

CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET

Item No.: 5 A

Council Meeting Date: **April 25, 2023**

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO *EL*

Peter Abide, City Attorney

**SUMMARY EXPLANATION:**

Resolution authorizing execution of Assignment and Assumption of Stadium Sublease

Resolution  Ordinance \_\_\_\_\_ Public Hearing \_\_\_\_\_ Routine Agenda \_\_\_\_\_

Exhibits for Review

Contract  Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

Other (Specify): Exhibit A: Assignment and Assumption of Stadium Sublease

Submittal Authorization: Council President \_\_\_\_\_ Mayor

STAFF RECOMMENDATION: Staff 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 EXECUTION OF ASSIGNMENT AND ASSUMPTION  
OF STADIUM SUBLEASE

WHEREAS, by Resolution No. 61-14, the City of Biloxi (the "City") approved entry into that certain Stadium Sub-Lease and Use Agreement by and among the City, Biloxi Baseball, LLC, a Virginia limited liability company, and Beau Rivage Resorts, LLC, a Mississippi limited liability company f/k/a Beau Rivage Resorts, Inc. ("Beau Rivage") dated as of February 11, 2014, as amended by that certain First Amendment to Stadium Sub-Lease and Use Agreement, and as amended by that certain Second Amendment to Stadium Sub-Lease and Use Agreement along with Sellers obligations under that Certain Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage, that certain Partial Settlement Agreement by and between Seller and the City, and that certain Master Agreement for Field Naming Rights with respect to MGM Park (collectively, the "Agreement");

WHEREAS, Biloxi Baseball, LLC ("Seller") and Shuckers Baseball, LLC, a Mississippi limited liability company ("Buyer") have requested that the City execute an Assignment and Assumption of Stadium Sublease, the form of which is attached hereto as Exhibit "A," with regard to a sale of the Shuckers baseball team;

WHEREAS, pursuant to a Purchase Agreement, Seller has, among other things, agreed to assign all of its rights, title, and interests in and to, and Buyer has agreed to assume all of Seller's duties and obligations under the Agreement;

WHEREAS, pursuant to Section 32 of the Stadium Sub-Lease and Use Agreement, Seller's interest in the lease may be assigned without the consent of the City

to the extent that such assignment is made in connection with the sale, transfer or conveyance of the Club and such sale, transfer or conveyance of the Club has been approved by MLB Professional Development Leagues, LLC as successor governing body to the League; and

WHEREAS, it is the recommendation of Peter C. Abide, City Attorney, that the City execute the Assignment and Assumption of Stadium Sublease.

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

SECTION ONE: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

SECTION TWO: The Mayor, on behalf of the City of Biloxi, is hereby authorized to enter into and execute the Assignment and Assumption of Stadium Sublease, in substantially the form attached hereto to as Exhibit "A."

SECTION THREE: This resolution shall take effect and be in force from and after its adoption.



## ASSIGNMENT AND ASSUMPTION OF STADIUM SUBLEASE

THIS ASSIGNMENT AND ASSUMPTION OF STADIUM SUBLEASE (this “Agreement”) is made and entered into on March \_\_, 2023, effective as of February 6, 2023 (the “Closing Date”) by and among Biloxi Baseball, LLC, a Virginia limited liability company (“Seller”), Shuckers Baseball LLC, a Mississippi limited liability company (“Buyer”), and the City of Biloxi, Mississippi, a municipal corporation of the State of Mississippi (the “City” and, together with Seller and Buyer, each a “Party” and, collectively, the “Parties”). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Lease (as defined below).

### RECITALS

**WHEREAS**, Seller and Buyer have entered into that certain Asset Purchase Agreement dated as of January 23, 2023 (the “Purchase Agreement”);

**WHEREAS**, pursuant to the Purchase Agreement, Seller has, among other things, agreed to assign all of its right, title and interests in and to, and Buyer has agreed to assume all of Seller’s duties and obligations under, that certain Stadium Sub-Lease and Use Agreement by and among Seller, the City, Beau Rivage Resorts, LLC, a Mississippi limited liability company f/k/a Beau Rivage Resorts, Inc. (“Beau Rivage”), dated as of February 11, 2014 (the “Initial Lease”), as amended by that certain First Amendment to Stadium Sub-Lease and Use Agreement by and among Seller, the City, Beau Rivage, and Overtime, dated as of March, 2015 (the “First Amendment”), as amended by that certain Second Amendment to Stadium Sub-Lease and Use Agreement by and among Seller, the City, Beau Rivage and Overtime Sports Management Biloxi, LLC, a Mississippi limited liability company (“Overtime”) dated as of June 2, 2015 (the “Second Amendment” and, together with the Initial Lease and the First Amendment, collectively, the “Lease”), pursuant to which Seller leases from the City, and the City leases to Seller, that certain real property commonly known as “MGM Park” and located at 105 Caillavet Street, in the City of Biloxi, Mississippi (the “Stadium”);

**WHEREAS**, the City, Seller and Overtime are parties to that certain Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage dated June 2, 2015, as supplemented by that certain Partial Settlement Agreement by and between Seller and the City, dated April 4, 2017 (the “Video Boards/Scoreboards Agreement”);

**WHEREAS**, the City and Overtime are parties to the Supplemental Agreement by and between Overtime and the City, dated March 7, 2017 (the “Supplemental Agreement”);

**WHEREAS**, Seller and the City are parties to that certain Partial Settlement Agreement by and between Seller and the City dated April 4, 2017 (the “Partial Settlement Agreement”);

**WHEREAS**, the City, Seller, Overtime and Beau Rivage are parties to the Master Agreement for Field Naming Rights with respect to MGM Park dated April 12, 2017 (the “Master Agreement”);

**WHEREAS**, Seller and Overtime are parties to that certain Settlement Agreement and Mutual General Release with Covenants by and among Overtime, Timothy Bennett, Seller and Ken J. Young (the “Overtime Settlement Agreement”) pursuant to which Overtime relinquished any all rights relating to the Lease and the Stadium;

**WHEREAS**, MLB Professional Development Leagues, LLC, a Delaware limited liability company and the boards, committees and subcommittees related thereto (“MLB PDL”) is the successor governing body to the League (as defined in the Initial Lease);

**WHEREAS**, pursuant to Section 32 of the Lease, Seller’s interest in the Lease may be assigned without the consent of the City to the extent that such assignment is made in connection with the sale, transfer or conveyance of the Club and such sale, transfer or conveyance of the Club is approved by the MLB PDL;

**WHEREAS**, the closing of the transactions contemplated under the Purchase Agreement shall constitute a sale, transfer or conveyance of the Club within the meaning of Section 32 of the Lease, of which the MLB PDL, as applicable, has approved; and

**WHEREAS**, Seller and Buyer desire to effect the assignment and assumption of the Lease as contemplated above and the City desires to join in this Agreement to acknowledge such assignment and assumption thereof.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, of the mutual promises set forth in this Agreement and the Purchase Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as between Seller and Buyer upon the basis of the representations and warranties and subject to the terms and conditions set forth in the Purchase Agreement, the Parties, intending to be legally bound, hereby agree as follows:

**Section 1.01 Recitals.** The foregoing Recitals are incorporated in and made a substantive part of this Agreement by reference.

**Section 1.02 Prior Agreements Between Seller and Buyer.** This Agreement supersedes and replaces that certain Assignment and Assumption of Stadium Sublease entered into between Seller and Buyer.

**Section 1.03 Amendments to Certain Agreements.** In connection with the Overtime Settlement, the City and Seller hereby amend the Video Boards/Scoreboards Agreement and the Master Agreement as set forth on Exhibit A attached hereto and incorporated herein (as amended, the “Amended Video Boards/Scoreboards Agreement” and the “Amended Master Agreement”, respectively).

**Section 1.04 Assignment and Assumption.** Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of the Seller’s right, obligations, title and interest in and to the Lease, the Amended Video Boards/Scoreboards Agreement, and the Amended Master Agreement (hereinafter collectively the “Assigned Agreements”). Buyer hereby accepts such assignment and

assumes all of the Seller's duties and obligations under the Assigned Agreements and agrees to pay, perform and discharge, as and when due, all of the obligations under the Assigned Agreements (including, without limitation, the obligation to maintain a Club at the Stadium for the Term of the Lease) accruing on and after the Closing Date.

**Section 1.05 Acknowledgement of Assignment by City.** The parties intend that Buyer be substituted for Seller with respect to the Assigned Agreements; accordingly, the City joins in the execution and delivery hereof to acknowledge the assignment of the Lease pursuant to Section 32 thereof and recognize Buyer as Seller's successor-in-interest in and to the Assigned Agreements. Buyer, by this Agreement, becomes entitled to all right, obligations, title and interest of Seller in and to the Assigned Agreements in as much as Buyer is the substituted party to the Assigned Agreements as of and after the Closing Date. The City and Buyer shall be bound by the terms of the Assigned Agreements in every way as if Buyer is named in the Assigned Agreements in place of Seller as a party thereto.

**Section 1.06 The City's and the Seller's Estoppel.** Attached hereto as Exhibit "B" is a list of the Lease, the Video Boards/Score Boards Agreement, the Supplemental Agreement, the Partial Settlement Agreement and the Master Agreement and Biloxi City Council Resolutions. Except as is set forth in the Assigned Agreements, the Lease is in full force and effect and has not been modified, changed, altered, or amended. The Lease, the Amended Video Boards/Score Boards Agreement, the Supplemental Agreement, the Partial Settlement Agreement and the Amended Master Agreement represent the entire agreement amongst Seller, the City, Beau Rivage and Overtime with respect to the Premises. Overtime's development rights under the Second Amendment have expired, Overtime's rights under the Video Boards/Score Board Agreement and the Master Agreement have been relinquished, and Overtime is not a party to the Lease.

**Section 1.07 Indemnification.** Notwithstanding anything to the contrary herein, Buyer agrees to indemnify, defend and hold Seller harmless from and against any claim, demand, cause of action, charge, judgment, damage, liability, cost or expense (including, without limitation, reasonable attorneys' fees and legal costs) arising out of the Lease in connection with events occurring on or after the Closing Date. Notwithstanding anything to the contrary herein, subject to the terms, conditions, and limitations of Article XIII of the Purchase Agreement, Seller agrees to indemnify, defend and hold Buyer harmless from and against any claim, demand, cause of action, charge, judgment, damage, liability, cost or expense (including, without limitation, reasonable attorneys' fees and legal costs) arising out of the Lease in connection with events occurring before the Closing Date.

**Section 1.08 Purchase Agreement.** As between Seller and Buyer, this Agreement shall be subject to the terms and conditions set forth in the Purchase Agreement, and nothing contained in this Agreement shall be construed to limit, terminate or expand the representations, warranties, covenants and indemnities set forth in the Purchase Agreement. As between Seller and Buyer, in the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Agreement, the terms of the Purchase Agreement shall govern, supersede and prevail.

**Section 1.09 Further Assurances.** Seller, Buyer, and their respective successors and assigns hereby covenant and agree that, at any time and from time to time upon the written request of the other, to do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and

delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required in order to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**Section 1.10 Governing Law.** This Agreement and the obligations hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Mississippi without regard to its conflict of law principles.

**Section 1.11 Miscellaneous.** This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors and/or assigns of each of the Parties. This Agreement may not be amended or modified except in writing signed by the Parties upon the prior receipt of all necessary approvals from MLB PDL. This Agreement may be executed via facsimile or electronic signatures and in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, and all such counterparts together shall constitute but one and the same agreement.

*[signatures are on the following page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first set forth above.

**SELLER:**

Biloxi Baseball, LLC,  
a Virginia limited liability company

By: KY Management, Inc.,  
a Florida corporation,  
its Manager

By: \_\_\_\_\_  
Kenneth J. Young, President

[Signature Page to Assignment and Assumption of Stadium Sublease]

**BUYER:**

Shuckers Baseball LLC,  
a Mississippi limited liability company

By: \_\_\_\_\_  
Name: John M. Tracy  
Title: Manager

[Signature Page to Assignment and Assumption of Stadium Sublease]

**THE CITY:**

The City of Biloxi, Mississippi,  
a municipal corporation of the State of Mississippi

By: \_\_\_\_\_  
Name: Andrew M. Gilich  
Title: Mayor

And

City Clerk

\_\_\_\_\_

## Exhibit A

### The Master Agreement

Section	Provision	Amendment
1(b)	“Field Name” means, at any point in time, the name of the Field designated by the Field Sponsor on the Field Sponsor's Schedule 1 delivered to Biloxi Baseball and Overtime as provided in Section 2 below.	“and Overtime” shall be deleted from provision.
2	Field Sponsor. The City from time to time will give notice to Biloxi Baseball and Overtime of the person or entity to whom it has assigned the right to name the Field	“and Overtime” shall be deleted from provision.
4	Sponsorship and Promotional Obligations of Overtime. Overtime agrees to provide the following additional promotional benefits to the Field Sponsor: . . .	“Overtime” shall be deleted and replaced with “Biloxi Baseball” .
6(a)	Indemnification. Field Sponsor shall name Overtime as additional insured, provide notice of cancellation/change to Overtime, furnish Overtime with certificates of insurance	All references to Overtime in provision shall be deleted.
8	Termination. This Agreement, as among Biloxi Baseball, Overtime, Beau Rivage and the City, is co-extensive with the term of the Sublease	“Overtime,” shall be deleted from provision.
9	Assignment. This Agreement may not be assigned by Field Sponsor except with the prior written consent of the City and the Beau Rivage, not to be unreasonably withheld or delayed, and with written notice to Biloxi Baseball and Overtime.	“and Overtime” shall be deleted from provision.
10	Field Name Change. In order to change the Field Name, Field Sponsor shall notify City, Beau Rivage, Biloxi Baseball and Overtime that it desires to change the Field Name and disclose the proposed new Field Name.	“and Overtime” shall be deleted from provision.

### The Video Boards/Scoreboards Agreement

Section	Provision	Amendment
5.1	Investment by Overtime. Overtime shall provide videoboard, structure, hardware and software	Entire provision shall be deleted.
7.3	Allocation of Revenue to City. <i>Amended by Section 5 of Supplemental Agreement.</i> Overtime shall guarantee \$50,000 minimum revenue to City	Section 7.3 is hereby amended as follows: Fifty-three and one-half percent (53.5%) of the annual revenue generated from the Secondary Video Board/Scoreboard for Baseball Seasons 2015-2034 shall be allocated to and retained by the City.  “Payments to the City with respect to the 2017 and future Baseball Seasons will be payable May 1st and September 25th of each year based on the amount of advertising revenue collected since the previous payment.” shall be added to the end of the provision
7.6	Field Name Sponsorship Rights. <i>Amended by Section 5 of Supplemental Agreement.</i> Assigns field name sponsorship rights to Overtime.	Entire provision shall be deleted and replaced with, “The City and Biloxi Baseball acknowledge the field name

		<p>sponsorship rights have reverted to the City Biloxi Baseball agrees to provide reasonable promotion of any new field name sponsor at its Third Party Events, including at a minimum: (i) using the sponsor field name in all written and oral references to the Stadium; (ii) displaying the sponsor logo in all of its written promotional material relating to the Stadium, including print, video or electronic media; (iii) using best efforts to require game announcers and broadcasters to make reference to the field name at least four times per game; (iv) display the sponsor logo on the Secondary Video Board/Scoreboard for 30 seconds at least six times per game; and (v) making ticket/suite packages available to sponsor on same or better terms as other sponsors.”</p>
	<p><i>Section 5 of Supplemental Agreement:</i> The City and Overtime acknowledge that the field name sponsorship rights have reverted to the City and Overtime is relieved of any minimum guaranteed payment obligation under the Video Board Agreement going forward. Overtime agrees to provide reasonable promotion of any new field name sponsor at its Third Party Events</p>	<p>Section 5 of Supplemental Agreement shall be removed from the Agreement.</p>
8.1	<p>Advertising and Sponsorships Sold. Overtime shall receive all advertising and sponsorships sold during its events within MGM Park.</p>	<p>Entire provision shall be deleted.</p>
9.2	<p>Maintenance and Repair of Secondary Video Board/Scoreboard. Biloxi Baseball, Overtime, and the City shall equally divide any and all maintenance and repairs on the Secondary Video Board/Scoreboard.</p>	<p>“Overtime,” shall be deleted from provision and the section replaced with “Biloxi Baseball and the City shall divide any and all maintenance and repairs on the Secondary Video Board/Scoreboard on the basis of 66.6666% to Biloxi Baseball and 33.3333% to the City.”</p>

## Exhibit B

1. Biloxi Stadium Sublease and Use Agreement, City of Biloxi Resolution No. 61-14;
2. First Amendment to Stadium Sub-Lease and Use Agreement, City of Biloxi Resolution No. 143-15;
3. Second Amendment to Stadium Sub-Lease and Use Agreement, City of Biloxi Resolution No. 264-15;
4. Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage, City of Biloxi Resolution No. 263-15;
5. Supplemental Agreement By and Between Overtime Sports Management Biloxi, LLC and the City of Biloxi, Mississippi with Respect to MGM Park, City of Biloxi Resolution No. 102-17;
6. Partial Settlement Agreement By and Between Biloxi Baseball, LLC and the City of Biloxi with Respect to MGM Park, City of Biloxi Resolution No. 109-17; and
7. Master Agreement for Field Naming Rights with Respect to MGM Park, City of Biloxi Resolution No. 109-17.