

ORDINANCE NO.: 2014-049

Authorizing the City Manager to execute a Multi-Use Venue Development Agreement between the City of Columbia, South Carolina, Hardball Capital, LLC and Bull Street Development, LLC

BE IT ORDAINED by the Mayor and Council this ___ day of _____, 2014, that the City Manager is hereby authorized to execute the attached Multi-Use Venue Development Agreement, or on a form approved by the City Attorney, between the City of Columbia, Hardball Capital, LLC and Bull Street Development, LLC.

Requested by:

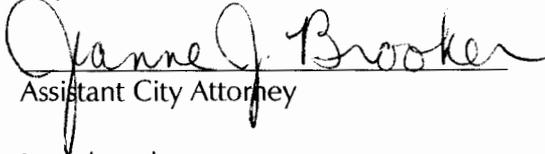
Assistant City Manager

Mayor

Approved by:

City Manager

Approved as to form:


Assistant City Attorney

ATTEST:

City Clerk

Introduced:

Final Reading:

LEGAL DEPARTMENT DRAFT

THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND IS NOT LEGALLY BINDING IN ANY RESPECT. NO BINDING OBLIGATION WILL ARISE (AS A RESULT OF COURSE OF DEALING OR OTHERWISE) UNLESS AND UNTIL A FINAL MULTI-USE VENUE DEVELOPMENT AGREEMENT IS DULY EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.

VENUE DEVELOPMENT AGREEMENT

By and Between

THE CITY OF COLUMBIA, SOUTH CAROLINA,

HARDBALL CAPITAL LLC

and

BULL STREET DEVELOPMENT, LLC

_____, 2014

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of _____, 2014 (the "**Execution Date**") by and between the City of Columbia, South Carolina ("**City**"), Hardball Capital LLC, a Georgia limited liability company ("**Club**"), and Bull Street Development, LLC ("**BSD**"), a South Carolina limited liability company. City, Club and BSD are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

WHEREAS, Club is the owner of multiple Class A (sometimes referred to as "Single A") Minor League Baseball franchises granted by The National Association of Professional Baseball Leagues, Inc. (the "**NAPBL**," which does business under the trade name "Minor League Baseball," sometimes abbreviated as "MiLB");

WHEREAS, City Council recognizes the presence of Club and the playing of the home games of Team (as defined herein) in Columbia, especially in its downtown area, provides a unique value to City, including generating new jobs, additional revenue sources and economic development and increased tourism for City;

WHEREAS, the NAPBL and the League have required that a new venue be constructed as a condition to Club's re-location of a Team to Columbia and City has agreed to finance, own and, through the engagement of professionals and contractors with relevant experience, to design, develop and construct a new, first class, natural turf, open-air Minor League Baseball venue and related facilities as part of an approximately 180 acre tract of land in downtown Columbia (the "**Bull Street Site**"), formerly home to the South Carolina Department of Mental Health, for a mixed-use commercial, recreational and residential project referred to as Bull Street ("**Bull Street Development**"), that will serve as the home of the Team and will also host concerts, other sporting events and community-oriented events (the "**Venue**");

WHEREAS, City and Hughes Development Corporation ("Hughes") are parties to a Development Agreement dated July 31, 2013 (as amended, the "**Bull Street Agreement**") pursuant to which Hughes (or its assignee) will acquire all or substantially all of the Bull Street Site and develop the Bull Street project;

WHEREAS, Hughes has subsequently assigned all of its rights and obligations under the Bull Street Agreement to BSD;

WHEREAS, pursuant to Amendment No. 1 to the Bull Street Agreement dated _____, 2014, BSD will convey to City a portion of the Bull Street Site upon which the Venue will be located as preliminarily shown on Exhibit A attached hereto and incorporated herein (the "**Real Property**");

WHEREAS, the City Council has determined that the construction of the Venue and re-location of a minor league baseball team to Columbia, South Carolina will serve a public purpose, and on April 8, 2014 authorized the City Manager to execute a Venue License Agreement with Club (the “**Venue License Agreement**”);

WHEREAS, pursuant to the Venue License Agreement the parties desire to set forth their mutual understandings as to how the design and construction of the Venue will be managed and coordinated and as to other issues impacting the Venue and Bull Street Development;

WHEREAS, the parties recognize the importance of the Venue to the Bull Street Development generally and desire that the Venue fits well with and maximally benefits the Bull Street Development as well as the community generally;

WHEREAS, the parties recognize that the success of the Venue will depend on an appropriate relationship with the neighboring properties and the Bull Street Development generally;

WHEREAS the City desires to recognize and benefit from the expertise and experience of Club regarding the composition, design, planning and execution of multi-use sports and entertainment venues and of the expertise and experience of BSD regarding downtown, mixed-use development projects;

WHEREAS, BSD will retain certain parcels of real estate and air rights above and adjacent to the Real Property and Venue (“**Air Rights**”) in which to construct improvements therein (the “**Air Rights Improvements**”), which Air Rights Improvements will be subject to a vertical subdivision, the Area Declaration, and any applicable Building Site Declaration(s) to be agreed upon among BSD, City and Club;

WHEREAS, as contemplated by the Venue License Agreement, the Parties now enter into this Agreement to establish the process and schedule for the design, development and construction of the Venue.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Club and BSD, each intending to be legally bound, do hereby agree as follows:

ARTICLE I. GENERAL TERMS

1.1 Definitions and Usage. Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A and incorporated herein by reference,

which also contains rules as to usage that shall be applicable herein. Terms used but not defined herein shall have the meaning ascribed to such terms in the Venue License Agreement.

ARTICLE II. REPRESENTATIVES

2.1 City Representative. City hereby designates the City Manager to be the representative of City (the “**City Representative**”), and the City shall have the right, from time to time, to change the Person who is the City Representative by giving at least five (5) Business Days prior written notice to Club and BSD thereof. The functions under this Agreement of City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as City Representative shall have the power to bind City in those instances in which this Agreement specifically provides for the Approval, decision, confirmation or determination of City Representative and in no other instances; *provided, however*, that notwithstanding anything in this Agreement to the contrary, City Representative shall not have any right to modify, amend or terminate this Agreement.

2.2 Club Representative. Club hereby designates Jason Freier to be the representative of Club (the “**Club Representative**”), who shall be authorized to act on behalf of Club under this Agreement. Club shall have the right, from time to time, to change the Person who is the Club Representative by giving at least five (5) Business Days prior written notice to City thereof. Any written Approval, decision, confirmation or determination hereunder by the Club Representative shall be binding on Club; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the Club Representative shall not have any right to modify, amend or terminate this Agreement unless so authorized by written notice from Club to City and BSD.

2.3 BSD Representative. BSD hereby designates _____ to be the representative of BSD (the “**BSD Representative**”), who shall be authorized to act on behalf of BSD under this Agreement. BSD shall have the right, from time to time, to change the Person who is the BSD Representative by giving at least five (5) Business Days prior written notice to City thereof. Any written Approval, decision, confirmation or determination hereunder by the BSD Representative shall be binding on BSD; *provided, however*, that notwithstanding anything in this Agreement to the contrary, BSD Representative shall not have any right to modify, amend or terminate this Agreement.

2.4 Collaborative and Cooperative Process. The Parties intend that the design, development, construction and furnishing of the Venue Improvements shall be a cooperative process. All Parties shall endeavor to diligently fulfill all obligations and responsibilities under this Agreement. All approvals and responses required under this Agreement shall be undertaken in good faith and delivered as soon as commercially reasonable. The Parties agree that each Party’s Representative will have full access to any pertinent information available to City from the Contractor, the Project Architect and all other contractors, consultants and other Persons retained in connection with the design, development, construction and furnishing of the Venue Improvements. For purposes of participating in the process of managing construction costs and continuing to be involved and informed during the design and construction of the Venue

Improvements, each Party's Representative will be given a reasonable opportunity to be present at all material meetings and briefings with all Parties, contractors, consultants and other Persons engaged with regard to the design, development, construction and furnishing of the Venue Improvements;

Until the Venue is complete, representatives of the City and Club shall meet, as necessary, in person or via teleconference, in general not less than once every two (2) weeks to discuss and coordinate their activities related to the Venue. BSD shall be invited to attend such meetings, but shall not be required to participate, provided, however, to the extent that the issues to be discussed and coordinated involve or materially impact the Air Rights Improvements or the larger Bull Street Development, representatives of BSD shall participate as well. Subject to applicable state and local procurement laws the City will consult with Club and BSD on all material matters relating to the design and construction of the Venue, including but not limited to:

- Retention of appropriate professionals to design and engineer the Venue and to provide construction oversight;
- Completion of architectural drawings, preparation of bid documents, supervision of scheduling and construction, handling of change orders, and management of the Venue Budget;
- Architectural themes in the Venue and the relationship of those to the larger Bull Street Development;
- Relationship between the Venue and other elements of the Bull Street Development; and
- Infrastructure and public improvements necessary to serve the Venue.

Notwithstanding the foregoing all contractually required communications, obligations and ultimate authority with respect to the Venue, the Project Architect, the Contractor or anyone acting through or on their behalf rests with City.

ARTICLE III. CONDITIONS TO CITY OBLIGATIONS AND COMMENCEMENT OF CONSTRUCTION

3.1 Conditions to City Obligations. This Agreement shall not be effective with respect to any City obligation hereunder and City shall not be obligated to move forward with any of the terms of this Agreement until the conditions in Section 3.1.1 through Section 3.1.3 (the "Conditions to City Obligations") are satisfied.

3.1.1 Approval of City Council. Approval of this Agreement by the City Council.

3.1.2 Execution of Venue License Agreement. The Venue License Agreement, as approved by the City Council on April 8, 2014, shall be fully executed.

3.1.3 Execution of Bull Street Amendment. Amendment No. 1 to the Bull Street Agreement, as approved by the City Council on April 8, 2014, (or as it may be subsequently amended) shall be fully executed.

3.2 Conditions to Commencement of Construction. None of City, Club nor BSD shall be obligated to commence physical construction of the Venue Improvements Work or the Air Rights Improvements Work until the conditions in Section 3.2.1 through Section 3.2.10 (the “**Conditions to Commencement**”) are satisfied or waived, such conditions to be satisfied on or before the respective dates set forth below, and in any event on or before commencement of physical construction of the Venue Improvements Work and Air Rights Improvements Work. City, Club and BSD shall execute a written confirmation when the Conditions to Commencement are satisfied and specify such date as the “**Construction Commencement Date.**” City, Club and BSD acknowledge and agree that the timeframes within which each of the Conditions to Commencement are to be satisfied shall be implemented toward the goals, to the extent commercially reasonable and in accordance with Applicable Law, that City achieves Substantial Completion of the Venue Improvements Work on or before the Substantial Completion Deadline (as the same may be extended by an Excusable Delay Period) and the City delivers the Air Rights Infrastructure on or before the Air Rights Infrastructure Delivery Date (as the same may be extended by an Excusable Delay Period). The Party benefitted by a condition may approve or disapprove such condition in its absolute discretion, except as otherwise expressly provided herein, and shall in no event have any liability for its disapproval of any condition for its benefit.

3.2.1 Baseball Approvals. Club must submit to the appropriate Baseball Authorities a Request for Relocation to the Venue of a specifically-identified team, per Section 5.1.5 below, by July 15, 2014, and on or before the Construction Commencement Date Club shall obtain all final Baseball Approvals.

3.2.2 Project Architect. As soon as commercially reasonable after the Conditions to City Obligations are satisfied, City, upon consultation with Club and BSD, shall have selected the Project Architect in accordance with any requirements of Applicable Law, including procurement laws applicable to City.

3.2.3 Real Property Acquisition. BSD, at its expense, will cause to be delivered to City within thirty (30) days of the completion of the Project Plans, and in any event at least thirty (30) days prior to the Construction Commencement Date, a survey of the Real Property and a title commitment for the Real Property. City will review title and survey and make objections, if applicable. Prior to the Construction Commencement Date, BSD will convey to City, at no cost, marketable fee simple title to the Real Property, subject to the Bull Street Master Declaration of Protective Covenants, the Area Declaration, and the Building Site Declarations (the “Conveyance Date”). BSD will pay all closing costs.

3.2.4 Area Declaration and Building Site Declaration. BSD will deliver to City and Club within forty-five (45) days of the Execution Date, initial drafts of the Area Declaration and Building Site Declarations. The City and Club will provide comments to the initial drafts within ten (10) business days, and City, Club and BSD will each act reasonably in

endeavoring to resolve issues and reach agreement regarding the terms of such Declarations. BSD will also obtain comments and approvals as may be required by the PUD or the Development Review Board established by the Bull Street Agreement. BSD will subsequently deliver to City and Club, within thirty (30) days of the completion of the Project Plans, and in any event at least thirty (30) days prior to the Conveyance Date, final drafts of the Area Declaration and Building Site Declarations, which shall govern the use, operation and development of the Venue (provided that as between City and Club, the Venue License Agreement will govern the daily operation of the Venue, so long as such daily operations do not violate the Area Declaration or any Building Site Declarations) and the Air Rights Parcels. The final Declarations will be subject to the approval of City and Club on or before the Conveyance Date and upon such approvals such Declaration(s) shall be recorded prior to conveyance of the Real Property to the City. The Area Declaration and Building Site Declarations shall include all necessary easements for support and access relating to the Air Rights Parcels.

3.2.5 Design and Construction Services. The City in consultation with BSD and Club will solicit services for the design and construction of the Venue. Such services will incorporate common practices associated with projects of this magnitude while considering all options associated with such services. The City intends to consider all options available regarding design and construction of the facility and determine the approach that will best fit the budget and timeline of the Venue project in accordance with Applicable Laws, including procurement laws applicable to City.

3.2.6 Club Financing. Club shall have provided evidence, satisfactory to the City in its sole and absolute discretion, of \$6,000,000 of Club contribution to be available for disbursement pursuant to the Venue License Agreement.

3.2.7 City Financing. City shall have completed its Financing and obtained the Financing Proceeds and agreed to make the Financing Proceeds available for disbursement according to the following schedule:

3.2.8 BSD Financing. BSD shall have provided evidence, satisfactory to the City in its discretion, that all Air Rights Infrastructure Costs shall be available for disbursement when due pursuant to the Venue Construction Contract; provided, however, that to the extent that the Air Rights Infrastructure Costs are eligible for payment by the City pursuant to the terms and conditions of the Bull Street Agreement, then in lieu of such evidence BSD shall, by document acceptable to City, irrevocably authorize City to fund the Air Rights Infrastructure Costs by disbursement pursuant to the Bull Street Agreement. Any such disbursements shall reduce the balance remaining available to BSD under the Bull Street Agreement. In the event that BSD elects not to proceed with the Air Rights Improvements, this Condition to Commencement shall be deemed satisfied.

3.2.9 Governmental Authorizations. As soon as commercially reasonable after the completion and delivery to City of the Project Plans and in accordance with all Applicable Laws, City shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the Venue Improvements, including building permits and

engineering and land use approvals necessary for the commencement of development and construction of the Venue Improvements.

3.2.10 No Default, Etc. No Party shall be in default of its obligations hereunder.

3.3 Termination for Failure of Conditions to be Satisfied.

3.3.1 Conditions to City Obligations Not Satisfied. If for any reason all of the Conditions to City Obligations have not been fully satisfied (or waived in writing as specifically authorized by the City Council) by August 1, 2014 then in such event, City may, by written notice to Club and BSD, extend the Conditions to City Obligations or may elect to terminate this Agreement.

3.3.2 Conditions to Commencement Not Satisfied. If for any reason all of the Conditions to Commencement have not been fully satisfied (or waived in writing by City, Club or BSD, as applicable) by October 1, 2014, as the same may be extended by written agreement of the Representatives of the Parties, then Club, City or BSD may, by written notice to the other Parties, elect to terminate this Agreement.

3.3.3 Effect of Termination. Upon any termination of this Agreement pursuant to this ARTICLE III, City and Club agree that the Venue License Agreement shall also terminate automatically, and the Parties shall have no further rights, obligations or liabilities under this Agreement (except pursuant to the provisions of this Agreement which expressly survive termination) and the Parties automatically shall be released from any future obligations under this Agreement that arise after the date of termination but shall not be released from any obligations which shall have accrued prior to the date of termination or relate to occurrences prior to the date of termination.

**ARTICLE IV.
TERM**

4.1 Term. The term under this Agreement (the “**Term**”) shall commence on the Execution Date and shall end on 11:59 p.m. on the date Final Completion occurs as required in Section 5.1.7 hereof. After Final Completion the Parties shall have no further duties or obligations under this Agreement except those provisions hereof that expressly survive Final Completion, which are Sections 6.4.5, 6.7, 6.8, 6.9, 6.10, 8.2 and 10.3, and Article XIII.

**ARTICLE V.
CERTAIN DEADLINES AND DELIVERABLES**

5.1 Deadlines Subsequent to Commencement of Term. Subject to extension as a result of an Excusable Delay Period in accordance with the terms of this Agreement and after the Construction Commencement Date, the Parties shall meet the following deadlines in connection with the following matters:

5.1.1 Scheduled Venue Improvements. City or its designee shall cause the construction of the Venue Improvements to commence on or before the day that is thirty (30) days after the date the Conditions to Commencement have been satisfied or waived.

5.1.2 Venue Budget. Except to take into account any change orders entered into pursuant to Section 6.5 hereof, a Party shall not voluntarily modify the Venue Budget in any material respect without the prior Approval of the other Parties' Representatives (*i.e.*, City's Representative, Club's Representative and/or BSD Representative, as applicable) such approval not to be unreasonably withheld, conditioned or denied. City will promptly provide Club Representative and BSD Representative with notice of any proposed material change to the Venue Budget for Approval, such Approval not to be unreasonably withheld, conditioned or denied. The Club's contribution to the Venue shall not exceed \$6,000,000 and the City's contribution for the Venue shall not exceed \$29,000,000; provided that City may fund Air Rights Infrastructure Costs pursuant to the Bull Street Agreement as provided in Section 3.2.8 and any such funds available under the Bull Street Agreement shall not be considered a part of the \$29,000,000 City contribution. Modifications to the Venue design will be made if deemed necessary to accommodate such a budget. BSD and Club may elect to assume financial responsibility for aspects of the project that may be deemed as desirable that result in additional funding needs in excess of the City contribution of \$29,000,000 and Club contribution of \$6,000,000 for a total project budget of \$35,000,000.

5.1.3 Venue Construction Schedule. City will provide Club and BSD Representative with notice of any material change to the Venue Construction Schedule for Club's and BSD's Approval, such Approval not to be unreasonably withheld, conditioned or denied.

5.1.4 Substantial Completion of the Venue Improvements Work. Subject to the terms and conditions hereof including Sections 5.2 and 6.4.4, City shall cause Substantial Completion of the Venue Improvements Work to occur on or before the Substantial Completion Deadline.

5.1.5 Baseball Approvals. On or before July 15, 2014, Club shall submit to the applicable Baseball Authorities a Request for Relocation to the Venue of a Team that meets the requirements of Section III(A)(5)(b) of the Venue License Agreement, which Request for Relocation shall include a then-current copy of the Project Plans. In the event the Project Plans are not in a form as of the submission date that will allow for final Baseball Approvals, Club shall request approval of the Request for Relocation, subject to subsequent submission of Project Plans which permit the final Baseball Approvals and satisfaction of any other conditions of such preliminary approval that are imposed by the Baseball Authorities. Notwithstanding the foregoing, Club agrees to obtain all final Baseball Approvals no later than October 1, 2014; provided such date shall be automatically extended so long as Club has filed the requisite application (including all related documentation) with the Baseball Authorities and NAPBL confirms that the application is in the approval process. Club reserves the right to substitute a different specifically-identified Team owned by Club that meets the requirements of the Venue License Agreement and for which Baseball Approvals are obtained on the schedule and as otherwise provided herein.

5.1.6 Punch-list Items. Upon Substantial Completion of the Venue Improvements (including the Air Rights Infrastructure), City shall provide notice thereof to Club and BSD. Club Representative, BSD Representative and City Representative shall schedule a time to meet within thirty (30) Business Days thereafter to inspect the Venue and for Club to prepare a “punch-list” of items that are reasonably required to be completed or repaired prior to Final Completion of the Venue Improvements. The Contractor shall complete, or cause to be completed, all reasonable punch-list items relating to the Air Rights Infrastructure within thirty (30) days after the inspection or as soon as is reasonably practicable in light of the work to be performed.

5.1.7 Final Completion. Subject to the terms and conditions hereof including Section 6.4.4, City shall cause Final Completion of the Venue Improvements Work to occur within ninety (90) days after the Substantial Completion Date (using its commercially reasonable efforts to not unreasonably interfere with Club’s business operations at the Venue).

5.2 Extension of Substantial Completion Deadline. In the event City fails to achieve Substantial Completion of the Venue Improvements Work on or before the Substantial Completion Deadline (as the same may have been extended by any Excusable Delay Period), City shall have the continuing right and option to extend the Substantial Completion Deadline, as such Substantial Completion Deadline may be extended pursuant to the terms of this Section 5.2 so that City may cause Substantial Completion of the Venue Improvements Work to occur, provided each of the following requirements is satisfied:

(a) City must continue to diligently and continuously prosecute the Venue Improvements Work (subject to Excusable Delay) after the original Substantial Completion Deadline (as the same may have been extended by Excusable Delay or the terms of this Section 5.2).

(b) In the event that the Venue is not completed by the Substantial Completion Deadline (as the same may have been extended by Excusable Delay, Club delay or BSD delay) and Club is not in default under this Agreement, City shall pay to Club a liquidated damages amount of \$50,000 per week during the period of such delay plus any fines or penalties assessed by the Office of the Commissioner of Major League Baseball, MiLB, or the League (“Club Late Opening Charges”). These liquidated damages are not a penalty but are intended to compensate Club for actual expenses incurred by Club including but not limited to payroll, administrative expenses, travel and lodging expenses, equipment costs, League and National Association dues, and debt service on the Hardball Contribution to the Venue (as defined in the Venue License Agreement), which damages are caused by the aforementioned failure to complete the Venue by the Substantial Completion Deadline. This shall be Club’s sole and exclusive remedy for damages due to delay in the Substantial Completion of the Venue. City and Club agree that because of the difficulty or impossibility of determining Club’s damages as a result of such a delay in Substantial Completion of the Venue Improvements Work, the difficulties of proof of loss and the inconvenience or non-feasibility of Club otherwise having a remedy for such failure to achieve Substantial Completion of the Venue Improvements Work by the original Substantial Completion Deadline (as the same may have been extended by any

Excusable Delay Period or the terms of this Section 5.2), the Club Late Opening Charges are a reasonable amount to be paid for such failure.

(c) So long as can be done on commercially reasonable terms, City may require the Contractor to pay Late Opening Charges. In lieu of the City paying Club Late Opening Charges under (b) above, the City may assign to Club any Late Opening Charges due from Contractor. Any such Late Opening Charges received by Club from Contractor shall reduce the Club Late Opening Charges due from City, dollar-for-dollar. This shall be Club's sole and exclusive remedy for damages due to City's delay in the Substantial Completion of the Venue. Provided that the City is not the cause of such delay, the City shall not be obligated to pay Late Opening Charges to Club or BSD or to pay any other damages for delay to Club or BSD, it being agreed that the sole source for such payment of Late Opening Charges shall be the Contractor pursuant to the Venue Construction Contract.

In the event the Contractor fails to cause Substantial Completion of the Venue Improvements Work to occur on or before the date required by the Venue Construction Contract, City hereby agrees it will not (i) amend or modify the provisions providing for liquidated damages in the Venue Construction Contract, (ii) waive, release, reduce or terminate the liquidated damages payable by the Contractor thereunder or (iii) waive, release, extend or terminate the Contractor's obligation to achieve Substantial Completion in accordance with the Venue Construction Schedule, without the prior Approval of Club, such Approval not to be unreasonably withheld, conditioned or denied.

5.3 Financing Proceeds. Club and BSD each acknowledges that City intends to use Financing Proceeds, together with the Club contribution, to pay for the Venue Costs.

5.3.1 Financing Proceeds Attributable to Tax Exempt Bonds. In the event the Venue Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to tax exempt bonds or other tax advantaged bonds, such remaining Financing Proceeds shall be used in the following order of priority, as the same may be permitted by the ordinance or other agreement authorizing the issuance of such bonds: (a) first, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, (b) second, for capital expenditures to enhance the value of the Venue Improvements, as mutually agreed to by the Parties, (c) third, for construction of additional Venue parking as mutually agreed to by the Parties, (d) fourth, for deposit into the debt service fund or another segregated account for the tax exempt bonds or tax advantaged bonds associated with the Financing and used to pay debt service on or redeem prior to maturity a portion of such bonds, (e) fifth, for such other capital expenditures as may be permitted under the Local Hospitality Tax Act and are approved by City Council; provided however; that City shall in all cases first obtain advice and confirmation from its bond counsel that the use of such proceeds for such expenditures will not adversely affect the tax exempt or tax advantaged status of such bonds in the reasonable opinion of a nationally recognized Bond Counsel chosen by City.

5.3.2 Financing Proceeds Attributable to Taxable Bonds. In the event the Venue Costs are less than the Financing Proceeds, then to the extent such remaining Financing

Proceeds are attributable to taxable bonds, such remaining Financing Proceeds shall be used in the following order of priority, as the same may be permitted by the ordinance or other agreement authorizing the issuance of such bonds: (a) first, the first \$_____ of any such remaining Financing Proceeds shall be deposited into the City Capital Fund (as such term is defined in the Venue License Agreement), (b) second, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, (c) third, for capital expenditures to enhance the value of the Venue Improvements, as mutually agreed to by the Parties, (d) fourth, for construction of additional Venue parking, as mutually agreed to by the Parties, and (e) fifth, for such other capital expenditures as may be permitted under the Local Hospitality Tax Act and are approved by City Council.

5.4 Construction of Air Rights Infrastructure. The City shall deliver the Air Rights Infrastructure to BSD on or before the Air Rights Infrastructure Delivery Date. In the event City fails to deliver the Air Rights Infrastructure to BSD on or before the Air Rights Infrastructure Delivery Date (as the same may have been extended by any Excusable City Delay Period), City shall have the continuing right and option to extend the Air Rights Infrastructure Delivery Date, as such Air Rights Infrastructure Delivery Date may be extended pursuant to the terms of this Section 5.4 so that City may complete the Air Rights Infrastructure, provided each of the following requirements is satisfied:

(a) City must continue to diligently and continuously prosecute the construction of the Air Rights Infrastructure (subject to Excusable City Delay) after the Air Rights Infrastructure Delivery Date (as the same may have been extended by Excusable City Delay or the terms of this Section 5.4).

(b) So long as this Agreement is in full force and effect and a BSD Default does not remain uncured, City shall assign to BSD the Air Rights Infrastructure Late Opening Charges, as liquidated damages and not as a penalty as BSD' sole and exclusive remedy, for each day after the original Air Rights Infrastructure Delivery Date (as the same may have been extended by Excusable City Delay Period) which elapses before Substantial Completion of the Air Rights Infrastructure. City, Club and BSD agree that because of the difficulty or impossibility of determining Club's and BSD' damages as a result of such a delay in Substantial Completion of the Air Rights Infrastructure, the difficulties of proof of loss and the inconvenience or non-feasibility of BSD otherwise having a remedy for such failure to achieve Substantial Completion of the Air Rights Infrastructure by the original Substantial Completion Deadline (as the same may have been extended by any Excusable Delay Period or the terms of this Section 5.4), the Air Rights Late Opening Charges are a reasonable amount to be paid for such failure. Provided that the City is not the cause of such delay, the City shall not be obligated to pay Late Opening Charges to Club or BSD or to pay any other damages for delay to Club or BSD, it being agreed that the sole source for payment of Late Opening Charges shall be the Contractor pursuant to the Venue Construction Contract. Any delays associated with infrastructure needs on the Bull Street Site to support the Venue shall not be considered City delays and, for avoidance of doubt, shall not result in an obligation for the City to pay damages for delay to BSD or Club.

ARTICLE VI.
CONSTRUCTION OF VENUE IMPROVEMENTS; GENERAL WORK
REQUIREMENTS

6.1 General Provisions.

6.1.1 Venue Improvements. City or its designee, in consultation with Club and BSD, shall cause the Venue Improvements to be designed, developed and constructed in accordance with the terms and conditions of this Agreement and all Applicable Laws, and shall diligently and continuously endeavor to adhere to the Venue Construction Schedule (subject to any Excusable Delay permitted in accordance with the terms of this Agreement).

6.1.2 Design and Pricing of Venue Improvements. The City or its designee, in consultation with Club and BSD, shall cause development of the Project Plans to be coordinated with the Venue Budget, and shall when appropriate obtain pricing input from the Contractor.

6.2 Club's Access to the Venue Improvements. Prior to the Operating Term Commencement Date, Club, BSD, and their respective Representatives shall have the right of access to the Venue and all portions thereof for the following purposes: (a) conducting inspections for purposes of determining compliance with this Agreement; and (b) installation of any additional fixtures or equipment Approved by City and not included in the Venue Budget. Such access shall be without charge under the Venue License Agreement, and at normal construction hours during the construction period, provided the requesting Party (i) notifies City in advance of such proposed entry by any Representative of the requesting Party, (ii) does not hinder or interfere with or delay the construction of the Venue Improvements or the activities of City's contractors (including the Contractor) and coordinate such work with such activities of City's contractors (including the Contractor) to minimize the risk of creating cost overruns, (iii) pays all costs of such work, (iv) takes such reasonable protective precautions or measures as City or its contractors (including the Contractor) may reasonably request, given the stage of the construction of the Venue Improvements at the time of such entry and (v) complies with and is subject to the provisions of the Venue Construction Contract relating to City's rights to access including providing the insurance required by the terms of the Venue Construction Contract (or, if the Contractor does not specify the same, then by providing such insurance as City may reasonably request).

6.3 Pre-Existing Site Conditions. Prior to the Operating Term Commencement Date, BSD shall be responsible for performing or causing to be performed, and for paying the cost of performing as a part of the Venue Budget, any and all testing required by the Voluntary Cleanup Contract ("VCC") entered into by and between BSD and the City to be performed with respect to any (i) state historical landmarks present at, in, on or under the Venue prior to the Construction Commencement Date and (ii) any Pre-Existing Environmental Conditions in accordance with Section 9.2; provided, however, that to the extent that such testing costs are eligible for payment by the City pursuant to the terms and conditions of the Bull Street

Agreement, then BSD shall, by document acceptable to City, irrevocably authorize and direct City to fund the testing under this Section 6.3 by disbursement pursuant to the Bull Street Agreement. Any such disbursements shall reduce the balance remaining available to BSD under the Bull Street Agreement.

6.4 Work Performed.

6.4.1 General Requirements. City or its designee shall, at its expense (except as otherwise provided in this Agreement), perform or cause the performance of the Venue Improvements Work in accordance with and subject to the terms of this Agreement, and City shall promptly and faithfully endeavor to cause the Contractor to perform that portion of the Venue Improvements Work to be performed under the Venue Construction Contract in accordance with the terms and provisions thereof and keep and perform all of the covenants and conditions contained in the Venue Construction Contract to be kept and performed by City; provided, however (i) City shall not be in breach of its obligations in this sentence if its failure to so keep and perform is caused by the failure of Club or BSD their respective Related Parties to perform their respective obligations under this Agreement or the Venue Construction Contract, and (ii) so long as City is using good faith, diligent efforts to achieve Substantial Completion of the Venue Improvements Work, City's liability related to any failure with respect to achieving the Venue Construction Schedule, including achieving Substantial Completion of the Venue Improvements Work by the Substantial Completion Deadline or the Air Rights Infrastructure Delivery Date or any subsequent date, will be solely as set out in Section 6.4.4. City will promptly, after City learns of the same, notify Club of any material default by any Party under the Venue Construction Contract.

6.4.2 Venue Construction Contract. The agreement to be executed by City with respect to the construction of the Venue Improvements (the "**Venue Construction Contract**") shall (a) contain price and schedule terms acceptable to the City in its discretion, (b) establish a substantial completion deadline not later than the Substantial Completion Deadline, and (c) cause the Contractor to obtain, keep and maintain performance and payment bonds, along with dual obligee riders in favor of the Club and BSD, from a Qualified Surety in a total amount equal to one hundred percent (100%) of the costs of the Venue Improvements Work, such performance and payment bonds to be held by and firmly bound unto City and as required by law or City ordinance, to the extent the law or ordinance imposes stricter requirements, (d) comply with the terms of Section 6.4.5 below, and (e) be approved by Club and BSD. Since the Air Rights Infrastructure is being constructed concurrently with the Venue Improvements, the Venue Construction Contract shall allocate costs, rights and responsibilities, including the Venue Cost and the cost of the Air Rights Infrastructure, respectively, between City and BSD in a manner acceptable to each of City and BSD in their respective discretion. The allocation of costs between Venue Improvements and Air Rights Infrastructure shall be established by the Venue Construction Contract.

6.4.3 Record Drawings and Other Documents. Upon Substantial Completion of the Venue Improvements Work, City shall furnish to Club (i) three (3) copies of the as-built drawings that the Contractor delivers to City under the Venue Construction Contract with respect

to the Venue Improvements Work; and (ii) three (3) copies of the operating and maintenance data binders supplied by the Contractor under the Venue Construction Contract.

6.4.4 Remedy for Failure to Achieve Substantial Completion by the Substantial Completion Deadline. Upon execution of the Venue Construction Contract, City's liability to Club and BSD for City's failure to achieve Substantial Completion of the Venue Improvements Work on or before the Substantial Completion Deadline shall be limited to Club's and BSD's right to receive the Late Opening Charges. Notwithstanding anything to the contrary contained in this Agreement, neither Club nor BSD shall have any rights or remedies against City, other than the recovery of the Late Opening Charges as set forth in Sections 5.2 and 5.4 (Club and BSD each hereby waiving all such rights and remedies, including any and all right to terminate this Agreement and the right to seek any additional type or kind of damages against City for such default), as a result of City's failure to achieve Substantial Completion of the Venue Improvements Work as required by this Agreement. Nothing in this Section 6.4.4 is intended to limit any damages City may recover from the Contractor with regard to a delay in the completion of the Venue Improvements Work.

6.4.5 Warranty Claims. City shall take commercially reasonable efforts to enforce all warranty and similar claims with respect to the Venue Improvements at City's cost and expense. Club and BSD shall make City aware of any defects or warranty issues which come to its attention with respect to the Venue Improvements. City and Club shall cooperate with each other in prosecuting any and all warranty and similar claims, at City's cost and expense, under any and all contracts or other agreements with third parties for the design or construction of the Venue. The terms of this Section 6.4.5 shall survive Final Completion.

6.4.6 Construction Cooperation. City or its designee will conduct the Venue Improvements Work, and require the Contractor to conduct the Venue Improvements Work, in accordance with the cooperative process described in Section 2.3, including the following:

- (a) instructing the Project Architect to provide Club with a duplicate copy of all preliminary drawings or specifications, written notices and other documentation delivered or received by any of them contemporaneously with their delivery to City, including advance notice of any weekly progress meetings and design review meetings; and
- (b) allowing Club Representative to attend all material meetings relating to the Venue Improvements Work, including weekly progress meetings and design review meetings.

6.5 Change Orders. The Parties acknowledge and agree that the Project Plans may need to be supplemented, re-ordered and/or revised from time to time during construction through the use of change orders. Either City or Club (or BSD, as applicable to Air Rights Infrastructure) may request a construction change order by notifying the other Party of such requested modification and the details and estimated costs thereof, which costs shall (i) include, but not be limited to, associated architectural, engineering, Contractor and contractor's fees for the change order and (ii) be the responsibility of the requesting Party to the extent that the

requested change order results in an increase in the previously budgeted cost for such item. Accordingly, the Parties agree to cooperate with respect to all proposed modifications. Each change order requested by Club or BSD shall be subject to the Approval of City, which shall not be unreasonably withheld, conditioned or delayed. Each change order requested by City shall be subject to the Approval of Club and BSD (as applicable to Air Rights Infrastructure), which shall not be unreasonably withheld, conditioned or delayed, and any unreasonable delay in Approval shall constitute Excusable Delay for the benefit of City.

6.6 Streets and Utilities. BSD will cause to be constructed the streets and utilities as set forth in the Bull Street Agreement. Any delay by BSD in constructing such streets and utilities that causes a delay in the Final Completion of the Venue will constitute Excusable Delay for the benefit of City and Club (but not BSD).

6.7 Parking. BSD shall provide at all times during the Term parking for the Venue, and such parking shall at all times comply with the parking requirements of the Baseball Authorities. The initial parking for the Venue will be generally located in one or more of the areas shown on Exhibit A. BSD reserves the right in its sole discretion to relocate the parking from time to time as development of adjoining areas occurs, so long as parking remains reasonably convenient to the Venue. BSD agrees to work with Club regarding the details associated with the parking arrangements to ensure convenient parking for the benefit of the Venue and compliance with parking requirements promulgated by the Baseball Authorities. All material modifications to Exhibit A shall be consistent with the terms of the Venue License Agreement and shall be approved by the Representatives of the Parties.

Club will, at its expense, prepare any undeveloped land that it intends to use for Venue parking (the “Club Provided Parking Areas”) so that such land is suitable for that purpose. Club will also have the right and obligation to operate, repair and maintain the Club Provided Parking Areas.

All obligations of BSD hereunder will end upon the construction of three thousand parking spaces within the boundaries of the Bull Street Development.

The terms of this Section 6.7 shall survive Final Completion.

6.8 Signage. All Signage (as defined in the Venue License Agreement) on and at the Venue (including for purposes of this Section 6.8, on and at the Venue Plaza), and on and at the Air Rights Improvements shall be in accordance with all Applicable Laws (as defined in the Stadium License Agreement, including, without limitation, all applicable zoning and planning (including PUD) laws, rules and regulations). Without limiting the generality of the foregoing:

6.8.1. Interior Signage. Club shall be permitted to place within the interior of the Venue (a) Permanently Affixed Venue Signage (as defined in the Venue License Agreement), and (b) temporary Signage at Club’s discretion. All such Signage shall be in accordance with MiLB industry norms for similar facilities. The City may use and sell temporary Signage as it deems appropriate for City Events (as defined in the Venue License Agreement) provided that such advertising does not conflict with promotional exclusivities

granted by Club with respect to the Venue for which Club has provided the City written notice of such exclusivities within a reasonable time prior to the booking of the City Event.

6.8.2 Video and Electronic Signage. Club shall be permitted to affix, with the prior written approval of City (which shall not be unreasonably withheld), (a) a scoreboard and/or videoboard facing into the Venue; (b) an electronic marquee, subject to BSD's and City's approval (in each case, not to be unreasonably withheld), on or near the exterior of the Venue facing outward; (c) line score and other video displays within the facility consistent with MiLB industry norms. The initial locations of the videoboard, scoreboard and marquee and any other video/electronic signage shall all be determined by agreement of Club, City and BSD during the design phase of the Venue. The City shall have the use of all video and electronic signage at City Events provided that such advertising displayed on such video or electronic signage does not conflict with promotional exclusivities granted by Club with respect to the Venue for which Club has provided the City notice of such exclusivities within a reasonable time prior to the booking of the City Event. Club shall have use of all video and electronic signage at all times other than during City Events.

6.8.3 Exterior Venue Signage. All Signage on the exterior of the Venue or otherwise directed out from the Venue shall be subject to the approval of the City and BSD (in each case not to be unreasonably withheld). The parties acknowledge and agree that certain exterior Signage may also be subject to review and approval by the Bull Street Development Review Committee in accordance with the Bull Street Agreement.

6.8.4 Naming Rights Signage. Subject to the terms and conditions of this Agreement, the parties expressly recognize that the Naming Rights Partner (as defined in the Venue License Agreement) will be entitled to appropriate Signage on the exterior of the Venue, consistent with MiLB industry norms, provided, however, that such signage for the Naming Rights Partner shall be subject to the approval of the City and BSD (in each case not to be unreasonably withheld). The parties acknowledge and agree that certain exterior Naming Rights Partner Signage may also be subject to review and approval by the Bull Street Development Review Committee in accordance with the Bull Street Agreement.

6.9 Plaza Usage. The Plaza will be managed by Club at such times there are activities taking place within the Venue. All other times it will be managed by the Association established by the Bull Street Agreement for events that will benefit the community. Any contract or agreement regarding its use shall include language that such agreement can be terminated no less than thirty (30) days in advance of the event, provided there is an event scheduled for the venue that requires or benefits from use of the Plaza. Any alterations or placement of permanent structures on the Plaza requires the approval of City, Club and BSD.

6.10 Development of Capital Maintenance Schedule. Pursuant to Section IV(D)(4) of the Venue License Agreement, attached hereto as Exhibit B is an exemplar Capital Maintenance Schedule for the Venue. This exemplar Capital Maintenance Schedule shall be utilized by the Representatives of the Parties in the development of the long-term Capital Maintenance Schedule to be agreed upon by the City and Club at the conclusion of construction

of the Venue. This preliminary exemplar Capital Maintenance Schedule is based upon the very preliminary state of design at this time, and will be subject to modification based on the design and construction of the Venue.

The terms of this Section 6.10 shall survive Final Completion.

ARTICLE VII. DELAYS AND EFFECT OF DELAYS

7.1 Excusable Delay. Regardless of the existence or absence of references to Excusable Delay elsewhere in this Agreement, any deadline or time period within which City, Club or BSD, respectively must fulfill its obligations elsewhere in this Agreement shall each be adjusted as appropriate to include Excusable Delay Periods unless otherwise expressly provided in this Agreement to the contrary; provided that (i) the obligation to pay amounts as when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Delay and (ii) the delayed party complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable Delay, the delayed party shall, within fifteen (15) Business Days after its knowledge of the occurrence of such event of Excusable Delay, give notice to the other parties of the event constituting Excusable Delay.

ARTICLE VIII. APPROVALS

8.1 Approvals.

8.1.1 Venue Improvements Work. City shall consult with Club and BSD regarding any Material Change to the Project Plans for the Venue Improvements Work prior to the commencement of any Venue Improvements Work that deviates in a material respect from the Project Plans for the Venue Improvements Work.

8.1.2 FF&E. City shall consult with Club regarding any Material Change to the FF&E Requirements prior to the commencement of any Venue Improvements Work that deviates in any material respect from that required in the FF&E Requirements. City shall consult with Club regarding the selection of any “allowance” items provided for in the Venue Construction Contract prior to the commencement of any Venue Improvements Work that includes such allowance items.

8.2 Governmental Rule. The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Club from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Club from, any requirement hereunder for the

Approval of City or City Representative. The terms of this Section 8.2 shall survive Final Completion.

ARTICLE IX. ENVIRONMENTAL PROVISIONS

9.1 No Hazardous Materials. Neither Club nor BSD shall cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Venue; *provided, however* that Club and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Venue as may be reasonably necessary for Club to operate from the Venue pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

9.2 BSD's Remedial Work. BSD shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by the VCC to be performed with respect to any Pre-Existing Environmental Conditions at, in, on or under the Venue; provided, however, that to the extent that the costs of such actions are eligible for payment by the City pursuant to the terms and conditions of the Bull Street Agreement, then BSD shall, by document acceptable to City, irrevocably authorize and direct City to fund such costs under this Section 9.2 by disbursement pursuant to the Bull Street Agreement. Any such disbursements shall reduce the balance remaining available to BSD under the Bull Street Agreement. Regulated wastes, such as asbestos and industrial waste shall be properly characterized, manifested and disposed of at an authorized facility.

ARTICLE X. INSURANCE; INDEMNITY

10.1 Policies Required.

10.1.1 Policies Required During Construction of the Venue Improvements Work. At all times during the Venue Improvements Work, City or its designee will use good faith, commercially reasonable efforts to cause the Contractor to keep and maintain the policies of insurance required by the terms and conditions of the Venue Construction Contract.

10.1.2 Builders Risk Insurance. Additionally, City or its designee shall cause the Contractor to maintain additional property insurance written on the so-called "Builder's Risk Completed Value Non-Reporting Form" during any period in which any Venue Improvements Work is being performed, the anticipated costs of which exceed \$100,000 in the aggregate, with no coinsurance requirement, and containing a provision granting the insured permission to complete and adding the City as the loss payee for such insurance.

10.2 Property Insurance. Upon Substantial Completion property insurance shall be maintained in accordance with the Venue License Agreement, the Area Declaration and all applicable Building Site Declarations, which may require that the Parties obtain coordinated insurance from the same carrier in order to avoid coverage disputes arising from the integrated nature of the Venue and the Air Rights Improvements..

10.3 Indemnity by Club and BSD. To the extent allowed by Applicable Law, Club shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Club, BSD or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of Club's performance under this Agreement.

To the extent allowed by Applicable Law, BSD shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Club, BSD or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of BSD's performance under this Agreement.

The terms of this Section 10.3 shall survive Final Completion.

ARTICLE XI. ASSIGNMENT, TRANSFER AND SUBLEASING

11.1 Assignment, Subletting or Transfers. City and Club, respectively, may assign, transfer sublease, license, mortgage, pledge, encumber or otherwise hypothecate its interest in this Agreement (each a "**Transfer**") in connection with, and only in connection with, a transfer permitted pursuant to Article XXII of the Venue License Agreement. BSD shall be permitted to assign or transfer all or part of its interest in this Agreement without the prior written approval of City or Club to (i) any entity under common control with BSD, or (ii) any third party purchaser of an Air Rights Parcel that agrees in writing to be bound by the terms and conditions of this Agreement; in which case BSD will be released from all liability or obligations under this Agreement upon expiration of the Term of this Agreement. Without limiting the foregoing, no assignment hereunder shall affect the enforceability of this Agreement and during the Term any assignee shall continue to be bound by the terms hereof.

11.2 Transfers by City. City may assign all of its rights and obligations in and to the Venue or under this Agreement to a Governmental Authority, a nonprofit corporation formed by City or a trustee in connection with the Financing; provided that City remains liable for the City's financial obligations contained herein unless such financial obligations are specifically assumed by any such Governmental Authority.

**ARTICLE XII.
DEFAULTS AND REMEDIES**

12.1 Events of Default.

12.1.1 Club Default. The occurrence of any of the following shall be an “**Event of Default**” by Club or a “**Club Default**”:

(a) the failure of Club to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on Club’s part to be kept, performed or observed if: (1) such failure is not remedied by Club within ten (10) days after notice from City of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within ten (10) days, Club fails to commence to cure such default within ten (10) days after such default, or Club fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within ten (10) days but is otherwise reasonably susceptible of cure, the time within which Club is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within sixty (60) days after notice from City of such default, (notwithstanding Club’s diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement;

(b) the occurrence of an Insolvency Event with respect to Club; or

(c) a default by Club under the Venue License Agreement shall have occurred and remain uncured.

12.1.2 City Default. The occurrence of the following shall be an “**Event of Default**” by City or a “**City Default**”:

(a) the failure of City to perform or observe any of the obligations, covenants or agreements to be performed or observed by City under this Agreement within ten (10) days (or such longer period as may be permitted in this Agreement) after notice from Club of such failure, but if such performance or observance cannot reasonably be accomplished within such ten (10) day period (or such longer period as may be permitted in this Agreement), then no Event of Default shall occur unless City fails to commence such performance or observance within such ten (10) day period (or such longer period as may be permitted in this Agreement) and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided, however*, that if such performance or observance has not been accomplished within sixty (60) days after notice

from Club to City of such failure (notwithstanding City's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default hereunder; or

(b) the occurrence of an Insolvency Event with respect to City.

(c) a default by City under the Venue License Agreement shall have occurred and remain uncured.

12.1.3 BSD Default. The occurrence of any of the following shall be an "**Event of Default**" by BSD or a "**BSD Default**":

(a) the failure of BSD to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on BSD's part to be kept, performed or observed if: (1) such failure is not remedied by BSD within ten (10) days after notice from City of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within ten (10) days, BSD fails to commence to cure such default within ten (10) days after such default, or BSD fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within ten (10) days but is otherwise reasonably susceptible of cure, the time within which BSD is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within sixty (60) days after notice from City of such default, (notwithstanding BSD's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement;

(b) the occurrence of an Insolvency Event with respect to BSD.

12.2 Remedies. Subject to the provisions of this ARTICLE XII:

12.2.1 City's Remedies. Subject to this ARTICLE XII, upon the occurrence of any Club Default or BSD Default, City may, in its sole discretion, pursue any one or more of the following remedies against the defaulting Party, without any further notice or demand, other than any notice expressly provided in this Agreement:

(a) City may (but under no circumstance shall be obligated to) elect to suspend its obligations under or to terminate this Agreement. In the event City suspends this Agreement due to a Club Default and cannot contract with another MiLB team to fulfill Club's obligations under the Venue License Agreement within one (1) year after such termination, the City, upon BSD request made within thirty (30) days after notice from City to BSD that City could not contract with another MiLB team, convey the Real Property back to BSD for an amount equal to all costs incurred by City in connection with the Venue and Venue Improvements.

(b) If such Club Default, including but not limited to default under Section 5.1.5 hereof, or BSD Default occurs prior to the Construction Commencement Date, City may recover all Pre-Development Expenses incurred by City from the applicable defaulting party.

(c) Notwithstanding the foregoing, if there is a BSD Default but not a Club Default, City may terminate only the rights of BSD under this Agreement (not the rights of Club), without limitation of the effectiveness of this Agreement between City and Club, and require BSD to transfer all ownership rights in the Air Rights Parcels to the City; provided, however, that if the City should subsequently propose to sell any Air Rights Parcel, (i) BSD shall have the right of first refusal for fifteen (15) days after written notice from the City to BSD regarding such sale to match any offer received by the City for such Air Rights Parcel, and (ii) upon the sale of the Air Rights Parcel to BSD or any other party, the City shall be entitled to receive from the sales proceeds: (w) full reimbursement for any Air Rights Infrastructure Costs paid by City, and all of City's out-of-pocket costs of acquiring, holding, advertising and selling the Air Rights Parcel;, (x) interest at the Default Rate on the foregoing; and (y) twenty percent (20%) of the net proceeds of sale, with BSD to receive any amounts remaining.

(d) City may exercise any and all other remedies available to City at law or in equity or otherwise provided in this Agreement;

12.2.2 Club's Remedies. Subject to this ARTICLE XII, upon the occurrence of any City Default or BSD Default, Club may, at its sole discretion, pursue any one or more of the following remedies against the defaulting Party, without any further notice or demand, other than any notice expressly provided in this Agreement:

(a) Club may (but under no circumstance shall be obligated to) terminate this Agreement.

(b) If prior to the Construction Commencement Date Club may recover all pre-development costs incurred by Club against the applicable defaulting party.

(c) Club may exercise any and all other remedies available to Club at law or in equity or otherwise provided in this Agreement.

(d) Notwithstanding anything contrary in this Agreement, if there is a City Default but not a BSD Default, Club and BSD shall have the option to complete construction of the Venue and recover all reasonable costs incurred in connection therewith from the City.

The Parties expressly agree that (i) Club's rights under Section 12.2.2 (a) through (c) shall be subject to the terms and provisions of Section 6.4.4 that limit Club's damages in the event of a delay to achieve Substantial Completion by the Substantial Completion Deadline to the Club Late Opening Charges and (ii) the remedies available to Club under Section 12.2.2(d) above shall not be limited by the provisions of Section 6.4.4.

12.2.3 BSD' Remedies. Subject to this ARTICLE XII, upon the occurrence of any City Default or Club Default, BSD may, at its sole discretion, pursue any one or more of the following remedies against the defaulting Party, without any further notice or demand, other than any notice expressly provided in this Agreement:

(a) BSD may (but under no circumstance shall be obligated to) terminate this Agreement.

(b) BSD may recover all pre-development costs incurred by BSD against the applicable defaulting party.

(c) BSD may exercise any and all other remedies available to BSD at law or in equity or otherwise provided in this Agreement.

(e) Notwithstanding anything contrary in this Agreement, if there is a City Default but not a Club Default, Club and BSD shall have the option to complete construction of the Venue and recover all reasonable costs incurred in connection therewith from the City.

The Parties expressly agree that (i) BSD's rights under Section 12.2.3 (a) through (c) shall be subject to the terms and provisions of Section 6.4.4 that limit BSD's damages in the event of a delay to achieve Substantial Completion by the Substantial Completion Deadline to the Air Rights Infrastructure Late Opening Charges and (ii) the remedies available to BSD under Section 12.2.3(d) above shall not be limited by the provisions of Section 6.4.4..

12.2.4 Cumulative Remedies. Subject to the provisions of this ARTICLE XII, each right or remedy of City, Club and BSD provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy of City or Club provided for in this Agreement or available at law or in equity, by statute or otherwise, and the exercise or the beginning of the exercise by City, Club or BSD of any one or more of the rights or remedies provided for in this Agreement shall not preclude the simultaneous or later exercise by City, Club or BSD of any or all other rights or remedies provided for in this Agreement or hereafter existing at law or in equity, by statute or otherwise.

12.3 No Waivers. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

12.4 Effect of Termination. If any Party elects to terminate this Agreement, as provided herein (whether such termination occurs pursuant to this ARTICLE XII or any other provision hereof), this Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Agreement shall not alter the then existing claims, if any, of a Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

ARTICLE XIII. GENERAL PROVISIONS

13.1 Non-Appropriation. Notwithstanding any other provision of this Agreement, the City's payment obligations hereunder (except with respect to Venue Costs which are payable from any Financing) are payable solely from available amounts, contingent upon an Appropriation of the money by the City Council; none of the City's payment obligations under this Agreement are secured by a pledge of its full, faith and credit or constitute a general obligation or pecuniary liability which count against the City's constitutional debt limit. City's failure to make an Appropriation is not a Default under this Agreement, but Club, as its sole and exclusive remedy, may terminate this Agreement as a result thereof. City retains all of its sovereign prerogatives and rights as a city under State law with respect to the planning, design, construction, development and operation of the Venue. Nothing in this section is intended to or shall affect the City's obligations to utilize funds in the City Capital Fund to maintain and improve the Venue per the Venue License Agreement.

13.2 Interest on Overdue Obligations. In the event Club fails to pay the City any amount owed by Club pursuant to the terms of this Agreement on or before the date which is thirty (30) days after the City delivers notice to Club of such failure, then such amount shall bear interest at the Default Rate from the date due until paid. No breach of Club's obligation to pay the City any amount owed by Club pursuant to the terms of this Agreement shall have been cured unless and until the interest accrued thereon under this Section 13.2 shall have been paid. All payments shall first be applied to the payment of accrued but unpaid interest.

13.3 Confidential Information and FOIA. City shall maintain the confidentiality of any proprietary information, trade secrets or other confidential materials delivered to it pursuant to this Agreement and designated as confidential and proprietary by the delivering Party (the "CPI") in accordance with the South Carolina Freedom of Information Act ("FOIA"). If Club or BSD asserts that any of the CPI is exempt from disclosure under FOIA, they shall specifically identify and mark the CPI as to which the exemption is claimed prior to providing such CPI to the City. If any such information forms part of a document that also contains non-exempt information, and if a request for disclosure of said document is made under FOIA, then Club or BSD shall provide to the City a version thereof from which the exempt CPI has been redacted in order to facilitate the City's response to such request. If the City receives a request under FOIA with respect to any of the CPI, the City shall (unless prohibited by law or court or other order) promptly notify the Club and/or BSD of such request so that the Club and/or BSD may seek a protective order or other remedy to prevent such disclosure; City shall wait a reasonable time thereafter before disclosing such CPI. If any of the CPI is withheld by the City in response to a

public records request, and a Court determines the CPI is not exempt from disclosure under FOIA, the delivering Party shall indemnify and reimburse the City for any and all costs of defense and judgments, including attorneys' fees and costs, incurred by the City in defending against the disclosure of the CPI. At the delivering Party's option, it may instead choose to indemnify and defend City in any FOIA action seeking the disclosure of the Party's CPI.

13.4 Anti-Discrimination and Diversity. In accordance with Applicable Laws, the Parties, in performing their respective obligations hereunder will not discriminate based on religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability. It is the intent of the Parties to encourage local participation, community involvement and diversity in the design, construction, and/or development of the Venue.

13.5 Severability. If any term or provision of this Agreement, the Venue License Agreement or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

13.6 Entire Agreement; Venue License Agreement; Amendment. This Agreement (including all exhibits attached hereto), together with the Venue License Agreement, constitute the entire and exclusive agreement between City and Club with respect to the subject matter contained herein and therein. This Agreement together with the Bull Street Agreement constitutes the entire and exclusive agreement between City and BSD with respect to the subject matter contained herein. This Agreement shall be interpreted to be supplementary to and consistent with the Venue License Agreement to the maximum possible extent. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

13.7 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Appendices and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Agreement and any Appendices or Exhibits, the text of this Agreement shall control.

13.8 Parties in Interest; Limitation on Rights of Others; No Third-Party Beneficiaries. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Agreement.

13.9 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

13.10 Governing Law. THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF SOUTH CAROLINA NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.

13.11 Court Proceedings. Any suit, action or proceeding against any Party arising out of or relating to this Agreement, any transaction contemplated hereby or any judgment entered by any court in respect of any thereof may be brought in any Federal court whose jurisdiction includes Columbia, South Carolina or any state court in Columbia, and the Parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consent to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for in this Agreement. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, action or proceeding in any Federal or state court located in South Carolina, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby except in a Federal court whose jurisdiction includes South Carolina or a state court Columbia, South Carolina.

13.12 Limitation to Capacity as City. The Parties acknowledge that all references to “City” herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee interest in the Venue) shall refer only to City in its capacity as City under this Agreement. The term “City” and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City’s Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or Claims against City in its capacity as the “City” hereunder, it being acknowledged that Club’s remedies for any injury, damage or other Claim

resulting from any such action, omission or circumstances arising out of City's Governmental Functions shall be governed by the laws and regulations concerning Claims against City as a Governmental Authority. In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Club to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

13.13 Capacity of Persons Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City's capacity as the "City" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City's Governmental Functions.

13.14 No Limitation on City's Governmental Functions. The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Venue, and that no representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by City is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of City's legal immunity or consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of City's Governmental Functions.

13.15 Non-liability of City Officials. No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative (including the City Representative) of City or such body or any of its Affiliates (whether acting in the performance of City's Governmental Functions or otherwise) shall be personally liable to Club, BSD or any Person holding by, through or under Club or BSD, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Club, BSD or any Person holding by, through or under Club, BSD, or for any other obligation, under or by reason of this Agreement.

13.16 Time. Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. All provisions in this Agreement which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall

automatically be extended to the next calendar day that is Business Day. All references in this Agreement to times or hours of the day shall refer to Eastern Time.

13.17 Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

13.18 Joint and Several Liability. If Club at any future time during the Term comprises more than one Person, all such Persons shall be jointly and severally liable for payment of amounts due under this Agreement and for performance of every obligation of Club under this Agreement.

13.19 Relationship of the Parties; No Partnership. The relationship of Club, BSD and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts hereunder or under the Venue License Agreement nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Club and City. As such, City shall have no direct supervision of or obligation to the employees of Club and any communication of employee matters shall be through the Club Representative.

13.20 Non-Merger of Estates. The interests of City, BSD and Club in the Venue shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Venue or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Venue shall join in the execution of a written instrument effecting such merger of estates.

13.21 Notice. All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party at the addresses set forth in Appendix B.

[Signature Page Follows]

[Signature Page to Multi-Use Venue Development Agreement]

This Agreement is executed to be effective for all purposes as of the Execution Date.

CITY:

CITY OF COLUMBIA

By: _____

Name:

Title:

CLUB:

HARDBALL CAPITAL LLC

By: _____

Name:

Title:

BSD:

BULL STREET DEVELOPMENT, LLC:

By: _____

Name:

Title:

**APPENDIX A
TO
DEVELOPMENT AGREEMENT**

Glossary of Defined Terms

“**Action**” or “**Proceedings**” means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“**Agreement**” has the meaning given to that term in the introductory paragraph of this Agreement.

“**Air Rights**” has the meaning given to that term in the Recitals.

“**Air Rights Infrastructure**” shall mean the Air Rights platform, support improvements upon which the Air Rights Improvements will be constructed, and utility, vertical transportation and other supporting elements for the Air Rights Improvements that are included in the Venue Construction Contract. The Air Rights Infrastructure shall be constructed simultaneously with the Venue Improvements.

“**Air Rights Infrastructure Costs**” shall mean the costs, as determined pursuant to the Venue Construction Contract, to complete the Air Rights Infrastructure, including costs of all work necessary, in the event that the Air Rights Improvements are not constructed immediately upon substantial completion of the Venue Improvements, to make the Venue fully enclosed, watertight, secure and in compliance with Applicable Laws.

“**Air Rights Infrastructure Delivery Date**” means the Substantial Completion Deadline.

“**Air Rights Infrastructure Late Opening Charges**” means the liquidated damages in the amount of \$1,000 per day payable to BSD pursuant to the Venue Construction Contract for the Contractor’s failure to cause Substantial Completion of the Air Rights Infrastructure to occur on or before the Air Rights Infrastructure Delivery Date, but only to the extent actually paid to City by the Contractor pursuant to the terms of the Venue Construction Contract, and net of any third party expenses of City associated with collecting any such amounts.

“**Air Rights Improvements**” has the meaning given to that term in the Recitals.

“**Air Rights Improvements Work**” means the design, development and construction of the Air Rights Improvements (including any associated infrastructure, demolition or site

preparation) in accordance with the terms of this Agreement and any applicable Building site Declarations. Air Rights Improvements Work does not include the Air Rights Infrastructure, which is part of the Venue Improvements Work.

“Air Rights Parcels” has the meaning given to that term in the Recitals.

“Applicable Laws” means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include all City Ordinances, Environmental Laws and any applicable Federal wage requirements. Club acknowledges that there may be certain “Applicable Laws” that apply to the Venue as a result of same being owned by City.

“Appropriation” means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by the City Council of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

“Approval,” “Approve” or “Approved” means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Club, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Club is required under the terms of the Agreement, the specific approval of such item or matter by Club or the Club Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Club or the Club Representative, as permitted pursuant to the terms of this Agreement, and delivered to the other Parties, as applicable, and shall not include any implied or imputed approval; (c) with respect to any item or matter for which the approval of BSD is required under the terms of the Agreement, the specific approval of such item or matter by BSD or the BSD Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of BSD or the BSD Representative, as permitted pursuant to the terms of this Agreement, and delivered to the other Parties, as applicable, and shall not include any implied or imputed approval; and (d) with respect to any item or matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to the Parties, as applicable, and shall not include any implied or imputed approval.

“Area Declaration” shall mean the Area Declaration of Protective Covenants, Conditions and Restrictions which shall govern and control the use, operations and development of the real property comprised of the Venue and the Air Rights Parcels.

“**Baseball Approvals**” means all of the approvals described in Section III(A)(5) of the Venue License Agreement.

“**Baseball Authorities**” means, collectively, the League, the NAPBL and MLB.

“**Bull Street**” has the meaning set forth in the Recitals.

“**Bull Street Agreement**” has the meaning set forth in the Recitals.

“**Bull Street Site**” has the meaning set forth in the Recitals.

“**Building Site Declarations**” shall mean and include each and all of those certain Building Site Declaration of Protective Covenants, Conditions, and Restrictions that shall govern and control the use, operation and development of each Air Rights Parcel to be developed by BSD or its successors.

“**Business Day**” shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Columbia, South Carolina.

“**City**” has the meaning set forth in the preamble to this Agreement.

“**City Ordinances**” means all ordinances and regulations of the City, including, without limitation, all ordinances concerning the Financing, land use, development projects on City-owned land, leasing of property by the City to private businesses, training and employment of residents of the City, affirmative action, no-strike and labor peace agreements, payment of a living wage and other matters relating to City procurement and contracting procedures and any building codes, fire or life safety codes, development codes, zoning regulations and subdivision regulations, as same may be amended from time to time.

“**City Council**” means the City Council of the City of Columbia, South Carolina.

“**City Default**” as the meaning set forth in Section 12.1.2.

“**City Personal Property**” means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by City as of the Operating Term Commencement Date or otherwise purchased as part of Venue Costs and located on or within the Venue (and that do not constitute fixtures) and can be removed from the Venue without damage thereto. The City Personal Property shall be identified in the Venue Budget, consistent with the terms of the Venue License Agreement. The term “City Personal Property” does not include personal property provided by Club pursuant to the Venue License Agreement, but includes any replacements of the City Personal Property by City.

“**City Representative**” has the meaning set forth in Section 2.1.

“Claims” shall mean and include any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

“Club” has the meaning set forth in the preamble to this Agreement.

“Club Default” has the meaning set forth in Section 12.1.1.

“Club Representative” has the meaning set forth in Section 2.2.

“Conditions to City Obligations” has the meaning set forth in Section 3.1.

“Conditions to Commencement” has the meaning set forth in Section 3.2.

“Construction Commencement Date” has the meaning set forth in Section 3.2.

“Contractor” means the party or parties selected by City in accordance with the terms of this Agreement for construction of the Venue Improvements.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Default Rate” means the Prime Rate plus one percent (1%) per annum, not to exceed the Maximum Lawful Rate.

“Design Fees” means the fees paid by City to the Preliminary Architect, the Project Architect or other design professional for the preparation of plans and specifications for the Venue Improvements.

“Environmental Law(s)” means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, Title 48 of the South Carolina Code of Laws, as amended, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001; and the Endangered Species Act, as amended, 16. U.S.C. §§1531 et seq.

“Event of Default” has the meaning set forth in Section 12.1.

“Excusable Delay” means any delay which is caused by or attributable to (but only to the extent of) Force Majeure or the default of another Party hereto.

“Excusable Delay Period” means, with respect to any particular occurrence of Excusable Delay, that number of days of delay in the performance by a Party of its obligations under the Agreement actually resulting from such occurrence of Excusable Delay.

“Execution Date” has the meaning set forth in the preamble to the Agreement.

“FF&E Requirements” means the specifications and requirements for the City Personal Property to be part of the Venue Improvements at Substantial Completion thereof as established pursuant to the Project Plans.

“Final Completion” means, with respect to the Venue Improvements Work or any component of the Venue Improvements Work, (a) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the Project Plans or other plans therefore (all of which have been Approved pursuant to the terms of this Agreement, as and if required), all Applicable Laws and all other requirements of this Agreement, including the completion of the punch-list type

items referred in Section 5.1.6 and (b) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Venue Improvements, in accordance with the terms of this Agreement.

“Financing” means the issuance, by or on behalf of City, of one or more series of bonds or other debt obligations in an aggregate principal amount such that the net proceeds of such issuance, together with the Club contribution, are not less than an amount equal to the Venue Budget, including any Venue Costs paid by City in advance of such Financing.

“Financing Proceeds” means the cash proceeds of the Financing, net of (a) amounts deposited into debt service reserve funds (if any) for the Financing, (b) amounts budgeted for the payment of capitalized interest on the Financing and (c) all costs of issuance associated with the Financing.

“FOIA” has the meaning set forth in Section 13.3.

“Force Majeure” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party’s fault or negligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes including a strike or lockout by MiLB players or umpires; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (vii) failure of either Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include economic hardship.

“Governmental Authority” means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a municipal recreational facilities authority.

“Governmental Authorizations” means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including an alcoholic beverage permit from the South Carolina Department of Revenue.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable

Laws. The entering into this Agreement and the performance by City of its obligations under this Agreement shall not be considered a “Governmental Function.”

“**Hazardous Materials**” means any and all contaminants, pollutants, hazardous substances, petroleum, petroleum products, or other material the presence of which in air, ground or water is regulated by federal, state or local Environmental Law.

“**Improvements**” means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefore.

“**Insolvency Event**” means, with respect to any Person, (a) such Person’s or any of its Subsidiaries’ (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its Subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such Subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its Subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

“**Late Opening Charges**” means the liquidated damages (as set forth in the Venue Construction Contract) actually paid to City by the Contractor pursuant to the terms of the Venue Construction Contract for the Contractor’s failure to cause Substantial Completion of the Venue Improvements Work to occur on or before the Substantial Completion Deadline, net of any third party expenses of City associated with collecting any such amounts.

“**League**” means the member league of the NAPBL in which the Team is a member, or any successor MiLB league.

“**Legal Holiday**” means any day, other than a Saturday or Sunday, on which City’s administrative offices are closed for business.

“**Lien**” means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets of any kind, whether real or personal tangible or intangible, now owned or hereafter acquired.

“**Local Hospitality Tax Act**” means Sections 6-1-700, *et seq.* of the South Carolina Code of Laws Annotated.

“**Material Change**” means (a) as to the Venue Improvements, any modification to the Venue Improvements so that the Venue Improvements will not conform in a material respect to the Plans for Venue Improvements previously Approved by Club, and (b) as to City Personal Property to be a part of the Venue Improvements at Substantial Completion thereof, any modification to such City Personal Property so that such City Personal Property does not conform to the FF&E Requirements previously Approved by Club.

“**Maximum Lawful Rate**” means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Agreement, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than Applicable Laws now allow.

“**MiLB**” means Minor League Baseball.

“**MLB**” means Major League Baseball.

“**Operating Term**” means the “Term” as defined in the Venue License Agreement.

“**Operating Term Commencement Date**” means the first day of the Operating Term.

“**Parties**” or “**Party**” has the meaning set forth in the preamble to this Agreement.

“**Person**” means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

“**Plaza**” shall be the area designated as the “Plaza” on the Project Plans.

“**Pre-Development Expenses**” means third party design, survey, site preparation and/or other pre-construction expenses of City incurred prior to Construction Commencement Date, including those of the Preliminary Architect (but excluding legal fees of the Parties, financial advice, and bond issuance costs).

“**Pre-Existing Environmental Conditions**” means any Existing Contamination on the Real Property as the term “Existing Contamination” is defined by the Voluntary Cleanup

Contract (13-5789-NRP) between the South Carolina Department of Health and Environmental Control, South Carolina Department of Mental Health, Bull Street Development, LLC, and the City of Columbia.

“Prime Rate” means the “prime rate” as published in the “Money Rates” section of The Wall Street Journal; however, if such rate is, at any time during the Term, no longer so published, the “Prime Rate” shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a “prime rate”.

“Project Architect” means the architectural firm that will be employed by City in connection with the Venue Improvements.

“Project Plans” means collectively, the plans for Venue Improvements and the FF&E Requirements.

“PUD” means the Planned Unit Development governing the Bull Street Development known as the “Bull Street Neighborhood Code”.

“Qualified Surety” means any surety which has been approved by City and which has an Alfred M. Best Company, Inc. rating of “A” or better and a financial size category of not less than “VIII” (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

“Real Property” means the tract of land depicted in Exhibit A. In addition to the depiction of real property attached hereto as Exhibit A, the term “Real Property” shall also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Venue is constructed.

“Related Party” or **“Related Parties”** means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, tenants, and subtenants.

“Subsidiary” means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of

whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

“Substantial Completion” means, when used with respect to the Venue Improvements Work or any component of the Venue Improvements Work, the receipt of (i) a certificate of the Project Architect certifying that such Venue Improvements have been completed in accordance with the Project Plans, and (ii) a certificate of occupancy from the City acting in accordance with its Governmental Function that such Venue Improvements are ready for use and occupancy for their intended purposes in accordance with Applicable Law.

“Substantial Completion Date” means the date upon which Substantial Completion of the Venue Improvements Work occurs.

“Substantial Completion Deadline” means March 1, 2016, as such date may be extended by (i) an Excusable Delay Period or (ii) Section 5.2, each in accordance with the terms of this Agreement.

“Team” means all rights, title and interest, including franchise rights, in the specific minor league baseball franchise that is owned and operated by Club, that meets the requirements set forth in Section XVII(A)(3) of the Venue License Agreement, and that is to play baseball in the Venue during the term of the Venue License Agreement.

“Term” has the meaning set forth in Section 4.1.

“Transfer” has the meaning set forth in Section 11.1.

“VCC” means the Voluntary Cleanup Contract (13-5789-NRP) between the South Carolina Department of Health and Environmental Control, South Carolina Department of Mental Health, Bull Street Development, LLC, and the City of Columbia.

“Venue” has the meaning given to that term in the Recitals.

“Venue Budget” means the budget prepared pursuant to Section 5.1.2.

“Venue Construction Contract” has the meaning set forth in Section 6.4.2.

“Venue Construction Documents” means any and all contracts, documents or other instruments entered into by or on behalf of City or any Affiliates thereof for the development, design, construction or furnishing of the Venue Improvements, including the Venue Construction Contract.

“Venue Construction Schedule” means a schedule of critical dates relating to the Venue Improvements Work (which dates may be described or set forth as intervals of time from or after

the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (ii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the Venue Improvements Work and (iii) Substantial Completion of the Venue Improvements Work. The Venue Construction Schedule shall be adjusted as appropriate to reflect the delay in the Venue Improvements Work resulting from each occurrence of Excusable Delay in accordance with the provisions of this Agreement.

“Venue Costs” means all documented, direct costs incurred or to be incurred by City in order for City to fulfill its obligations under this Agreement with respect to the Venue Improvements Work and to cause Final Completion of the Venue Improvements Work, including all infrastructure, demolition, site preparation, Pre Development Expenses, Design Fees and any amounts payable to a third party under any of the Venue Construction Documents, but excluding costs of issuance of any Financing, costs of any Party’s legal or financial advice, allocation of internal staff or overhead costs of any Party. Venue Costs do not include Air Rights Infrastructure Costs or other infrastructure costs payable under the Bull Street Agreement or any Late Opening Charges or liquidated damages due any Party under this Agreement.

“Venue Improvements” means the Venue, including the Improvements and the City Personal Property located on the Real Property and described in the Project Plans for Venue Improvements and the FF&E Requirements. The Venue Improvements include the Air Rights Infrastructure but do not include the Air Rights Improvements.

“Venue Improvements Work” means the construction of the Venue Improvements (including the Air Rights Infrastructure any associated infrastructure, demolition or site preparation) in accordance with the terms of this Agreement.

“Venue License Agreement” has the meaning set forth in Section 3.1.1.

Rules as to Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) “Include”, “includes” and “including” shall be deemed to be followed by “, but not limited to,” whether or not they are in fact followed by such words or words of like import.

(2) “Writing”, “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable

Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) “Hereof”, “herein”, “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article”, “Section”, “Subsection” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Agreement and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word “or” will have the inclusive meaning represented by the phrase “and/or”.

(10) “Shall” and “will” have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of day shall be based upon Eastern Standard Time or Eastern Daylight Time, as applicable, on the date in question in Columbia, South Carolina.

(12) References to “\$” or to “dollars” shall mean the lawful currency of the United States of America.

(13) “Not to be unreasonably withheld” when used herein with respect to any Approval shall be deemed to be followed by “, conditioned or delayed” whether or not it is in fact followed by such words or words of like import.

**APPENDIX B
TO
DEVELOPMENT AGREEMENT**

Address for Notices

A. **CITY: CITY OF COLUMBIA, SOUTH CAROLINA**

All notices to City shall be sent to:

City of Columbia, South Carolina
City Hall
1737 Main Street
Columbia, South Carolina 29201
Attention: City Manager
Telephone: _____
Facsimile: _____

with a copy to:

City of Columbia
P.O. Box 667
Columbia, SC 29202
Attention: City Attorney
Telephone: 803-737-4242
Facsimile: 803-737-4250

B. **CLUB: HARDBALL CAPITAL LLC**

All notices to Club shall be sent to:

Hardball Capital, LLC
984 Foxcroft Road
Atlanta, GA 30327
Attention: Jason Freier, CEO
Telephone: 404-579-5786
Facsimile: 260-471-4678

C. **BSD: BULL STREET DEVELOPMENT, LLC**

All notices to Club shall be sent to:

Mail Address:

Bull Street Development, LLC

Attn: Robert E. Hughes, Jr.

Post Office Box 2567

Greenville, SC 29602

Delivery Address:

Bull Street Development, LLC

Attn: Robert E. Hughes, Jr.

1 North Main Street, Suite 902

Greenville, SC 29601

With a copy to:

John M. Walker

Smith Moore Leatherwood

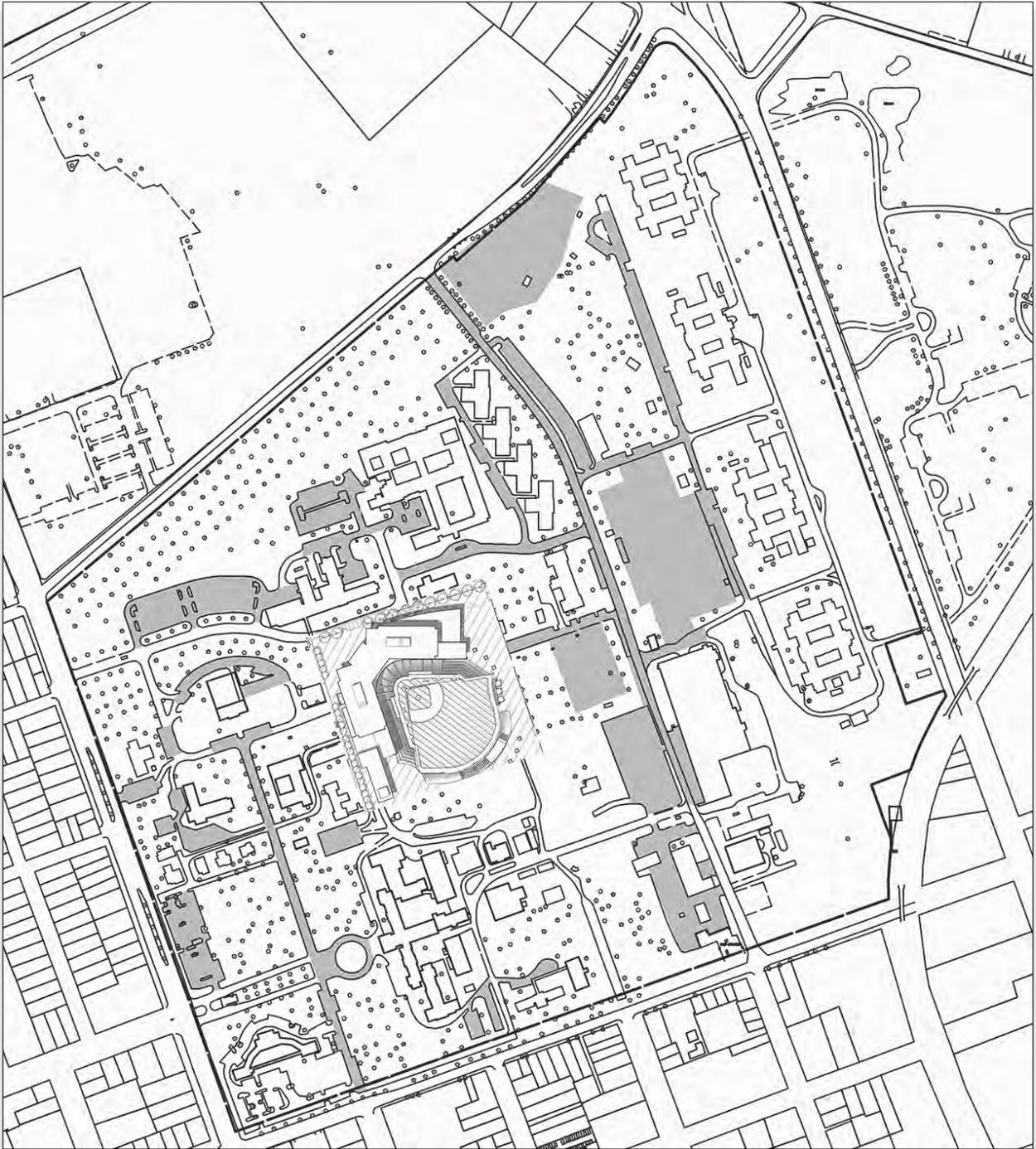
2 West Washington Street, Suite 1100

Greenville, SC 29601

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

Real Property and Parking

EXHIBIT A



-  Location of Parking
-  Approximate Location of Venue



**EXHIBIT B
TO
DEVELOPMENT AGREEMENT**

Exemplar of a Capital Maintenance Schedule

EXHIBIT B

Notes to Columbia Venue Capital Expense Estimation Matrix

The top portion of the matrix contains estimated inputs into the fund, the estimated earnings on retained funds, the estimated withdrawals/expenditures in red and the annual balance at the conclusion of each year.

The naming rights partner will pay each year at or near the beginning of the year (certainly prior to the April start of the season). The team will pay its \$1 per paid attendee over 275,000 in arrears each January. Between the two, there is an estimated an input of \$275,000 per year for the first 10 years. This is based on an annual naming rights payment of \$200,000 and an annual per-attendee payment of \$75,000 (in Fort Wayne this payment has averaged approximately \$120,000 over the first 5 years, so this assumption is very conservative). The input was increased to \$325,000 for the second ten years to account for inflation in the naming rights value.

The fund earnings are estimated based on a 5% annual return on the cash in the fund. Such a return should be achievable because (1) there will be a significant (seven figure) balance in the fund for most of its life and (2) the vast majority the fund can be placed in a longer-term investments because most of the funds will not be tapped for several years (hence no need for liquidity).

These estimates are based off of Hardball Capital's experience operating Parkview Field in Fort Wayne as well at a study of multiple other facilities that was conducted prior to creating a similar matrix for Parkview Field. Some adjustments were made for the different climate in Columbia as opposed to Fort Wayne and this matrix will need to be refined once the final design of the Columbia Venue is settled upon and the construction completed.

The left hand column contains thirty two areas of potential capital maintenance. These categories should cover all or virtually all of the capital needs of the Venue.

The second column explains the frequency of investment in that particular area.

The third column indicates the approximate amount of the expenditure in each area in current dollars. The columns to the right then track those expenditures on a year-by-year basis (with the current dollar cost being inflated by 3% each year). Those expenditures are then carried up to the top portion of the matrix.

Elevators	Every 15 yrs.	\$30,000															\$46,739					
Overhead Doors	Every 7 yrs.	\$15,000						\$18,448									\$22,689					
Concessions	Every 7 yrs.	\$40,000						\$49,195									\$60,504					
Major Equipment	Every 5 yrs.	\$25,000					\$28,982				\$33,598						\$38,949					\$45,153
Refrigeration & Freezers	Every 7 yrs.	\$15,000						\$18,448									\$22,689					
Retail (fixed)	Every 7 yrs.	\$10,000						\$12,299									\$15,126					
Playing Surface Replacement & Irrigation	Every 15 yrs. (field)	\$150,000 (field)															\$467,390					
	Every 15 yrs. (Irrigation)	\$150,000 (Irrigation)																				
Fencing & Railings	Every 5 years	\$25,000					\$28,982				\$33,598						\$38,949					\$45,153
Backstop Netting	Every 7 yrs.	\$15,000						\$18,448									\$22,689					
Outfield Wall (padding)	Every 15 yrs.	\$75,000															\$116,848					
Total			\$0	\$0	\$16,391	\$50,648	\$86,946	\$35,822	\$338,215	\$107,675	\$19,572	\$221,746	\$0	\$499,016	\$66,084	\$378,147	\$3,170,464	\$208,612	\$0	\$77,376	\$52,605	\$1,833,203