



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

11b

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 22, 2022

ORDINANCE/RESOLUTION CAPTION:

ORDINANCE TO APPROVE A FOURTH AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT (REVISED)

SUMMARY BACKGROUND:

The Greenville Drive is undertaking major capital improvements to Fluor Field. The purpose of this Ordinance is to approve an amendment to the Lease between the Drive and the City where the City will participate in the stadium improvements and extends the current term of the Stadium Lease from 2032 to 2036.

REVISED EXHIBIT: Note - The attached Exhibit A, "Fourth Amendment to Stadium Development Lease Agreement" was modified after First Reading on August 8, 2022. The changes are highlighted in the Exhibit in underline/strikethrough format.

IMPACT IF DENIED:

The Lease Agreement will not be amended.

FINANCIAL IMPACT:

The funding for the Calendar Year 2022 contribution was included in the adopted FY23 budget, so there is capacity for approval of this item.

REQUIRED SIGNATURES

Department Director

DocuSigned by:

Matt Elyard

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City Attorney

DocuSigned by:

Leigh Paolletti

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OMB Director

City Manager

DocuSigned by:

John F. McDonough

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Ordinance No. 2022-____

A N O R D I N A N C E

TO APPROVE A FOURTH AMENDMENT TO STADIUM DEVELOPMENT
LEASE AGREEMENT

WHEREAS, RB3, LLC (n/k/a Greenville Drive, LLC (“Greenville Drive”) entered into that certain Stadium Development Lease Agreement dated as of May 26, 2005 (the “Original Lease”) (as amended by the First Amendment thereto dated April 2, 2014, the Second Amendment thereto dated February 28, 2017), and the Third Amendment thereto dated May 25, 2021, with respect to the development, construction and leasing of a professional baseball stadium within the City of Greenville, South Carolina, all as more particularly described in the Original Lease; and

WHEREAS, simultaneously with execution of the Original Lease, Greenville Drive assigned all of its rights, interests, remedies and obligations pursuant to the Original Lease to West End Stadium, LLC, an Affiliate of Greenville Drive; and

WHEREAS, West End Stadium, LLC, Greenville Drive and/or certain of their Affiliates will be undertaking on an accelerated time frame a project involving, among other things, Stadium Improvements as more fully set forth in the Fourth Amendment to Stadium Development Lease Agreement, a copy of which is attached hereto and incorporated herein as Exhibit A (“Fourth Amendment”), which improvements are intended to enhance the fan experience at the Stadium and result in continued attendance growth and community support for the Greenville Drive home games and other baseball events at the Stadium; and

WHEREAS, the Stadium and the Greenville Drive have been a tremendous success, playing a transformative role in the redevelopment of downtown, particularly the West End, where there has been significant commercial and residential development which has greatly increased the City’s tax base; and

WHEREAS, the Greenville Drive home games and other events at the Stadium (including NCAA and league all-star baseball games) play an equally important role as a destination venue which draws City residents, those living in the surrounding areas and tourists alike; and

WHEREAS, the Greenville Drive and other fans patronize local retail and eating establishments and hotels, before and after each game, thereby generating additional sales, accommodations and hospitality taxes; and

WHEREAS, it is in the City’s interest to support the Stadium Improvements, and accordingly the City and West End Stadium, LLC desire to modify the Original Lease in certain respects, including to provide for certain financial commitments of the City with respect to the Stadium Improvements and an extension of the base lease term from 2032 to 2036; and

WHEREAS, in light of the foregoing, City Council desires to approve the Fourth Amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the Fourth Amendment is hereby approved. The City Manager, in consultation with the City Attorney, may: (a) make or accept modifications to the wording and designations of the attached document as may be necessary or appropriate and (b) execute such ancillary documents as may be necessary, provided there is no compromise of the substantive

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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 _____, 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A

FOURTH AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT

This FOURTH AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT dated as of August __, 2022 (this "Amendment") between **CITY OF GREENVILLE, SOUTH CAROLINA**, a municipality organized and existing under the laws of the State of South Carolina ("Lessor" or the "City"), and **WEST END STADIUM, LLC**, a South Carolina limited liability company ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor, RB3, LLC (n/k/a Greenville Drive, LLC ("Greenville Drive")), and Lessee entered into that certain Stadium Development Lease Agreement dated as of May 26, 2005 (the "Original Lease"), with respect to the development, construction and leasing of a professional baseball stadium within the City of Greenville, South Carolina, all as more particularly described in the Original Lease;

WHEREAS, simultaneously with execution of the Original Lease, Greenville Drive assigned all of its rights, interests, remedies and obligations pursuant to the Original Lease to Lessee, an Affiliate of Greenville Drive;

WHEREAS, Lessor and Lessee have entered into certain amendments of the Original Lease, including the First Amendment thereto dated April 2, 2014, the Second Amendment thereto dated February 28, 2017, and the Third Amendment thereto dated May 25, 2021 (the Original Lease, as modified or amended from time to time, the "Lease");

WHEREAS, Lessee and certain of its Affiliates (collectively, the "Lessee Parties") have made and will continue to make Stadium Capital Improvements (as defined below), which improvements are intended to enhance the fan experience at the Stadium and result in continued attendance growth and community support for the Greenville Drive home games and other baseball events at the Stadium;

WHEREAS, the Lease provides that the City will own the Stadium (less certain trade fixtures and other personal property) at the end of the lease term;

WHEREAS, the Stadium and the Greenville Drive have been a tremendous success, playing a transformative role in the redevelopment of downtown, particularly the West End, where there has been significant commercial and residential development which has greatly increased the City's tax base;

WHEREAS, the Greenville Drive home games and other events at the Stadium (including NCAA and league all-star baseball games) play an equally important role as a destination venue which draws City residents, those living in the surrounding areas and tourists alike;

WHEREAS, Greenville Drive and other fans patronize local retail and eating establishments and hotels, before and after each game, thereby generating additional sales, accommodations and hospitality taxes; and

WHEREAS, it is in the City's interest to support the Stadium Capital Improvements, and accordingly Lessor and Lessee desire to modify the Lease in certain respects, including to provide for certain financial commitments of Lessor with respect to the Stadium Capital Improvements.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Capitalized Terms. All capitalized terms used and not otherwise defined in this Amendment shall have the respective meanings ascribed to them in the Lease, with the exception of those capitalized terms set forth below in paragraph 2(e) below which are defined in that Intergovernmental Agreement dated as of December 20, 2012 between the Greenville Arena District, South Carolina, the County of Greenville and the City of Greenville ("IGA").

2. Contribution to Stadium Improvements.

(a) Each of Lessor and Lessee recognize the significant mutual interest of the parties for the Stadium to remain an updated, high quality professional baseball stadium and entertainment venue. Subject to paragraph 2(e) below, in connection with the Stadium Capital Improvements to be made by the Lessee Parties, Lessor has agreed to contribute the sum of \$700,000.00 per calendar year during the Lease Term for a period of fifteen (15) years, commencing with the 2022 calendar year and ending in calendar year 2036 (the "Lessor Annual Capital Improvements Contribution"). Lessor shall pay the Lessor Annual Capital Improvements Contribution to Lessee (by wire transfer to an account designated in writing by Lessee), or, if applicable, deposit the Lessor Annual Capital Improvements Contribution into the Annual Contributions Account (as defined below), on or before September 30 of each calendar year during the Lease Term, commencing with the 2022 calendar year. Notwithstanding anything to the contrary herein, the provisions of this paragraph 2 shall not limit, reduce or otherwise modify in any way (i) Lessee's and Lessor's respective maintenance obligations under the Lease in respect of the Land, Leasehold Improvements and Related Project Improvements, as applicable, or (ii) the Lessor Contribution and the Annual Maintenance Contribution obligations of Lessor and Lessee as set forth and defined in the Second Amendment to the Lease dated February 28, 2017, which obligations remain in full force and effect.

(b) For the purposes hereof, "Stadium Capital Improvements" shall mean currently planned and future capital improvements to be made on the Land and/or to the Stadium, including, but not limited to, the clubhouse renovation project scheduled to begin construction in September 2022 (which project is described in more detail in Exhibit A attached hereto, the "Clubhouse Renovation Project"). The term "Project Costs" shall mean all costs and expenses expended or incurred by or for the account of the Lessee Parties in connection with the planning, design, acquisition, construction, installation and equipping of the Stadium Capital Improvements, including, but not limited to, architectural, engineering and surveying fees, and all other amounts payable to the architect, general contractor or any other Person by the Lessee Parties in connection with the design, planning, construction, installation and equipping of, and obtaining of permits and approvals for, the Stadium Capital Improvements with the exception of loan interest, internal project management, advertising, media, public relations, contingency, and internal corporate overhead expenses incurred by the Lessee Parties.

(c) In the event at any time the aggregate Lessor Annual Capital Improvement Contributions exceed the aggregate Project Costs then incurred by the Lessee Parties, Lessee shall establish and maintain, in Lessee's name, a separate bank account (the "Annual Contributions Account") into which such excess Lessor Annual Capital Improvements Contributions shall be deposited. Lessee shall have the right to use Lessor Annual Capital Improvement Contributions (including by withdrawing funds from the Annual Contributions Account) solely for purposes of paying Project Costs, the specific amounts and needs of which

shall be determined by Lessee in good faith; said payments may constitute reimbursements to Lessee Parties for Project Costs then previously incurred by any of them and not reimbursed, provided they are not incurred prior to January 1, 2022. The Lessor Annual Capital Improvements Contribution shall be payable by Lessor in respect of each applicable calendar year as provided above, regardless of the actual amount of Project Costs incurred by the Lessee Parties in such calendar year or any prior years.

(d) On or before September 30, 2023, and each September thereafter during the Lease Term, Lessee shall provide to Lessor a written statement generally summarizing the Project Costs paid or reimbursed from the Lessor Annual Capital Improvements Contributions in the immediately preceding 12-month period. Lessee shall provide Lessor with reasonably substantiated documentation (e.g., invoices or other evidence of payment) showing the payment of specific Project Costs (to the extent such costs have then been incurred).

(e) The Lessor Annual Capital Improvements Contributions shall be payable solely from: (i) revenue distributed to the Lessor by the State Treasurer generated by the possession, sale and consumption of Sunday alcohol within the City of Greenville pursuant to Section 61-6-2010 of the South Carolina Code of Laws (1976, as amended from time to time) and (ii) the amounts annually distributed to Lessor from the Excess Accommodations Fees Account by The Bank of New York Mellon Trust Company, N.A. acting as the Escrow Agent under the IGA (or any successor escrow agent or replacement account for such Excess Accommodations Fees), in each case for the 12-month period ending on the applicable Lessor Annual Capital Improvements Contribution due date. Should the funds available to Lessor from the funding sources identified in this paragraph 2(e) be insufficient to fund all or a portion of any applicable Lessor Annual Capital Improvements Contribution and Lessor does not otherwise fund the shortfall when due, then the amount of such shortfall shall be carried forward to subsequent year(s) (with the shortfall added to the Lessor Annual Capital Improvements Contribution due in the next following year(s) and, if still unpaid, all payable solely from the funding sources identified in this paragraph 2(e)) until all Lessor Annual Capital Improvements Contributions are paid in full. In the event that funds are available to Lessor from the funding sources identified in this paragraph 2(e) sufficient to fund all or a portion of any applicable Lessor Annual Capital Improvements Contribution and Lessor fails to make any applicable Lessor Annual Capital Improvements Contribution in an amount up to the Lessor Annual Capital Improvements Contribution but in no event greater than the amount actually received by Lessor from the funding sources identified in this paragraph 2(e) and such failure continues unremedied following the notice and cure periods set forth in Section 11.2(b) of the Lease, then such failure shall be deemed an Event of Default on the part of Lessor under Section 11.2 of the Lease, thereby entitling Lessee to all of the rights and remedies with respect thereto under the Lease (including, without limitation, those remedies set forth in Section 11.4 of the Lease), in addition to any other applicable rights and remedies of Lessee in respect of such amounts due and payable to Lessee. While any portion of the Lessor Annual Capital Improvements Contribution remains unpaid, the Lessor shall not provide a pledge of the funds referenced in this paragraph 2(e) which is superior to the rights of Lessee under this Amendment.

(f) In the event that either of the funding sources identified above in paragraph 2(e) ceases to be available to Lessor in the future for any reason, including without limitation as a result of a change in the Sunday alcohol laws or the termination of the IGS, it is the intention of the parties for Lessor to make available for the funding of its payment obligations under this Amendment any replacement or equivalent source of funds available to Lessor from Sunday alcohol taxes or local accommodations fees/taxes collected pursuant to Title 6, Chapter 1, Article 5 of the South Carolina Code of Laws, as the case may be, or other reasonable substitute therefor,

so as to continue to provide Lessee with a source of funds reasonably expected to be sufficient to fully cover such payment obligations. Upon the occurrence of any such event, Lessor and Lessee will cooperate with each other, and Lessor will use good faith, reasonable efforts to make such available funding sources a source of funds for Lessor's obligations under this Amendment. Lessee recognizes that formal action will be required to be taken by the then-sitting City Council of the City of Greenville in order to effectuate any such replacement or other changes in funding sources hereunder, and that there is no guaranty or commitment by Lessor that any such replacement or substitute funding sources will be available.

(g) The parties acknowledge that it is in the mutual best interest of the Lessor and Lessee throughout the Lease Term for the Stadium and its facilities to continue to be upgraded and maintained in good repair in a manner consistent with other high-quality sports stadiums in order for the Stadium to remain a sports destination venue and attract fans to the Stadium and the downtown Greenville area. Accordingly, it is the parties' intent to mutually support Stadium Capital Improvements during the Lease Term beyond the calendar year 2036. To that end, the parties agree to, no later than 2034, begin working toward a mutually acceptable arrangement for such investments beyond 2036. This is an expression of intention only and the Lessee recognizes that formal action will be required to be taken by the then-sitting City Council in order to effectuate an extension of the Lessor's obligation under this Amendment, and Lessor likewise recognizes that any such extension shall require the written approval of Lessee.

3. Approvals. Lessor shall cooperate with Lessee and exercise best efforts to process, issue, approve and thereafter maintain in full force and effect (i) all approvals, permits and agreements required from the Lessor in connection with the acquisition, construction, improving, installation and operation of the Stadium Capital Improvements, including, without limitation, any necessary signage approval, and (ii) any other governmental permits, licenses and approvals which must be obtained in Lessor's name or with Lessor's consent, approval or application, in order to enable Lessee to complete the Stadium Capital Improvements (collectively, "Lessor's Permit Obligations"). Lessor shall use best efforts to fulfill Lessor's Permit Obligations in a timely manner so as to enable Lessee to commence construction of the Clubhouse Renovation Project as soon as reasonably possible upon completion of the 2022 baseball season (i.e., September 2022) and to complete such construction prior to the commencement of the 2023 baseball season (i.e., prior to March 2023). Lessor shall use best efforts to expedite the Lessor's processing, issuing, approving and maintaining the Lessor permits and approvals described above and any other applicable governmental requirements.

4. Further Modifications. Effective as of the date hereof, the Lease shall be amended as follows:

(a) Section 8.2 of the Lease shall be deemed modified by adding "or Project Costs (as defined in either that certain Second Amendment or Fourth Amendment to the Stadium Development Lease Agreement)" following the words "Project Costs" in the fourth line thereof (as set forth in the First Amendment to the Original Lease).

(b) Section 13.2 of the Lease shall be deemed modified by deleting the reference to "Michael S. Pitts, Esq." and replacing the same with "Leigh B. Paoletti, Esq."

(c) Each reference in the Original Lease to "this Agreement", "this Lease", "herein", "hereunder" or words of similar import shall be deemed to refer to the Lease (as defined in Section 1.1(w) of the Original Lease), including as amended by the First Amendment thereto, the Second Amendment thereto, the Third Amendment thereto and this Amendment.

(d) Section 5.5 of the ~~Original~~ Lease shall be deemed modified by deleting the reference to "~~October 31, 2032~~" in the ~~second and third lines~~ first line thereof and replacing the same with "~~October 31, 2036~~".

~~(e) Each reference in the Original Lease to "this Agreement", "this Lease", "herein", "hereunder" or words of similar import shall be deemed to refer to the Lease as defined herein. Section 12(a) of the Lease shall be deemed modified by deleting the reference to "October 31, 2032" in the second and third lines thereof and replacing the same with "October 31, 2036"~~

(f) For the avoidance of doubt, it is understood that the references to "2032" in the last paragraph of paragraph 6 of the Second Amendment to the Original Lease (i.e., the paragraph starting with "Notwithstanding anything to the contrary herein...") shall hereafter be references to "2036". In addition, such paragraph of the Second Amendment to the Original Lease shall likewise apply to non-payment of the full amount of any Lessor Annual Capital Improvements Contribution or a Lessor breach of its obligations under this Amendment

5. Miscellaneous. (a) Except as set forth herein, nothing contained in this Amendment shall be deemed to amend or modify in any respect the terms of the Lease and such terms shall remain in full force and effect as modified hereby. If there is any inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall be controlling and prevail.

(a) A memorandum of this Amendment shall be executed and acknowledged in accordance with the laws of the State and recorded in the Register of Deed's Office.

(b) This Amendment contains the entire agreement of the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

(c) This Amendment may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. An executed counterpart of this Amendment transmitted by facsimile, email or other electronic transmission shall be deemed an original counterpart and shall be as effective as an original counterpart of this Amendment and shall be legally binding upon the parties hereto to the same extent as delivery of an original counterpart.

(d) Each of the parties hereto shall be responsible for its respective costs and expenses incurred in connection with the negotiation and execution of this Amendment.

(e) This Amendment shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

(f) This Amendment shall be governed by the laws of the State of South Carolina without giving effect to conflict of laws principles thereof.

(g) The captions, headings, and titles in this Amendment are solely for convenience of reference and shall not affect its interpretation.

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the day and year first above written.

LESSOR:

WITNESSES:

CITY OF GREENVILLE, SOUTH CAROLINA

_____ By:_____

Name:

_____ Title:

STATE OF _____)

) **ACKNOWLEDGMENT**

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, _____, with whom I am personally acquainted, and who acknowledged that s/he executed the within instrument for the purposes therein contained, and who further acknowledged that s/he is the _____ of CITY OF GREENVILLE, SOUTH CAROLINA (the "Lessor") and is authorized by the Lessor to execute this instrument on behalf of the Lessor.

WITNESS my hand, at office, this ___ day of _____, 20__.

Notary Public

My Commission Expires:

[signatures continue on the following page]

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LESSEE:

WITNESSES:

WEST END STADIUM, LLC:

By: _____

Name:

Title:

STATE OF _____)

) **ACKNOWLEDGMENT**

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, _____, with whom I am personally acquainted, and who acknowledged that s/he executed the within instrument for the purposes therein contained, and who further acknowledged that s/he is the _____ of WEST END STADIUM, LLC (the "Lessee") and is authorized by the Lessee to execute this instrument on behalf of the Lessee.

WITNESS my hand, at office, this ___ day of _____, 20__.

Notary Public

My Commission Expires:

[end of signature pages]

EXHIBIT A
CLUBHOUSE RENOVATION PROJECT

This FOURTH AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT dated as of August __, 2022 (this "Amendment") between **CITY OF GREENVILLE, SOUTH CAROLINA**, a municipality organized and existing under the laws of the State of South Carolina ("Lessor" or the "City"), and **WEST END STADIUM, LLC**, a South Carolina limited liability company ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor, RB3, LLC (n/k/a Greenville Drive, LLC ("Greenville Drive")), and Lessee entered into that certain Stadium Development Lease Agreement dated as of May 26, 2005 (the "Original Lease"), with respect to the development, construction and leasing of a professional baseball stadium within the City of Greenville, South Carolina, all as more particularly described in the Original Lease;

WHEREAS, simultaneously with execution of the Original Lease, Greenville Drive assigned all of its rights, interests, remedies and obligations pursuant to the Original Lease to Lessee, an Affiliate of Greenville Drive;

WHEREAS, Lessor and Lessee have entered into certain amendments of the Original Lease, including the First Amendment thereto dated April 2, 2014, the Second Amendment thereto dated February 28, 2017, and the Third Amendment thereto dated May 25, 2021 (the Original Lease, as modified or amended from time to time, the "Lease");

WHEREAS, Lessee and certain of its Affiliates (collectively, the "Lessee Parties") have made and will continue to make Stadium Capital Improvements (as defined below), which improvements are intended to enhance the fan experience at the Stadium and result in continued attendance growth and community support for the Greenville Drive home games and other baseball events at the Stadium;

WHEREAS, the Lease provides that the City will own the Stadium (less certain trade fixtures and other personal property) at the end of the lease term;

WHEREAS, the Stadium and the Greenville Drive have been a tremendous success, playing a transformative role in the redevelopment of downtown, particularly the West End, where there has been significant commercial and residential development which has greatly increased the City's tax base;

WHEREAS, the Greenville Drive home games and other events at the Stadium (including NCAA and league all-star baseball games) play an equally important role as a destination venue which draws City residents, those living in the surrounding areas and tourists alike;

WHEREAS, Greenville Drive and other fans patronize local retail and eating establishments and hotels, before and after each game, thereby generating additional sales, accommodations and hospitality taxes; and

WHEREAS, it is in the City's interest to support the Stadium Capital Improvements, and accordingly Lessor and Lessee desire to modify the Lease in certain respects, including to provide for certain financial commitments of Lessor with respect to the Stadium Capital Improvements.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

6. Capitalized Terms. All capitalized terms used and not otherwise defined in this Amendment shall have the respective meanings ascribed to them in the Lease, with the exception of those capitalized terms set forth below in paragraph 2(e) below which are defined in that Intergovernmental Agreement dated as of December 20, 2012 between the Greenville Arena District, South Carolina, the County of Greenville and the City of Greenville ("IGA").

7. Contribution to Stadium Improvements.

(a) Each of Lessor and Lessee recognize the significant mutual interest of the parties for the Stadium to remain an updated, high quality professional baseball stadium and entertainment venue. Subject to paragraph 2(e) below, in connection with the Stadium Capital Improvements to be made by the Lessee Parties, Lessor has agreed to contribute the sum of \$700,000.00 per calendar year during the Lease Term for a period of fifteen (15) years, commencing with the 2022 calendar year and ending in calendar year 2036 (the "Lessor Annual Capital Improvements Contribution"). Lessor shall pay the Lessor Annual Capital Improvements Contribution to Lessee (by wire transfer to an account designated in writing by Lessee), or, if applicable, deposit the Lessor Annual Capital Improvements Contribution into the Annual Contributions Account (as defined below), on or before September 30 of each calendar year during the Lease Term, commencing with the 2022 calendar year. Notwithstanding anything to the contrary herein, the provisions of this paragraph 2 shall not limit, reduce or otherwise modify in any way (i) Lessee's and Lessor's respective maintenance obligations under the Lease in respect of the Land, Leasehold Improvements and Related Project Improvements, as applicable, or (ii) the Lessor Contribution and the Annual Maintenance Contribution obligations of Lessor and Lessee as set forth and defined in the Second Amendment to the Lease dated February 28, 2017, which obligations remain in full force and effect.

(b) For the purposes hereof, "Stadium Capital Improvements" shall mean currently planned and future capital improvements to be made on the Land and/or to the Stadium, including, but not limited to, the clubhouse renovation project scheduled to begin construction in September 2022 (which project is described in more detail in Exhibit A attached hereto, the "Clubhouse Renovation Project"). The term "Project Costs" shall mean all costs and expenses expended or incurred by or for the account of the Lessee Parties in connection with the planning, design, acquisition, construction, installation and equipping of the Stadium Capital Improvements, including, but not limited to, architectural, engineering and surveying fees, and all other amounts payable to the architect, general contractor or any other Person by the Lessee Parties in connection with the design, planning, construction, installation and equipping of, and obtaining of permits and approvals for, the Stadium Capital Improvements with the exception of loan interest, internal project management, advertising, media, public relations, contingency, and internal corporate overhead expenses incurred by the Lessee Parties.

In the event at any time the aggregate Lessor Annual Capital Improvement Contributions exceed the aggregate Project Costs then incurred by the Lessee Parties, Lessee shall establish and maintain, in Lessee's name, a separate bank account (the "Annual Contributions Account") into which such excess Lessor Annual Capital Improvements Contributions shall be deposited. Lessee shall have the right to use Lessor Annual Capital Improvement Contributions (including by withdrawing funds from the Annual Contributions Account) solely for purposes of paying Project Costs, the specific amounts and needs of which shall be determined by Lessee in good

(c) faith; said payments may constitute reimbursements to Lessee Parties for Project Costs then previously incurred by any of them and not reimbursed, provided they are not incurred prior to January 1, 2022. The Lessor Annual Capital Improvements Contribution shall be payable by Lessor in respect of each applicable calendar year as provided above, regardless of the actual amount of Project Costs incurred by the Lessee Parties in such calendar year or any prior years.

(d) On or before September 30, 2023 and each September thereafter during the Lease Term, Lessee shall provide to Lessor a written statement generally summarizing the Project Costs paid or reimbursed from the Lessor Annual Capital Improvements Contributions in the immediately preceding 12-month period. Lessee shall provide Lessor with reasonably substantiated documentation (e.g., invoices or other evidence of payment) showing the payment of specific Project Costs (to the extent such costs have then been incurred).

(e) The Lessor Annual Capital Improvements Contributions shall be payable solely from: (i) revenue distributed to the Lessor by the State Treasurer generated by the possession, sale and consumption of Sunday alcohol within the City of Greenville pursuant to Section 61-6-2010 of the South Carolina Code of Laws (1976, as amended from time to time) and (ii) the amounts annually distributed to Lessor from the Excess Accommodations Fees Account by The Bank of New York Mellon Trust Company, N.A. acting as the Escrow Agent under the IGA (or any successor escrow agent or replacement account for such Excess Accommodations Fees), in each case for the 12-month period ending on the applicable Lessor Annual Capital Improvements Contribution due date. Should the funds available to Lessor from the funding sources identified in this paragraph 2(e) be insufficient to fund all or a portion of any applicable Lessor Annual Capital Improvements Contribution and Lessor does not otherwise fund the shortfall when due, then the amount of such shortfall shall be carried forward to subsequent year(s) (with the shortfall added to the Lessor Annual Capital Improvements Contribution due in the next following year(s) and, if still unpaid, all payable solely from the funding sources identified in this paragraph 2(e)) until all Lessor Annual Capital Improvements Contributions are paid in full. In the event that funds are available to Lessor from the funding sources identified in this paragraph 2(e) sufficient to fund all or a portion of any applicable Lessor Annual Capital Improvements Contribution and Lessor fails to make any applicable Lessor Annual Capital Improvements Contribution in an amount up to the Lessor Annual Capital Improvements Contribution but in no event greater than the amount actually received by Lessor from the funding sources identified in this paragraph 2(e) and such failure continues unremedied following the notice and cure periods set forth in Section 11.2(b) of the Lease, then such failure shall be deemed an Event of Default on the part of Lessor under Section 11.2 of the Lease, thereby entitling Lessee to all of the rights and remedies with respect thereto under the Lease (including, without limitation, those remedies set forth in Section 11.4 of the Lease), in addition to any other applicable rights and remedies of Lessee in respect of such amounts due and payable to Lessee. While any portion of the Lessor Annual Capital Improvements Contribution remains unpaid, the Lessor shall not provide a pledge of the funds referenced in this paragraph 2(e) which is superior to the rights of Lessee under this Amendment.

(f) In the event that either of the funding sources identified above in paragraph 2(e) ceases to be available to Lessor in the future for any reason, including without limitation as a result of a change in the Sunday alcohol laws or the termination of the IGS, it is the intention of the parties for Lessor to make available for the funding of its payment obligations under this Amendment any replacement or equivalent source of funds available to Lessor from Sunday alcohol taxes or local accommodations fees/taxes collected pursuant to Title 6, Chapter 1, Article 5 of the South Carolina Code of Laws, as the case may be, or other reasonable substitute therefor, so as to continue to provide Lessee with a source of funds reasonably expected to be sufficient to fully cover such payment obligations. Upon the occurrence of any such event, Lessor and Lessee will

cooperate with each other, and Lessor will use good faith, reasonable efforts to make such available funding sources a source of funds for Lessor's obligations under this Amendment. Lessee recognizes that formal action will be required to be taken by the then-sitting City Council of the City of Greenville in order to effectuate any such replacement or other changes in funding sources hereunder, and that there is no guaranty or commitment by Lessor that any such replacement or substitute funding sources will be available.

(g) The parties acknowledge that it is in the mutual best interest of the Lessor and Lessee throughout the Lease Term for the Stadium and its facilities to continue to be upgraded and maintained in good repair in a manner consistent with other high-quality sports stadiums in order for the Stadium to remain a sports destination venue and attract fans to the Stadium and the downtown Greenville area. Accordingly, it is the parties' intent to mutually support Stadium Capital Improvements during the Lease Term beyond the calendar year 2036. To that end, the parties agree to, no later than 2034, begin working toward a mutually acceptable arrangement for such investments beyond 2036. This is an expression of intention only and the Lessee recognizes that formal action will be required to be taken by the then-sitting City Council in order to effectuate an extension of the Lessor's obligation under this Amendment, and Lessor likewise recognizes that any such extension shall require the written approval of Lessee.

8. Approvals. Lessor shall cooperate with Lessee and exercise best efforts to process, issue, approve and thereafter maintain in full force and effect (i) all approvals, permits and agreements required from the Lessor in connection with the acquisition, construction, improving, installation and operation of the Stadium Capital Improvements, including, without limitation, any necessary signage approval, and (ii) any other governmental permits, licenses and approvals which must be obtained in Lessor's name or with Lessor's consent, approval or application, in order to enable Lessee to complete the Stadium Capital Improvements (collectively, "Lessor's Permit Obligations"). Lessor shall use best efforts to fulfill Lessor's Permit Obligations in a timely manner so as to enable Lessee to commence construction of the Clubhouse Renovation Project as soon as reasonably possible upon completion of the 2022 baseball season (i.e., September 2022) and to complete such construction prior to the commencement of the 2023 baseball season (i.e., prior to March 2023). Lessor shall use best efforts to expedite the Lessor's processing, issuing, approving and maintaining the Lessor permits and approvals described above and any other applicable governmental requirements.

9. Further Modifications. Effective as of the date hereof, the Lease shall be amended as follows:

(a) Section 8.2 of the Lease shall be deemed modified by adding "or Project Costs (as defined in either that certain Second Amendment or Fourth Amendment to the Stadium Development Lease Agreement)" following the words "Project Costs" in the fourth line thereof (as set forth in the First Amendment to the Original Lease).

(b) Section 13.2 of the Lease shall be deemed modified by deleting the reference to "Michael S. Pitts, Esq." and replacing the same with "Leigh B. Paoletti, Esq.".

(c) Each reference in the Original Lease to "this Agreement", "this Lease", "herein", "hereunder" or words of similar import shall be deemed to refer to the Lease (as defined in Section 1.1(w) of the Original Lease), including as amended by the First Amendment thereto, the Second Amendment thereto, the Third Amendment thereto and this Amendment.

(d) "October 31, 2032" in the second and third lines thereof and replacing the same with "October 31, 2036".

(e) Each reference in the Original Lease to "this Agreement", "this Lease", "herein", "hereunder" or words of similar import shall be deemed to refer to the Lease as defined herein.

(f) For the avoidance of doubt, it is understood that the references to "2032" in the last paragraph of paragraph 6 of the Second Amendment to the Original Lease (i.e., the paragraph starting with "Notwithstanding anything to the contrary herein...") shall hereafter be references to "2036".

10. Miscellaneous. (a) Except as set forth herein, nothing contained in this Amendment shall be deemed to amend or modify in any respect the terms of the Lease and such terms shall remain in full force and effect as modified hereby. If there is any inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall be controlling and prevail.

(b) A memorandum of this Amendment shall be executed and acknowledged in accordance with the laws of the State and recorded in the Register of Deed's Office.

(c) This Amendment contains the entire agreement of the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

(d) This Amendment may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. An executed counterpart of this Amendment transmitted by facsimile, email or other electronic transmission shall be deemed an original counterpart and shall be as effective as an original counterpart of this Amendment and shall be legally binding upon the parties hereto to the same extent as delivery of an original counterpart.

(e) Each of the parties hereto shall be responsible for its respective costs and expenses incurred in connection with the negotiation and execution of this Amendment.

(f) This Amendment shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

(g) This Amendment shall be governed by the laws of the State of South Carolina without giving effect to conflict of laws principles thereof.

(h) The captions, headings, and titles in this Amendment are solely for convenience of reference and shall not affect its interpretation.

[remainder of page intentionally blank; signature pages follow]

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the day and year first above written.

LESSOR:

WITNESSES:

CITY OF GREENVILLE, SOUTH CAROLINA

_____ By:_____

Name:

_____ Title:

STATE OF _____)

) **ACKNOWLEDGMENT**

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, _____, with whom I am personally acquainted, and who acknowledged that s/he executed the within instrument for the purposes therein contained, and who further acknowledged that s/he is the _____ of CITY OF GREENVILLE, SOUTH CAROLINA (the "Lessor") and is authorized by the Lessor to execute this instrument on behalf of the Lessor.

WITNESS my hand, at office, this ___ day of _____, 20__.

Notary Public

My Commission Expires:

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LESSEE:

WITNESSES:

WEST END STADIUM, LLC:

By: _____

Name:

Title:

STATE OF _____)

) **ACKNOWLEDGMENT**

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, _____, with whom I am personally acquainted, and who acknowledged that s/he executed the within instrument for the purposes therein contained, and who further acknowledged that s/he is the _____ of WEST END STADIUM, LLC (the "Lessee") and is authorized by the Lessee to execute this instrument on behalf of the Lessee.

WITNESS my hand, at office, this ___ day of _____, 20__.

Notary Public

My Commission Expires:

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EXHIBIT A
CLUBHOUSE RENOVATION PROJECT (to be added)