



**CITY OF BELLE ISLE, FLORIDA  
CITY COUNCIL AGENDA ITEM COVER SHEET**

**Meeting Date:** August 7, 2018

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Donation of 4.07 Acres at 2635 McCoy road

**Background:** Action on this issue was tabled until the City Attorney and the attorney for the donor could come to an agreement on the agreement language. This was accomplished.

As part of the approval for the commercial development at 2635 McCoy Road, several conditions were placed on the application. One of the conditions was that the property owner would donate the R-1A Zoned portion of the parcel (4.07 acres) to the City in exchange for being allowed to build a hotel to a height of 48 feet (4 stories) on the commercial part of the parcel.

As part of the agreement with the Trentwood Boulevard neighborhood, once the land is conveyed to the City, the City will immediately apply to rezone this property from R-1A to OS and leave land in its present condition to allow for a vegetative buffer of approximately 150 feet between the commercial property and the Trentwood Neighborhood. This buffer will be in addition to an 8-foot wall that is to be built on the commercial parcel.

**Staff Recommendation:** Approve the Agreement

**Suggested Motion:** I move we approve the Donation Agreement with Thirumala Property's LLC for the donation of 4.07 acres of land located at 2635 McCoy Road.

**Second Motion:** I move that upon conveyance of the land that the City Manager apply to have the property rezoned from R-1A to OS (Open Space).

**Alternatives:** Do not accept the donation

**Fiscal Impact:** TBD by appraisal

**Attachments:** Donation Agreement

## LAND DONATION AGREEMENT

THIS LAND DONATION AGREEMENT (the "Agreement") is made this \_\_\_\_ day of July, 2018, by and between **Thirumala Property's LLC**, a Florida limited liability company, whose address is 10644 Lago Bella Drive, Orlando, Florida 32832 ("Owner") and **City of Belle Isle**, a municipal corporation of the State of Florida, whose address is 1600 Nela Avenue, Belle Isle, Florida 32809 ("City"). The Owner and City are sometimes herein jointly referred to as the "Parties."

### RECITALS:

WHEREAS, the Owner represents and warrants that it is the fee simple owner of that certain 4.07 +/- acre real property located in Belle Isle, Orange County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property") which is a portion of that larger parcel owned by Owner having Orange County Tax Parcel Identification Number 30-23-30-0000-00-005; and

WHEREAS, the Owner desires to make a donation of the Property to the City and the City desires to accept such donation upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants below, the receipt and adequacy of which are hereby acknowledged, the parties do hereby agree as follows:

1. Donation. The Property shall be conveyed by Owner to City on the terms set forth in this Agreement as a donation to the City, and there is no purchase price or other monetary consideration from the City to the Owner for such conveyance. Owner shall not receive any impact fee credits or ad valorem tax credits concerning the conveyance of the Property to the City. The Parties agree that the Owner may seek a federal income tax deduction or credit for this donation of Property to the City which is a political subdivision of the State of Florida. Owner is donating the land in part to satisfy a voluntary condition of a building height variance to a maximum of 48 feet for the remainder of Orange County Tax Parcel Identification Number 30-23-30-0000-00-005 which will be continued to be owned by the Owner after the Closing. If for any reason the Closing contemplated by this Agreement does not occur, the variance condition for conveying the Property to the City shall not have been satisfied and the building height variance cannot be used or enjoyed by the Owner or its successors and assigns. Thus, no further development orders or building permits utilizing such building height variance for the remainder property will be issued unless and until the Closing hereunder occurs.

2. Title. The Owner shall convey good, marketable and insurable title to the Property to the City by special warranty deed, which shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in City's sole judgment, interfere with the City's intended use of the Property. Without limiting the generality of the foregoing, the Property shall not be subject to any (i) mortgage, security agreement, judgment, lien or claim of lien, or any other title exception or defect that is monetary in nature, or (ii) any leases, rental agreements or other rights of occupancy of any kind, whether written or oral. Owner shall, at its cost, secure all necessary partial release of mortgages and releases of other encumbrances on the Property. Possession of the Property shall be given to the City on the date of conveyance. Owner shall cooperate with the City in correcting any deficiencies in the conveyance documents (including post-Closing), if any, including executing corrective instruments reasonably requested by the City.

3. Beneficial Interest Disclosure. In the event the Property subject to this Agreement is held by an entity or form of ownership as set forth in section 286.23, Florida Statutes, Owner agrees to fully comply with said statutory disclosure of beneficial interest requirements and such disclosures shall be made by affidavit under oath at least ten (10) days prior to Closing, subject to the penalties prescribed for perjury.

4. Ad Valorem Taxes. Owner shall be responsible for paying the ad valorem taxes and special assessments related to the Property and its parent tract, including past due taxes and the pro-rated ad valorem taxes for the Property from January 1, 2018 to the date of conveyance and for all special assessments for 2018 and previous years. If applicable, pro-rated ad valorem taxes and assessments shall be paid and escrowed with the Orange County Tax Collector by the Owner in accordance with the provisions of Section 196.295, Florida Statutes. The City is exempt from paying ad valorem taxes; in no event shall the City be responsible for paying ad valorem taxes or previously assessed special assessments relating to or arising from this transaction.

5. Inspection Period. Owner agrees that City shall have from the Effective Date until the Closing Date, the right to inspect the Property ("Inspection Period"). During the Inspection Period, the City shall have the right to make such investigations, visual inspections, appraisals, land use, engineering studies, environmental site assessments, boundary and topographical surveys, and soil borings of and concerning the Property ("Inspections"). Any entry made on the Property by City or its representatives shall be upon reasonable notice to Owner, and at reasonable times. City shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all persons performing Inspections and all other persons who may or could be harmed during the performance of the Inspections. In the event the closing does not occur, City shall return the Property to its previously existing condition or better, and shall pay for all work and inspections performed on its behalf in connection with the inspections of the Property.

City shall not permit the creation of any lien upon the Property in favor of any contractor, materialman, mechanic, surveyor, architect or laborer as the result of the City's Inspections, and City shall promptly satisfy or have bonded off any such lien filed in the public records. City holds the Owner harmless against and from all disputes, claims, liens, claims of lien, injuries, losses, liabilities, obligations, damages and expenses (including reasonable attorneys' fees, paralegal fees, experts' fees and litigation costs at all trial and appellate levels) resulting or arising from or in any way related to the City's Inspections of the Property. Nothing herein is intended to nor shall constitute a waiver of sovereign immunity by the City or any other privileges, immunities or defenses afforded by law to the City and its officials, officers, employees and agents. This Paragraph 5 shall survive termination and expiration of the Inspection Period and this Agreement.

Within five (5) business days from the Effective Date, Owner will provide the City with a copy of any environmental reports, soil reports and boundary surveys Owner has relating to the Property.

If subsequent to the Effective Date, but prior to the Closing Date, City determines, in its sole discretion, for any reason, or no reason that it does not want to proceed further with the acceptance of the conveyance of the Property, City shall, on or before the Closing Date, have the right to terminate this

Agreement by written notice to the Owner, and thereafter be relieved from any obligations under this Agreement.

6. Closing. On or before sixty (60) days after the Effective Date (the "Closing Date"), the Closing of the transaction contemplated by this Agreement shall occur at the office of the Closing Agent, located at 1947 Lee Road, Winter Park, Florida 32789, or City of Belle Isle City Hall at 1600 Nela Avenue, Belle Isle, Florida, 32809 whichever the Closing Agent may choose; provided, however, the Closing Date may be extended as provided in Paragraph 7. The Owner and City may mutually agree to move up the Closing Date.

7. Title Commitment/Insurance.

A. The City may obtain at Owner's expense, by or through Fishback Dominick as Title Agent within fifteen (15) days from the Effective Date, an A.L.T.A. Form B (Florida) title commitment for title insurance (the "Commitment") on the Property. When used herein, the term "title company" shall mean the title insurance company that issued the Commitment. The Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in City's sole judgment, interfere with the City's intended use of the Property (the "Permitted Exceptions"). In the event the Commitment shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the City, the City shall notify Owner of any objections in writing within ten (10) business days of City's City Manager's receipt of the Commitment specifying the title defects on the Property, and Owner shall have a period of five (5) business days after receipt of such written notice within which to: (i) elect to cure any title defects to the satisfaction of City; or (ii) notify City that Owner elects not to cure any title defects. If Owner elects by written notice to cure the title defects, Owner shall have thirty (30) days to attempt to cure such title defects. Upon Owner's election not to cure or failure to cure the title defects, the City may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive all conditions in this subsection and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such title defects had been found; provided, however, that exceptions may be made to the title insurance policy for such uncured title defects. The Closing Date shall be extended as necessary to effectuate the intent of this section.

B. The City shall have the right, but not obligation to purchase a title insurance policy for the Property upon the election of the City's City Manager. If the City's City Manager elects to purchase an Owner's Policy of Title Insurance for the Property, such is to be purchased by and issued to City at City's expense after closing. Since there is no purchase price, the title insurance policy will be issued for an amount to be agreed upon by title insurance company and City's City Manager.

8. Closing Costs. Owner shall be responsible for deed recording costs, documentary stamp taxes, title commitment expenses up to \$250.00, corrective instrument recording, costs for clearing encumbrances and curing title defects and costs for satisfying mortgages and other liens on the Property conveyed and other closing costs for which the City is not responsible pursuant to the

next sentence. The City will be responsible for the any title insurance policy premium costs if the City's City Manager elects for the City to purchase a title insurance policy and the fees of Fishback Dominick for handing the Closing Agent duties. Each party shall be bear their own attorneys' fees concerning the drafting and negotiation of this Agreement and the transaction contemplated thereby.

9. Owner's Warranties and Representations.

A. The Property is vacant and is to be conveyed "as-is". The provisions of this Paragraph and its subparagraphs shall survive Closing.

B. Owner represents and warrants that Owner does not know of any facts that materially affect the value of the Property, other than those that City can readily observe or that are known by or have been disclosed to City, including but not limited, to concerning: (i) underground or above-ground storage tanks on the Property, or any petroleum, hazardous waste and other environmental contamination, or (ii) unrecorded judgments, leases, options, liens or encumbrances. Owner represents and warrants that it has received no notice from any governmental authority of the existence of any violation or potential violation of any environmental statute, rule or regulation with respect to the Property.

C. Owner warrants that Owner is in sole constructive or actual possession of the Property and Owner has no actual knowledge of another person having any right to possession of the Property, or asserts any claim of title or other interests in it. Owner warrants that Owner has full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. Owner warrants that the Property IS NOT the homestead of Owner.

D. Owner has no actual knowledge of any outstanding contracts for the sale of the Property to any person or persons whomsoever except for the City, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Property. Owner represents that there are no mortgages upon the Property. Owner has not executed and will not execute any instruments that would adversely affect the title to the Property.

E. Owner has no actual knowledge of any assessments that are now liens on the Property as shown in the Official Records. Owner has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against Owner that could attach to the Property or affect title to the Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the Owner unable to consummate this transaction.

F. Owner warrants that there have been no improvements made upon the Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

G. Owner warrants that the undersigned entities and person(s) signing for Owner have full authority to bind Owner to this Agreement and to convey the Property to the City.

H. If, before the conveyance to City, Owner discovers any information or facts that would materially change the foregoing warranties and representations, Owner shall immediately give notice to City of those facts and information. If the facts which cause any warranty or representation to be inaccurate are not remedied before the required Closing date, City may elect to terminate this Agreement and thereby be released from any and all obligations under this Agreement. Notwithstanding any provision in this Agreement to the contrary, the City shall have all remedies available at law or equity if Owner breaches the warranties provided in this Paragraph 9.

I. From and after the Effective Date of this Agreement to the date of the Closing, Owner shall maintain the Property at its expense in the same condition in which the Property exists on the date of this Agreement, natural wear and tear and casualty damage excepted, and Owner shall pay in due commercial course, all uncontested taxes, charges and assessments against the Property and all other costs and expenses of maintaining and operating the Property.

J. Owner shall execute an affidavit at closing attesting that the warranties and representations herein are true on and as of the closing date and that such warranties and representations survive closing.

10. Default. If the City fails to perform any of the covenants of this Agreement, Owner shall have as its sole remedy the right to terminate this Agreement. If Owner fails to perform any of the covenants of this Agreement prior to conveyance of the Property, City shall have as its remedy: (i) the right to terminate this Agreement and thereby be released from any and all obligations under this Agreement, or (ii) seek specific performance of this Agreement. The provisions of this Paragraph shall survive Closing and termination of this Agreement.

11. Closing Agent. Owner and City agree that Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP (herein "Fishback Dominick" or "Closing Agent"), shall serve as legal counsel to City, the Closing Agent and title insurance agent in this transaction. In the event of any dispute, conflict or lawsuit, involving any deposit, or this Agreement or the transaction or obligations or rights under this Agreement, Fishback Dominick may interplead the disputed funds or documents with the Clerk of the Circuit Court. Fishback Dominick makes no representations or warranties (implied or expressed) regarding the Property, including without limitation, concerning the marketability of title, condition, mortgage payoff, liens and encumbrances. Fishback Dominick does not represent the Owner in this transaction and in no event shall Fishback Dominick be conflicted out from representing the City in the event of a dispute between the Parties. Monies held by Closing Agent under this Agreement will be placed in a non-interest bearing account. The provisions of this Paragraph shall survive Closing and termination of this Agreement.

12. Notices. All written notices required to be given hereunder shall be sent via U.S. Mail or overnight delivery (e.g. UPS, Federal Express) to the address for the parties shown in the opening paragraph of this Agreement. Notices to the City shall be sent to the attention of the City Manager with copy at the same address to the attention of the City Attorney.

13. Release. Owner, on behalf of itself and its agents, successors, and assigns hereby fully and forever waives and releases the City of and from any and all compensation, damages and claims

for or arising from the conveyance of the Property to the City, including, without limitation, any and all damage, if any, to Owner's remaining property.

14. Complete Agreement. This Agreement embodies the complete agreement between the Parties hereto and cannot be varied or terminated except by the written agreement of the parties.

15. Parties Bound. This Agreement shall be binding upon and inure to the benefit of City and Owner, and their respective heirs, personal representatives, successors and assigns.

16. Attorneys' Fees. In the event of any litigation between the parties to enforce any provision or right under this Agreement, the unsuccessful party covenants and agrees to pay to the successful party all costs and expenses expressly including, but not limited to, reasonable attorneys' fees incurred by such party in connection with the litigation.

17. Time. Time is of the essence of this Agreement.

18. Dates. If the final day of a period or date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be deemed to fall on the next day which is not a Saturday, Sunday or legal holiday.

19. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile or electronic signatures shall be deemed to be originals.

20. Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue for any lawsuits filed arising from or relating to this Agreement shall be in a court of proper jurisdiction in Orange County, Florida.

21. Mediation. Any dispute, difference, claim or counterclaim between Owner and City arising out of or in connection with this Agreement which cannot be amicably resolved by the parties through good faith negotiations shall first be submitted to nonbinding mediation for resolution. As a condition precedent to the filing of any suit or other legal proceeding, the parties shall endeavor to resolve claims, disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The Parties shall, by mutual agreement, select a mediator within twenty (20) days of the date of the request for mediation. In the event that the Parties cannot agree on a mediator, then each Party shall select a mediator and those two mediators shall select a third mediator certified by the Supreme Court of Florida, who shall serve as the mediator. No suit or other legal proceeding shall be filed until (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation; provided however, a lawsuit may be filed prior to the satisfaction of the mediation requirement in order to preserve a claim that will elapse due to an immediate forthcoming expiration of an applicable statute of limitation. In the event a lawsuit is filed prior to the completion of the mediation requirement, the lawsuit shall be abated upon motion of either party until such time as the mediation requirement has been satisfied. The parties shall share the mediator's fee equally. The mediation shall be held in Orange County, Florida, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

22. Effective Date of Agreement. The Effective Date of this Agreement for all purposes shall be the date when the last one of Owner and City has executed same and after the City Council approves this Agreement. This Agreement and City's obligations to perform hereunder is expressly made contingent upon approval of this transaction by the City Council.

23. Radon Gas Notification. In accordance with the requirements of Florida Statutes Section 404.056(5) the following notice is hereby given:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

24. Open Space, Public Use by City. If the Closing occurs, within thirty (30) days after the Closing, the City will apply to amend the future land use designation for the Property to the Recreation/Open Space future land use and to rezone the Property to the Open Space district zoning. The City warrants that its use of the Property shall be exclusively for a public purpose within the meaning of I.R.C. §170(c)(1).

25. No Waiver. Nothing herein shall constitute a waiver of or be deemed a waiver of the City's sovereign immunity protections. Nothing herein shall constitute or be deemed a waiver or limitation of City's home rule, comprehensive planning, zoning and police power authority. IN WITNESSES WHEREOF, the Parties have executed this document on the dates written below.

26. Further Assurances. The parties shall reasonably cooperate (at no expense to the non-requesting Party) by executing such further assurances as may be reasonably necessary or appropriate to assist Owner in claiming a charitable deduction or credit for the value of the Property for income or other tax purposes.

CITY OF BELLE ISLE, A FLORIDA MUNICIPAL CORPORATION

By: \_\_\_\_\_  
Lydia Pisano, Mayor

Attest:

\_\_\_\_\_  
Yolanda Quiceno, City Clerk

Date: \_\_\_\_\_

[Owner's Signature Page is on Next Page]



Date: 7/19/2018

[Owner's Signature Page is on Next Page]

**OWNER**

**Thirumala Property's LLC, a Florida limited liability company**

**By its Managing Members:**

**THIRUMALA-INC**



By: \_\_\_\_\_

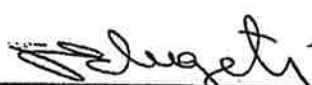
Print Name: JD ELIGETI

Title: PRESIDENT

Date: 7/19/2018

**AND**

**ELIGETI LIMITED PARTERSHIP**

By:  \_\_\_\_\_

Print Name: Jamuna Eligeti

Title: Trustee

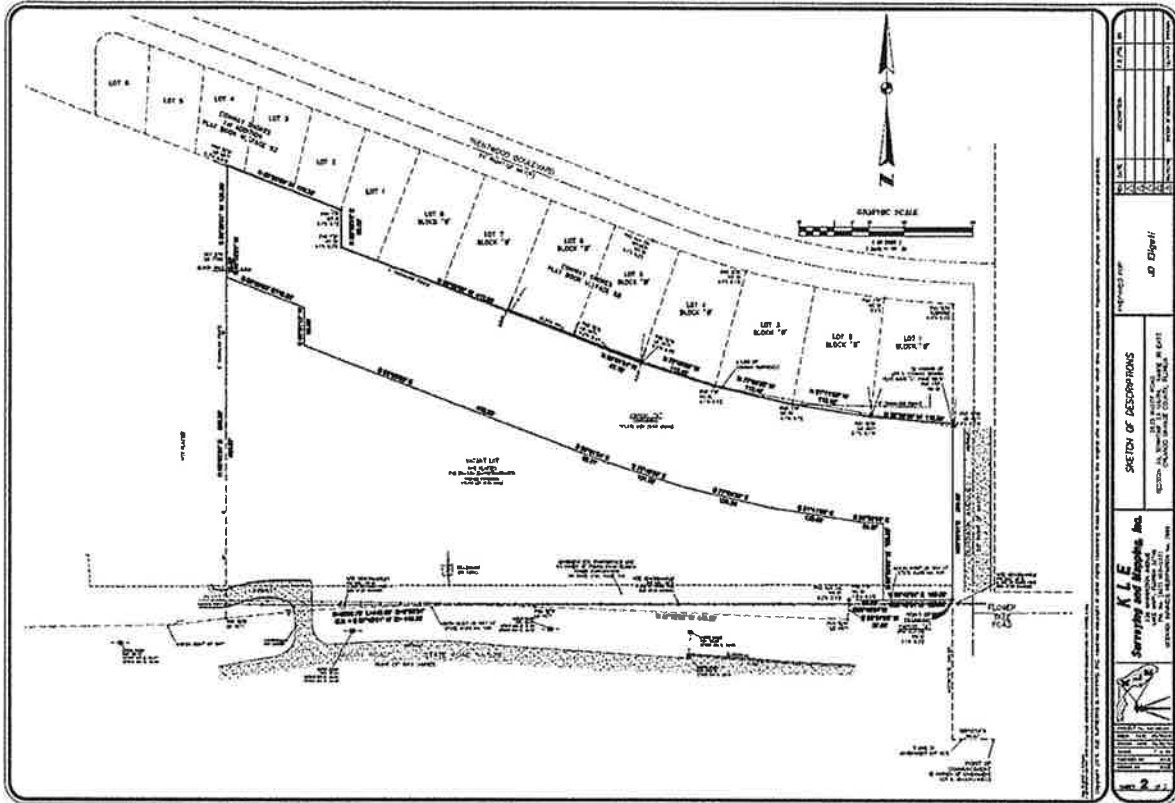
Date: 7/19/2018

## EXHIBIT "A"

A portion of Government Lot 5, Section 30, Township 23 South, Range 30 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southeast corner of Government Lot 5, Section 30, Township 23 South, Range 30 East, Orange County, Florida, thence run South 89°42'04" West along the South line of Government Lot 5 a distance of 60.00 feet; thence run North 00°00'51" East a distance of 200.00 feet to the **Point of Beginning**; thence run North 00°00'51" East a distance of 250.80 feet to the Southeast corner of Lot 1, CONWAY SHORES, as recorded in Plat Book Page 58, Public Records of Orange County, Florida, thence along the South line of said CONWAY SHORES, run North 85°35'39" West a distance of 119.88 feet; thence run North 81°11'29" West a distance of 112.42 feet; thence run North 77°00'29" West a distance of 112.42 feet; thence run North 72°49'29" West a distance of 112.42 feet; thence run North 69°51'34" West a distance of 47.18 feet, thence run North 68°59'09" West a distance of 412.65 feet, thence run North 00°00'51" East a distance of 53.56 feet; thence run North 68°59'09" West a distance of 176.35 feet, thence run South 00°30'01" West a distance of 124.85 feet, thence run South 00°02'31" West a distance of 35.42' feet; thence run South 68°59'09" East a distance of 119.92 feet; thence run South 00°01'12" West a distance of 53.56 feet; thence run South 68°59'09" East a distance of 413.80 feet; thence run South 69°51'34" East a distance of 52.21 feet; thence run South 72°49'29" East a distance of 121.78 feet; thence run South 77°00'29" East a distance of 123.38 feet; thence run South 81°11'29" East a distance of 123.66 feet; thence run South 85°35'39" East a distance of 36.87 feet; thence run South 00°00'51" West a distance of 36.87 feet, to a point on the North right-of-way line of McCoy Road (S.R. #528); thence along said North right-of-way the run North 89°42'04" East a distance of 100.00 feet to the **Point of Beginning**.

Said lands containing 177,236 +/- square feet or 4.07 +/- acres.



s:\clients\baller isle, city of\2635 mccooy road b900-29004\land donation agreement 07-12-2018.docx