

ORDINANCE NO.: 2014-021

*Authorizing the City Manager to execute a Venue License Agreement
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 8th day of April, 2014, that the City Manager is authorized to execute the attached Venue License Agreement, or on a form to be approved by the City Attorney, between the City of Columbia and Hardball Capital LLC for the planned multi-use entertainment facility in the Bull Street Development.

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 3/4/2014
Final Reading: 4/8/2014

ORIGINAL
STAMPED IN RED

EXECUTION COPY

VENUE LICENSE AGREEMENT

By and Between

HARDBALL CAPITAL LLC

and

**THE CITY OF COLUMBIA,
SOUTH CAROLINA**

April 8, 2014

VENUE LICENSE AGREEMENT

This Venue License Agreement (“Agreement”) is made and entered into as of April 8, 2014, by and between **HARDBALL CAPITAL LLC**, a Georgia limited liability company (“Hardball”), and **THE CITY OF COLUMBIA, SOUTH CAROLINA** (the “City”) (Hardball and the City are sometimes herein referred to collectively as the “Parties,” or singularly as each “Party”).

ARTICLE I **RECITALS**

A. The City desires to assist in and accelerate the development of an approximately 180 acre tract of land in downtown Columbia, South Carolina (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”).

B. On July 31, 2013, the City entered into a Development Agreement with Hughes Development Corporation (“Hughes”) whereby Hughes will acquire and revitalize the Bull Street Site (the “Bull Street Agreement”). The preliminary plan for Bull Street includes the substantial re-use of many of the historic structures on the property along with residential dwelling units, and approximately 1.7 million square feet of retail, hotel, commercial and office areas. The plan also includes church locations, recreational spaces, hiking and biking trails, preserved and open spaces and community facilities. An economic impact study commissioned by the Greater Columbia Chamber of Commerce (the “Chamber Study”) projects that the Bull Street development could have an anticipated impact on the City of Columbia of approximately \$1.2 billion per year and could assist with the creation create and support of up to 6,100 jobs.

C. The Chamber Study also concluded that “Columbia could further enhance and speed up these impacts occurring by including a minor league baseball park in the development plan.” The Chamber Study noted the effect that minor league ballparks have had in similar-sized cities throughout the country and stated that Columbia “may even be at a competitive disadvantage with other South Carolina cities in terms of attractive places to live since it does not have a minor league team.”

D. In part based on the recommendation in the Chamber Study and a Brailsford & Dunleavy feasibility study commissioned by the City, the City desires to build a multi-use entertainment facility, which would host outdoor concerts, festivals, community and family-friendly events as well as minor league baseball, as part of the Bull Street project. The City desires to build a multi-use entertainment facility for the public purpose of providing recreational, cultural, and business and community development opportunities for residents of the City, and to further tourism and economic development in the City.

E. Hardball and its affiliates own and operate minor league professional baseball teams and Hardball desires to bring a team to play at a to-be-constructed multi-use entertainment facility in Columbia, South Carolina.

F. Hardball and the City desire to cause to be designed, financed and constructed a first class, urbanistic-sensitive multi-use entertainment facility (the “Venue”, as

further defined herein) pursuant to a Development Agreement (the "Development Agreement") to be agreed upon between the City, Hardball and Hughes, with the goal of opening for the 2015 baseball season if feasible, or if that is not feasible, the 2016 season.

G. Hardball and the City desire that Hardball cause the Club to play its home baseball games in the Venue for a minimum of 30 years, and to license certain use of the Venue to Hardball under the terms and conditions of this Agreement.

H. Hardball is skilled and experienced in the management, operation, maintenance and supervision of multi-use entertainment facilities, including those that feature minor league baseball.

I. Hardball and the City desire that Hardball manage, operate and maintain the Venue (as defined herein) under the terms and conditions of this Agreement.

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, Hardball and the City agree as follows:

ARTICLE II **DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set forth below.

A. "Applicable Laws" shall mean all applicable laws, ordinances, orders, rules, regulations, resolutions and requirements of duly constituted Governmental Authorities.

B. "Baseball Attendance" shall mean, for each Hardball Home Baseball Game:

- i Paid attendance (including no-shows);
- ii Suite tickets (excluding separately paid "standing room only" tickets, if any);
- iii Sponsorship and promotional agreement/arrangement tickets; and
- iv Complimentary attendance, except for the exclusions as set forth in Hardball Events Attendance below.

C. "Board of Advisors" shall have the meaning set forth in Section XXIV(A) hereof.

D. "Box Offices" shall mean the ticketing box offices at the Venue at which tickets for Venue Events are sold, printed and distributed.

E. "Broadcast Rights" shall mean the exclusive worldwide right, on a live or delayed basis, to produce and distribute programming by means of the transmission or retransmission of electronic signals, including over-the-air VHF and UHF signals, internet or otherwise "online", cable (basic, premium and pay-per-view), multi-channel distribution systems, wire, fiber, microwave, satellite, master antenna and direct broadcast satellite, as well as recorded visual images with or without sound, including photographs, films, videotapes and cartridges. Broadcast Rights shall also include the copyrights for any such programming or portions thereof and the exclusive right to make, use, sell and license the same for commercial or non-commercial purposes.

F. "Bull Street Agreement" shall have the meaning set forth in the Recitals in Section I(B).

G. "Business Day" means any day, other than a Saturday or Sunday and other than a day that banks in the State of South Carolina are generally authorized or required by Applicable Laws to be closed.

H. "City Event" shall mean any event, activity or program held at the Venue scheduled by City (in accordance with and as contemplated by Article XI) that is not a Hardball Event.

I. "City Financing" shall mean the financing obtained and used by the City to fund construction of the Venue, as determined by the City in its sole discretion.

J. "City Capital Fund" shall have the meaning set forth in Section IV(D)(1) herein.

K. "City Obligations" shall have the meaning set forth in Section IV(C).

L. "City Owned Parking Areas" shall mean those Parking Areas owned by the City for use in connection with the Venue, Venue Events and other purposes pursuant to the Development Agreement, the terms and conditions applicable to which are set forth in the Development Agreement, and the land for which will be contributed to the City by Hughes.

M. "Club" shall mean the minor league baseball franchise owned and operated by Hardball meeting the requirements set forth in Section XVII(A)(3) that plays baseball in the Venue during the Term.

N. "Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor thereto.

O. "Consumer Price Index" shall mean the Consumer Price Index, All Urban Consumers, U.S. City Average, Unadjusted, as published by the U.S. Bureau of Labor Statistics.

P. "Development Agreement" shall have the meaning set forth in the Recitals in Section I(F).

Q. “FF&E” shall mean furniture, fixtures, equipment and other items of personal property.

R. “Food and Beverage Concessions” shall mean all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided at, any and all Venue Events, whether through fixed or portable stands, machines or vendors, including dining, Suite waitperson service, catering, concessions vending, vending machines, roving vendors, picnics, snack bars and any other food or beverages served at the Venue.

S. “Food and Beverage Concessions Equipment” shall mean all equipment required to store, prepare, display, service, distribute and sell Food and Beverage Concessions at the Venue

T. “Governmental Authority” shall mean any federal, state or local government (including the City), agency, court, commission or other body with jurisdiction of the matter in question.

U. “Hardball Areas” shall mean the areas designated in the Plans and Specifications as administrative offices, Team Store(s), designated storage areas, and the Home Team locker room during the baseball season, and coaching offices during the baseball season, and all kitchens, food and beverage preparation, storage and sales areas.

V. “Hardball Contribution” shall mean the Hardball Initial Contribution and the Hardball Development Contribution.

W. “Hardball Development Contribution” shall have the meaning set forth in Section IV(A)(2).

X. “Hardball Events” shall mean all activities and events at the Venue, including Hardball Special Events and Hardball Home Baseball Games, but excluding City Events.

Y. “Hardball Events Attendance” shall mean Baseball Attendance together with the actual attendance for all other Hardball Events for which an admission fee is charged or a room rental or other facility fee is charged. Hardball Events Attendance shall not include attendance from:

- i employees, media and game day performance personnel;
- ii complimentary tickets issued to visiting and home teams, scouts, and other uniformed and non-uniformed personnel in accordance with MLB and NAPBL standard practices and policies for minor league teams;
- iii tickets issued to charitable groups (i.e., those groups who are Section 501(c)(3) organizations under the Code (e.g., Boys and Girls Club)); provided the tickets are provided for free by Hardball; and

iv tickets provided for free by Hardball through its charitable programs, such as its school and library reading programs.

Z. “Hardball Event Novelties and Souvenirs” shall mean any novelty, clothing or souvenir sold at any Hardball Event.

AA. “Hardball Home Baseball Game” shall mean all home games of the Club, including all exhibition, preseason, regular season and postseason home games.

BB. “Hardball Initial Contribution” shall have the meaning set forth in Section IV(A)(1).

CC. “Hardball Maintenance Obligations” shall have the meaning set forth in Section IV(C).

DD. “Hardball Provided Parking Areas” shall mean those Parking Areas to be provided by Hardball for use in connection with the Venue, and Venue Events pursuant to the Development Agreement, the terms and conditions applicable to which are set forth in the Development Agreement.

EE. “Hardball Special Event” shall mean any event that is not a Hardball Home Baseball Game and is an event conducted at the Venue and scheduled by Hardball pursuant to Article XI herein, including concerts and other sporting events.

FF. “Maintenance Budget” shall have the meaning set forth in Section IV(D)(4) hereof.

GG. “MLB” shall mean Major League Baseball.

HH. “Naming Rights” shall have the meaning set forth in Section IX(A).

II. “Naming Rights Partner” shall mean the entity after whom the Venue shall be named. A Naming Rights sponsorship will be sold for the economic benefit of both the City and Hardball as further described in Article IX.

JJ. “NAPBL” means the National Association of Professional Baseball Leagues.

KK. “Novelties and Souvenirs” shall mean any product, item, device, souvenir, novelty, supply or other similar kind of personal property. Novelties and Souvenirs shall include baseball caps and hats, bats, T-shirts, sweatshirts, jerseys and pullovers, baseballs, baseball and other sports and entertainment trading cards, baseball gloves, scorecards, programs, souvenir books and other products related to the forgoing products or related to or sold in conjunction with Hardball Events.

LL. “Occupancy Date” means the date on which construction of the Venue is substantially completed and a temporary certificate of occupancy is issued by the applicable

Governmental Authorities and Hardball commences using the Venue (including by occupying the Venue).

MM. "Parking Areas" shall mean those areas agreed upon as "Parking Areas" for the Venue pursuant to the Development Agreement, which shall include the Hardball Provided Parking Areas and the City Owned Parking Areas.

NN. "Performance License Fees" shall have the meaning set forth in Section IV(A)(3) herein.

OO. "Permanently Affixed Venue Signage" shall mean all advertising signage at the Venue that is permanently affixed to any portion of the Venue including, the outfield fence(s) and other field surface walls surrounding the field and around the concourse, picnic areas, suite level, foul poles, lighting structures, dugouts, and the service level. It shall also include marquee signage at or near the entrances to the Venue.

PP. "Plans and Specifications" shall mean the plans and specifications developed by mutual agreement of the Parties pursuant to the Development Agreement specifically describing the design of the Venue and all included amenities.

QQ. "Project Budget" shall be the budget to develop the Venue, which budget shall not exceed \$35,000,000, the funds for which shall be comprised of \$29,000,000 from the City and \$6,000,000 from Hardball, as provided herein.

RR. "Scoreboard Advertising" shall mean any and all advertising displayed on the Venue scoreboard and videoboard, including audio, video and message center advertising.

SS. "Signage" shall mean all signs, banners, flags, pennants, and similar items or displays, whether permanent (including any of the foregoing that is permanently affixed to any item or imbedded in any item), temporary (including any of the foregoing that is electronic, virtual or otherwise projected) or mixed.

TT. "Tax Exempt Bonds" shall mean bonds or other obligations issued by or on behalf of the City for which the interest thereon is excluded from the gross income of the holders thereof.

UU. "Taxable" under Article IV(A)(2) shall mean any property not exempt from ad valorem taxation under Article X of the South Carolina Constitution Sections 3(a)-3(d).

VV. "Utility" or "Utilities" shall mean the electric, gas, sewage, water, storm water, telecommunication services, and Internet/wireless/broadband/multimedia services utilized at the Venue.

WW. "Venue" shall mean the planned multi-use entertainment facility located in the City of Columbia, South Carolina, as described in the Plans and Specifications, including such immediately adjacent exterior area as designated pursuant to the Development Agreement.

XX. "Venue Maintenance" shall include, but not be limited to, maintenance of the playing field and landscaped areas inside the Venue, which maintenance shall include regular mowing, watering, fertilizing and other chemical treatments required to maintain the field and landscaping at professional stadium quality and the grounds in an attractive and clean condition, specialized turf care as required, such as aeration and other treatments which are required to maintain the quality of the field as defined herein, recycling requirements and the maintenance of all unsodded areas of the field and Venue.

YY. "Venue Equipment" shall have the meaning set forth in Section XVI(B) hereof.

ZZ. "Venue Events" shall mean all City Events and all Hardball Events.

AAA. "Venue Manager" shall mean Hardball or its permitted assignee pursuant to Article XXII.

BBB. "Venue Services" shall mean and consist of the following:

1. Operation Services. The operation and staffing of Food and Beverages Concessions, the Venue scoreboard, the public address system, the Box Offices, collections, security within the Venue, all ticket booths and ushering services, first-aid room, the opening and closing of the Venue and the operation of all Venue facilities (excluding Hardball Areas) at all Venue Events.

2. Field Preparation. Field preparation in advance of baseball games or other on-field Venue Events which shall include, but not be limited to, lining the field, preparation of the unsodded areas of the field, installation of bases, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and other Venue Events.

3. Janitorial Services. The cleaning and maintenance of the interior portions of the Venue during and after all Venue Events, including the stocking of all restrooms with paper products as required prior to such events, the pickup and disposal of all trash collected immediately after such events and any necessary clean-up of trash and debris from the Venue used by attendees of Venue Events. All janitorial services provided to the Venue shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with Applicable Laws.

4. Pre-Event Venue Services. The preparation of the Venue for any Venue Event as may be required, including conversion of the playing field for other athletic events, installation of any supplemental seating equipment, installation of stage or platform equipment, installation of any additional sound equipment and/or temporary lighting that may be required for the Venue Event.

5. Venue Security. Venue security in accordance with Section V(B).

CCC. "Suites" shall mean the suites identified in the Plans and Specifications.

DDD. "Team Store(s)" shall mean the merchandise store(s) located within the Venue, which are more specifically described in the Plans and Specifications.

ARTICLE III **TERM**

A. Effectiveness; Conditions. This Agreement is effective and enforceable immediately upon execution by the Parties, but is subject to the following conditions in favor of both parties, except as expressly provided below:

1. Approval of City Council. Approval of this Agreement by the City Council of the City. The City's total contribution to the development of the Venue and all other related expenditures including the plaza, the support of Hughes' development, Hughes' use of the air rights, and cost overruns shall not exceed \$29,000,000.

2. Execution of Development Agreement. On or before June 15, 2014, as such date may be extended by mutual agreement, the City, Hardball and Hughes shall have entered into a Development Agreement, and such Development Agreement shall be approved by the City Council of the City. Such Development Agreement will provide the terms for design, financing and construction of the Venue, and may address the City Owned Parking Areas, and related infrastructure, including contribution by Hughes to the City of the land for the Venue and City Owned Parking Areas. The Development Agreement may also establish terms and conditions for the operation, repair, maintenance and replacement of the Parking Areas, including, City Owned Parking Areas and Hardball Provided Parking Areas.

3. Satisfaction of Development Agreement Conditions. On or before September 1, 2014, as such date may be extended by mutual agreement, all conditions precedent to groundbreaking as set forth in the Development Agreement (including all conditions to City Financing) shall have been satisfied.

4. Execution of Hughes/City Agreements. On or before May 1, 2014, as such date may be extended by mutual agreement, the City and Hughes shall have entered into any amendment(s) to the Bull Street Agreement as required by the City. This condition is for the sole benefit of the City.

5. Baseball Approvals. On or before October 1, 2014, as such date may be extended by mutual agreement, Hardball shall have obtained all necessary and final approvals, which shall be irrevocable and in writing, from the league of which the Club is a member, NAPBL, and MLB (collectively, the "Baseball Authorities"), as applicable, for (a) the design of the Venue, (b) the relocation of a full season minor league baseball team that is a member of the NAPBL meeting the requirements set forth in Section XVII(A)(3) to Columbia, South Carolina, which will be the Club, (c) the Club to play its home games at the Venue, and (d) such other approvals as are required by the Baseball Authorities with respect to

the transactions contemplated by this Agreement. Upon finalization of such approvals, the entity that owns the Club shall join in this Agreement and assume all of the obligations of Hardball under this Agreement. The date on which these approvals are due shall be automatically extended so long as Hardball has filed the requisite application (including all related documentation) with the Baseball Authorities and NAPBL confirms that the application is in the approval process.

The Parties agree to work in good faith and use commercial best efforts to assure that all of the conditions set out in this section are satisfied. If any of the foregoing conditions are not satisfied by the stated deadline, as it may be extended, either Party may terminate this Agreement upon written notice to the other, whereupon it shall be null and void and neither Party shall have any further obligations to the other under this Agreement. Upon satisfaction of the foregoing conditions either Party may request execution of a supplement to this Agreement establishing the satisfaction of the foregoing conditions.

B. Term of Agreement. The term of Hardball's license rights under this Agreement shall commence on the date hereof and shall expire, unless sooner terminated as provided herein, 60 days after the end of the thirtieth (30th) full regular season of Club (plus post-season if applicable) following the opening of the Venue for the Club's regular season play (the "Term").

ARTICLE IV **FINANCIAL TERMS**

A. Hardball Contributions and Fees.

1. Hardball Initial Contribution. Hardball shall contribute Six Million Dollars (\$6,000,000) (the "Hardball Initial Contribution") to the City in connection with the construction and equipping of the Venue. On or before the date of groundbreaking for construction of the Venue, and as a condition thereto, the Hardball Initial Contribution shall either be paid in full by Hardball to City or Hardball shall provide evidence of adequate financing, which evidence of adequate financing shall be satisfactory to the City in its sole and absolute discretion, pursuant to which Hardball can advance the Hardball Initial Contribution in draws as applicable expenses are incurred. Notwithstanding the foregoing, in the event the Parties mutually agree in writing that Hardball will obtain from third parties equipment for the construction and equipping of the Venue, Hardball's actual, direct, out-of-pocket costs for obtaining such equipment will be credited against the Hardball Initial Contribution; provided, however, in connection with such approval, the Parties shall also agree as to (i) the specific equipment, and related installation and other services to be provided by the third party with respect to such equipment, (ii) the identity of the third party equipment and service provider, (iii) the terms and conditions of such acquisition, including warranty and services terms, conditions and limitations; which terms and conditions shall not, unless approved by the City allow for installment payments of any such costs, (iv) Hardball's cost to be credited to the Hardball Initial Contribution, and (v) such other matters as the Parties mutually agree to at the

time of approval. If the amount of Hardball’s actual, direct, out-of-pocket costs for obtaining equipment by agreement pursuant to this Section IV(A)(1) is not determined as of the date Hardball’s cash payment is due under this Section IV(A)(1), the Parties’ agreement shall specify an estimated credit for such amount, and upon determination of the actual amount the Parties shall promptly make payment as needed to reconcile the difference, if any, between the estimate and the actual cost.

2. **Hardball Development Contribution.** As further described in Sections VII(B) and XVII(A)(2), the Parties acknowledge that the successful development and operation of the Venue will promote and stimulate Taxable development within the Bull Street Site, and one of the primary reasons for the City’s financial and other commitments to build the Venue and enter into this Agreement is to help the revitalization of the Bull Street Site, through investment in Taxable properties thereon. Accordingly, Hardball hereby agrees to annually contribute money to the City (the “Hardball Development Contribution”), which annual Hardball Development Contribution shall be based upon the total investment in Taxable development within the Bull Street Site (excluding the Venue or any other City-owned improvements within the Bull Street Site) which are completed as of December 31 of any calendar year, commencing December 31, 2016 or such earlier calendar year in which a full baseball season is played at the Venue and payable on January 15 of the following calendar year, according to the following schedule:

Hardball Development Contribution	Total Investment in Taxable Development on Bull Street Site
\$516,000	\$0-\$30 million
\$258,000	\$30-45 million
\$129,000	\$45-60 million
\$0	Above \$60 million

For purposes of determining investment in Taxable developments within the Bull Street Site for the above-described table, Hardball and the City agree to use the improvement costs for such Taxable developments, as reflected on applications for building and other permits filed with the City pursuant to City of Columbia Ordinance No. Sec. 5-201 *et seq.*, which may be amended by the City Council from time to time in its sole and exclusive discretion, plus other reasonable demonstrated and documented hard and soft costs expended on the production of the asset that is the subject of the building permit.

The Hardball Development Contribution shall be prorated based on the number of scheduled Hardball Home Baseball Games which are not played during a season due the destruction of the venue as described in Article XIX, Condemnation, as described in Article XX, Force Majeure, as described in Article XXI or due to

termination of this Agreement by the City for reason other than breach by Hardball.

When received annually, the City shall deposit the Hardball Development Contribution into a segregated account, and restrict the use thereof to provide for infrastructure and parking facilities with respect to the Bull Street Site, as contemplated by the Bull Street Agreement or deposit to the City Capital Fund as otherwise described herein; provided in all events, the City shall not utilize the Hardball Development Contribution directly or indirectly for the payment of debt service on Tax Exempt Bonds issued to finance the construction of the Venue, or in a manner which would jeopardize the continued tax exemption of such Tax Exempt Bonds with the advice of its bond counsel.

3. Performance License Fees. In addition to the Hardball Contribution, Hardball shall also pay to the City on or before January 31 of each year for the prior calendar year throughout the Term hereof additional performance license fees in accordance with the following schedule (the "Performance License Fees"):

Annual Hardball Events Attendance at all Hardball Events	Additional License Fees Payable (per person in excess of 275,000)
0 – 275,000	\$ 0
275,001+	\$1.00

By way of example, should the Hardball Events Attendance for the calendar year ending December 31, 2015 be 400,000, Hardball would pay the City the sum of One Hundred and Twenty Five Thousand Dollars (\$125,000). Should Hardball Events Attendance for such year be 450,000, Hardball would pay the City the sum of One Hundred and Seventy Five Thousand Dollars (\$175,000). Should Hardball Events Attendance be 200,000 for such year, Hardball would not owe the City any Performance License Fees for such year.

All Performance License Fees will be paid by Hardball to City and deposited by City into the City Capital Fund described in Section IV(D).

B. City Event Revenue and Expenses.

1. City Event Concessions. Hardball will, on or before seven (7) days after the applicable City Event, pay to the City fifty percent (50%) of all net revenue (i.e., gross revenue net of applicable taxes, and actual, direct, out of pocket costs of goods sold and labor) generated from the sale of Food and Beverage Concessions from each City Event. The City's share of concessions revenue from City Events ("City Event Food and Beverage Concession Revenue") will be deposited by City into the City Capital Fund described in Section IV(D).

2. Venue Services Payments. The City shall reimburse Hardball for the actual, direct, out-of-pocket costs and expenses incurred by Hardball for all Venue Services provided by Hardball in connection with all City Events, including the actual, direct, out-of-pocket costs of event personnel, security, supplies, set-up and clean-up; provided, however, the City shall not be charged for (a) Food and Beverages Concessions costs or expenses (other than to the extent of netting certain costs and expenses against gross revenue as described in Section IV(B)(1)), (b) surcharges or upcharges on Venue Services, or (c) overhead and other indirect expenses of Hardball. All such payments due to Hardball from the City for the Venue Services shall be paid within thirty (30) days after City's receipt of a reasonably detailed invoice for such Venue Services for such City Events. The City and Hardball may agree upon a methodology for simultaneously netting the City's payments to Hardball pursuant to this Section IV(B)(2) and Hardball's payments to the City pursuant to Section IV(B)(1) and (3); provided that the City receives sufficient time to review and approve all pertinent backup information.

3. City Event Revenue. Excluding Food and Beverage Concessions revenue sharing as described in Section IV(B)(1) above, the City will retain all revenues from all City Events ("City Event Revenue"), including: ticket sales, merchandise sales (other than the sales of baseball novelties, which shall be sold only by Hardball), program and advertising sales, Signage (subject to the restrictions described in Section XIII(B)), parking (including and subject to Section IV(G)(3)), Suite ticket sales, Broadcast Rights, City Event Food and Beverage Concessions Revenue and Venue Services Revenue (as defined below). Any merchandise sales conducted by the City will be from portable displays. The City will not sell merchandise out of the Team Store(s) at City Events. Gross revenues (net of applicable taxes) with respect to City Events collected by Hardball in connection with the Venue Services ("Venue Services Revenue") shall be paid by Hardball to City within seven (7) days after the applicable City Event. All City Event Revenue (net of costs, expenses, taxes and other amounts for which the City is responsible) will be deposited upon receipt by City into the City Capital Fund described in Section IV(D).

C. Maintenance Costs. Hardball shall pay the costs of all maintenance, repairs and replacements for which it is responsible as set forth on Exhibit IV(C) (the "Hardball Maintenance Obligations"). The City will, within thirty (30) days after being invoiced for the same, reimburse Hardball for the actual, direct, out-of-pocket costs of all maintenance, repairs and replacements for which it is responsible as set forth as set forth on Exhibit IV(C) ("City Obligations"), provided that upon reasonable notice to Hardball the City may instead elect to self-perform at its expense any of the City Obligations.

D. City Capital Fund.

1. City Capital Fund. The City shall establish a maintenance and improvement fund (the "City Capital Fund") for the long term maintenance and capital improvement needs of the Venue. The primary purpose of the City Capital

Fund shall be that the Venue remains a first-class multi-use entertainment facility and an asset to downtown Columbia the surrounding community for at least the life of this Agreement.

2. City Deposits. The City shall deposit into the City Capital Fund, upon receipt by the City as described herein, Performance License Fees, net City Event Revenue, and City's share of Net Naming Rights Revenue (as defined in Section IX(A) below) (collectively, "City Deposits"). City shall have the right, but no other obligation, to fund the City Capital Fund.

3. Shortfall Funding. Should the sum of (x) annual City Deposits, plus (y) any prior payments into the City Capital Fund by Hardball under this Section IV(D)(3), as determined as of the conclusion of any calendar year of the Term, be less than Two Hundred and Fifty Thousand Dollars (\$250,000) per calendar year, measured from January 1 of the year in which the first Hardball Home Game is played at the Venue, Hardball will, no later than February 15 of the following year, contribute to the City Capital Fund an amount sufficient to raise the average total annual deposit to Two Hundred and Fifty Thousand Dollars (\$250,000) per year; provided, however:

(a) amounts earned with respect to a calendar year to be deposited into the City Capital Fund that are not received until after the end of such year (e.g., Performance License Fees earned with respect to Hardball Events at the Venue during the month of December) shall be deposited through January 31 of the following year and, if deposited by such date, shall for purposes of this Section IV(D)(3) be deemed to have been paid in the prior calendar year;

(b) (i) with respect to calendar years of this Agreement where Gross Naming Rights Revenue (as defined in Section IX(A)) paid by the Naming Rights Partner is at least Four Hundred Thousand Dollars (\$400,000), Hardball's payment obligations under this Section (IV)(D)(3) shall be increased so as to ensure average annual deposits into the City Capital Fund are at least Three Hundred Thousand Dollars (\$300,000) in such years, and (ii) with respect to calendar years of this Agreement where Gross Naming Rights Revenue paid by the Naming Rights Partner is at least Five Hundred Thousand Dollars (\$500,000), Hardball's payment obligations under this Section (IV)(D)(3) shall be increased so as to ensure average annual deposits into the City Capital Fund are at least Three Hundred Fifty Thousand Dollars (\$350,000) in such years. The increased deposit requirements set out in clauses (i) and (ii) herein shall only apply to average of the annual deposits in the years in which the particular Gross Naming Rights Revenue thresholds above are met; they shall not relate back or forward and require the increased deposits for all years (i.e., the average calculation will not include years in which the applicable threshold was not met)..

4. Use; Capital Maintenance Schedule; Maintenance Budgets. The City Capital Fund shall be used for the City Obligations as set forth on Exhibit IV(C) 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. At the conclusion of construction of the Venue, the Parties shall agree to a long-term Capital Maintenance Schedule. The Capital Maintenance Schedule will be attached to the Development Agreement and shall be updated by Hardball from time to time, as expressly approved in writing by the City and in consultation with the Board of Advisors. All expenditures from the City Capital Fund shall be decided by the City in its discretion in consultation with Hardball and the Board of Advisors. The City shall establish in its discretion an annual maintenance budget covering City Obligations (the "City Budget") and Hardball shall establish in its discretion an annual maintenance budget covering Hardball Maintenance Obligations (the "Hardball Maintenance Budget") in consultation among the City, Hardball and the Board of Advisors each year in accordance with the timing and procedures to be mutually agreed in good faith between Hardball and the City, and in each case sufficient to meet the maintenance standards set forth in Section VI(B). The City Budget shall be developed using (but not controlled by) the Capital Maintenance Schedule attached to the Development Agreement (the "Capital Maintenance Schedule"), but may be altered by the City in its discretion.

E. Hardball Revenue Retention. Hardball shall be entitled to collect and retain all revenues received from the operations of the Venue at all times other than from City Events as described herein, including all Permanently Affixed Venue Signage, Scoreboard Advertising, ticket sales and licenses, suite rentals or sublicenses, souvenirs, concessions, programs, parking (subject to Section IV(G)(3)), pouring or beverage advertising revenue, other vending or licensing revenues, Broadcast Rights and advertising, and all other revenues from all Hardball Events (collectively, "Hardball Revenue"). Hardball will not be entitled to a share in any parking revenues generated by the City at City controlled facilities, subject to Section IV(G)(3). For clarity, Hardball Revenue does not include City Event Revenue, or City's share of Net Naming Rights Revenue.

F. Hardball Payments. Notwithstanding anything to the contrary contained herein, (1) the payments to be made by Hardball under this Agreement are separate and independent from each other, and from any other payments to be made by Hardball with respect to this Agreement or any related agreement, (2) each payment to be made by Hardball under this Agreement shall be paid in full by Hardball as and when due without set-off, reduction, deduction, abatement or withholding of any kind, and (3) each payment to be made by Hardball under this Agreement shall be paid by Hardball in cash, by wire transfer or in other immediately available funds, to an account or accounts directed by the City.

G. Parking.

1. Generally. Identification of Parking Areas, the terms and conditions applicable to Parking Areas, and the parties rights and obligations with respect to Parking Areas, including obligations to provide Parking Areas

(including adequate parking for Venue Events and acceptable pricing for parking for Venue Events), allocation of parking within Parking Areas, and operation, staffing, repair, maintenance and replacement of Parking Areas, shall be as set forth in the Development Agreement.

2. Initial Parking. Prior to the City building the Venue Parking Garage (as defined in Section IV(G)(3)), Hardball and Hughes shall be responsible for providing adequate parking for Venue Events at their cost.

3. Venue Parking Garage Operation. In the event the City builds a parking garage that is part of the City Owned Parking Areas (the "Venue Parking Garage"), the following shall apply to revenues generated by the Venue Parking Garage with respect to Hardball Events. If more than one (1) parking garage is financed and built by the City under the Bull Street Agreement as part of the City Owned Parking Areas, the Venue Parking Garage shall be the parking garage closest to the Venue.

- (a) For purposes of this Agreement, (i) the "Hardball Recoupment Amount" shall mean, at the applicable time of measurement, Unrecouped Principal (as defined below) plus interest accrued thereon as provided below, (ii) "Unrecouped Principal" means the initial \$500,000 amount less amounts applied to the Unrecouped Principal as provided in clauses (b), (c) and (d) below, (iii) interest shall accrue on Unrecouped Principal at a rate per annum of four percent (4%) after the first year the Club occupies the Venue, which interest shall not be compounded, (iv) amounts applied to the Hardball Recoupment Amount under clauses (b), (c) and (d) below shall be applied first to the Unrecouped Principal and then to accrued interest until such time as Hardball fully recoups the Hardball Recoupment Amount, and (v) the "Hardball VIP Parking Amount" is an annual amount equal to \$31,500 which shall be increased by four percent (4%) at the end of every five (5) year period after the date of this Agreement for the subsequent five (5) year period.
- (b) The City shall provide Hardball access to three hundred (300) total spaces at the Venue Parking Garage for VIP and Suite holder parking for Hardball Events (collectively, "Hardball VIP Parking") as forth in the Development Agreement. Each year during the Term until the Hardball Recoupment Amount has been fully recouped by Hardball as provided in this Section IV(G)(3), the Hardball VIP Parking Amount shall be applied to reduce the Hardball Recoupment Amount as described in Section IV(G)(3)(a) and not paid to the City.
- (c) Each year during the Term until the Hardball Recoupment Amount has been fully recouped by Hardball as provided in this Section

IV(G)(3) or earlier termination pursuant to Section IV(G)(3)(d) below, (1) Hardball shall staff and operate parking at the Venue Parking Garage for Hardball Events, for a period starting one (1) hour before the opening time of a Hardball Event through one (1) hour after the end of a Hardball Event, and (2) gross revenues (net of actual, direct, out of pocket and staffing costs for personnel at the Venue Parking Garage) shall be retained by Hardball and applied to reduce the Hardball Recoupment Amount as described in Section IV(G)(3)(a) and not paid to the City.

- (d) In the event that all or a portion of the costs of construction of the Venue Parking Garage are financed with proceeds of Tax Exempt Bonds issued on behalf of the City pursuant to Internal Revenue Service Revenue Procedure 82-26, 1982-1 C.B. 476 ("Rev. Proc. 82-26") and such Tax Exempt Bonds are discharged within the meaning of Rev. Proc. 82-26, the provisions of this Section IV(G)(3)(c) shall be terminated in connection with such discharge. Following such termination, the City shall assume the responsibility for staffing and operating the Venue Parking Garage for Hardball Events, but shall remain obligated to repay the Unrecouped Principal to Hardball, which, when paid to Hardball, will reduce the Hardball Recoupment Amount as described in Section IV(G)(3)(a). Notwithstanding the foregoing, upon any such termination, the City and Hardball shall have the right to re-enter any management arrangement with respect to the Venue Parking Garage, which may provide for (among other things) the application of revenues derived from such arrangement to reduce the Hardball Recoupment Amount as described in Section IV(G)(3)(a).
- (e) At such time as the Hardball Recoupment Amount has been fully recouped by Hardball as provided in clauses (b), (c) and (d) above, (i) the City shall elect whether the City or Hardball (on mutually agreeable terms and as may be permitted with respect to Tax Exempt Bonds, if any, issued to finance the Venue Parking Garage) shall operate the Venue Parking Garage for Hardball Events, in each case subject to the terms and conditions of the Bull Street Agreement regarding Parking Areas, and (ii) the City shall be paid the Hardball VIP Parking Amount in cash each year for Hardball VIP Parking at the Venue Parking Garage, which shall be paid by Hardball to City on or before June 1 of each year.

H. Records; Inspection; Underpayment; Late Payments.

I. Records. For a period of three (3) years after the end of the calendar year of the Term to which they pertain, Hardball shall keep and maintain at Hardball's office in Columbia, South Carolina, complete and accurate books

and records, including attendance and parking records for all events and activities at the Venue, and all of Hardball's activities at the Venue, including (i) Hardball Events and (ii) City Events for which Hardball provides Venue Services. Without limiting the generality of the foregoing, such books and records shall include those records required by Section VII(K) below.

2. Inspection. The City (including its accountants, attorneys and other representatives designated by the City) shall be entitled to inspect and copy such books and records during the Term and for three (3) years thereafter at Hardball's office, at all reasonable times upon not less than forty-eight (48) hours' written notice. The books and records subject to inspection by the City include only the books, records and data related to the Venue itself and activities thereat (such as attendance records, facilities maintenance records, City Events records and accounting, parking records, etc.) not of Hardball itself (such as, without limitation, Hardball's tax returns) or the Club. Neither Hardball nor the Club shall be required to provide its private financial information of any kind whatsoever not otherwise required to be provided under this Agreement.

3. Accuracy of Payments; Underpayment. Receipt and acceptance of any statement furnished by Hardball or payments paid by Hardball to the City hereunder shall not preclude the City from questioning the correctness thereof at any time. In the event any errors are disclosed, either through questioning or as the result of an audit, all erroneous statements shall be rectified and any differences in payments shall be remitted to the City by Hardball within ten (10) days. In the event that an audit reveals an underpayment by Hardball, Hardball shall, in addition to the payment and interest provided for in this Agreement, reimburse the City for reasonable costs and expenses of such audit if the underpayment is five percent (5%) or more than the amount required to be paid for the applicable period that was audited.

4. Late Payments; Interest. Hardball acknowledges that time is of the essence in making all payments required by this Agreement, and if any such payments are not remitted on the date due, Hardball shall pay interest at the rate of one and one half percent (1.5%) per month from such due date until full payment thereof is made.

ARTICLE V

CITY'S OBLIGATIONS

A. Completion. The City agrees to cause the Venue to be completed in accordance with the Development Agreement.

B. Security. The City, at its expense, shall determine and be responsible for all reasonable security outside the Venue. Hardball shall determine and be responsible, at its expense (subject to reimbursement for City Events as set out in Section IV(B)(2) above), for all reasonable security inside the Venue at all times, including for all Venue Events. Notwithstanding the foregoing, Hardball will, as necessary and at its expense, employ a

reasonable number of law enforcement personnel for traffic control at the Venue. The necessity, number and timing of the use of law enforcement personnel for traffic control shall be determined in consultation between the City of Columbia Police Department and Hardball. In addition, the City and Hardball shall determine the necessity of a City fire marshal in attendance at each Hardball event, the cost of which fire marshal Hardball shall be responsible.

ARTICLE VI HARDBALL'S OBLIGATIONS

A. Hardball Home Baseball Games. Hardball will cause the Club to play all of the Hardball Home Baseball Games at the Venue, provided, however, Club may from time-to-time hold a game (not more than two per season) at the home ballpark of its major league affiliate, which game(s) shall be identified to the City by Hardball in connection with such year's scheduling process under Article XI below.

B. Venue Maintenance. Hardball shall perform all maintenance, restoration, replacement and repairs for the Venue and all components thereof and improvements thereon, of whatever kind and nature, foreseen or unforeseen, as may be necessary to keep the entire Venue in first class condition and repair, including major maintenance, restoration, repair and replacement of all structural (including the roofing and roof components) and concrete components, all heating, air conditioning, ventilating, plumbing, and electrical systems, playing surface replacement, field drainage systems, field lighting system (including field lighting installation and reinstallation), Venue scoreboard, Venue lighting, Parking Area improvements and lighting, grandstands, sound system, seating, bleachers, elevators, entry way area, glass, walls, roof, sidewalks and exterior landscaping maintenance, and all maintenance, repairs and restoration of Venue Equipment. The obligation to pay for such maintenance is set forth in Section IV(C) and (D) above, and Exhibit IV(C), and the amounts payable by the City for its responsibilities shall not, without the express permission of the City, exceed the then-applicable amounts pursuant to the Capital Maintenance Schedule and the City Budget, and shall be limited to the amount available in the City Capital Fund. All decisions regarding capital expenditures to be paid from the City Capital Fund shall be subject to the prior written approval of the City, which shall not be unreasonably withheld.

C. Alcoholic Beverage Permit. Hardball shall (either on its own behalf or through a related entity acceptable to the City) obtain and maintain in good standing at its expense throughout the Term hereof, an Alcoholic Beverage Permit for on-premises consumption of beer, wine and liquor for use at all Venue Events. The City will assist, as appropriate, Hardball's acquisition of a full liquor license applicable to appropriate areas within the Venue.

D. Applicable Laws; Permits. Hardball shall (and shall ensure that its designees and subcontractors) (i) conduct all of their respective activities and provide all of their respective services hereunder in accordance with all Applicable Laws, and (ii) obtain and maintain at all times all permits, licenses, approvals, consents and other entitlements required for their respective activities and services hereunder.

ARTICLE VII MANAGEMENT

A. **Generally.** Hardball shall be the exclusive manager and operator of the Venue. Except for the City's services, payment, repair and maintenance obligations as expressly set forth in this Agreement, the City shall have no obligation with respect to the management, operation, repair or maintenance of the Venue, or costs and expenses thereof, and Hardball, at its sole cost and expense, shall be solely responsible for the management, operation, maintenance and repair of the Venue, and the costs and expenses thereof. Without limiting the generality of the foregoing, Hardball shall, at its sole cost and expense, provide Venue Services throughout the Venue for all Venue Events (subject to the reimbursement for City Events provided for in Section IV(B)(2) above). Hardball shall develop policies designed to (i) assure quality control, (ii) assure that the Venue is managed, operated and promoted in a manner that reflects positively on the City and encourages families and tourists to attend Venue Events, and serves the goals described in the Recitals to this Agreement, and (iii) whenever practicable, provide City-based entities, both public and private, with an opportunity to bid on services performed at and/or for the Venue. Such policies shall be subject to the prior review and approval of the City, which approval shall not be unreasonably withheld.

B. **Venue Booking.** Hardball acknowledges and agrees that one of the primary reasons for City's financial and other commitments to build the Venue and enter into this Agreement is to establish and maintain during the Term the revitalization of the Bull Street Site and to promote tourism, for which the Venue and the public's attendance at Venue Events are integral components, all of which are in the mutual best interests of the City and Hardball. In order to further those interests, and in addition to Hardball's obligations regarding the Club under Section VI(A) regarding Hardball Home Baseball Games, Hardball further agrees to use its commercially reasonable best efforts to attract events and activities to the Venue which will generate paid admission.

C. **Management and Operation for Benefit of Community.** Hardball acknowledges and agrees that one of the primary reasons for City's financial and other commitments to build the Venue and enter into this Agreement is to provide for the betterment of the community generally. Hardball will use its reasonable best efforts to provide opportunities for local and regional charities and non-profits to utilize and gain exposure through the Venue. Hardball will also use reasonable best efforts to partner with little leagues and other youth sports leagues on fundraising and other opportunities for the benefit of youth sports in Columbia and the Midlands.

D. **Performance Standard.** Hardball shall manage, operate, repair and maintain the Venue in a manner consistent with modern Class A and Class AA NAPBL stadiums, and in accordance with standards and practices of prudent, qualified and professional managers that manage, operate, repair and maintain properties similar to the Venue (the "Professional Baseball Management Standards"). Hardball shall perform its duties hereunder: (1) in accordance with the terms of this Agreement and (b) in accordance with Applicable Laws.

E. **Appropriate Use.** Hardball acknowledges that use of the Venue reflects upon the image and goodwill of the City, and Hardball agrees that no Hardball Event, Signage at

the Venue, promotion of Hardball Events, or any other use of the Venue by Hardball or its agents, contractors or sublicensees shall be inconsistent with prevailing community standards. Without limiting the generality of the foregoing, no Signage, advertising or other promotions at the Venue shall be authorized or permitted by Hardball for any of the following: cigarettes, tobacco, firearms, contraceptives, adult entertainment, sports books, or any illegal activities of any kind or nature, nor shall Hardball authorize or permit any advertising or promotions which violate Applicable Laws.

F. Personnel. Hardball shall retain, employ, compensate, train and manage sufficient numbers of personnel to provide the services to be provided by Hardball hereunder in a quality and professional manner, and no less than in accordance with the Professional Baseball Management Standards.

G. Damage. Hardball shall be responsible for all damage to the Venue or any portion thereof that occurs during any Hardball Event. The City shall be responsible for the actual, direct, out of pocket cost of repairing any damage caused by or during any City Event, except for any damage caused by Hardball, its affiliates, or any of their respective employees, agents, contractors or representatives.

H. Service Contracts; Subcontracting. Hardball may, as necessary and/or appropriate to fulfill its routine maintenance obligations hereunder, negotiate and enter into bona fide contracts with third parties for janitorial services, landscape maintenance and such other routine maintenance services for the Venue (collectively, the "Service Contracts") as Hardball shall reasonably determine to be advisable. Any Service Contract which is a City Obligation, or otherwise the responsibility of the City, must be approved in writing by the City. All Service Contracts shall be (i) in the name of Hardball and (ii) provide that it is terminable upon no more than thirty (30) days' notice without penalty or premium. To the extent required in Article XVIII, each Service Contract shall provide that the service provider thereunder must obtain the insurance described in Article XVIII and must provide satisfactory evidence of such insurance to Hardball. Delegation by Hardball to a service provider shall not limit the obligations or responsibilities of Hardball hereunder. Hardball shall ensure service providers comply with the applicable terms of this Agreement, and any service providers will be subject to the same obligations hereunder as would Hardball if it provided these services directly. Notwithstanding anything to the contrary contained in this Agreement, but subject to the foregoing and Section VIII(A) below, Hardball may not delegate or subcontract any of its duties or obligations under this Agreement to any subcontractor or other third party without the prior written approval of the City in each instance; such approval right to include the right to approve any related agreements with such third party(ies).

I. Competitive Bidding. When required by Applicable Laws, all contracts for repairs, capital improvements, goods and services with respect to the Venue will be awarded on the basis of competitive bidding conducted in accordance with applicable legal requirements.

J. Notices to City. Hardball shall promptly notify City in writing if Hardball becomes aware of any of the following:

i Any breach or alleged breach by Hardball under this Agreement;

ii any litigation or potential litigation affecting the Venue or the City, or any litigation or potential litigation affecting Hardball that could reasonably be expected to have a material and adverse effect on Hardball and/or its services or obligations under this Agreement;

iii any bankruptcy filings, whether voluntary or involuntary, with respect to Hardball or any of its subcontractors;

iv any casualty, loss, injury, claim or other event relating to the Venue that might result in a claim against the City or under any applicable insurance policies;

v any violation or alleged violation of Applicable Laws or insurance requirements;

vi any involuntary lien filed against the Venue; and

vii any material increases or decreases in costs, expenses or income not reflected in the City Budget or Hardball Maintenance Budget.

K. Financial Reporting and Record Keeping.

1. Financial Controls. Hardball will ensure such control over accounting and financial transactions as is reasonably required to protect the City's assets from theft, gross negligence or fraudulent activity on the part of Hardball's employees or other agents. Uninsured losses arising from theft, gross negligence or fraud of Hardball, its employees or agents are to be borne by Hardball and not as an operating expense of the Venue.

2. Quarterly Statements. On or before the 15th day of the first month following the end of each calendar quarter during the Term, Hardball shall provide City with a statement showing the following for the prior quarter and year to date:

- (a) A current user summary and detailed use activity report;
- (b) Invoices for reimbursement from the City or the City Capital Fund;
- (c) Expenses and receipts for all City Events;
- (d) All expenditures by Hardball with respect to Hardball Maintenance Obligations;
- (e) A detailed accounting of Hardball Events Attendance and all Performance License Fees to be paid by Hardball to the City;

(f) Such other related information as the City may reasonably request.

L. Books and Records. Hardball shall maintain the following books, records and documents at Hardball's office at the Venue. Upon expiration or termination of this Agreement, such books and records shall be the property of the City, and full and complete originals of such books and records shall be left at the Venue for immediate access and use by the City:

- (a) Executed use agreements for Venue Events, or other Venue use or sublicense agreements, original insurance certificates, and related correspondence, all of which may be maintained by Hardball in electronic form;
- (b) Maintenance and repair files;
- (c) Accounting books and records and supporting documentation for Performance License Fees and reimbursement and expenses for City Events;
- (d) Operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;
- (e) Service contracts, including cleaning, maintenance, landscaping, snow removal, trash removal, etc.;
- (f) Permits and licenses;
- (g) Copies of insurance policies or certificates; and
- (h) Such other books, records and documents as the City may reasonably require Hardball to maintain.

ARTICLE VIII **CONCESSIONS, NOVELTIES & SOUVENIRS**

A. Concessions Manager. Subject to the terms and conditions of this Agreement, Hardball shall act as the exclusive provider of Food and Beverage Concessions at the Venue. Hardball shall, at its sole discretion, have the right to subcontract for the provision of Food and Beverage Concessions at the Venue to a qualified third party reasonably acceptable to the City. Hardball shall ensure such third party complies with the applicable terms of this Agreement, and any such third party will be subject to the same obligations hereunder as would Hardball if it provided these services directly. Delegation by Hardball to such third party shall not limit the obligations or responsibilities of Hardball hereunder. Any such sublicense or subcontract, and any amendments, modifications, replacements or substitutions thereof, are subject to City's prior review and approval, and must (i) provide that it is terminable by the City at no penalty or expense to the City upon the expiration or termination of this Agreement, (ii) provide for insurance and indemnification in favor of the City in such manner and amounts as

required by the City, and (ii) provide that the City is an intended third party beneficiary of such agreement entitled to enforce such agreement and its rights thereunder.

B. Novelties. Nothing contained in this Agreement shall be construed to limit the City from selling or authorizing a third party to sell Novelties or Souvenirs at City Events, provided that the City will not at any time sell or authorize the sale of Food and Beverage Concessions by parties other than Hardball nor can it sell baseball themed novelties. The City shall solely retain all revenue from the sale of its own Novelties and Souvenirs at the Venue during City Events. Any such sales by the City shall be from temporary displays. The City will not be entitled to sell merchandise out of the Team Store(s), and the Team Store(s) will only be open at City Events upon the mutual agreement of the Parties. Notwithstanding the foregoing, or anything else herein to the contrary, Hardball shall retain all revenue from the sale of all baseball-themed, Club-related or league-related Novelties and Souvenirs at all Venue Events and from all sales of any type from the Team Stores. To the extent permitted by law, the City shall not provide vendor licenses allowing the sale of food and beverage or of baseball themed novelties on the sidewalks in a distance of 1,000 feet from the Venue structure immediately prior to, after and during Hardball Events.

ARTICLE IX **VENUE NAMING RIGHTS**

A. Naming Rights Partner; Naming Rights Agreement. The City and Hardball will work together and in good faith to market the naming rights for the Venue (the "Naming Rights") to a Naming Rights Partner. The Naming Rights Partner, and the terms and conditions of the Naming Rights agreement, shall be as mutually agreed upon by the City and Hardball, such approval not to be unreasonably withheld. For purposes of this Agreement, (i) "Gross Naming Rights Revenue" means an amount equal to the aggregate consideration payable by the Naming Rights Partner (including cash payments and the cash equivalent fair market value of any in kind consideration) under the Naming Rights agreement or otherwise with respect to the Naming Rights, and (ii) "Net Naming Rights Revenue" means Gross Naming Rights Revenue less the sum of (a) the cost of any Suite sublicense/sublease and/or any tickets to be provided as benefits under the Naming Rights agreement, valued at the amount at which such Suite sublicense/sublease or tickets are sold by Hardball to the general public, (b) any direct, actual, out of pocket fabrication and installation costs of Hardball for Signage to be provided as benefits under the Naming Rights agreement, the costs of which are not payable by Naming Rights Partner, and (c) if and as may be mutually agreed by the Parties, the fair market value of any other elements desired by the Naming Rights Partner, not customarily included as part of a naming rights agreement.

B. Sharing of Net Naming Rights Revenue. For the initial term of the Naming Rights agreement, which is anticipated to be ten (10) to twenty (20) years, the City and Hardball shall each receive fifty percent (50%) of Net Naming Rights Revenue up to Three Hundred and Fifty Thousand Dollars (\$350,000) per year. If Net Naming Rights Revenue exceeds Three Hundred and Fifty Thousand Dollars (\$350,000) per year, the City shall receive one hundred percent (100%) of all Net Naming Rights Revenue in excess of Three Hundred and Fifty Thousand Dollars (\$350,000) per year. Following the initial term of the Naming Rights Agreement, the \$350,000 figure will be adjusted for increases in the CPI from the

commencement date of the Term and the same formula will be utilized (i.e., the City receives fifty percent (50%) of all Net Naming Rights Revenue up to the CPI-adjusted figure and one hundred percent (100%) above that amount). For clarity, the City's share of Net Naming Rights Revenue shall be paid to City by the Naming Rights Partner solely in cash, and if any portion of the Gross Naming Rights Revenue is payable by the Naming Rights Partner through any in kind consideration, Hardball shall be the recipient of such in kind consideration and the City shall receive its share of the cash equivalent of such consideration in cash as part of its share of the Net Naming Rights Revenue. The Naming Rights agreement shall provide that the City's portion of Net Naming Rights Revenue shall be paid directly by the Naming Rights Partner to the City without set-off, reduction, deduction, abatement or withholding of any kind, whereupon the City shall deposit such funds upon receipt directly into the City Capital Fund described in Section IV(D).

C. City Reserved Rights. Notwithstanding anything to the contrary contained in this Agreement, the City reserves and shall retain all naming, advertising and promotional rights in connection with all adjacent areas which do not include the Venue, including City owned or controlled parking facilities (including the City Owned Parking Areas) (collectively, the "Reserved Rights"); provided that in no event shall any naming, advertising or promotional rights arrangement relating to Reserved Rights conflict with any exclusive sponsorship promotional category granted to the Naming Rights Partner under the Naming Rights agreement. Hardball shall have no claims to any revenues derived by City from the Reserved Rights, and no such revenues shall be subject to this Agreement.

ARTICLE X **VENUE USE**

A. Hardball's Rights and Obligations.

1. Use of Venue Prior to Completion. Hardball shall be permitted to use appropriate portions of the Venue, consistent with the terms and conditions of this Agreement, including the Hardball Areas, as soon as such areas are completed and approved for occupancy. The City shall cause to have issued appropriate occupancy permits for the same as soon as possible, upon fulfillment of all requirements for such certificate of occupancy. Hardball will use commercially reasonable efforts to work with the League to extend its 2015 or 2016 home opening game (whichever is to be the first home opening game of Club played at the Venue) as late as possible so as to maximize the time available for completion of construction of the Venue.

2. Hardball Events.

(a) Scope. Hardball shall have exclusive use of the Venue for conducting Hardball Events. Such use shall include that portion of each such day reasonably necessary for the event, preparation therefore and clean-up and repairs thereafter. Hardball shall use commercially reasonable efforts to promote and present Hardball

Events to achieve the civic and economic and tourism development goals of this Agreement.

- (b) Ticketing. Hardball shall be exclusively responsible for all ticket services (including printing, sales and distribution) related to all Venue Events. In satisfaction of this obligation, Hardball shall have the right to designate the identification of seating at the Venue and to conduct such ticket sales at the Box Offices at all times it deems proper. Hardball may, in its discretion, issue complimentary admissions to each Hardball Event and Home Baseball Game to Hardball and visiting team personnel, guests and officials and representatives of the media. Hardball shall have the right to charge any amount it deems appropriate for tickets for admission to Hardball Events.
- (c) Hardball Home Baseball Game Promotion Tickets. Hardball shall provide at no cost to the City, for the City's use, as may be reasonably requested by the City from time to time, complimentary tickets not to exceed forty-five (45) per event for admission for Hardball Home Baseball Games and reasonable complimentary access to other Hardball Events. The type of ticket, as requested by the City, to each event shall be determined by Hardball based on availability; however, Hardball shall reasonably accommodate the City's request for type and location of seating, and shall upon any request make "best available" tickets or, if available a Suite or other private area, available to the City. These tickets shall be used only by City personnel and their guests for official City business, such as attracting business to the City or entertaining visiting officials, and shall not be resold or otherwise distributed.

3. Suites.

(a) Suites.

i For the Term of this Agreement, Hardball shall have the right to sublease or sublicense each of the Suites for all Venue Events. Any such sublease or sublicense shall provide that it is terminable by the City at no penalty or expense to the City upon the expiration or termination of this Agreement.

ii Any such Suite sublessee or licensee of Hardball shall, subject to reasonable limitations or conditions which may be established by the City, have the right to purchase from the City twenty (20) tickets to each City Event (which shall entitle the sublicense to occupy its Suite for that event); provided, however, in the event a sublessee or licensee does not purchase its full twenty (20) ticket allotment for a City Event, such Suite

shall not be occupied for such City Event unless otherwise agreed by Hardball and the City.

iii In the event any Suite is not sublicensed or subleased at least thirty (30) days prior to the time of a City Event, City shall have the right to sublicense or sublease such Suite(s) for such City Event and the revenue therefrom shall be City Revenue for purposes of this Agreement.

(b) Suite Furnishings. As described in the Plans and Specifications, sixteen (16) Suites shall be designed and constructed as part of the Project Budget and include the following amenities, among any others set forth in the Plans and Specifications:

- i wall mounted television with cable hook-up;
- ii fixed and wireless internet;
- iii carpet, trim, ceiling and lighting, and otherwise finished and ready for occupancy;
- iv wet bar, refrigerator;
- v telephone, intercom and fully wired for Venue sound and closed-circuit television;
- vi cabinetry and closet; and
- vii basic furnishing package.

Any additional Suites will be at Hardball's cost and not included in the Project Budget.

4. Administrative Offices. In order to facilitate the satisfaction of its obligations undertaken pursuant to this Agreement and to perform its business as anticipated under the Agreement, Hardball shall at all times during the Term of this Agreement have the right of access to and exclusive use of all Hardball Areas. All equipment, computers, desks, phones and other FF&E required for the Administrative Offices shall be Hardball's cost and responsibility. None of the foregoing shall be paid for by the City or be part of the Hardball Contribution.

5. Team Stores and Box Offices. During the Term of this Agreement and any early occupancy of the Venue as such occupancy is permitted pursuant to Section X(A)(1) above, Hardball shall have the exclusive right to occupy and operate the Team Stores and Box Offices. These areas shall be "built out" to the extent of the amount provided in the Project Budget, but all equipment (including ticketing computers, software, technology and printers), furnishings, computers, phones and other FF&E required for the Team Stores and Box Offices, and any build out costs in excess of the budgeted amount, shall be Hardball's cost and

responsibility. None of the foregoing shall be paid for by the City or be part of the Hardball Contribution.

6. City Control. Subject to Hardball's license rights during the Term of this Agreement, the City does not relinquish and does retain full ownership of the Venue. Therefore, all duly authorized representatives of the City shall have reasonable access to all areas of the Venue at any time and on any occasion. In addition, the City retains all of its governmental and regulatory power and authority, and except as provided in Section XXV(V) the City does not by this Agreement waive or limit any of its governmental or regulatory power and authority.

7. Venue Plaza. In the event the Venue includes a plaza or other area on the exterior of the Venue which is capable of event or promotional activation, such area will be subject to the terms and conditions of a Use Plan as mutually agreed upon by the Parties and attached to the Development Agreement.

ARTICLE XI **SCHEDULING**

It is understood that Hardball shall, during the Term, be granted priority use of the Venue for Hardball Home Baseball Games at the Venue. Nonetheless, the City and Hardball agree to work together and in good faith to efficiently and effectively accomplish a scheduling of events at the Venue. As such, the Parties have adopted the following scheduling procedure:

A. Proposed Schedule/City Events. The scheduling year shall run from April 1 of each year through March 30 of the following year. On or before January 15 of each year, Hardball shall provide the City a schedule of Hardball Home Baseball Games, including potential post-season tournament game dates as accurately as possible. Prior to March 1 of that year, Hardball shall deliver to the City those dates upon which Hardball desires to conduct up to five (5) Hardball Events at the Venue during such year. Within thirty (30) days thereafter, the City shall provide Hardball with those dates upon which the City desires to conduct up to twenty (20) City Events at the Venue during such year.

B. Remaining Dates. Thereafter, all remaining dates may be utilized on a first-come, first-served basis, with the express understanding that use of the field will be reasonably limited from time to time both by Club practices and to preserve the quality and safety of the field surface.

C. Third Party Uses; Cooperation. Notwithstanding Hardball's exclusive management rights set forth in Article VII, City may, subject to the scheduling provisions of this Article XI and the other provisions of this Agreement (including payment to Hardball of costs and expenses for Venue Services as set forth in Section IV(B)(2)) schedule uses of the Venue by City or an agency affiliated therewith, or any third party (provided that any third party event is sponsored by, is for the benefit of, or involves participation of, the City or an agency affiliated therewith). The City shall not rent, or other than as noted herein, sublicense the Venue or any part thereof for use by others. The Parties agree to work together in good faith to schedule any

events earlier than the process outlined above may contemplate. The Parties also agree to work together to maximize usage of the Venue. This will include allowing either Party to schedule an event on a date reserved by the other Party if the reserving party does not have an actual event scheduled on the date in question, and the Parties agreeing to, wherever possible, reschedule smaller or movable events to accommodate larger and/or less movable events.

ARTICLE XII **MARKETING**

Except as otherwise set forth herein, each Party shall be responsible for its own marketing. Hardball shall be responsible for and have the exclusive right of marketing Hardball Events. The City shall be exclusively responsible for marketing City Events.

ARTICLE XIII **ADVERTISING**

A. Signage Plans and Sales. In connection with the development of the Plans and Specifications, Hardball and the City shall agree on a Signage placement plan and Signage guidelines for the Venue, which guidelines and plan shall be attached the Development Agreement, and shall thereafter be subject to modification and replacement upon the written approval of the Parties. Subject to Article IX, Hardball shall have the exclusive right to sell, and collect the revenues from, all Permanently Affixed Venue Signage, and Scoreboard Advertising for Hardball Events. The City may use and sell Scoreboard Advertising and temporary Signage as it deems appropriate for City Events. Permanently Affixed Venue Signage is subject to review and, to the extent provided above, approval by the City in its reasonable discretion, including to ensure compliance with Applicable Laws and this Agreement. The Parties acknowledge and agree that certain Permanently Affixed Venue Signage may also be subject to review and approval by the Bull Street Development Review Committee in accordance with the Bull Street Agreement.

B. Advertising at City Events. The City shall have the right to sell and retain revenue generated from the sale of advertising associated with City Events, including temporary Signage, advertising on the field-side scoreboard message center and video display, print media and broadcast media. Such advertising shall be provided at the City's cost and shall not replace or cover existing Signage except where appropriate to secure a particular event, nor shall advertising displayed by the City at the Venue for a City Event conflict with promotional category exclusivities granted by Hardball with respect to the Venue for which Hardball has provided the City notice of such exclusivities.

ARTICLE XIV **BROADCAST RIGHTS**

A. Hardball's Broadcast Rights. Hardball shall have exclusive ownership and control over Broadcast Rights associated with Hardball Events. All revenue generated by Hardball relating to such Broadcast Rights shall be retained exclusively by Hardball. All costs

incurred in connection with the broadcast of Hardball Events shall be the responsibility of Hardball.

B. City's Broadcast Rights. The City shall have exclusive ownership and control over Broadcast Rights associated with City Events. All revenue generated by the City relating to such Broadcast Rights shall be retained exclusively by the City. All costs incurred in connection with the broadcast of City Events shall be the responsibility of the City.

ARTICLE XV UTILITIES

The Parties agree that, in consideration of the rights and obligations of the Parties set forth herein, Hardball shall be obligated to pay all Utility charges incurred by either Party in connection with the operation of the Venue during the Term hereof. Electricity and gas shall be obtained for the Venue in the name of the City; however, Hardball shall be the Party responsible for payment of all bills and charges for such Utilities. Hardball shall pay the costs of all utilities at Hardball Events and reasonable and ordinary utilities for City Events. The City shall reimburse Hardball for any major Utility charges (such as use of the Venue Videoboard or Venue Lighting) incurred in connection with City Events at the Venue. In no event will the City provide free Utility service to Hardball in violation of Applicable Law or applicable bond ordinances authorizing the City's bonds.

ARTICLE XVI EQUIPMENT

A. Hardball's Obligations. Hardball shall, at its expense (and not as part of the Hardball Contribution), (i) supply, maintain, repair and replace FF&E for its administrative offices as preliminarily described on the FF&E list, and (ii) maintain, repair and replace all baseball-related FF&E, and other equipment, personal property and supplies (including all FF&E and other equipment and personal property for the clubhouse, locker rooms, weight/training rooms, therapy rooms, medical/rehabilitation rooms, video/multimedia rooms and meeting rooms, and all baseball playing, practice and training equipment, personal property and supplies). Supply of the initial items described in clause (ii) above shall be included in the initial development cost of the Venue up to \$175,000, as provided in the budget presented by Hardball, and any cost for such items in excess of \$175,000 shall be paid by Hardball (and not as part of the Hardball Contribution).

B. City's Obligations. The City, as part of the Project Budget, will provide the use of all equipment as set forth in an exhibit attached to the Development Agreement (the "Venue Equipment").

C. Food and Beverage Concessions Equipment. Unless purchased by Hardball as part of the Hardball Contribution, the City, as part of the Project Budget, shall purchase and install all Food and Beverage Concessions Equipment necessary to make the Venue fully operational, consistent with the Plans and Specifications and the Development Agreement. Unless purchased by Hardball as part of the Hardball Contribution, the Food and Beverage Concessions Equipment shall remain the property of the City, with Hardball being

granted, subject to its obligations under this Agreement, the exclusive license to use all Food and Beverage Concessions at the Venue. If purchased by Hardball as part of the Hardball Contribution, the Food and Beverage Equipment may be retained by Hardball until such time as it is fully amortized or Hardball is in breach of this Agreement, whichever occurs first, at which time it shall become and remain the property of the City.

ARTICLE XVII **COVENANTS**

A. Hardball's Covenants.

1. Taxes and Encumbrances. Hardball shall pay promptly when due any and all personal property taxes imposed on its personal property located in the Venue. To the extent any work is done at the request of and for the sole benefit of Hardball and for which a supplier or contractor has lien rights arising from nonpayment, Hardball further covenants that it will not permit any mechanics liens or similar encumbrance to exist against the Venue or any property therein and shall, within thirty (30) days of any such lien or encumbrance being asserted against the Venue or any property therein as a result of action or inaction by Hardball, either cause the same to be released of record, or obtain title or other insurance coverage satisfactory to the City over such lien and proceed diligently to contest the same in good faith.

2. Real Estate Taxes. This Agreement is being entered into by the City in reliance on the letter from the Richland County Assessor's Office to the McNair Law Firm, P.A. on behalf of the City dated March 11, 2014 agreeing that the Venue is exempt from ad valorem taxes on the basis of the following:

- (a) The Bull Street Site is presently characterized by abandoned, run-down and dilapidated structures, under-developed land and other blighted conditions.
- (b) As more particularly described in Article I, and as described in or contemplated by the Chamber Study and the Brailsford and Dunleavy feasibility study referenced therein, the successful development and operation of the Venue will promote and stimulate private development within the Bull Street Site, which would in turn eliminate, remove and address the current blighted conditions of the Bull Street Site and be essential to its successful redevelopment, all of which would enhance the overall quality of the Bull Street Site and its surrounding areas.
- (c) The successful development and operation of the Venue will promote tourism and, as a result thereof and the general redevelopment of the Bull Street Site, foster and encourage tourists, visitors, residents and businesses to locate in or patronize such facilities or the surrounding area (including tourism-

generating facilities in close proximity to the Downtown area, the Congaree Vista Area and the Riverfront area, like the South Carolina State Museum, the EdVenture Children's Museum, the Three Rivers Greenway extension, Granby Riverwalk, Canal Front Park, the proposed Riverfront Park, the Columbia Metropolitan Convention Center and the Colonial Life Arena, or in close proximity to the Bull Street Campus, like the Robert Mills House, the Hampton-Preston Mansion and other nearby historic structures), which enhances the economic viability of the City through the redevelopment of nearby properties, the creation of additional jobs, the infusion of capital investment and increased commercial activity, thereby resulting in additional *ad valorem* property taxes, hospitality fees and other taxes and fees.

- (d) Hardball has agreed to manage and operate the Venue in a manner which will benefit the City and its citizens, and the community, as more particularly described in Article VII.

The City represents that, notwithstanding the fact that Hardball will be primarily responsible for the operation and management of the Venue under this Agreement, the Venue will serve an essential function and will be used exclusively for a public purpose. As a supplement to its undertakings elsewhere in this Agreement (including particularly Article VII), and notwithstanding anything to the contrary contained in this Agreement, Hardball agrees to operate, manage and use the Venue in a manner which is consistent with the foregoing sentence, and further to not take any action with respect to the Venue which is inconsistent therewith or contrary thereto.

If and to the extent that, notwithstanding the foregoing, during the Term it is determined that the Venue is determined to be subject to real estate or other *ad valorem* taxes or payments in lieu thereof on account of the rights of Hardball under this Agreement, the City shall be responsible for and pay such taxes, provided that Hardball shall fully cooperate in restructuring this Agreement so as to eliminate or mitigate such taxes, and if Hardball does not agree to or cannot restructure this Agreement so as to mitigate such taxes to a reasonable and acceptable level in the sole discretion of the City, the City may terminate this Agreement effective as of the end of the first full baseball season following such notice of termination. Upon any such termination by the City the City shall refund to Hardball an amount equal to the Hardball Development Contributions actually paid by Hardball pursuant to Section IV(A)(2) plus (x) the Hardball Initial Contribution actually paid by Hardball (less amounts recouped under Section IV(G)(3)), (y) divided by 30, (z) times the number of years that would have remained in the Term as of the termination date.

3. Membership in Minor League Baseball. Hardball shall at all times throughout the Term own a Club that (a) is a full-season Class A (or higher) minor league baseball team in a league that is a member of the NAPBL, (b) has a

Player Development Contract associated with a MLB Franchise, and (c) is authorized by NAPBL, the league in which Club is a member, and any other sanctioning authority to play its home games in the Venue. Such Club shall be the Club for purposes of this Agreement, including, Section VI(A) above.

4. Equal Employment Opportunity And Employment of City Residents. Hardball agrees and covenants to the City that it is presently and will continue to be an equal opportunity employer and at all times shall comply with Applicable Laws that prohibit discrimination. Further, Hardball agrees and covenants to the City that it will use its best efforts to retain the services of Columbia area residents for Venue Services performed pursuant to this Agreement.

5. Prohibition Against Dangerous Materials and Substances. Without the consent of the City, Hardball agrees not to bring into the Venue any material, substance, equipment or object that is likely to endanger the life or to cause bodily injury to any person within the Venue, or which is likely to constitute a hazard to property therein without the approval of the City. The Parties acknowledge that common field maintenance chemicals and supplies, cleaning solvents and fireworks displays are all to be reasonably used at the Venue.

B. City's Covenants/Compliance. Pursuant to the Development Agreement, the City shall construct the Venue in compliance with the Plans and Specifications, all applicable building, health, safety, bidding, procurement, traffic and zoning ordinances which apply to the Venue, including the Americans With Disabilities Act, as well as all applicable Environmental Laws.

ARTICLE XVIII

INDEMNIFICATION AND INSURANCE

A. Indemnification of the City by Hardball. Hardball agrees to indemnify, defend and hold harmless the City and its respective Council members, advisors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including attorneys' fees, incurred in connection with, or by reason of any act, omission or negligence of Hardball, its affiliates, or their respective employees, agents, contractors or representatives, or any breach of this Agreement, in connection with Hardball's activities pursuant to this Agreement.

B. Hardball Insurance Policies. Hardball shall, effective as of the date that Hardball is permitted to occupy the Venue pursuant hereto, obtain and maintain throughout the Term of this Agreement public liability coverage including personal injury liability, liquor liability, and contractual liability; if on a commercial general liability form, the limit per occurrence shall be One Million Dollars (\$1,000,000) and an aggregate of Two Million Dollars (\$2,000,000) combined single limit (CSL) per occurrence and include bodily injury and property damage liability; automobile coverage with liability limits of One Million Dollar (\$1,000,000) combined single limits (CSL) bodily injury and property damage per accident; a general umbrella liability policy in "follow form" form with limits of at least Five Million Dollars

(\$5,000,000); and workers compensation coverage to protect Hardball's permanent and temporary employees. Such coverage shall be evaluated by the Parties, upon consultation with the Board of Advisors, every fifth (5th) year during the term hereof and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Hardball will name the City as additional insured on the commercial general liability and umbrella policies and will provide certificates of all insurance or original policies. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of South Carolina. Hardball shall maintain property insurance on all assets within the Venue that are owned by Hardball, in so-called "all risk" form (with standard named peril exceptions) on a full replacement cost basis. The City will be named as additional insured on such policies and Hardball will provide to the City certificates of all insurance or original policies.

C. City Insurance Policies. The City shall maintain property insurance on the Venue (other than for assets therein owned by Hardball) in so-called "all risk" form (with standard named peril exceptions) on a full replacement cost basis. Hardball will be named as additional insured on such policies and the City will provide to Hardball certificates of all insurance or original policies as they shall be on file prior to the beginning of the Term of this Agreement. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of South Carolina.

D. Waiver of Claims and Subrogation. Notwithstanding anything to the contrary herein the Parties hereto waive claims against each other for all loss or damage covered by property insurance, regardless of the cause of such loss or damage.

E. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting the City which arise out of any of the matters relating to this Agreement or otherwise, Hardball shall notify the City promptly upon becoming aware of same and Hardball shall give City all pertinent information possessed by Hardball and reasonable assistance in the defense or other disposition thereof. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting Hardball which arise out of any of the matters relating to this Agreement or otherwise, the City shall notify the Hardball promptly upon becoming aware of same and the City shall give Hardball all pertinent information possessed by the City and reasonable assistance in the defense or other disposition thereof.

ARTICLE XIX

DESTRUCTION OF VENUE

A. Destruction. If the Venue is wholly or partially destroyed by fire or other insurable casualty, the City shall, at its expense, promptly commence and diligently complete the restoration of the Venue to substantially the same condition as of the date of the Venue's original completion, with all subsequent improvements, reasonable wear and tear, and property owned by Hardball, excepted. Notwithstanding the foregoing, so long as the City has maintained full replacement cost insurance as required by Section XVIII(C), the City's obligation to repair and restore the Venue shall not exceed the amount of insurance proceeds made available to the City due to such casualty. Further, if the Venue is damaged in a material manner within the last five

(5) years of the Term, the City shall have the option, in the City's sole and absolute discretion, to repair and restore the Venue as provided in this Section XIX(A) or to terminate this Agreement effective as of the date of such casualty by giving written notice to Hardball within sixty (60) days after the date the City received notice of such casualty. All repair activities shall be timed and organized in such a manner to facilitate Hardball's ability to play the Hardball Home Baseball Season games at the Venue and to conduct Hardball Events to the degree feasible and the City agrees to cooperate with Hardball on all such decisions. Should the Venue or any part thereof be made untenable as a result of such destruction, (1) Hardball may, at its option, toll the remaining time on its license under this Agreement from the date at which use became untenable until such time as the Venue is repaired and (2) Hardball's obligations to maintain the Venue and to make any applicable Hardball Development Contributions shall abate until the Venue is restored as detailed above.

B. Assistance of the City in Locating a Temporary or Permanent Alternate Facility. If the Venue or a material portion of the Venue becomes unavailable on a temporary basis by reason of either partial destruction or repair or restoration; or for any other reason, the City shall utilize commercially reasonable efforts to assist Hardball in locating a temporary facility in which the Club may play baseball games and Hardball may otherwise conduct Hardball Events.

ARTICLE XX **CONDEMNATION**

In the event that any portion of the Venue or material portion of the Venue is taken from Hardball pursuant to any right of eminent domain exercised by any governmental entity or pursuant to any governmental order and such taking renders the Venue unfit for its intended purpose, Hardball shall have the right to terminate this Agreement within One Hundred Eighty (180) days of such taking. Upon any such termination each party shall have the right to pursue its own compensation from the condemning authority.

ARTICLE XXI **FORCE MAJEURE**

Hardball and the City agree that with respect to any services to be provided, or action to be taken by either Party during the Term of this Agreement, the Party required to furnish or perform the same shall in no event be liable for failure to do so when prevented by any cause beyond the reasonable control of such Party such as strike, lock-out, suspension of play of baseball, breakdown, accident, order or regulation of or by any governmental authority or failure of supply, or inability, by the exercise of reasonable diligence, to obtain supplies, parts, players or employees necessary to furnish such services, or because of war or other emergency, or for any cause due to any act or neglect of the other Party hereto, or its servants, agents, employees, any assignee, or successor in interest to such other Party; provided that the foregoing shall not limit the obligation to make payments to the extent that payments are due pursuant to Articles IV or IX, nor Hardball's obligations under Section XVII(A)(3), nor the City's obligations under Article V (but without limitation of force majeure to the extent applicable under the Development Agreement). The time within which such services or actions shall be performed or rendered shall be extended for a period of time equivalent to the delay of such cause.

ARTICLE XXII
ASSIGNABILITY AND TRANSFERABILITY

The City may assign this Agreement for administrative and operational purposes to an authority or authorities, provided, that if such an assignment should be made, such assignee shall be able to enforce the provisions of this Agreement pursuant to such assignment without the further consent of the City. Hardball shall have the right to sublicense the Suite portion of the Venue; provided, such sublicense abides by all of the applicable terms and conditions hereof (including Section X(A)(3)(a)) and which term shall not extend beyond Hardball's Term. With the consent of the City, which consent shall not be unreasonably withheld, provided Hardball is not in default hereunder, Hardball may assign its rights and responsibilities as described herein to an entity (i) with operational and financial capabilities reasonably satisfactory to the City, and (ii) which provides a minor league professional affiliated baseball Club in the same manner and quality as contemplated hereunder, and (iii) which assumes all obligations of Hardball under this Agreement. Any change of management or control of Hardball that results in Hardball no longer being under the control of Jason Freier, or in the event of a sale or transfer of control of more than 51% of equity ownership of Hardball Capital LLC or the Club, shall also constitute an assignment requiring the City's consent hereunder. No assignment by Hardball that is permitted by this Agreement, including this Article XXII, that requires the approval of any Baseball Authority shall be effective until such approval is obtained by Hardball and provided in writing to the City.

ARTICLE XXIII
DEFAULT AND TERMINATION

In the event that either Party hereto shall otherwise materially breach, violate or fail to fully perform any provision contained in this Agreement, the non-breaching Party may upon thirty (30) days written notice thereof, terminate this Agreement; provided, however, that the defaulting Party shall have the right and opportunity to cure the default within said thirty (30) day period or if such breach, violation or non-performance cannot be cured within a thirty (30) day period, to continue diligently and in good faith to effect such cure within such period, provided that, unless otherwise provided herein, in no event shall such opportunity to cure exceed ninety (90) days after receipt of such notice. In the event that such breach, violation or non-performance is not cured within said thirty (30) day period or any authorized extension thereof, then this Agreement may be terminated by the non-breaching Party upon the expiration of such period. In addition, each Party shall have all other remedies expressly set forth in this Agreement, and remedies available at law or in equity on account of breach.

Hardball acknowledges that certain bonds will be issued to finance construction of the Venue in consideration of the civic, governmental and economic and tourism development benefits resulting from the Club playing its home games at the Venue per Section VI(A) above, that such benefits are unique, and extraordinary and not reasonably quantifiable, that loss of the benefits resulting from the Club playing its home games at the Venue per Section VI(A) above would cause unique, immediate and irreparable harm to the City or which there may be no adequate remedy at law. Accordingly, the City shall be entitled to obtain immediate specific performance and injunctive relief (temporary, preliminary and permanent) upon any breach by Hardball of its obligations under Section VI(A) or Section XVII(A)(3).

ARTICLE XXIV
BOARD OF ADVISORS

A. Generally. During the Term, a Board of Advisors (the “Board of Advisors”) shall consult with Hardball and the City regarding the operation and management of the Venue. The Board of Advisors is purely advisory and is intended to provide areas of expertise for the Parties, input from various constituents with an interest in the Venue, and a forum for presenting and considering matters concerning the Venue, its operation and management. The Board of Advisors has no power to make any decisions of any kind that bind Hardball or the City.

B. Composition. The Board of Advisors shall have eight (8) members comprised as follows:

- i One (1) member appointed by Hughes;
- ii One (1) member appointed by Hardball;
- iii Controller or Chief Financial Officer of the City;
- iv One (1) member appointed by the City Council of the City;
- v One (1) member appointed by the Columbia Council of Neighborhoods;
- vi One (1) member appointed by the Naming Rights Partner;
- vii One (1) member appointed by a majority of the other members of the Board of Advisors; and
- viii One (1) member appointed by the Columbia Council of Neighborhoods on a rotating basis representing the neighborhoods adjacent to the Venue (which neighborhoods include, but are not limited to, Arsenal Hill, Cottontown, Downtown Neighborhood Association, Earlewood, Edgewood, Elmwood, and Robert Mills).

Members may be appointed and/or replaced only by the applicable constituent upon written notice to the other constituents.

C. Meetings. During the first twelve (12) months of after occupancy of the Venue by Hardball, the Board of Advisors shall meet at least once every month. For each year of this Agreement thereafter, the Board of Advisors shall meet at least on a quarterly basis. The location of the meetings shall be at the Venue, unless the members of the Board of Advisors agree otherwise. Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

ARTICLE XXV
MISCELLANEOUS

A. Governing Law; Venue. This Agreement shall be in governed accordance with the laws of the State of South Carolina. Exclusive jurisdiction and venue for any dispute concerning this Agreement will be in the federal or state courts located in the City of Columbia, Richland County, South Carolina.

B. Entire Agreement. This Agreement constitutes the final, complete and exclusive written expression of the intent of the Parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements. The foregoing shall not be construed as limiting subsequent agreements, including the Development Agreement.

C. Authority. Hardball and the City, respectively, each represent that it has the authority to be bound by the terms of this Agreement. Once executed by both Parties, this Agreement will constitute a valid and binding agreement, enforceable in accordance with its terms.

D. Mutual Dependency and Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of Hardball to perform and have access to the Venue for all of its intended business operations as contemplated herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

E. Notices and Addresses. All notices required to be given under this Agreement shall be given by (1) certified mail, (2) registered mail or (3) sent via facsimile followed on the same day by recognized overnight courier, in all cases addressed to the proper Party to the following addresses, or at such other address as may be subsequently given in writing pursuant to this Section and shall be deemed given three (3) days after being deposited in the U.S. mails, postage prepaid, in the case of certified or registered mail and on the day following notice by facsimile-and-overnight mail:

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

IF TO THE CITY: City of Columbia, South Carolina
City Hall
1737 Main Street
Columbia, South Carolina 29201
Attention: City Manager
Telephone: 803-545-3026
Facsimile: 803-545-3051

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

F. Amendment, Modification, or Alteration. No amendment, modification or alteration of the Terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.

G. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance, in equity, or otherwise.

H. Time is of the Essence. Time is of the essence for this Agreement.

I. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts and or exchanged via facsimile, each of which shall be deemed an original, but all such counterparts and/or facsimile or originals together shall constitute but one and the same document.

J. Headings Only for Reference. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.

K. Valid Limited Liability Company. Hardball represents that as of the date of the execution of this Agreement Hardball Capital LLC is organized and in good standing under the laws of the State of Georgia, that it is duly authorized to enter into this Agreement and has taken all requisite corporate action to obtain such authorization and that no consent of or notice to any other individual, private or public entity or governmental authority is required in connection with the execution, delivery and performance of this Agreement.

L. Prohibition Against Food and Beverage Being Brought Into the Venue. Hardball may request the City to post signs in appropriate locations in the Venue which shall prohibit patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Venue.

M. Status of Parties. The Parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Agreement shall be determined to be creating a partnership or joint venture between Hardball and the City with respect to Hardball's activities conducted in the Venue pursuant to the terms of this Agreement.

N. Waiver. The waiver by either Hardball or the City of any default or breach by the other Party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other Party of the same or another provision of this Agreement.

O. Bull Street Study. Per the Bull Street Agreement, the Parties will conduct noise and light studies at Hardball's expense and will design the Venue in a modern and urbanistic-sensitive fashion to minimize the amount of noise and light experienced by the surrounding community.

P. Binding Effect/Benefit. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and, subject to Article XXII, their respective affiliates, successors and assigns.

Q. Exhibits; Attachments. All exhibits or attachments attached to this Agreement are incorporated into and are a part of said Agreement as if fully set out herein.

R. Hardball's Property Loss and Damage. Nothing herein shall be construed to create a bailment relationship between the City and Hardball or the Club concerning any property brought on the premises of the Venue by Hardball or the Club.

S. Employee Status. It is understood and agreed that no agent, servant or employee of Hardball or any of its subcontractors shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant or employee of Hardball.

T. Cooperation. The City and Hardball agree to work together in good faith to assure a consistent and effective operation of the Venue.

U. Permits. The City will work cooperatively with Hardball in connection with such building permits, noise and light ordinance permits and/or clearances as necessary to alter street and traffic flow as per the master plan for the Bull Street project and in connection with such other permits and clearances as may be required in order to complete the project and operate the Venue as contemplated hereunder

V. No Tax. The City will not, without the consent of Hardball, impose a ticket/admission/amusement tax applicable to Hardball Home Baseball Games or other Hardball Events during the term hereunder, unless such tax is applicable to all professional sports and entertainment facilities in the City, or otherwise generally applicable to businesses throughout the City.

W. Fireworks. So long as permitted by law, the City will assist Hardball so that Hardball can hold an acceptable number of firework nights per each season consistent with industry norms.

X. Non-Venue Signage. The City will work with the City Department of Public Works and other appropriate state and county Governmental Authorities to endeavor to alter or construct new directional signage on freeways and other major thoroughfares, directing vehicles to the Venue. The City will assist Hardball in obtaining permission and approval to hang banners within City limits (subject to reasonable restrictions and applicable guidelines) to generate interest in the development of the Project, and major events being held at the Venue.

Y. Interpretation; Construction. In this Agreement: (i) the table of contents and headings are for convenience of reference only and will not affect the meaning or interpretation of this Agreement, (ii) the words "herein," "hereunder," "hereby" and similar words refer to this Agreement as a whole (and not to the particular sentence, paragraph or Section where they appear), (iii) terms used in the plural include the singular, and vice versa, unless the context clearly requires otherwise, (iv) unless expressly stated herein to the contrary, reference to any document means such document as amended or modified and as in effect from time to time in accordance with the terms thereof, (v) unless expressly stated herein to the contrary, reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and as in effect from time to time, (vi) the words "including," "include," "includes" and variations thereof are deemed to be followed by the words "without limitation," (vii) "any" is used in the sense of "any or all," (viii) unless expressly stated herein to the contrary, reference to a document, including this Agreement, will be deemed to also refer to each annex, addendum, Exhibit, schedule or other attachment thereto, (ix) unless expressly stated herein to the contrary, reference to an Article, Section or Exhibit is to an article, section or exhibit, respectively, of this Agreement, (x) all dollar amounts are expressed in United States dollars and will be paid in United States currency in immediately available funds, (xi) when calculating a period of time, the day that is the initial reference day in calculating such period will be excluded and, if the last day of such period is not a Business Day, such period will end on the next day that is a Business Day, (xii) the Parties participated jointly in the negotiation and drafting of this Agreement; therefore, if an ambiguity or question of intent or interpretation arises, then this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the terms hereof, (xiii) the Exhibits hereto are an integral part of this Agreement and terms and conditions therein have the same effect as if contained in the body of this Agreement; and (xiv) the words "shall" and "will" have equal force and effect.

Z. Additional Documents and Approvals. The Parties, whenever and as often as each shall be reasonably requested to do so by the other Party, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

AA. City Payment Limitations. Notwithstanding anything herein to the contrary, the City's payment obligations hereunder are payable solely from available amounts (including, as the context requires, the City Capital Fund); 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.

[SIGNATURE PAGE FOLLOWS]

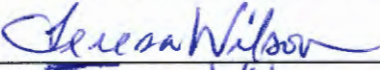
IN WITNESS WHEREOF, this Agreement has been executed by the undersigned effective as of the date first mentioned above.

CITY:

HARDBALL:

CITY OF COLUMBIA, SOUTH CAROLINA

HARDBALL CAPITAL LLC

By: 
Name: Teresa Wilson
Title: City Manager


By: 
Name: Jason M. Freier
Title: Chief Executive Officer

EXHIBIT IV(C)

ITEM	CAPITAL FUND	HARDBALL
Structure		
Structural steel and concrete components	M, R	
Roofs	M, R	
Water sealing	M, R	
Windows and doors	R	M, 1
Flooring, walls, ceilings	R	M
Railings and fencing	R	M
Fixed seating	R	M
Safety netting	R	M
Interior Finishes (flooring, carpeting, tiles, walls)	R	M
Exterior Painting	R	M
Stadium Systems		M, 2
Plumbing	R	M
Electrical	R	M
HVAC	R	M
Security and fire monitoring and suppression and sprinkler systems	R	M
Generator	R	M
Lighting (excluding field lighting)	R	M
Emergency lighting	R	M
Escalators and elevators	R	M
Scoreboard	R	M
Sound system	R	M
Other electronic signage		M, R
Trash compactor	R	M
Playing Field		
Preparation for games		M, R
Grass cutting		M, R
Sod fertilizing maintenance and repair.		M
Full playing surface replacement		
Field drainage system	R	
Field irrigation system	R	M
Foul ball screen, backstop	R	M
Dugouts	R	M
Bullpens	R	M
Outfield fence/wall padding	R	M
Field lighting and lamps	R	M
	R	M
Baseball equipment		M, R
Hitting screens		M, R
Tarps		M, R
Batting cages		M, R
Portable backstops		M, R

Signage and communications		
Scoreboards	R	M
Fixed marketing signage		M, R
Videoboards and other electronic marketing signage		M, R
Wayfinding signage	R	M
Public address system	R	M
Electronic message center	R	M
Telephone	R	M
Internet	R	M
WiFi	R	M
Suites, banquet and other public areas equipment and furnishings	R	M
Press Box equipment and furnishings	R	M,
Offices equipment and furnishings		M, R
Clubhouses and Umpire room equipment and furnishings		M, R
Clubhouses and Umpire room floors, walls, fixtures	R	M
Concessions stands, equipment, refrigeration and freezers and portable units	R	M
Venue Area	R	M
Marketing inventory		M, R
Other		
Seats, bleachers and chairs	R	M
Cupholders	R	M
Bathrooms	R	M
Exterior Landscaping		R, M

Key

M=Ordinary and routine maintenance and repair responsibility, including cleaning and trash removal

R= Capital replacement responsibility; excluding in the case of the City, all items that constitute marketing inventory, e.g., naming on cupholders.

1 includes window cleaning

2 includes pest control and annual inspections

The parties have attempted to foresee all of the requirements for the maintenance and improvement of the Venue but agree that items may arise that are not on this list. When such items arise, Hardball shall be required to pay for any items that constitute routine or ordinary maintenance. All capital expenditures and needs, except those for which Hardball is responsible per this Exhibit, shall be funded out of the City Capital Fund.