

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.:

5

Council Meeting Date:

September 19, 2023

ITEM TITLE: RESOLUTION
INTRODUCED BY: Mayor Andrew "FoFo" Gilich
CONTACT PERSON: E. Michael Leonard, CAO
Peter Abide, City Attorney

SUMMARY EXPLANATION:

Resolution authorizing entry into Second Amendment to the Purchase and Sale Agreement with Commerce Street Partners, LLC

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Second Amendment

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 ENTRY INTO SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT WITH COMMERCE STREET PARTNERS, LLC

WHEREAS, by Resolution No. 502-23, the governing body of the City of Biloxi (the “City”) authorized and approved entry into that certain Purchase and Sale Agreement (the “Agreement”) with Commerce Street Partners, LLC (“CSP”) for the sale of a parcel of real property located at the northeast corner of the intersection of Caillavet Street and Division Street, Biloxi, Mississippi, and identified as Tax Parcel No. 1410E-01-010.000;

WHEREAS, Paragraph 5 (a) ii. of the Agreement stated that CSP will confirm in writing to the Seller whether a “Market Store” has been approved for construction within thirty (30) day from the effective date of the Agreement, or by August 21, 2023;

WHEREAS, by Resolution No. 558-23, the City’s governing authorities approved entry into the First Amendment to the Agreement with CSP, extending the deadline to confirm approval of a Market Store to September 15, 2023;

WHEREAS, CSP requests additional time to confirm the approval of a “Market Store”;

WHEREAS, it is in the best interest of the City to extend the deadline for approval of a Market Store until October 30, 2023; and

WHEREAS, it is the recommendation of Peter C. Abide, City Attorney, that the City enter the Second Amendment, attached hereto as Exhibit “A.”

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND 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 is hereby authorized to execute, on behalf of the City of Biloxi, the Second Amendment to the Purchase and Sale Agreement with Commerce Street Partners, LLC, in substantially the form attached hereto as Exhibit "A."

SECTION THREE: This Resolution will be in effect from and after its adoption.

**SECOND AMENDMENT TO THE
PURCHASE AND SALE AGREEMENT**



THIS, SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT (this “Amendment”), is made this the ____ day of September, 2023, and is effective as of the 15th day of September, 2023, by and between the CITY OF BILOXI, MISSISSIPPI, a Mississippi municipal corporation (the “Seller”) and COMMERCE STREET PARTNERS, LLC (“Buyer”).

WITNESSETH:

WHEREAS, the Seller and Buyer entered that certain Purchase and Sale Agreement (the “Agreement”), effective July 24, 2023, which provides the terms and conditions under which Buyer agrees to purchase the real property located at 875 Elk Street and identified as a portion of Tax Parcel 1410E-01-010.000 (the “Property”);

WHEREAS, Paragraph 5 (a) ii. of the Agreement stated that Buyer will confirm in writing to the Seller whether a “Market Store” has been approved for construction within thirty (30) day from the effective date of the Agreement, or by August 21, 2023;

WHEREAS, effective August 17, 2023, Buyer and Seller entered into the First Amendment to the Agreement, extending the deadline for approval of a “Market Store” to September 15, 2023;

WHEREAS, Buyer requests additional time to confirm the approval of a “Market Store”; and

WHEREAS, the parties mutually desire to amend the Agreement to provide for the above-referenced circumstances.

NOW THEREFORE, in consideration of the provisions set forth in the foregoing recitals, and the consideration set forth in the Agreement, all of which is incorporated herein by reference, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Paragraph 5 (a) ii. is hereby amended to read as follows:

Within one hundred one (101) days from and after the Effective Date, or by October 30, 2023, Buyer will confirm in writing to Seller whether the “Market Store” has been approved for construction. If the “Market Store” construction has not been approved, or if such store is approved with conditions less than what is proposed in Exhibit “C,” the Seller shall have the right, within fourteen (14) days, to terminate this Agreement and refund the Earnest Money to the Buyer.
2. All remaining terms and conditions of the Agreement will remain in full force and effect.

Signatures on following page

IN WITNESS WHEREOF, the parties by their duly authorized officers have caused these presents to be subscribed on the day and year first above written.

CITY:

THE CITY OF BILOXI, MISSISSIPPI, a
Mississippi municipal corporation

By: _____
Name: Andrew M. Gilich, Jr.
Title: Mayor

BUYER

COMMERCE STREET PARTNERS, LLC

By: _____
Name: _____
Title: _____

ATTESTED BY:

Stacy L. Thacker, Municipal Clerk