedies:

(i) Buyer shall have the right to waive the breach, default or other closing condition and proceed to Closing in accordance with the provisions of this Agreement without a reduction in the Purchase Price; or

(ii) Buyer shall have the right to terminate this Agreement by notice to Seller, in which event the Deposit shall be refunded to Buyer, and all obligations of Buyer and Seller under this Agreement shall terminate; or

(iii) Buyer may seek specific performance.

Buyer shall have no right to recover damages from Seller.

(b) If Buyer fails to perform any of the covenants of this Agreement applicable to Buyer, Seller, following delivery of five (5) days' notice to cure (except that no notice of cure shall be needed, given, or exist by reason of Buyer's failure to timely close on the scheduled Closing Date, may retain the Deposit actually paid by Buyer as liquidated and agreed upon damages as its sole and exclusive remedy in consideration for the execution of this Agreement and in full settlement of any claims for damages, and Seller and Buyer shall be relieved of all further obligations and liability under this Agreement.

16. **ATTORNEY'S FEES; COSTS:** If any litigation is instituted for the purposes of enforcing or interpreting any provision of this Agreement, the prevailing party or parties, as determined by the court having jurisdiction thereof, shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred in connection therewith, including, but without limitation, reasonable attorney's fees at the pretrial level, the trial level, and in connection with all appellate and bankruptcy proceedings. Fees for paralegal and other legal support personnel shall also be recoverable in accordance with the preceding sentence.

17. **OTHER AGREEMENTS:** No prior or present agreements or representations shall be

binding upon Buyer or Seller unless included in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

18. **AGREEMENT NOT RECORDABLE; PERSONS BOUND:** Neither this Agreement nor any notice of it shall be recorded in the land records of the Second Judicial District of Harrison County, Mississippi This Agreement shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all.

19. **TIME:** The "Effective Date" of this Agreement is the date on which the Mayor of Biloxi signs the Agreement and delivers a copy thereof to the Buyer. Time periods of five (5) days or less shall be computed without including Saturday, Sunday, or national legal holidays and any time periods ending on a Saturday, Sunday, or national legal holiday shall be extended until 5:00 p.m. on the next business day.

20. **BROKER:** Seller has no broker in this transaction, and no commissions are due from the Seller to any broker in this transaction. The Buyer's broker is Kim Ross Bush, Commercial Girls, Coldwell Banker Alfonso Realty, 2003 Bienville Blvd., Ocean Springs, MS 39564; the Buyer shall be responsible for paying compensation to its broker under a separate agreement between Buyer and its broker.

21. **FINANCING:** This Agreement is an all cash transaction.

22. **NOTICES:** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile or email, upon electronic or telephonic confirmation of receipt from the receiving facsimile machine or the receiving computer; (c) if sent by overnight courier, with request for next business day delivery, on the next business day after sending; or (d) whether actually received or not, two (2) business days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Paragraph):

If to Seller: City of Biloxi
 Attn: Mayor A. M. Gillich, Jr.
 140 Lameuse Street
 Biloxi, MS 39530
 Tel: 228-435-6254
 PAbide@curriejohnson.com

with copies to: Peter Abide, City Attorney
 140 Lameuse Street
 Biloxi, MS 39530
 Tel: 228-435-6254
 PAbide@curriejohnson.com

If to Buyer: Divya Tandon, Manager
SJI Properties, LLC
240 W. 40th Street, 2d Floor
New York, NY 10018
(917) 774-4628
dt@thesji.com

With copies to
David A. Wheeler, Esquire
Wheeler & Wheeler, PLLC
P.O. Box 264
Biloxi, MS 39533
Tel: (228) 374-67720
Fax: (228) 374-6721
Email: david@wheelerattys.com

22. **ASSIGNABILITY:** Except for an assignment to an entity wholly owned by Buyer or Buyer's owners, this Agreement may not be assigned by Buyer without the prior written consent of Seller.

23. **PARAGRAPH HEADINGS:** The paragraph headings used in this Agreement are for convenience only and shall not be used in interpreting or construing any provision of this Agreement.

24. **CONSTRUCTION OF AGREEMENT:** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court should construe this Agreement more strongly against either party.

25. **COUNTERPARTS AND DUPLICATE ORIGINALS:** To facilitate the execution of this Agreement, any number of counterparts of this Agreement may be executed and delivered. It shall not be necessary for each party's signature to appear on each counterpart, but it shall be sufficient that each party's signature appear on one or more of the counterparts. Each of the counterparts shall be considered an original and all of them, together, shall constitute one and the same instrument. A facsimile copy or an emailed PDF copy of the Agreement executed by the party shall be considered for all purposes as an original.

26. **FURTHER ACTION:** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.

27. **WAIVER:** The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed a waiver of any other provision of this Agreement or of any future breach of the provision so waived.

28. **GOVERNING LAW:** The laws of the State of Mississippi, including without limitation Mississippi's laws regarding the conflict of laws, shall govern the validity, construction,

enforcement and interpretation of this Agreement. Venue for any legal action arising hereunder shall be in the appropriate court of competent jurisdiction in and for the Second Judicial District of Harrison County, Mississippi, or the United States District Court for the Southern District of Mississippi, Southern Division. If any provision of this Agreement is deemed unenforceable, the remaining provisions shall remain in full force and effect.

29. **SPECIAL PROVISIONS:** Agreement is contingent upon:

Necessary and proper governmental approvals of a Planned Development – Residential Zoning District or Planned Development – Infill Zoning District, under the Land Development Ordinance, for the Property to allow Buyer to feasibly finance construction of multifamily rental units on the Property and rent them to families at rates in compliance with requirements and rules of the Mississippi Home Corporation pertaining to any financial and tax credit programs available for assistance to the Buyer.

Water, sewer and all other required utility services for Purchaser are currently available to the Property in the required capacity.

Inspections to be performed at Buyer's expense within the Due Diligence Period may include, without limitation, at Buyer's discretion, a wetlands review, geotechnical/soil boring, environmental, and any other inspection deemed appropriate by Buyer. Seller agrees for Buyer to have access to property to perform all desired inspections. Results of all inspections must be acceptable to Buyer, or this Agreement will be considered null and void and earnest money will be refunded to Buyer.

There are no other prohibitions or restrictions that would preclude Buyer from building its planned multifamily residential real estate development on the parcels immediately after Closing.

30. **STATEMENT:** Each undersigned party to this transaction acknowledges that he/she has been duly authorized to execute this Agreement and further that they have read and understand this Agreement and hereby acknowledges receipt of a copy of this document. When herein used the singular includes the plural and the masculine includes the feminine.

SIGNATURE PAGE FOLLOWS_____

WITNESS OUR SIGNATURES on the date specified below for each of the parties herein.

SELLER:

BUYER:

THE CITY OF BILOXI, MISSISSIPPI

SJI PROPERTIES, LLC

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

BY: _____
DIVYATANDON, MANAGER

DATE: _____

DATE: _____

STACY THACKER, Municipal Clerk

DATE: _____

EXHIBIT "A" TO THE AGREEMENT

