



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

15d

TO: Honorable Mayor and Members of City Council

FROM: John F. McDonough, City Manager

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

AGENDA DATE REQUESTED: August 9, 2021

ORDINANCE/RESOLUTION CAPTION:

ORDINANCE TO ENTER INTO A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE, GRAND BOHEMIAN GREENVILLE, LLC, AND THE KESSLER ENTERPRISE, INC. FOR CERTAIN ENHANCEMENTS TO THE CIVIC IMPROVEMENTS ADJACENT TO THE GRAND BOHEMIAN HOTEL, TO PROVIDE FOR THE USAGE OF SAME, AND TO APPROPRIATE AN ADDITIONAL \$163,000 FOR THE PROJECT

SUMMARY BACKGROUND:

This Ordinance appropriates additional funds as part of a development agreement with Kessler Enterprise, Inc. for the Grand Bohemian Hotel. The existing agreement is being modified to reflect mutually-agreeable enhancements to the approved Event Lawn, which the City had previously agreed to fund as part of the defined Public Improvements in the development agreement. The Ordinance also makes a modification to the allowable uses for the event lawn in the existing agreement.

The additional funding will come from the Economic Development Fund project account, which has sufficient balance for this purpose.

IMPACT IF DENIED:

The City will not appropriate funds for the modifications to the event lawn or modify the terms of the agreement regarding uses.

FINANCIAL IMPACT:

There is sufficient fund balance in the Economic Development Fund project account for this appropriation.

REQUIRED SIGNATURES

Department Director

DocuSigned by:

Merte Johnson

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Matt Elyard

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City Attorney

DocuSigned by:

Michael S. Pitts

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City Manager

John F McDonough

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OMB Director

AN ORDINANCE

TO ENTER INTO A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE, GRAND BOHEMIAN GREENVILLE, LLC, AND THE KESSLER ENTERPRISE, INC. FOR CERTAIN ENHANCEMENTS TO THE CIVIC IMPROVEMENTS ADJACENT TO THE GRAND BOHEMIAN HOTEL, TO PROVIDE FOR THE USAGE OF SAME, AND TO APPROPRIATE AN ADDITIONAL \$163,000 FOR THE PROJECT

WHEREAS, the city of Greenville (the “City”) entered into a Development Agreement (the “Agreement”) with Grand Bohemian Greenville, LLC and The Kessler Enterprise, Inc. (collectively, the “Developer”) in furtherance of a public-private partnership to construct certain public improvements which are part of the Grand Bohemian Hotel (the “Civic Improvements” and “Hotel”, respectively); and

WHEREAS, the City has long been committed to the continuing development of its commercial districts, including the Central Business District, and supports opportunities to leverage funds for public improvements adjacent to private redevelopments; and

WHEREAS, the Developer is making a significant capital investment in the construction of the Hotel which will serve as a major contributor to the City’s economy, enhance the tax base, and will further drive tourism in Greenville, particularly its Downtown—all to the benefit of the City’s residents and the business community; and

WHEREAS, a portion of the Civic Improvements includes an event lawn on public property adjacent to the Hotel and in immediate proximity to Falls Park (the “Event Lawn”); and

WHEREAS, the Developer has suggested certain enhancements to the Event Lawn and has requested that it be allowed to use the Event Lawn, on a limited basis, for Hotel-related events; and

WHEREAS, as expressly contemplated by Section 36-136(a)(5) of the City Code, given the significant investment the Developer is making in the Hotel and the significant contribution it will make to the City’s tourism, the City is amenable to the Developer’s limited use of the Event Lawn as long as that space maintains its public character; and

WHEREAS, in light of the foregoing, City Council desires to approve the Second Amendment to Development Agreement for Civic Improvements, a copy of which is attached hereto and incorporated herein as Attachment 1 (the “Second Amendment”) and appropriate the funds required to make the Civic Improvements enhancements contemplated therein;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the Second Amendment is hereby approved and \$163,000 is hereby appropriated as reflected in Attachment 2 to this ordinance. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the attached documents 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 City Council, then the matter shall be presented to Council for further review before the final execution.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

ATTACHMENT 1

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR CIVIC IMPROVEMENTS

This **SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR CIVIC IMPROVEMENTS** (this "Second Amendment") is entered into as of June __, 2021, by and between the **CITY OF GREENVILLE**, a municipal corporation and a political subdivision of the State of South Carolina (the "City") and **GRAND BOHEMIAN GREENVILLE, LLC**, a Delaware limited liability company, as assigned by **THE KESSLER ENTERPRISE, INC.** (together with its affiliated entities herein referred to as the "Developer"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in that certain Development Agreement for Civic Improvements, entered into by and between the City and the Developer dated as of September 27, 2017, as amended by that certain First Amendment to Development Agreement for Civic Improvements dated January 31, 2019 (collectively referred to herein as the "Development Agreement").

WITNESSETH:

WHEREAS, the parties hereto desire to amend certain terms and conditions of the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the covenants, promises and undertakings set forth herein and in the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. City Contribution. The City and the Developer agree that the term "City Contribution," as it is defined in the Recitals of the Development Agreement, is hereby amended to mean "up to, but not to exceed, Three Million Six Hundred Sixty-Three Thousand and No/100 Dollars (\$3,663,000.00)."

2. Financing. The City and Developer agree that the first sentence of Section 3.1 of the Development Agreement is deleted in its entirety and replaced with the following:

"Subject to annual appropriation and the schedule set forth below in Section 3.5, the City shall fund up to Three Million Six Hundred Sixty-Three Thousand and No/100 Dollars (\$3,663,000.00) for the Civic Improvements."

The City and Developer further agree that the first sentence of Section 3.5 of the Development Agreement is deleted in its entirety and replaced with the following:

"The City Contribution shall fund up to One Million Four Hundred Sixty-Three Thousand and No/100 Dollars (\$1,463,000.00) in eligible reimbursements associated with those Civic Improvements in Area 2 (as more fully set forth below in Section 4.3) with hard construction to begin approximately nine (9) months prior to

completion of the Hotel, the start of which shall be determined by the Developer.”

3. Completion of Construction of the Hotel and Civic Improvements. The City and the Developer agree that the completion of the construction of the Hotel and Civic Improvements provided for in Section 3.3 of the Development Agreement is projected to be the end of the fourth quarter of 2021.

4. Area 2 (City Right-of-Way) – Upper Falls Park East Gateway. The City and the Developer agree that Section 4.3(g) is deleted in its entirety and replaced with the following:

“(g) Natural grass event lawn with structural soil and grass paved system is being replaced with ForeverLawn artificial turf system with rubber infill and nailer boards and 10” compacted gravel base per the revised Construction Plans for Falls Park East Gateway Civic Improvements, Project # 25958.0002, prepared by Thomas & Hutton Engineering Co. for the City and the Developer, dated April 26, 2021 and more particularly described on that certain PCI No. PCI00018 dated June 10, 2021 attached hereto as Exhibit “A” and incorporated herein by reference. Twelve (12) metal tent stakes shall be furnished and installed by Developer to accommodate a 40’ by 60’ standard City event tent; provided, however, the staking system shall be designed and constructed in such a manner that no portion of the stakes protrude above the ground; and”

5. Area 2 (City Right-of-Way) – Upper Falls East Gateway. The City and the Developer agree that Section 4.3(h) is deleted in its entirety and replaced with the following:

“(h) Landscape beautification, including, but not limited to, ten (10) new stacked stone walls around the perimeter trees that line the entrance courtyard to Area 2.”

6. City Commitments. The City and the Developer agree that Section 6 is hereby amended by adding the following Section 6.4:

“6.4 The City shall jointly, with notification to the Developer, manage access to the event lawn located within Area 2 (the “Event Lawn”) in a manner generally consistent with the management of other City plazas and event spaces, with the exception of application of the general prohibition on commercial use as it pertains to the Developer’s use, or the use by the Developer’s affiliates and its successors in interest, given that the Event Lawn meets the exception criteria of Section 36-136(a)(5) of the City Code of Ordinances. Specifically, the City recognizes that this public space is improved as part of an economic development project where the Developer made a significant capital investment in the Civic Improvements, including the Event Lawn, and said public space is immediately adjacent to the Hotel, a major downtown economic

development project directly promoting tourism in which the Developer has also made a significant capital investment. The City acknowledges that the Developer desires to utilize the Event Lawn from time to time as a complimentary extension of the Hotel. Accordingly, with respect to the Developer's use of the Event Lawn, the City and the Developer agree as follows:

(f) All events permitted hereunder shall comply with applicable provisions of the City Code of Ordinances including, but in no way limited to, Chapter 16, Article III, Division 3 (noise regulations).

(b) Subject to subsection (c) below, the City shall use commercially reasonable efforts to accommodate the Developer's requests for usage of the Event Lawn provided, however, the City will not be required to cancel any prior reservations of the Event Lawn in favor of usage by the Developer. The City's Director of Parks, Recreation and Tourism or her designee will notify the Developer of any permitting of non-Developer related events at the Event Lawn in order to ensure that no schedule conflict occurs with the Developer.

© The foregoing notwithstanding, in order to ensure that the use of the Event Lawn for special events is not of such a frequency that the public space loses its public character, the usage of the Event Lawn by the Developer shall not exceed 175 calendar days per year. Of these 175 days, usage by the Developer shall not exceed (i) 75 weekend days (Friday, Saturday, and Sunday) per year with no more than 2 weekends per any given month containing four Saturdays and 3 weekends per any given month containing five Saturdays (regardless of actual usage during said weekends) and/or (ii) 100 days during the other days of the year (Monday, Tuesday, Wednesday, and Thursday) with no more than 12 such days (not including the weekend usage contemplated above) in any given month.

(d) All City event permit requirements and fees (e.g., police and trash services) shall apply to the Developer's use of the Event Lawn.

© Due to the significant strain that major events place upon City resources, the City shall have the right to establish blackout dates which shall be communicated to the Developer at least one year in advance. The parties agree that the Event Lawn between the dates of the day after Thanksgiving and January 3 of the new year, each year, will be set aside for use as a seasonal market open to the general public similar in quality to the seasonal market at Developer's Plant Riverside District that will be coordinated and implemented by the Developer in conjunction with the City. This

time shall not count toward Developer's usage contemplated above in subsection ©.

(f) Any damage to the landscaping, lawn, or City infrastructure within the Event Lawn caused by the Developer or its employees, agents, invitees, or licensees shall be the sole responsibility of the Developer to repair, normal wear and tear excepted. Developer shall use commercially reasonable efforts to complete said repairs as soon as possible; if the Developer fails to do so, the City has the right to undertake such repairs in which event the Developer shall promptly reimburse the City. Any damage to the landscaping, lawn, or City infrastructure within the Event Lawn caused by the City or the City's permittees (which such permittees shall not include the Developer or its employees, agents, invitees, or licensees) shall be the sole responsibility of the City or its permittees, normal wear and tear excepted. Subject to a permittee's activities, the City may require a permittee to provide evidence of liability insurance against personal injury or property damage."

7. Limitation on Amendment. Except as specifically modified hereby, all of the terms and provisions of the Development Agreement are ratified and reaffirmed by the parties hereto. This Second Amendment is limited as specified and other than the specific amendments contained herein shall not constitute an amendment, modification or waiver of, or otherwise affect in any way, any other provisions of the Development Agreement. This Second Amendment may not be further modified unless executed by all parties affected thereby or against whom enforcement is sought.

8. Execution/Counterparts. This Second Amendment may be executed in counterparts and, when counterparts of this Second Amendment have been executed and delivered by the Parties as provided in this Section 8, this Second Amendment shall be fully binding and effective, just as if the parties had executed and delivered a single counterpart of this Second Amendment. Without limiting the manner in which execution of this Second Amendment may be accomplished, execution by the parties may be effected by facsimile or electronic transmission (via PDF or other means) of a signature page of this Second Amendment executed by such party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Second Amendment as of the day and year first above written.

DEVELOPER:

GRAND BOHEMIAN GREENVILLE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY OF GREENVILLE

By: _____

Name: _____

Its: _____

EXHIBIT "A"

PCI No. PCI00018 dated June 10, 2021

[See Attached]

ATTACHMENT 2

BUDGET AMENDMENT					
BUDGET	Capital Projects Fund (ED Fund)		REQUESTED BY	Economic Development	
FISCAL YEAR	2021-22		DATE		
<u>INCREASE</u>			<u>DECREASE</u>		
<u>Description</u>			<u>Description</u>		
<u>Capital Projects Fund</u>					
Transfers Capital Projects		163,000			
Construction		163,000			
Explanation:	To appropriate \$163,000 in additional funding in the Capital Projects fund for the Grand Bohemian Hotel Development Agreement.				
DATE			APPROVED BY		
			City Council/City Manager Camilla Pitman/City Clerk		
FOR OMB POSTING PURPOSES ONLY					
<u>Budget Adjustments</u>		Increase (Decrease)	<u>Journal Entry</u>		
<u>Project Code</u>	<u>Account</u>	<u>Amount</u>	<u>Project Code</u>	<u>Account</u>	<u>Amount</u>
ED3510	341-0000-391.81-41	163,000	ED3500	341-9010-491.81-41	DR 163,000
ED3510	341-9010-411.68-04	163,000	ED3510	341-0000-391.81-41	CR 163,000
Total		326,000	Total		326,000
Prepared By					
Posted By					
Date					
				Number	