

ORIGINAL  
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RESOLUTION NO.: R-2022-016

*Recognizing the application of the Force Majeure provision in the Venue License Agreement between Hardball Capital, LLC and the City of Columbia, dated April 8, 2014*

Be it resolved by the Mayor and City Council of the City of Columbia, South Carolina this 1<sup>st</sup> day of March, 2022, that pursuant to Article XXI of the Venue License Agreement, the time within which services or actions shall be performed or rendered shall be extended for a period of time equivalent to a delay caused by force majeure, Council hereby acknowledges that owing to the global pandemic and resulting emergency declarations, it was not possible to hold a 2020 baseball season, therefore, the Venue License Agreement shall be extended by a period of one (1) year as provided by this Article.

Requested by:

Assistant City Manager Gentry

Approved by:

Cheresa B. Wilson  
City Manager

Approved as to form:

[Signature]  
City Attorney

Introduced: 3/1/2022  
Final Reading: 3/1/2022

[Signature]  
Mayor

ATTEST:

Gilda M. Hammond  
City Clerk

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ORDINANCE NO.: 2020-057

*Authorizing the City Manager to execute an Agreement Regarding the Use of the Segra Park Capital Fund between the City of Columbia and Hardball Capital LLC for the planned multi-use entertainment facility in the Bull Street Development*

BE IT ORDAINED by the Mayor and City Council this 21st day of July, 2020, that the City Manager is authorized to execute the attached Agreement Regarding Use of the Segra Park Capital Fund, or on a form to be approved by the City Attorney, between the City of Columbia and Columbia Fireflies, LLC d/b/the Columbia.

Requested by:

Assistant City Manager Gentry

  
Mayor

Approved by:


  
City Manager

Approved as to form:

Teresa A. Knox

City Attorney

ATTEST:

  
City Clerk

Introduced: 6/16/2020

Final Reading: 7/21/2020

### **Agreement Regarding Use of Segra Park City Capital Fund**

This agreement ("Agreement") is entered into between the parties ("Parties"), the City of Columbia, South Carolina (the "City") and Columbia Fireflies, LLC d/b/a the Columbia Fireflies (the "Team") regarding the matters addressed herein.

WHEREAS, the City and Hardball Capital, LLC ("Hardball"), the manager of Team, entered into a Venue License Agreement on April 8, 2014 (the "VLA") with respect to the venue currently known as Segra Park (the "Venue"), located at 1640 Freed Street, Columbia, South Carolina, 29201; and,

WHEREAS, the VLA, in Article IV, Section D(1), creates a maintenance and improvement fund (the "City Capital Fund") with revenue generated in, from or in connection with the Venue and with the primary purpose of assuring that "the Venue remains a first-class multi-use entertainment facility and an asset to downtown Columbia and the surrounding community for at least the life of this Agreement"; and,

WHEREAS, Article IV, Section D(4) of the VLA states that the use of the City Capital Fund shall be for City Obligations (which are defined in the VLA as "actual, direct, out-of-pocket costs of all maintenance, repairs and replacements [related to the Venue] for which [the City] is responsible as set forth as set forth on Exhibit IV(C) [to the VLA]") or other capital improvements approved by the City, but at no time shall these funds be used for payment of debt service on bonds or other obligations issued by or on behalf of the City; and,

WHEREAS, on January 30, 2016 and with the City's consent the rights and responsibilities to manage, operate and maintain the Venue pursuant to the VLA were assigned by Hardball to Team; and,

WHEREAS, Team has held games and events drawing approximately 1.2 million patrons to the Venue in the first four years of operation, has operated and maintained the Venue in a first-class fashion, has been a strong partner in the Columbia community and is in full compliance with all of its obligations under the VLA; and

WHEREAS, circumstances beyond the Parties control have caused Major League Baseball to suspend (and will likely cause Major League Baseball to cancel) the 2020 Minor League Baseball season, and health and safety concerns have caused the Venue to be shut down and will cause the Venue to continue to remain closed or to operate in a greatly reduced capacity, causing great strain to the operations of Team; and,

WHEREAS, the Parties wish to assure that City and Team continue their successful partnership for the remaining years of the VLA and beyond, and that the Venue continues to be maintained and operated in a first-class fashion both now and in the future; and,

WHEREAS, Team is pursuing opportunities to create special events at the facility utilizing COVID-19 safety protocols in order to maximize utilization of the Venue during these unprecedented times; and,

WHEREAS, expenses specifically associated with support of special events (such as staffing, janitorial, set up/tear down, etc.) scheduled at the Venue will not be included in expenses to be paid via the City Capital Fund but those expenses necessary for maintenance of the Venue independent of special events (such as field maintenance, utilities, elevator maintenance, HVAC maintenance, fire alarm and suppression system, etc.) are allowable as expenses to be paid via the City Capital Fund; and,

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

1. From June 2020 through sixty days after the resumption of regularly scheduled Minor League Baseball games at the Venue or June 30, 2021 whichever occurs first, Team shall be permitted to utilize the funds in the City Capital Fund for the benefit of the Venue—specifically for

maintenance costs in connection with the Venue, Venue utilities payments and debt service payments (regularly scheduled principal and interest) related to the Team's contribution into the Venue; provided, however, that at no time shall these funds be used for payment of debt service on bonds or other obligations issued by or on behalf of the City. Team shall submit an accounting of the eligible expenses monthly to the City Manager for reimbursement from the City Capital Fund and the City shall provide that reimbursement for these permitted uses.

2. The monthly eligible expenses are estimated to range from Forty Thousand and No/100 (\$40,000.00) Dollars to Fifty Thousand and No/100 (\$50,000.00) Dollars but will vary from month to month, based on maintenance needs and other costs of the Venue.

3. The City and Team agree that the City Capital Fund will not be allowed to be reduced below Four Hundred Thousand and No/100 (\$400,000.00) Dollars unless and until both parties agree to such.


4. The Team acknowledges funds used from the City Capital Fund will be returned to the City Capital fund during the term of the VLA, either by means of installments or through future maintenance activities intended to be covered through the City Capital Fund per the terms of the VLA, Exhibit IV(C). If, at any time prior to the full return of all funds utilized by Team under this Agreement, the City Capital Fund lacks sufficient resources to cover a necessary City maintenance obligation pursuant to Section IV(D)(4) of the VLA, Team shall either (a) pay for that maintenance obligation and have the amount of such payment counted as returned to the City Capital Fund or (b) be required to return to the Capital Fund the lesser of (i) the amount sufficient to permit the fund to cover such obligation; or (ii) the amount utilized under this Agreement that has not yet been returned to the City Capital Fund.

5. Per Article IV, Section D(2), City shall have no obligation to contribute to the City Capital Fund other than the revenue generated in, by, through or in connection with the Venue per the VLA. All funds in the City Capital Fund have been, and will continue to be (unless the City specifically agrees otherwise) generated from the Venue and/or Team's operation thereof or obligations under the VLA.

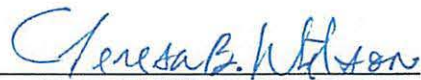
6. All other rights and responsibilities of the Parties under the VLA shall remain in full force and effect.

This Agreement is effective as of the date of the last signature hereinbelow.

Columbia Fireflies, LLC  
1640 Freed Street  
Columbia, South Carolina 29201

By:   
John E. Katz, President  
Date: 8/18/2020

City of Columbia, South Carolina  
Post Office Box 147  
Columbia, South Carolina 29217

By:   
Teresa B. Wilson, City Manager  
Date: 8/18/2020

APPROVED AS TO FORM

  
Legal Department City of Columbia, SC



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ORDINANCE NO.: 2020-057

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Requested by:

Assistant City Manager Gentry

Approved by:

*Teresa A. Knox*  
City Manager

Approved as to form:

*Teresa A. Knox*

City Attorney

*ST D*  
Mayor

ATTEST:

*Erika D. Hammond*  
City Clerk

Introduced: 6/16/2020  
Final Reading: 7/21/2020

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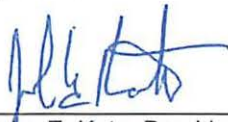
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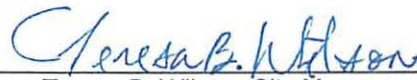
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