

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5A

Council Meeting Date: March 27, 2018

ITEM TITLE: **RESOLUTION**

INTRODUCED BY: **Councilman George Lawrence** *GL*

CONTACT PERSON: **Karen L. Brashier/Clerk of the Council**

SUMMARY EXPLANATION:

Resolution to amend the Lease with The Original Beignet Factory, LLC for Old Biloxi Library Property, (Prior Resolution No. 444-17)

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

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

Other (Specify):

Submittal Authorization: Council President Mayor _____

STAFF RECOMMENDATION:

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:

Tabled one week on March 20, 2018

Resolution No.

RESOLUTION TO AMEND THE LEASE WITH
THE ORIGINAL BEIGNET FACTORY, LLC
FOR OLD BILOXI LIBRARY PROPERTY
(PRIOR RESOLUTION NO. 444-17)

WHEREAS, on September 5, 2017, the City Council of the City of Biloxi approved Resolution No, 444-17, Resolution authorizing the lease of surplus property with the Original Beignet Factory, LLC and Old Biloxi Library, LLC for Old Biloxi Library Property; and

WHEREAS, the City Council is desirous of reconsidering said lease in Section 8. Repairs and Maintenance, pages 7 and 8 of the lease to revert the elevator maintenance back to the City and to return the sole responsibility of the repair, upkeep and maintenance of the elevator servicing the building from the tenant back to the City, as set forth in the proposed substitute pages attached as Exhibit "A"; and

WHEREAS, the City Council of the City of Biloxi, Mississippi having given full consideration, find it in the best interest of the City of Biloxi, Mississippi to amend the lease on behalf of the City of Biloxi and The Original Beignet Factory, LLC, in substantially the form as the document attached as Exhibit "A" hereto upon the terms and conditions stated herein to authorize the Mayor and Rosita M. LaCap, Managing Member, The Original Beignet Factory, LLC, to substitute and incorporate these new pages into the existing lease and initial said pages 7 and 8 to the Lease Agreement attached hereto as Exhibit "A".

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

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

Section 2: The Mayor is hereby authorized to amend the lease on behalf of the City of Biloxi and The Original Beignet Factory, LLC, in substantially the form as the document attached as Exhibit "A" hereto upon the terms and conditions stated therein.

Section 3: The Mayor and Rosita M. Lacap, Managing Member, The Original Beignet Factory, LLC, are hereby authorized to initial said changes to the Lease Agreement in substantially the form as the document attached hereto as Exhibit "A".

Section 4: This Resolution shall be made part of the existing lease referenced in Resolution No. 444-17.

(iii) the material terms and conditions of the proposed sale (the "Offer Terms"); and (iv) an offer to sell the subject property at the Offered Price and on the Offer Terms to the Tenant. At any time within thirty (30) days after receipt of the Notice, the Tenant may, by giving written notice to the Landlord (owner), elect to purchase the Lot at the Offered Price and on the Offer Terms.

6. TENANT'S USE: Tenant and any approved sub-tenants shall use and operate the Leased Premises exclusively for retail food-service café and/or restaurant (including the sale of alcoholic beverages), retail gifts, retail antiques, and any and all lawful business incident thereto. Tenant shall have the joint use of the outdoor area lying on the west side of the building and all parking areas with the tenant on the first floor of the building. Tenant shall not have the right to use the outdoor area lying on the south and north side of the building, except such areas as are jointly used for parking.

7. UTILITIES: The Tenant agrees and covenants to pay or cause to be paid all bills, (1/2) of all bills, charges, and sur-charges for all shared services and all utilities on the Leased Premises during the Term of this Lease Agreement, including but not limited to water, sewer, gas, cable, Internet and electricity, until such time as two separate meters are installed for the first floor and the second floor. After installation of separate meters, Tenant shall be responsible for all utilities on tenant' further indemnify, defend and hold Landlord harmless for all such payments and shall discharge the same in a timely manner. Landlord may require separate meters for one or more of the utilities serving the Tenant's Leased Premises.

8. REPAIRS AND MAINTENANCE: Except for replacement, maintenance and repair to the roof, elevator, and exterior walls of the Leased Premises and replacement, maintenance and repair to the Leased Premises required by reason of the intentional or negligent acts of Landlord,

its employees, agents, invitees, licensees, or contractors, the Tenant, at its sole cost and expense, shall be responsible for all replacement, maintenance and repair to the Leased Premises and shall keep the Leased Premises in good commercial condition and state of repair during the term of this Lease Agreement, ordinary wear and tear excepted. Tenant covenants that it will not cause or allow any waste to occur on the Leased Premises at any time during the term of this Lease Agreement. Reasonable notice from Tenant of the need for Landlord to perform a repair to the roof or exterior walls of the Leased Premises shall be a condition to Landlord commencing such repair. The provisions of this subsection shall not apply in the case of damage or destruction by fire or other casualty, or by Eminent Domain, that are controlled by other provisions of this Lease Agreement. ~~Tenant shall be solely responsible for the repair, upkeep and maintenance of the elevator servicing the building.~~

9. IMPROVEMENTS: Subject to the provisions of the Historic Preservation Easement, the Mississippi Landmark requirements referenced in this Lease Agreement, and any other applicable laws, codes, covenants and restrictions, Tenant may at its sole cost and expense make additions, improvements, alterations or changes necessary for the business of the Tenant, provided that the Tenant has obtained all necessary governmental approvals and permits and has obtained the Landlord's prior written consent and provided that such work shall be completed in a good and workmanlike manner. Tenant agrees and covenants that it will not allow any liens to be placed against the subject property as a result of said construction. This includes but is not limited to contractor's liens, materialman's/mechanics liens, lis pendens notices or security interests in any property which may become fixed to the realty. Tenant shall further be solely responsible for obtaining and paying for all necessary permits, applications and approvals for any