

CITY OF BILOXI
AGENDA ITEM
FACT SHEET

Item No.: 4A

Council Meeting Date: 3/31/2015

ITEM TITLE: Resolution

INTRODUCED BY: Council President Felix O. Gines *FG by KC*

CONTACT PERSON: Karen Brashier/Keri Campbell

SUMMARY EXPLANATION: Resolution authorizing modification to the First Amendment to Stadium Sub-Lease and Use Agreement as adopted by Resolution No. 143-15.

Resolution Ordinance Public Hearing Routine Agenda

Exhibits for Review

Contract Minutes Plans/Maps Deed Lease

Other (Specify):

Submittal Authorization: Council President Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote: Councilmember Yes No Other

Lawrence _____
Gines _____
Newman _____
Deming _____

Councilmember Yes No Other

Tisdale _____
Glavan _____
Fayard _____

ACTION TAKEN:

FG/kc 033115COU

Resolution No.

RESOLUTION AUTHORIZING MODIFICATION TO FIRST AMENDMENT
TO STADIUM SUB-LEASE AND USE AGREEMENT
AS ADOPTED BY RESOLUTION NO. 143-15

WHEREAS, on March 24, 2015, the City Council of the City of Biloxi authorized by Resolution No. 143-15 the execution of a First Amendment to the February 11, 2014, Stadium Sub-Lease and Use Agreement (the "Stadium Lease") between the City, Biloxi Baseball, LLC, Beau Rivage Resorts, Inc., and Overtime Sports Management, Biloxi, LLC, regarding the baseball stadium being constructed; and,

WHEREAS, the approved amendment contained some provisions which needed to be revised;

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

The Acting Mayor and Municipal Clerk are hereby authorized to execute on behalf of the City of Biloxi, Mississippi, a revised version of the First Addendum to Stadium Sub-Lease and Use Agreement in substantially the form as the document attached as an exhibit hereto.

FIRST AMENDMENT TO STADIUM SUB-LEASE AND USE AGREEMENT

WHEREAS, on February 11, 2014, the City entered into a Stadium Sub-Lease and Use Agreement (the "Stadium Lease") with Biloxi Baseball, LLC, Beau Rivage Resorts, Inc., and Overtime Sports Management, Biloxi, LLC, regarding the baseball stadium being constructed; and,

WHEREAS, the Stadium Lease contained provisions wherein Biloxi Baseball, LLC, was obligated to provide certain improvements to the facility and the City was to receive certain income; and,

WHEREAS, in order to expedite the process of preparing the stadium for opening during the coming Baseball Season the parties have determined to modify the terms of the Stadium Lease to increase the amount of improvements which will be provided by Biloxi Baseball, LLC, and to modify the timing of the ticket revenue component of the rent structure; and,

WHEREAS, pursuant to Section 42 of the Stadium Lease, any amendment to the Stadium Lease requires the prior written consent of Beau Rivage;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the mutual covenants and promises contained herein, the City of Biloxi, Mississippi (the "City"), Biloxi Baseball, LLC, ("Team") and Overtime Sports Management, Biloxi, LLC ("Overtime"), agree (with Beau Rivage Resorts, Inc., hereby expressing its consent) to the following amendments to the Stadium Lease:

1. TEAM or OVERTIME will provide, at their own expense, upgrades and additions of at least \$925,000 to complete the following components: a) A/V system of approximately \$325,000; b) additional entrance upgrade of \$100,000; c) suite completion upgrades of \$75,000; d) signage upgrade of \$100,000; e) company switch upgrade of \$50,000; and f) video upgrade of \$275,000. Any variances to complete these upgrades are the sole responsibility and cost of the TEAM and OVERTIME.

2. Exhibit R to the Stadium Lease shall be modified as indicated on the document attached hereto as "Exhibit R", which shall contain the following changes:

a). In years 2015 and 2016, the surcharge for AA Baseball shall be \$0 per ticket for the first 231,250 tickets sold in each season, and \$2 per ticket sold for the remainder of each season;

b). In years 2017 until the final two baseball seasons of the first term, the surcharge for AA Baseball shall be \$2 per ticket;

c). In the final two baseball seasons of the first term, the surcharge for AA Baseball shall be \$3 per ticket for the first 231,250 tickets sold in each season, and \$2 per ticket for the remainder of each season per ticket;

3. The Team and Overtime will "substantially complete" obligations 1(a) and 1(d) under

paragraph 1 above by June 1, 2015, to expedite the stadium opening, and if that schedule is not met then the City shall owe no further liquidated damages under the Stadium Lease from June 1, 2015. The Team and Overtime will have achieved substantial completion of items 1(b), 1(c), 1(e) and 1(f) under paragraph 1 above by July 1, 2015, and if that schedule is not met then the City shall owe no additional liquidated damages under the Stadium Lease from July 1, 2015 (if such damages are still payable and have not been previously terminated). For purposes of this agreement the term "substantially complete", and variants thereof, shall mean complete to the point that their incomplete status is not the cause of, or a substantial contributing factor in, a denial of a temporary certificate of occupancy or other permit allowing the stadium to be used for Minor League Baseball.

4. All other terms and conditions contained in the Stadium Lease which do not conflict with the terms of this amendment shall remain in full force and effect.

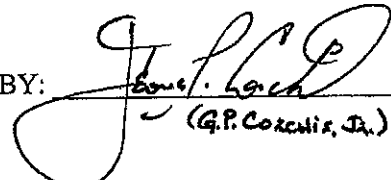
5. Beau Rivage Resorts, Inc., executes this agreement for the sole purpose of indicating its written consent to this modification of the Stadium Lease as required by Paragraph 42 of the Stadium Lease.

Executed on this the _____ day of March, 2015.

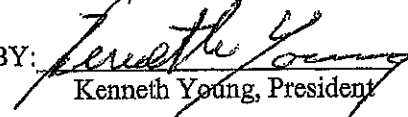
CITY OF BILOXI, MISSISSIPPI

BY: _____
Acting Mayor Kenny Glavan

BEAU RIVAGE RESORTS, INC.

BY: 
(G.P. Corcoran, Jr.)

BILOXI BASEBALL, LLC

BY: 
Kenneth Young, President

OVERTIME SPORTS
MANAGEMENT, BILOXI, LLC

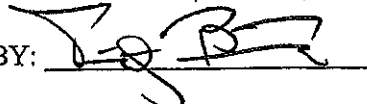
BY: 

EXHIBIT "R"

ADDITIONAL RENT SCHEDULE

| | Ticket Price | Surcharge* |
|--|---|--|
| AA BASEBALL – 2015 Baseball Season and 2016 Baseball Season | TBD | \$0 for first 231,250 tickets sold; then \$2 per ticket* |
| AA BASEBALL – 2017 Baseball Season until last two Baseball Seasons of initial term | TBD | \$2 per ticket* |
| AA BASEBALL – Last two Baseball Seasons of initial term | TBD | \$3 per ticket for first 231,250 tickets sold; then \$2 per ticket* |
| OTHER BASEBALL EVENTS | TBD | \$1 per ticket |
| FESTIVALS | TBD | \$1 per ticket |
| CONCERTS AND OTHER EVENTS | \$0 - \$30 \$31 - \$45 \$46 - \$75 \$76 - \$100 \$101 or more | \$2 \$3 \$4 \$5 \$5 |
| | | |

**AA Baseball Ticket Surcharge not to exceed \$500,000 Annually*