



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

12a

TO: Honorable Mayor and Members of City Council
FROM: Shannon Lavrin, City Manager

Ordinance/First Reading
 Ordinance/Second & Final Reading
 Resolution/First & Final Reading
 Information Only

AGENDA DATE REQUESTED: September 11, 2023

ORDINANCE/RESOLUTION CAPTION:

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE LEASE AGREEMENT FOR THE OPERATION OF A RESTAURANT IN THE FALLS PARK BUILDING

SUMMARY BACKGROUND:

Falls Park Eatery, LLC, d/b/a Passerelle Bistro, is currently operating under a lease dated September 29, 2004, as amended by those certain letter agreements dated March 3, 2011, April 9, 2012, and September 11, 2018, for operation of a restaurant in a portion of the Falls Park Building (the "Agreement"). The parties desire to amend the Agreement as set forth in the Fourth Amendment attached to this Ordinance.

IMPACT IF DENIED:

The amendments to the lease will not be approved.

FINANCIAL IMPACT:

Rental receipts of approximately \$33,000 per year less HVAC quarterly service fees incurred by the City, previously incurred by the Tenant.

REQUIRED SIGNATURES

Department Director

DocuSigned by:
Tara Eaker
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OMB Director

DocuSigned by:
Karen Crawford
FF010FBE2A3C45B...

City Attorney

DocuSigned by:
Leigh Padletti
3CBFADFS22244F8...

City Manager

DocuSigned by:
Shannon Lavrin
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AN ORDINANCE

TO AUTHORIZE THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE LEASE AGREEMENT FOR THE OPERATION OF A RESTAURANT IN THE FALLS PARK BUILDING

WHEREAS, Falls Park Eatery, LLC (“Falls Park Eatery”) is the owner of the leasehold rights in that certain Lease Agreement from the city of Greenville (the “City”) dated September 29, 2004, as amended by those certain letter agreements dated March 3, 2011, April 9, 2012, and September 11, 2018, for operation of a restaurant in a portion of the Falls Park Building (the “Agreement”); and

WHEREAS, Falls Park Eatery has exercised its option to extend the Agreement for an additional three-year term that commenced on January 31, 2023, and will end on January 30, 2026, unless further extended; and

WHEREAS, the City and Falls Park Eatery desire to amend the Agreement as set forth in the Fourth Amendment attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Fourth Amendment is only intended to amend the Agreement as specifically set forth therein, and all other terms and conditions of the Agreement are intended to remain in full force and effect as if fully reinstated therein;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the City Manager is authorized to execute on behalf of the City the Fourth Amendment to the Agreement in substantially the same form as Exhibit A attached hereto and incorporated herein. The City Manager, in consultation with the City Attorney, may make or accept minor modification to the wording and designations of the Fourth Amendment as may be necessary or appropriate, provided there is no compromise of the substantive purposes of this Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to Council for further review before the final execution.

DONE, RATIFIED AND PASSED THIS THE ___ DAY OF _____, 2023.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this “Amendment”) is entered into as of _____, by and between the City of Greenville, South Carolina, a municipal corporation and political subdivision of the State of South Carolina (“Landlord”), and Falls Park Eatery, LLC, a South Carolina limited liability company, d/b/a Passerelle Bistro (“Tenant”).

WITNESSETH:

WHEREAS, Landlord and Overlook Falls, Inc., a South Carolina corporation (“Overlook”), entered into that certain Lease Agreement dated September 29, 2004 (the “Lease Agreement”), as amended by that certain letter agreement dated March 3, 2011, pursuant to which Landlord leased to Overlook the rights to operate a restaurant in a portion of the Falls Park Building located at 601 South Main Street in downtown Greenville, effective as of October 1, 2004;

WHEREAS, Landlord and Overlook also entered in that certain Lease dated September 29, 2004, but effective as of October 1, 2004 (the “Lower Plaza Lease”), as amended by that certain letter agreement dated March 3, 2011, pursuant to which Landlord leased to Overlook the rights to use a portion of a plaza abutting the Falls Park Building in connection with Overlook’s operation of a restaurant in a portion of the Falls Park Building pursuant to the Lease Agreement;

WHEREAS, effective May 1, 2012, Overlook sold substantially all of its assets to Tenant and assigned to Tenant all of its rights in and to the Lease Agreement and the Lower Plaza Lease;

WHEREAS, by that certain letter agreement dated April 9, 2012, but later executed, Landlord and Tenant amended the terms of the Lease Agreement and the Lower Plaza Lease to, among other things, grant Tenant the right to extend such leases for two successive three-year terms beyond January 31, 2017 (e.g., January 31, 2017, through January 30, 2020, and January 31, 2020, through January 30, 2023);

WHEREAS, by that certain letter agreement dated September 11, 2018, Landlord and Tenant amended the terms of the Lease Agreement and the Lower Plaza Lease to, among other things, grant Tenant the right to extend such leases for two additional, successive three-year terms beyond January 30, 2020 (e.g., January 31, 2023, through January 30, 2026, and January 31, 2026, through January 30, 2029);

WHEREAS, by that certain letter dated November 21, 2022, Tenant exercised its option to extend both the Lease Agreement and the Lower Plaza Lease for an additional three-year term, commencing January 31, 2023, and ending on January 30, 2026, unless further extended; and

WHEREAS, the parties now desire to further amend the Lease Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Section 6 of the Lease Agreement is hereby amended to delete the requirement that Tenant maintain “not less than a quarterly HVAC maintenance contract with a licensed HVAC company.”

2. Section 6 of the Lease Agreement is hereby further amended to delete the fifth sentence thereof and to revise the sixth sentence as follows (emphasis added):

“All trash and other refuse, including boxes and grease, shall be disposed of as Tenant’s sole responsibility.”

3. Section 7 of the Lease Agreement is hereby amended to add the requirement that Landlord service the HVAC unit at least quarterly.

4. Section 8 of the Lease Agreement is hereby amended to delete the phrase:

“d. Trash removal from dumpster.”

5. The rent due and payable to Landlord under the Lease Agreement for the extended term commencing January 31, 2023, and ending on January 30, 2026, shall be increased by \$1,600.00 per year, prorated for any partial year of such extended term. If Tenant opts to pay the rent due and payable to Landlord each year in one lump sum payment on or before January 31st of each year, the prorated additional amount due and payable for the first year of the extended term commencing January 31, 2023, shall be paid to Landlord on or before September 1, 2023; for each additional year of the extended term, the additional \$1,600.00 shall be added to the lump sum payment otherwise due and payable on January 31st of each year. If Tenant opts to pay the rent due and payable to Landlord each year in equal monthly payments on or before the first day of each month during each year of the extended term, each such monthly payment shall be increased by \$133.33 (\$1,600.00/12), commencing on September 1, 2023.

6. Should Tenant exercise its to option extend the Lease Agreement for an additional three-year term, commencing January 31, 2026, and ending on January 30, 2029, the rent due and payable to Landlord during such extended term shall also be increased by \$1,600.00 per year, prorated for any partial year of such extended term. Such additional amounts shall be paid with the annual or monthly rent payments otherwise due and payable to Landlord in accordance with the terms and conditions of the Lease Agreement as amended.

7. Except as amended herein, all terms and conditions of the Lease Agreement shall remain in full force and effect.

[Signature page to follow]

ON BEHALF OF THE PARTIES HERETO, their duly authorized representatives have executed this Amendment as of the date first above written.

LANDLORD:

CITY OF GREENVILLE, SOUTH CAROLINA

Shannon Lavrin
City Manager

TENANT:

FALLS PARK EATERY, LLC
d/b/a Passerelle Bistro

Michael V. Minelli
Owner

Approved as to form:

City Attorney's Office

Reviewed:

City Director of Parks, Recreation, & Tourism

Reviewed:

City Director of Public Works

Reviewed:

City Chief Financial Officer

Reviewed:

City Risk Manager

Received:

City Purchasing Administrator