CITY OF SPARTANBURG
SOUTH CAROLINA

CITY COUNCIL AGENDA

City Council Meeting
City Council Chambers
145 W. Broad Street
Monday, May 13, 2024
5:30 PM

I. **Moment of Silence**

II. **Pledge of Allegiance**

III. **Approval of the Minutes of the April 22, 2024 Meeting**

IV. **Approval of the Agenda of the May 13, 2024 Meeting**

V. **Public Comment**
Public Comment Forms available in Council Chambers on the podium. Please turn in the completed form to the City Clerk prior to the start of the meeting.

VI. **Proclamation Declaring May as Mental Health Awareness Month in the City of Spartanburg**
Presenter: Jerome Rice, Jr., Mayor

VII. **Proclamation Declaring May 19-May 24, 2024 as Public Works Week in the City of Spartanburg**
Presenter: Jerome Rice, Jr., Mayor

VIII. **Northside Development Group Update**
Presenter: LaKesa Whitner, Director of Community Programs

IX. **Award of Bid for Removal and Replacement of HVAC System at CC Woodson Recreation Center**
Presenter: Tony McAbee, Facilities Manager

X. **Appointment of City Councilmembers to the Hospitality Tax Committee**
Presenter: Christie Lindsey, City Clerk

XI. **Resolution**

A. **A Resolution Approving the City of Spartanburg's Fiscal Years 2024-2028 Consolidated Plan and 2024 Annual Action Plan**
Presenter: Martin Livingston, Community Development Director

As required by the Americans with Disabilities Act, the City of Spartanburg will provide interpretive services for the City Council Meetings. Requests must be made to the Communications & Marketing Office (596-2020) 24 hours in advance of the meeting. This is a Public Meeting and notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information

XII. Ordinance

A. **An Ordinance to Provide for and Authorize the Execution and Delivery of a Stadium Sublease Agreement Between the City of Spartanburg, South Carolina and DBH Kinston, LLC; and Other Matters Related Thereto. (Second Reading)**
Presenter: Chris Story, City Manager

B. **An Ordinance Consenting to the Removal of Certain Property Located in the City of Spartanburg from the Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) Established By and Between Spartanburg County and Cherokee County, Consenting to the Addition of Such Properties to a New Joint County Industrial/Business Park to be Established By and Between Spartanburg County and Cherokee County; Consenting to the Execution and Delivery of an Amended And Restated Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) Between Spartanburg County and Cherokee County; Authorizing the Execution and Delivery of an Amended and Restated Intergovernmental Agreement (City of Spartanburg Economic Development Partnership Park) Between the City of Spartanburg and Spartanburg County; and Other Matters Relating Thereto. (Second Reading)**
Presenter: Chris Story, City Manager

C. **Authorizing the Issuance of Spartanburg Stadium Facilities Corporation Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024, in the Aggregate Principal Amount of Not Exceeding $67,500,000, by Spartanburg Stadium Facilities Corporation to Provide Funding to Finance the Costs of Design, Acquisition, Construction and Equipping of a Multi-Use Municipal Stadium Intended for Use Principally as a Minor League Baseball Venue; Authorizing the Execution and Delivery of a Ground Lease Agreement By and Between the City and Johnson Development Associates, Inc. or an Affiliate or Subsidiary Thereof; Authorizing the Execution and Delivery of a Base Lease Agreement By and Between the City and the Corporation, and the Conveyance of Certain Property of the City to the Corporation Thereunder; Authorizing the Execution and Delivery of an Installment Purchase and Use Agreement By and Between the City and the Corporation; Consenting to the Form of a Trust Agreement to be Entered Into by the Corporation and the Trustee for the Bonds; and Making Provision for all Other Matters Relating to the Foregoing. (Second Reading)**
Presenter: Chris Story, City Manager

XIII. Staff Updates

XIV. City Council Updates

XV. Executive Session

A. Executive Session Pursuant to Section 30-4-70 (a)(5) of the South Carolina Code to Discuss Matters Relating to Economic Development "Project Core" a Potential Mixed-use Development in the Downtown Area

B. Executive Session Pursuant to Section 30-4-70 (a)(5) of the South Carolina Code to Discuss Matters Relating to Economic Development "Project Edge" a Potential Mixed-use Development in the Downtown Area

C. An Executive Session to Discuss a Contractual Agreement Pursuant to Section 30-4-70 (a) (2) of the SC Code of Laws

XVI. Adjournment.

City Code Sec. 2-57. Citizen Appearance. Any citizen of the City of Spartanburg may speak at a regular meeting on any matter pertaining to City Services and operations germane to items within the purview and authority of City Council, except personnel matters, by signing a Citizen's Appearance form prior to the meeting stating the subject and purpose for speaking. No item considered by Council within the past twelve (12) months may be added as an agenda item other than by decision of City Council. The forms may be obtained from the Clerk and maintained by the same. Each person who gives notice may speak at the designated time and will be limited to a two (2) minute presentation.

City Council Meeting
County Council Chambers
366 N. Church Street
Monday, April 22, 2024
5:30 p.m.

(These minutes to be approved at the May 13 Council Meeting)

City Council met this date with the following Councilmembers present: Mayor Jerome Rice, Jr, Mayor Pro Tem Janie Salley, Councilmembers Jamie Fulmer, Ruth Littlejohn, Meghan Smith, Erica Brown and Rob Rain. City Manager Chris Story, Deputy City Manager Mitch Kennedy, Assistant City Manager Kevin Limehouse and City Attorney Robert P. Coler were in attendance. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are live streamed/recorded. To view the video for a complete transcript, please visit https://www.cityofspartanburg.org/city-council

I. **Moment of Silence – observed**

II. **Pledge of Allegiance - recited**

III. **Approval of the Minutes of the April 8, 2024 City Council Meeting –**
Councilmember Fulmer *made a motion to approve the minutes as received.*
Councilmember Smith seconded the motion, which carried unanimously 7 to 0.

Mayor Rice *advised the agenda needed to be amended to include an update from Spartanburg Water presented by CEO, Guy Boyle.*
Councilmember Brown *made a motion to amend the agenda.*
Councilmember Littlejohn seconded the motion to amend the agenda to include the update.

IV. **Approval of the Amended Agenda for the April 22, 2024 City Council Meeting -**
Councilmember Littleljohn *made a motion to approve the amended agenda.*
Mayor Pro Tem Salley seconded the motion to approve the amended agenda.

V. **Public Comment –**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
1. **Steve Wise-Homeless Memorial Event**
2. **Jame Jones-Project R.E.S.T. as pertains to U-Visas**

VI. **Update on EPA; PFAS Regulation & EPA; Lead and Copper Rule from Spartanburg Water**
Presenter: Guy Boyle, CEO
Council was provided an update regarding the EPA; PFAS Regulation & EPA; and the Lead and Copper Rule.
Council received the update as information only.

VII. **FY25 Budget Process Overview**
Presenters: Dennis Locke, Director of Finance
Chris Story, City Manager

Council received as information only. They also requested that a budget workshop be held prior to the budget being adopted.

VIII. **Consent Agenda**

A. **An Ordinance to Amend the City of Spartanburg, South Carolina Zoning Ordinance and Comprehensive Plan Land Use Element, by Amending Section 206, Changes to District Boundaries, Specifically, the Property Located At 1621 John B. White Sr. Blvd, and is Further Identified as Tax Map ID: 6-21-13-060.00 on the Spartanburg County Tax Map, as part and Parcel of the City of Spartanburg which is Zoned R-15, with a Land use Designation of Single-Family Residential District to be Assigned a Zoning Designation of B-1, with a Land Use Designation of Neighborhood Shopping District and Providing for Severability And an Effective Date.**
Presenter: Martin Livingston, Community Development Director
Councilmember Littlejohn *made a motion to approve the consent agenda. Councilmember Smith seconded the motion, which carried unanimously 7 to 0.*

IX. **Resolutions**

A. **A Resolution Pursuant to Section 4-1-1740(C), Code of Laws of South Carolina 1976, As Amended, Consenting to the Placement of Certain Property Within the Corporate Limits of the City of Spartanburg in a Joint Industrial and Business Park of Spartanburg and Cherokee Counties.**
Presenter: Robert P. Coler, City Attorney
Councilmember Fulmer *made a motion to approve the resolution as presented. Councilmember Littlejohn seconded the motion, which carried unanimously 7 to 0.*

B. **A Resolution to Adopt the Spartanburg County Multi-Jurisdictional Hazard Mitigation Plan.**
Presenter: Chris Story, City Manager
Councilmember Smith *made a motion to approve the resolution as presented. Councilmember Littlejohn seconded the motion, which carried unanimously 7 to 0.*

X. **Staff Updates**
Mr. Story introduced the new Planning Director, Fredalyn Fraiser to Council and welcomed her to the team.

X. **City Council Updates-** Each Councilmember gave updates on their activities since the previous council meeting.

XI. Executive Session-

A. **Executive Session Pursuant to Section 30-4-70 (a)(5) of the South Carolina Code to Discuss Matters Relating to Economic Development "Project Core" a Potential Mixed-use Development in the Downtown Area.**

B. **Executive Session Pursuant to Section 30-4-70 (a)(5) of the South Carolina Code to Discuss Matters Relating to Economic Development "Project Hoist" a Potential Mixed-use Development in the Downtown Area.**

C. **An Executive Session to Discuss a Contractual Agreement Pursuant to Section 30-4-70 (a)(2) of the South Carolina Code of Laws.**

Councilmember Fulmer *made a motion to adjourn to executive session at 6:27p.m. Councilmember Smith seconded the motion, which carried unanimously 7 to 0.*

XVI. Adjournment – ***Mayor Pro Tem Salley*** *made a motion to adjourn the meeting, Councilmember Brown seconded the motion, which carried unanimously 7 to 0. The meeting adjourned at 8:04p.m.*

Christie B. Lindsey

Christie B. Lindsey, City Clerk

REQUEST FOR CITY COUNCIL ACTION

TO: Chris Story, City Manager

FROM: Tony McAbee, Facilities Manager

SUBJECT: Award of Bid for HVAC Replacement at CC Woodson Recreation Center

DATE: May 9, 2024

BACKGROUND: CC Woodson Recreation Center HVAC Unit will require replacement with a brand new unit. City staff has sent out a request for bids. Five contractors responded with bids. L.P.B. of South Carolina, Inc. was the second lowest bidder ($117,000.00) but the most qualified bidder because the lowest bidder ($115,688.00) lacked the necessary credentials to complete the work. Therefore, Staff recommends L.P.B. of South Carolina be awarded the bid.

ACTION REQUESTED:

Council to approve the bid award to L.P.B. of South Carolina Inc. to replace the HVAC unit at CC Woodson Recreation Center located at 210 Bomar Avenue.

BUDGET & FINANCIAL DATA:

Total cost to replace HVAC Unit will be $117,000.00

REQUEST FOR CITY COUNCIL ACTION

TO: **Chris Story, City Manager**

FROM: **Martin Livingston, Community Development Director**
Erich Chatham, CIVITAS, LLC

SUBJECT: **Approval of the City of Spartanburg's Fiscal Years 2024 – 2028 Consolidated Plan and 2024 Annual Action Plan**

DATE: **May 13, 2024**

BACKGROUND:
The U.S. Department of Housing and Urban Development (HUD) provides us with two recurring annual grants, the Community Development Block Grant (CDBG) and HOME Partnership Funding, to address low and moderate income neighborhoods in the City and affordable housing priorities. HUD attempts to ensure that cities utilize those programs strategically by requiring that the annual use of the funds be aligned with an Annual Action Plan which is in turn aligned with a five year Consolidated Plan.

Staff is requesting approval of the City of Spartanburg's Fiscal Years 2024 – 2028 Consolidated Plan and 2024 Annual Action Plan. These Strategic Planning document determines by survey, public hearings, and consultations with neighborhood residents and partner organizations the needs of the community and develops a five year plan for addressing those needs. The Consolidated Plan and Annual Action Plan is a requirement of HUD for the City to continue to receive Community Development Block Grant (CDBG) and HOME Partnership Funding. Both documents focus on eligible low and moderate income neighborhoods in the City and affordable housing priorities for the use of CDBG and HOME funds. A Consolidated Plan is not a Comprehensive Plan. A Comprehensive Plan is much larger in scope and is a function of the City's strategic vision of its development and zoning priorities over a ten year period.

The City of Spartanburg will receive an allocation of Community Development Block Grant (CDBG) and HOME Partnership Funds for eligible activities to be implemented within City limits. CDBG Funds can be used for a variety of activities including administration, affordable housing, infrastructure, economic development, demolition, subrecipient activities, and other eligible uses. HOME Partnership Funds can only be used for the development of affordable housing. The total estimated allocation for CDBG Funds is $642,598 and the total allocation of HOME Partnership Funds is $200,630.

After a thirty (30) day comment period which ended April 29, the documents must be reviewed and approved by Council and submitted to HUD within 60 days.

ACTION REQUESTED: Staff is requesting approval of the City of Spartanburg's Fiscal Years 2024 – 2028 Consolidated Plan and 2024 Annual Action Plan.

BUDGET AND FINANCIAL DATA: **Not applicable**.

A RESOLUTION
APPROVING THE FISCAL YEAR 2024-2028 CONSOLIDATED PLAN
AND ALLOCATING FISCAL YEAR 2024
COMMUNITY DEVELOPMENT BLOCK GRANT
AND HOME PARTNERSHIP FUNDS

WHEREAS, The City of Spartanburg is required to prepare a five-year strategy for the use of the Community Development Block Grant (“CDBG”) and HOME Partnership Grant funds in a Consolidated Plan; and

WHEREAS, the City of Spartanburg (“City”) will receive a Community Development Block Grant (“CDBG”) and HOME Partnership Funds Grant for Fiscal Year 2024; and

WHEREAS, the funding of the CDBG and HOME Partnership Funds are provided by the U.S. Department of Housing and Urban Development (HUD) with an annual application; and

WHEREAS, City Council has considered the various needs and priorities for the use of these funds and has provided for public input on the use of these funds.

NOW, THEREFORE, BE IT RESOLVED BY the Mayor and Members of Council of the City of Spartanburg in Council assembled:

Section 1. Approval of the Fiscal Years 2024-2028 Consolidated Plan and Housing Market Study for the City of Spartanburg.

Section 2. Approval of the Fiscal Year 2024 Annual Action Plan to be submitted to the U.S. Department of Housing and Urban Development.

Section 3. Fiscal Year 2024 CDBG funds and Fiscal Year 2024 HOME funds are appropriated as follows:

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
PROPOSED ACTIVITIES:

Neighborhood Services Administration	128,000
Public Services / Subrecipients	90,000
Rehabilitation Admin and Code Admin	165,000
Housing Rehabilitation	195,598
Removal of Blight / Citywide Demolition	64,000
TOTAL CDBG Annual Budget	**642,598**

HOME PARTNERSHIP FUNDS	
PROPOSED ACTIVITIES:	
Administration	20,000
CHDO Reserves	31,000
Housing Developments	149,630
TOTAL HOME Annual Budget	**200,630**
Total Annual Action Plan Funding	**$843,228**

Section 4. If the U.S. Department of Housing and Urban Development reduces or increases the overall allocation of Community Development Block Grant (CDBG) and Home Partnership Funds (HOME), each activity, will be proportionally increased or decreased from the estimated funding levels to match actual allocation amounts, except for subrecipient activities.

Section 5. If the U.S. Department of Housing and Urban Development reduces the overall CDBG allocation, then subrecipient activities will be reduce to meet the CDBG subrecipient limits.

Section 6. This Resolution adopted this ________ day of ________________ 2024.

____
Jerome Rice, Mayor

ATTEST:

____
Christie Lindsey, City Clerk

APPROVED AS TO FORM:

____
Robert P. Coler, City Attorney

ORDINANCE NO. ____

AN ORDINANCE TO PROVIDE FOR AND AUTHORIZE THE EXECUTION AND DELIVERY OF A STADIUM SUBLEASE AGREEMENT BETWEEN THE CITY OF SPARTANBURG, SOUTH CAROLINA AND DBH KINSTON, LLC; AND OTHER MATTERS RELATED THERETO.

Enacted: May 13, 2024

BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

Section 1. Findings and Determinations. The City Council (the ***"Council"***) of the City of Spartanburg, South Carolina (the ***"City"***), hereby finds and determines:

(a) The City is an incorporated municipality located in Spartanburg County, South Carolina, and, as such, possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina.

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended, empowers all municipalities to own and possess property, real, personal or mixed, without limitation, and such municipalities may lease real or mixed property by ordinance.

(c) The City has entered into that certain Development Agreement with Johnson Development Associates, Inc. (***"JDA"***) dated as of October 11, 2023 (the ***"Development Agreement"***), through which JDA has agreed to design and construct a minor league baseball stadium in the City, such stadium being more fully described therein (the ***"Stadium"***), along with certain other public and private improvements as part of a significant mixed-use development in the City.

(d) Through the Development Agreement, the City has agreed to defray the cost of the initial construction of the Stadium and certain related public improvements from certain identified sources of funds described therein, including, without limitation, proceeds of installment purchase revenue bonds (the ***"Series 2024 Bonds"***) to be issued by Spartanburg Stadium Facilities Corporation, a South Carolina nonprofit corporation (the ***"Corporation")*** organized on behalf, and to support certain activities, of the City.

(e) The Corporation will issue the Series 2024 Bonds to finance, among other things, the costs of the design, acquisition, construction and equipping of the Stadium to be located on land (the ***"2024 Real Property"***) to be ground leased to the City by JDA or an affiliate or subsidiary of JDA (the ***"Ground Lessor"***) pursuant to a Ground Lease Agreement (the ***"Ground Lease"***).

(f) In order to effectuate the issuance of the Series 2024 Bonds and the design, acquisition, construction and equipping of the Stadium, the City will:

1. enter into the Ground Lease with the Ground Lessor;

2. enter into a Base Lease Agreement with the Corporation, pursuant to which it will sublease to the Corporation the 2024 Real Property on which the Stadium is to be located; and

3. enter into an Installment Purchase and Use Agreement pursuant to which the City will make certain payments to the Corporation and thereby purchase the Stadium in installments, and pursuant to which the City will be entitled to the use and occupancy of the 2024 Real Property and the

Stadium, and pursuant to which the City may permit the use of all or portions of the 2024 Real Property and the Stadium subject to certain limitations set forth therein.

(g) The City desires to enter into a Stadium Sublease Agreement (the ***"Stadium Sublease Agreement"***) with DBH Kinston, LLC a Delaware limited liability company (the ***"Team Owner"***) whereby: (a) the Team Owner shall use, occupy, manage, maintain and operate the 2024 Real Property and the Stadium as a multi-purpose minor league baseball stadium on a year-round basis for professional baseball and other sporting activities and community and cultural uses and events, and (b) the City shall undertake certain capital maintenance and repair obligations with respect to the Stadium, all as more specifically set forth in the Stadium Sublease Agreement.

Section 2. Approval of Stadium Sublease Agreement. The form, terms and provisions of the Stadium Sublease Agreement attached as Exhibit A hereto are hereby approved, and the Mayor of the City and the City Manager, or either of them acting alone, are hereby authorized, empowered and directed to execute, acknowledge and deliver the Stadium Sublease Agreement in the name and on behalf of the City. The Stadium Sublease Agreement is to be in substantially the form attached as Exhibit A hereto, or with such changes as shall be approved by the officials of the City executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Stadium Sublease Agreement attached as Exhibit A hereto.

Section 3. Further Actions and Documents. The Mayor, the Mayor Pro-Tempore, the City Manager, the City Clerk, the Director of Finance and Budget, the City Attorney and the officials of the City, acting jointly or individually, are hereby authorized to execute and deliver any and all documents, agreements and certificates, and are hereby authorized to take any further actions as are necessary or useful, for carrying out the transactions authorized by this Ordinance or the Stadium Sublease Agreement. The authorizations provided for in this Ordinance shall be construed liberally to effect the intent of the Council.

Section 4. Provisions Severable. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 5. Conflicts. All orders, resolutions, ordinances of the City and parts thereof in conflict herewith are, to the extent of such conflict only, hereby repealed and this Ordinance shall take effect and be in full force from and after its enactment and approval.

Section 6. Ordinance Effective. This Ordinance shall be effective upon second and final reading and approval by the City Council of the City of Spartanburg, South Carolina.

[execution page follows]

Enacted by the City Council of the City of Spartanburg, South Carolina, this 13th day of May, 2024.

CITY OF SPARTANBURG, SOUTH CAROLINA

____
Mayor

(SEAL)

ATTEST:

____
Clerk

Date of First Reading: April 8, 2024

Date of Second Reading: May 13, 2024

[Signature Page to Ordinance No. ___]

EXHIBIT A

Form of Stadium Sublease Agreement

[see attached]

STADIUM SUBLEASE AGREEMENT

by and between

DBH KINSTON, LLC,
as Sublessee

and

THE CITY OF SPARTANBURG, SOUTH CAROLINA,
as Sublessor

Dated as of [●]

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STADIUM SUBLEASE AGREEMENT

THIS STADIUM SUBLEASE AGREEMENT (this "**Lease**") made as of [●] (the "**Effective Date**"), by and between the City of Spartanburg, South Carolina, as sublessor (the "**City**") and DBH Kinston, LLC, a Delaware limited liability company, as sublessee (the "**Team Owner**"). The City and the Team Owner are referred to collectively herein as the "**Parties**," and each individually as a "**Party**."

RECITALS

A. WHEREAS, the Team Owner is the owner of a minor league baseball team (the "**Team**") and is party to the Team PDL License Agreement (as defined herein) pursuant to which Team Owner has been granted the right to operate the Team in the Professional Development League System (as defined herein);

B. WHEREAS, Morgan & Henry JOF ESA II, LLC, a South Carolina limited liability company (the "**Property Owner**"), and an Affiliate of Johnson Development Associates, Inc., a South Carolina corporation (the "**Developer**"), holds the title to the land identified as "TRACT 1" comprised of 6.777 acres in **Exhibit B** (the "**Stadium Site**");

C. WHEREAS, pursuant to the Ground Lease Agreement dated as of the date hereof (the "**Ground Lease**"), by and between the Property Owner, as lessor, and the City, as lessee, the Property Owner has leased, on the terms described therein, the Stadium Site to the City; and

D. WHEREAS, pursuant to the Project Development Agreement dated as of [the date hereof] (the "**Development Agreement**"), by and between the Developer and the Team Owner, the Developer has agreed, on the terms described therein, to design, develop, construct, and furnish on behalf of, and for initial ownership by, the City a new, first-class, state of the art, and multi-purpose minor league baseball stadium and related facilities (the "**Stadium**," and together with the Stadium Site, the "**Leased Premises**"), the location of such Stadium being shown in **Exhibit C** (the "**Stadium Site Plan**"); and

E. WHEREAS, the City and Spartanburg Stadium Facilities Corporation, a South Carolina nonprofit corporation (the "**Corporation**") have executed and entered into that certain Base Lease and Conveyance Agreement dated of even date herewith (the "**Base Lease**") pursuant to which the City has granted, bargained and conveyed title in and to the Stadium to the Corporation, and has subleased to the Corporation the Stadium Site; and

F. WHEREAS, the Corporation and the City have executed and entered into that certain Installment Purchase and Use Agreement dated of even date herewith (the "**Installment Agreement**") pursuant to which the Corporation has granted certain rights to the City to use and lease the Leased Premises to one or more third parties, including specifically the right of the City to lease the Leased Premises to the Team Owner pursuant to this Lease, and pursuant to which the City has agreed to purchase the Stadium from the Corporation in annual installments through the payment of Installment Payments (as such term is defined therein); and

G. WHEREAS, the Corporation intends to issue its Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024 (the "**Bonds**") for the purpose of defraying a portion of the costs of acquisition and construction of the Stadium, and to enter into that certain Trust Agreement (the "**Trust Agreement**" and, together with the Base Lease, the Installment Agreement and such other agreements executed by the City or the Corporation in connection with the issuance of the Bonds, the **"Bond Documents"**) with U.S. Bank Trust Company, National Association, as Trustee, in connection therewith; and

H. WHEREAS, pursuant to the Trust Agreement, the Bonds shall be payable solely from and secured by the Trust Estate (as such term is defined in the Trust Agreement), which shall include, among other assets, all of the Corporation's right, title and interest in and to the Stadium and the Stadium Site; and

I. WHEREAS, the City has agreed to sublease to the Team Owner, and the Team Owner has agreed to sublease from the City, the Leased Premises, as more particularly described herein;

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND USAGE

1.1 Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Lease shall have the meanings given to them in **Exhibit A**, which also contains rules as to usage that shall be applicable herein.

ARTICLE II

CITY AND TEAM OWNER REPRESENTATIVES

2.1 City Representative. The City hereby designates the City Manager of the City or his or her designee to be the representative of the City (the "**City Representative**"), and the City shall have the right, from time to time, to change the individual who is the City Representative by giving at least five (5) Business Days prior written notice to the Team Owner thereof. The only functions under this Lease of the City Representative shall be as expressly specified in this Lease. The City Representative shall have the power to bind the City in those instances in which this Lease specifically provides for the approval, decision, confirmation or determination of the City Representative and in no other instances; *provided* that, notwithstanding anything in this Lease to the contrary, the City Representative shall not have any right to modify, amend or terminate this Lease, other than non-material amendments for purposes of clarification or cure of any ambiguity that are made in accordance with Section 20.6.

2.2 Team Owner Representative. The Team Owner hereby designates Peter Freund or his or her designee to be the representative of the Team Owner (the "**Team Owner Representative**"), who shall be authorized to act on behalf of the Team Owner under this Lease. The Team Owner shall have the right, from time to time, to change the individual who is the Team Owner Representative by giving at least five (5) Business Days prior written notice to the City thereof. Any written approval, decision, confirmation or determination hereunder by the Team Owner Representative shall be binding on the Team Owner; *provided* that, notwithstanding anything in this Lease to the contrary, the Team Owner Representative shall not have any right to modify, amend or terminate this Lease.

ARTICLE III

LEASEHOLD ESTATE; LEASE TERM; RENT; FACILITY FEES

3.1 Grant of Leasehold.

(a) In consideration of and pursuant to the covenants, agreements and conditions set forth herein, the City does hereby lease, let, demise and rent unto the Team Owner, and the Team Owner does hereby rent and lease from the City, on and subject to the terms, conditions and provisions of this Lease, the Leased Premises, together with all other rights, titles and interests granted to the Team Owner under this Lease (collectively, the "**Leasehold Estate**") for the Lease Term set forth herein.

(b) To the extent the Public Spaces are owned by the City, the City also hereby grants such non-exclusive access easements over the Public Spaces as are necessary or appropriate for access by the Team Owner to the Leased Premises. The City agrees that such Team Owner access to the Public Spaces shall not be disturbed by any third parties during the Lease Term, except upon the occurrence of a Team Owner Default. The City shall take reasonable steps to assist the Team Owner with obtaining access easements over parcels owned by third parties as are necessary for access to the Leased Premises.

(c) The Team Owner acknowledges that the City, as a municipality, exercises certain police powers, taxation powers and other governmental functions which may affect the Leasehold Estate and that, other than as expressly set forth herein, this Lease shall not in any way affect the exercise of such powers, duties and functions.

3.2 Delivery of Possession. Upon the Rent Commencement Date, the City shall deliver to the Team Owner possession and occupancy of the Leased Premises subject only to (i) the Ground Lease, (ii) the Bond Documents; (iii) the Nondisturbance Agreement; (iv) the rights of the City under this Lease and (v) all Applicable Law. Subject to the rights of the Team Owner or its Affiliates to access the Leased Premises pursuant to the Development Agreement, the Team Owner and its Affiliates shall not have the right to use or occupy any part of the Leased Premises prior to the Rent Commencement Date, except as may be approved in writing by the City.

3.3 Ground Lease. The City shall perform and comply with all of the terms, conditions and obligations of the City, as tenant, under the Ground Lease as and when required to be performed or complied with thereunder. The City shall not amend, modify or terminate the Ground Lease without the prior written consent of the Team Owner, which consent shall not be unreasonably withheld. The City shall enforce its rights and remedies against the Developer, as landlord, under the Ground Lease as fully as if the City were the tenant under this Lease in order to protect the interests of the Team Owner under this Lease.

3.4 Recording of Memorandum of Lease. The Team Owner may file of record a memorandum of this Lease in a form reasonably acceptable to the City in the public records of Spartanburg County, South Carolina upon the Rent Commencement Date. Upon the Lease Expiration Date, the Team Owner shall execute such instruments reasonably requested by the City in recordable form which are sufficient to release of record any rights or interests of the Team Owner in and to the Leasehold Estate.

3.5 Initial Term. Subject to the terms and conditions hereof, the City hereby leases the Leased Premises to the Team Owner for a period commencing on the Rent Commencement Date and expiring on the date that is twenty (20) years after the Rent Commencement Date; *provided* that such expiration date shall be extended to the next occurring December 31st following such twenty (20) year anniversary if the Baseball Season for the Team has not ended on such twenty (20) year anniversary and the Team is in fact playing its Home Games in the Stadium during that season (the "**Initial Term**"). For the avoidance of doubt, the first Lease Year shall commence on the Rent Commencement Date.

3.6 Renewal Periods. The Team Owner shall have the right to renew the term of this Lease for two (2) additional five (5) year renewal periods (any such period being a "**Renewal Period**") beyond the Initial Term, on the same terms as are set forth in this Lease, exercised by written notice to the City no later than one hundred eighty (180) days prior to the expiration of the Initial Term or the first Renewal Period, as applicable.

3.7 Rent.

(a) The Team Owner shall pay to the City an annual base rental during the Lease Term of Five Hundred Thousand and 00/100 Dollars ($500,000), payable in bi-annual (i.e., twice per year) installments of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000) due on or before April 1 and October 1 of each year, commencing with the first such date on or following the Rent Commencement Date; *provided* that the Team Owner shall pay a prorated portion of such rent to the City for the period commencing on the Rent Commencement Date (or, if the Team Owner has entered into any Other Stadium Agreement pursuant to Section 4.3(a), the date that such Other Stadium Agreement expires) and ending on the next occurring April 1 or October 1. For the avoidance of doubt, the Team Owner shall not be obligated to pay any rent for periods prior to the Rent Commencement Date.

(b) The annual base rental (and the corresponding bi-annual installments) payable by the Team Owner to the City shall escalate every five years during the Lease Term by the CPI Increase.

3.8 Facility Fee. The Team Owner shall impose a $1.00 facility fee on each ticket to a Stadium Event or a City Event for which admission is charged ("**Facility Fee**"); *provided* that the amount of the Facility Fee shall be adjusted each Lease Year to increase the Facility Fee by one percent (1%) over the amount of the Facility Fee in the prior Lease Year. The Team Owner shall remit the proceeds of the collected Facility Fee ("**Facility Fee Proceeds**") to the City in the same manner that rent is remitted in accordance with Section 3.7. The Facility Fee Proceeds shall be exclusively used by the City to fund the City's obligations with respect to the Leased Premises pursuant to this Agreement and pursuant to the Bond Documents (the "**Facility Fee Purposes**") and shall not be used for any purposes unrelated to the Leased Premises. The City and Spartanburg County, South Carolina (the "**County**") have entered into an Intergovernmental Agreement (Stadium Development Project) dated as [●], 2024 (the "**Stadium IGA**"), which sets forth a plan of finance to aggregate various sources of revenue of the County and the City in each year to be used for the Facility Fee Purposes, including, as further described in the Stadium IGA, (a) rent and Facility Fees paid to the City under this Agreement, (b) City local hospitality fees in the initial amount of $550,000 in the fiscal year ending June 30, 2026 and escalating at three percent (3%) annually thereafter, (c) up to two-thirds (2/3rds) of annual County local accommodations tax collections (subject to annual appropriation by the County Council of the County as set forth therein), and (d) portions of certain fees-in-lieu of taxes paid in the Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park). Subject to the annual appropriation by City Council of the City of amounts to be contributed by the City under the Stadium IGA, the City shall not reduce the sources of revenues identified in the Stadium IGA for payment of the Facility Fee Purposes, and the City shall not agree with the County to reduce such sources of revenues, unless the then-current balance in the Capital Maintenance Fund is at least equal to the cumulative sum of Facility Fee Proceeds remitted to the City to date, less Capital Maintenance and Repair expenditures paid from the Capital Maintenance Fund to date.

ARTICLE IV

USE OF THE LEASED PREMISES

4.1 Permitted Use. During the Lease Term, the Team Owner shall use, occupy, manage, maintain and operate the Leased Premises as a first-class, state of the art, and multi-purpose minor league baseball stadium on a year-round basis for professional baseball and other sporting activities (collegiate, scholastic, and amateur) and community and cultural uses and events, including charitable events and concerts, and access by the general public (collectively, the "**Permitted Use**").

4.2 Prohibited Use. The Team Owner shall not use, nor permit the use of, the Leased Premises for any purpose that is not a Stadium Event, a City Event, or another Permitted Use without the prior written approval of the City. While the Team PDL License Agreement remains in effect, the Team Owner shall not use the Leased Premises in a manner which would constitute or result in a breach or default by Team Owner of the Team PDL License Agreement or of the PDL Rules and Regulations. Notwithstanding anything to the contrary included in this Lease, the Team Owner shall not use or allow the Stadium to be used during the Lease Term for (a) any purpose that is violative of Applicable Law or (b) the sale or display of any Obscene Materials or the operation of any store or other facility, a principal or significant portion of the business of which is the sale or display of Obscene Materials.

4.3 Stadium Events.

(a) The Team Owner shall keep the Stadium active as is commercially reasonable on a year-round basis to host events (collectively, "**Stadium Events**") during the Lease Term. Stadium Events shall include Team pre-season, regular season and postseason home games at the Stadium, as scheduled by the Team's professional baseball league ("**Home Games**"), and Team practices, and may also include:

(i) concerts;

(ii) amateur sporting events;

(iii) festivals;

(iv) meetings, weddings and other hospitality events;

(v) charitable events; and

(vi) other events of a similar scope and nature;

provided that, notwithstanding anything to the contrary in this Agreement, if the Rent Commencement Date has not occurred, or the Team Owner, acting in good faith, reasonably believes that the Rent Commencement Date will not occur, on or before April 1, 2025, then the Team Owner shall be permitted to enter into an agreement to conduct Stadium Events, including Home Games (and the Team shall be permitted to play Home Games) at a stadium other than the Stadium (an "**Other Stadium Agreement**"); *provided, further* that the Team Owner shall, acting in good faith, use commercially reasonable efforts to limit the effectiveness of any Other Stadium Agreement to a period ending no later than sixty (60) days after the date when the Team Owner, acting in good faith, reasonably expects the Rent Commencement Date to occur.

(b) The Team Owner shall have sole and exclusive control of the booking and ticketing policies and procedures governing the Leased Premises and any Stadium Events held within the Leased Premises during the Lease Term; *provided* that such policies and procedures shall be in accordance with Applicable Law and any Professional Baseball Standards. The Team Owner shall be entitled to retain all revenues (other than Facility Fees) arising from booking and ticketing Stadium Events.

(c) The Public Spaces shall be generally available for public use; *provided* that the Team Owner may limit access to the Public Spaces up to three (3) hours before and after any Stadium Event to provide for the orderly undertaking of the Stadium Event. If and to the extent the City conveys the Public Spaces, or any portion thereof, to any third party, the City agrees that such conveyance shall be subject to the requirement that the Team Owner shall have the right to limit access to the Public Spaces up to three (3) hours before and after any Stadium Event to provide for the orderly undertaking of the Stadium Event.

4.4 <u>City Events</u>.

(a) Notwithstanding anything to the contrary contained in this Lease, the Team Owner shall have absolute priority for use of all or any portion of the Leased Premises for any and all Stadium Events. Subject to the foregoing and to the Team Owner's reasonable approval of such events, the Team Owner shall license the use of the Leased Premises to the City for no fewer than ten (10) City-sponsored civic-oriented, community not-for-profit or educational events (the "**City Events**") per Lease Year; *provided* that City Events shall not include any events that would be in competition with concerts, performances, or other revenue generating events that could be held on the Leased Premises and that are of a type that is commonly held at Comparable Properties and sponsored or promoted by for profit businesses.

(b) The Team Owner shall have sole and exclusive control of the booking and ticketing policies and procedures governing the Leased Premises and any City Events held within the Leased Premises during the Lease Term; *provided* that such policies and procedures shall be in accordance with Applicable Law and any Professional Baseball Standards. Notwithstanding Section 7.1(a), but subject to the terms of Section 4.4(f), the City shall be entitled to (i) determine the price of tickets to, and the cost of sponsorships of, City Events and (ii) retain all revenues arising from the sale of tickets to or sponsorships of City Events; *provided* that the City shall pay to the Team Owner all reasonable and customary costs, expenses and fees of the Team Owner associated with such tickets within thirty (30) days after receipt of a reasonably detailed invoice from the Team Owner, including reasonable back-up documentation as requested by the City.

(c) The City shall notify the Team Owner in writing of the City's request to hold a City Event at the Leased Premises, which notice shall be given not less than sixty (60) days prior to the date proposed by the City for such proposed City Event and shall include a full and complete written description of such proposed City Event; *provided* that the City shall not request to schedule a City Event during any Baseball Season during the Lease Term until the final schedule for such Baseball Season has been published. The Team Owner shall give notice to the City reasonably approving or disapproving such City Event within five (5) Business Days after the Team Owner's receipt of the City's written request. Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, if the Team Owner has previously scheduled an event at the Stadium on the date of a City Event requested by the City, the Team Owner shall have no obligation to make the Stadium available to the City on such date. The Team Owner shall have no obligation to reschedule a Stadium Event to accommodate a City Event that has not been scheduled.

(d) During any City Event, the Team Owner shall have the sole option of selling concessions and/or merchandise on the Leased Premises, and the Team Owner shall be entitled to receive and retain all revenue generated therefrom as described in Section 5.4, Section 7.1(a), and Section 7.3.

(e) After each City Event, the City shall promptly repair, in compliance with the Operating Standard, any waste, damage, breakage, wear, theft, littering or other harm caused by the City, its contractors, invitees, or trespassers. Without limiting the foregoing, after each City Event, the City shall be responsible for the timely restoration of all portions of the field at the Stadium to Professional Baseball Standards. The Parties shall, from time to time as appropriate during the Lease Term, cooperate and confer with each other in good faith to develop and modify procedures and standards to be implemented by the City for City Events to ensure that all portions of the field at the Stadium are adequately protected during the preparation for, and the holding of, City Events so that the field meets, or can be timely restored to, Professional Baseball Standards, after each City Event.

(f) Sponsorships sold for City Events shall be subject to any category exclusivity granted by the Team Owner to its sponsors and advertisers. Revenues derived from sponsorships sold for City Events shall be retained by the City. The City shall be solely responsible for all actual costs and expenses associated with City Events that are over and above the costs to maintain and operate the Stadium had there been no such City Event. The City shall pay the Team Owner for the actual additional costs and expenses associated with any City Event within thirty (30) days after receipt of a reasonably detailed invoice from the Team Owner, including reasonable back-up documentation as requested by the City.

(g) As between the Parties, the City (i) shall be responsible for and shall bear all risk of liability for personal injury or property damage and (ii) shall be responsible for repairing any damage to the Leased Premises arising directly or indirectly from City Events that do not result primarily from the Team Owner's material breach of its obligations under this Lease or the gross negligence or willful misconduct of the Team Owner or its Affiliates, vendors, contractors, licensees, or assignees.

4.5 Revenue. Except as otherwise expressly provided by the terms of this Lease, the Team Owner shall be entitled to receive and retain all revenues generated from the Team and/or at the Stadium, including all revenues from Stadium Events, concessions, merchandise, suite, loge box and club seat rentals, interior and exterior Stadium advertising and signage, sponsorships, any and all naming rights and other advertising, sales of broadcast and telecast rights, internet rights, expansion fees and team fundraising, and any other sources of revenue. The Team Owner's entitlement to such revenues shall in each case be subject to applicable sales, use, admission, stamp or excise taxes, if any, imposed by any Governmental Authority, which shall be, as between the Parties, the sole responsibility of the Team Owner to pay.

ARTICLE V

STADIUM OPERATIONS AND MAINTENANCE

5.1 Stadium Operations Generally.

(a) During the Lease Term, the Team Owner shall (i) or, in accordance with Section 5.1(b), shall cause the Operator to, in accordance with the Permitted Use, the Operating Standard, and Applicable Law, operate the Leased Premises and, except as otherwise expressly set forth in this Lease, be responsible for all expenses associated therewith ("**Operating Expenses**"), (ii) possess and implement all personal property necessary for such operation, and (iii) be responsible for such furniture, fixtures and equipment as are necessary for installation at the Stadium to operate the Team.

(b) During the Lease Term, the Team Owner may engage and retain a third-party operator (the "**Operator**") to operate the Leased Premises in accordance with the Operating Standard. The Operator must, at all times, be a Qualified Operator or otherwise be approved by the City in writing, which approval shall not be unreasonably withheld, conditioned, or delayed.

(c) The Team Owner shall secure and maintain such permits, variances, and licenses as may be necessary or, in the Team Owner's discretion, desirable to operate the Leased Premises, and the City shall render reasonable assistance in connection therewith as the Team Owner may request, at the Team Owner's sole cost and expense.

(d) The Team Owner may interrupt operations of the Leased Premises due to any Force Majeure Event or in order to conduct renovations or Routine Maintenance; *provided* that the Team Owner shall use best efforts to minimize the duration and area of interruptions in operations consistent with the Operating Standard.

5.2 **Routine Maintenance**. The Team Owner shall be responsible for all Routine Maintenance of the Leased Premises at its sole cost and expense. The Team Owner shall perform, or cause to be performed, all Routine Maintenance in an economical and efficient manner, consistent with Routine Maintenance conducted at the Comparable Properties and in accordance with Professional Baseball Standards and all Applicable Law. For the avoidance of doubt, the Parties agree that Routine Maintenance shall not include Capital Maintenance and Repairs.

5.3 **Alterations**. The Team Owner may make, or cause to be made, alterations to the Leased Premises during the Lease Term, subject in each instance to the written approval of the City (not to be unreasonably conditioned, withheld or delayed) before work is commenced on such alterations; *provided* that the City's approval shall not be required for non-structural alterations or decorative or cosmetic alterations, including painting or hanging of shelving.

5.4 **Concessions**. During the Lease Term, the Team Owner shall operate the concession operations at the Leased Premises in accordance with the Operating Standard, and Team Owner shall be entitled to retain 100% of revenues derived therefrom. The Team Owner may engage and retain a third-party concessionaire (the "**Concessionaire**") to operate the concession operations at the Leased Premises in accordance with the Operating Standard. The Concessionaire must, at all times, be either a Qualified Concessionaire or otherwise approved by the City in writing, which approval shall not be unreasonably withheld, conditioned, or delayed.

5.5 **Public Safety**.

(a) The Team Owner, at its cost and expense, shall be responsible for providing, or causing to be provided, public safety services and support within the Leased Premises necessary to ensure the security and safety of patrons attending Stadium Events, including with regard to crowd control, vehicular and pedestrian traffic control and fire and life safety issues.

(b) The City, at its cost and expense, shall be responsible for providing, or causing to be provided, all required public safety services and support (i) within the Leased Premises and the Public Spaces necessary to ensure the security and safety of patrons attending City Events, including with regard to crowd control, vehicular and pedestrian traffic control and fire and life safety issues, and (ii) in the Public Spaces necessary to ensure the security and safety of patrons attending Stadium Events, including with regard to crowd control, vehicular and pedestrian traffic control and fire and life safety issues.

5.6 **Utilities**. The Team Owner shall be responsible for paying the cost of all utilities, for the Leased Premises, including water, electricity, natural gas, sanitary sewage, irrigation, telephone and internet service; *provided* that the City shall use reasonable efforts to ensure such costs are charged to the Team Owner at the same rate that comparable utilities are charged to the City. The Team Owner shall contract directly with all utility service providers for such utility service. Upon written request by the Team Owner, the City shall use reasonable efforts to assist the Team Owner, at the Team Owner's sole cost and expense, in establishing and maintaining any utilities at the Leased Premises.

5.7 **Parking**. Periodically, as determined by the Parties, the Parties shall meet in good faith to develop and implement a strategic plan to address parking for the Stadium and multimodal transportation serving the Stadium and surrounding areas. It is the intent of the Parties that the strategic plan will include a plan to identify available parking spaces within the area located one-half (1/2) mile from the outside perimeter of the Stadium (in every direction) and on-street metered parking spaces and to promote the use of public transportation and other multimodal transportation for users of the Stadium. The strategic plan shall also include ingress and egress plans, traffic circulation plans, directional signage and other wayfinding improvements to maximize the experience of Stadium patrons. The Team Owner acknowledges that the City is under no obligation to provide any additional parking.

5.8 **Wayfinding Signage**. If requested by the Team Owner, the City shall use its commercially reasonable efforts to assist the Team Owner in the creation and placement of wayfinding signage in the areas in and around the Leased Premises. Team Owner shall bear all expenses related to such wayfinding signage, including its creation, placement, replacement and removal.

5.9 **Triple Net Lease**. Other than as is expressly set forth in this Lease, all costs, expenses, taxes, insurance, utilities, liabilities or charges with respect to the Leased Premises and the leasing, operation, Routine Maintenance, use, and occupation of the Leased Premises, shall be the absolute and unconditional sole responsibility of and payable by Team Owner without notice, demand, counterclaim, setoff, deduction or defense.

ARTICLE VI

CAPITAL MAINTENANCE AND REPAIRS

6.1 Capital Maintenance and Repairs Generally.

(a) During the Lease Term, the City shall make, or shall cause to be made, at its sole cost and expense, all alterations, repairs, refurbishments, improvements, renovations and replacements to the Leased Premises and all equipment, facilities and structures therein of a capital nature (collectively, the "**Capital Maintenance and Repairs**") so that the Leased Premises at all times remains in compliance with all Applicable Law, all Professional Baseball Standards and in first-class repair, order and condition (determined at any point in time by reference to improvements of similar type of condition, use and age that have been maintained in first-class condition and which are Comparable Properties). Capital Maintenance and Repairs shall include the items and tasks identified as "Capital Repair Responsibility" in **Exhibit D**. For the avoidance of doubt, Capital Maintenance and Repairs shall not include Routine Maintenance. The City's obligation to pay for any Capital Maintenance and Repairs shall be limited to funds available in the Capital Maintenance Fund or otherwise appropriated by the City Council of the City in the then-current fiscal year of the City; *provided* that, notwithstanding anything to the contrary in this Lease, if the City does not undertake or pay for Capital Maintenance and Repairs (or reimburse the Team Owner therefor) due to a lack of funds or lack of appropriation, then the Team Owner shall have the termination and self-help rights set forth in Section 6.4.

(b) The City shall perform, or cause to be performed, all Capital Maintenance and Repairs in an economical and efficient manner consistent with the sound capital maintenance procedures employed at Comparable Properties, in accordance with all Applicable Law and Professional Baseball Standards, and so as not to unreasonably interfere with any Stadium Events held by the Team Owner on the Leased Premises; *provided* that the City may interrupt operation of the Leased Premises with the prior reasonable approval of the Team Owner during mutually agreed upon times to allow the City to conduct Capital Maintenance and Repairs.

(c) Notwithstanding anything to the contrary in this Lease, the Team Owner shall be required to pay for Capital Maintenance and Repairs to the extent such Capital Maintenance and Repairs are required due to (i) a breach of this Lease by the Team Owner (including a failure of the Team Owner to conduct Routine Maintenance in accordance with this Lease) or (ii) the gross negligence or willful misconduct of the Team Owner or its Affiliates, vendors, contractors, licensees, or assignees (but not, for the avoidance of doubt, the gross negligence or willful misconduct of any other Stadium Event attendees or City Event attendees).

6.2 Capital Maintenance Plan.

(a) Not later than eighteen (18) months following the Rent Commencement Date, and on or before October 1 of each year of the Lease Term thereafter, the Parties shall reasonably cooperate to prepare and mutually agree on a plan that sets forth Capital Maintenance and Repairs expected to be undertaken, or caused to be undertaken, by the City for the following five (5) Lease Years (or, to the extent that during a second Renewal Period there are fewer than five (5) Lease Years remaining in the Lease Term, for the remaining Lease Years in the Lease Term) and the estimated costs expected to be undertaken therefor (the "**Capital Maintenance Plan**"), which Capital Maintenance Plan shall clearly distinguish between (i) the Capital Maintenance and Repairs (and the estimated costs expected to be undertaken therefor) for the immediately succeeding Lease Year, and (ii) the Capital Maintenance and Repairs (and the estimated costs expected to be undertaken therefor) for the other Lease Years included in the Capital Maintenance Plan. For the avoidance of doubt, the City shall be responsible for all Capital Maintenance and Repairs required by this Lease, whether or not such Capital Maintenance and Repairs are included on the Capital Maintenance Plan.

(b) If the Parties are unable to reach agreement with respect to any item to be included in the Capital Maintenance Plan and such item is (or any such items are collectively) material to the operation of the Stadium for any Permitted Use or required by the applicable Professional Baseball Standards, then the Parties agree to mutually engage in good faith discussions with the Developer with the shared objective of reaching such an agreement and to allow the Developer the time and opportunity to assist the Parties in jointly resolving the issues that impede the agreement from being reached. If the Parties remain unable to reach such an agreement forty-five (45) days after undertaking such discussions with the Developer (and after engaging in, at a minimum, non-binding commercial mediation with a third party mediator(s) in accordance with Section 18.1), then the Team Owner shall have the option to terminate this Lease by providing written notice thereof to the City.

6.3 **<u>Capital Maintenance Fund</u>**. The City shall maintain a capital maintenance fund for Capital Maintenance and Repairs (the "**Capital Maintenance Fund**") with a minimum balance on the Effective Date, and at the beginning of each Lease Year, of Five Hundred Thousand and 00/100 Dollars ($500,000.00). All disbursements from the Capital Maintenance Fund shall be used solely by the City to make, or cause to be made, Capital Maintenance and Repairs required by this Lease and pursuant to the Capital Maintenance Plan. Any amounts remaining in the Capital Maintenance Fund upon the Lease Expiration Date shall remain the property of the City; *provided* that such amounts shall be applied to reimburse the Team Owner for any costs expended by the Team Owner in exercising its self-help rights set forth in <u>Section 6.4</u> to the extent the Team Owner has not been reimbursed for such costs.

6.4 **<u>Team Owner Self-Help</u>**.

(a) If the Team Owner makes written demand of the City to undertake any Capital Maintenance and Repairs that the City is required to perform under this Lease (a "**Work Demand**") and the City does not undertake, or cause to be undertaken, such Capital Maintenance and Repairs within ten (10) Business Days after receipt of such Work Demand (or for such longer period as may be reasonably necessary to undertake such Capital Maintenance and Repairs, provided in such case that (i) the City has demonstrated to the reasonable satisfaction of the Team Owner that the City is proceeding, and will proceed, with all due diligence to undertake and prosecute such Capital Maintenance and Repairs to completion, (ii) the City's actions can be reasonably expected by the Team Owner to result in the City's undertaking of such Capital Maintenance and Repairs work within a reasonable period of time acceptable to the Team Owner and (iii) such Capital Maintenance and Repairs work is in fact undertaken within such reasonable time period), or, having undertaken such work, fails to prosecute such work to completion in a reasonable period of time acceptable to the Team Owner, then the Team Owner may send a written notice ("**Warning Notice**") to the City informing the City that the Team Owner intends to undertake the work itself if the City does not undertake or resume, as applicable, prosecution of such work within ten (10) Business Days after the City's receipt of such Warning Notice. If (i) the City does not undertake or resume, as applicable, prosecution of the work within the ten (10) Business Day period specified in the Warning Notice and (ii) the Capital Maintenance and Repair that is the subject of the Work Demand and Warning Notice is (or any such Capital Maintenance and Repairs are collectively) material to the operation of the Stadium for any Permitted Use, then the Team Owner may elect, upon written notice of such election to the City, either to terminate this Lease, subject to the next sentence of this <u>Section 6.4(a)</u>, or to undertake such work, and, if the Team Owner elects to undertake such work, then the City shall reimburse the Team Owner for the reasonable costs of such work; *provided* that the Team Owner uses commercially reasonable efforts to cause such work to be undertaken on commercially reasonable terms and submits a copy of invoices, contracts and other documentation that reasonably substantiates the nature and amount of such work. The Team Owner agrees that, before exercising its election to terminate this Lease under the preceding sentence, it shall inform the Developer of its intentions and the reasons therefor and shall allow the Developer a reasonable period of time and opportunity to resolve or cure the issue(s) with the City that gave rise to the Team Owner's right to terminate this Lease (not to exceed forty-five (45) days). If the City does not reimburse the Team Owner within ten (10) Business Days after the Team Owner has submitted a written request for reimbursement and all supporting documentation required by this <u>Section 6.4(a)</u>, then the Team Owner, in addition to all other rights at law or in equity, may elect, upon written notice of such election to the City, either to terminate this Lease or to offset such unreimbursed costs against any payment due from the Team Owner to the City under this Lease (including any rent payment).

(b) Notwithstanding anything to the contrary in this Lease, if any Capital Maintenance and Repairs work is necessary to remedy an emergency, then the Team Owner may undertake, or cause to be undertaken, such Capital Maintenance and Repairs work to remedy such emergency without providing a Work Demand to the City; *provided* that the Team Owner uses commercially reasonable efforts to cause such work to be undertaken on commercially reasonable terms and submits a copy of invoices, contracts and other documentation that reasonably substantiates the nature and amount of such work. If the City does not reimburse the Team Owner within ten (10) Business Days after the Team Owner has submitted a written request for reimbursement and all supporting documentation required by this Section 6.4(b), then the Team Owner, in addition to all other rights at law or in equity, may elect, upon written notice of such election to the City, either to terminate this Lease, subject to the last sentence of this Section 6.4(b), or to offset such unreimbursed costs against any payment due from the Team Owner to the City under this Lease (including any rent payment). The Team Owner agrees that, before exercising its election to terminate this Lease under this Section 6.4(b), it shall inform the Developer of its intentions and the reasons therefor and shall allow the Developer a reasonable period of time and opportunity to resolve or cure the issue(s) with the City that gave rise to the Team Owner's right to terminate this Lease.

6.5 New Professional Baseball Standards. No later than ten (10) Business Days after the Team Owner is informed of any New Professional Baseball Standards that require Capital Maintenance and Repairs, the Team Owner shall provide the City with a Work Demand for such Capital Maintenance and Repairs that includes a description of such New Professional Baseball Standards, and, if so timely informed, the City shall be obligated to make any such Capital Maintenance and Repairs in accordance with Section 6.4(a), and the Parties shall modify the Capital Maintenance Plan accordingly. If the Team Owner fails to provide notice of the New Professional Baseball Standards to the City in accordance with the foregoing and the City fails to make the required Capital Maintenance and Repairs in such time frame as is required to meet such New Professional Baseball Standards, then the Team Owner shall be solely responsible for the consequences arising therefrom, including any fines or penalties assessed by MLB PDL or any other baseball governing body with jurisdiction over the Team in connection with such failure and any additional costs that the City incurs to accelerate the completion of such Capital Maintenance and Repairs.

ARTICLE VII

ADVERTISING AND OTHER RELATED RIGHTS

7.1 Advertising and Sponsorship Rights.

(a) Except as otherwise set forth in this Lease, the Team Owner shall have sole and exclusive advertising and sponsorship privileges on the interior and exterior of the Stadium, including billboard and program advertising, merchandising, and novelty licensing, and all revenue derived therefrom shall be retained by or paid to the Team Owner. The Team Owner shall have the right to install within the Leased Premises advertising, signs, marquees, billboards, message boards, banners, and other forms of advertising and announcement media; *provided* that the same shall be subject to Applicable Law, including local code requirements.

(b) Subject in all respects to the Team Owner's agreements with sponsors and advertisers, the Team Owner shall provide the City with access, at no cost to the City, to digital signage at the Stadium, in a form reasonably agreed between the Parties, for use (i) by City Event sponsors during City Events and (ii) by the City for up to three (3) community-oriented messages (including municipal announcements and community recognitions) for each Stadium Event and City Event; *provided* that the same shall be subject to Applicable Law, including local code requirements

7.2 Broadcasting Rights. The Team Owner shall have the exclusive right to broadcast all Stadium Events held within the Leased Premises, via any and all media and through any and all distribution channels now known or hereafter developed (including television, satellite and terrestrial radio, internet (including stand-alone audio and audio/visual streaming)), or to sell such rights, and Team Owner shall be entitled to retain all revenue generated therefrom.

7.3 Pouring and Branding Rights. The Team Owner, or its authorized licensee, shall have the exclusive right to sell pouring (for both alcoholic and non-alcoholic beverages) and branding rights for all food concessions and merchandising within the Leased Premises and shall be entitled to retain all revenue generated therefrom.

7.4 Naming Rights.

(a) The Team Owner shall have the sole and exclusive right from time to time to (i) designate the name of the Leased Premises, (ii) give designations and associations to any portion of the Leased Premises or the operations therefrom, and (iii) grant to one or more third parties the right to include such parties' names, logos and/or corporate identifiers in the name of the Leased Premises or portions thereof and to have such names, logos and/or corporate identifiers prominently displayed on the interior and exterior of the Leased Premises and retain all revenue generated therefrom (all the foregoing, collectively, the "**Naming Rights**"); *provided* that in no event shall the Team Owner designate a naming sponsor engaged in any business involving illegal activity and/or Obscene Material. Within a reasonable period of time following the naming or renaming of the Leased Premises, and subject to Section 5.8, the City shall use only the then-current designated name of the Leased Premises in all of its materials and publications referring to the Leased Premises, including without limitation in tourism, informational and promotional materials, advertisements, municipal publications, maps and directional, informational and road or transit signage for vehicular and pedestrian wayfinding.

(b) The Team Owner shall have the sole and exclusive right to establish and change the operating and official name of the Team and logo of the Team; *provided* that in no event shall such name or logo reference illegal activity or Obscene Material. The City hereby grants to the Team Owner a world-wide, royalty-free license to use and sublicense the use of the name "Spartanburg" and its associated intellectual property in combination with the name and logo that the Team Owner chooses for the Team (such combined Team name and Team logo being the "**Co-Branded Team Name and Logo**"). The Team Owner shall own all intellectual property rights and interest in and to the Co-Branded Team Name and Logo and shall have the right to obtain such copyright, trademark, and service mark protection for the name of the Co-Branded Team Name and Logo and all derivations thereof for its own account, all of which shall thereupon be the exclusive property of the Team Owner. The Team Owner hereby grants to the City a royalty-free license to use and sublicense the use of the Co-Branded Team Name and Logo for marketing purposes during the Lease Term, such marketing purposes to be subject to the prior written consent of the Team Owner (not to be unreasonably withheld, conditioned or delayed).

ARTICLE VIII

COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 Team Owner Covenants. The Team Owner covenants that:

(a) During the Lease Term, the Team Owner shall cause the Team to play all Home Games at the Stadium, except (i) for any Homes Games scheduled pursuant to an Other Stadium Agreement, (ii) for any Home Games that cannot be played at the Stadium as a result of a Force Majeure Event or an Untenantability Period and that are not rescheduled to be played in the Stadium, (iii) for up to six (6) Home Games of the Team Owner's choosing, which the Team Owner shall have the right to play in a venue other than the Stadium during each Lease Year; *provided* that, if the Team Owner exercises this option, such Home Games, to the extent that such Home Games are scheduled to occur on any weekend, may occur on no more than two (2) separate weekends in a Lease Year and the Team Owner shall replace such Home Games during the same Lease Year with a Stadium Event (or Stadium Events) of a nature and scope that is reasonably anticipated to attract at least the same number of attendees as would be anticipated to have attended such Home Games, (iv) for any postseason games that are required by MLB PDL to be played at a neutral site location, and (v) as may otherwise be required by the PDL Rules and Regulations.

(b) Subject to the Team Owner's rights under Section 13.5, the Team Owner shall not relocate the Team or the home territory of the Team outside of the Stadium Site prior to the Lease Expiration Date, and the City shall have the right to seek specific performance in the event of any breach of this covenant.

(c) The Team Owner shall use good faith commercially reasonable efforts to preserve, maintain and renew the Team PDL License Agreement until the Lease Expiration Date.

(d) The Team Owner shall use good faith commercially reasonable efforts to enter into and remain in compliance with the Parking Agreement (as defined herein).

(e) The Team Owner shall not discriminate in any manner on the basis of sex, age, disability, race, color, creed or national origin with respect to any applicant or employee, and shall conform in all respects to the pertinent provisions of federal, state or local laws, ordinances, rules and regulations of employment practices. The Team Owner further agrees that in serving the public, its employees shall not, on the grounds of sex, age, disability, race, color, creed, or national origin, discriminate or permit discrimination or refuse to serve a person or a group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.

(f) The Team Owner shall not commit or permit any waste on or about the Leased Premises during the Lease Term nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on or about the Leased Premises or use the Leased Premises for any unlawful purposes.

8.2 **<u>Team Owner Representations and Warranties</u>**. The Team Owner hereby represents and warrants to the City that, as of the Effective Date:

(a) The Team Owner is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The business which the Team Owner carries on and which it proposes to carry on may be conducted by the Team Owner. The Team Owner is duly authorized to conduct business as a limited liability company in the State of South Carolina and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) The execution, delivery and performance of this Lease by the Team Owner are within the Team Owner's powers, and have been duly authorized by all necessary action of the Team Owner.

(c) Neither the execution and delivery of this Lease nor the consummation of any of the transactions contemplated herein nor compliance with the terms and provisions hereof will contravene the organizational documents of the Team Owner nor any Applicable Law to which the Team Owner is subject or any judgment, decree, license, order or permit applicable to the Team Owner, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of the Team Owner pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which the Team Owner is a party or by which the Team Owner is bound, or to which the Team Owner is subject.

(d) No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party, other than PDL Approval, is required for the execution, delivery and performance by the Team Owner of this Lease.

(e) This Lease is the legal, valid and binding obligation of the Team Owner, enforceable against the Team Owner in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Team Owner, threatened against or affecting the Team Owner, which the management of the Team Owner in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Team Owner under, this Lease to perform its obligations under this Lease, or (b) have a material and adverse effect on the financial condition or operations of the Team Owner or on the ability of the Team

Owner to conduct its business as presently conducted or as proposed or contemplated to be conducted in this Lease.

(g) The Team Owner has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Lease.

(h) The Team Owner owns the Team.

(i) The Team PDL License Agreement is effective and gives the Team the right to be an affiliate of a Major League Club.

(j) If constructed and completed by the Developer in accordance with the Development Agreement, the Stadium will be, at the time of its construction and completion, in compliance with all Professional Baseball Standards in effect as of the Effective Date.

(k) All requisite approvals for the relocation of the Team to Spartanburg, South Carolina have been obtained by the Team Owner, including, as applicable, all necessary PDL Approvals.

8.3 <u>City Covenants</u>. The City covenants that prior to the Lease Expiration Date:

(a) The City shall not offer any financial incentives to, or assist in establishing or locating, (i) any other professional baseball franchise within the City or (ii) any professional or semi-professional sports franchise within the City, including any so-called collegiate wooden bat league team, that typically plays games on an outdoor diamond or rectangular field that can be set up in a stadium comparable to the Stadium. As used in this section "financial incentives" includes cash payments, tax abatements, transferring interests in real estate or personal property, loans, guarantees, or any other form of financial accommodations.

(b) Subject to the terms and conditions of this Lease, the City shall cause the Team Owner to peaceably and quietly have, hold and enjoy the Leasehold Estate and have the right to use the Leasehold Estate in accordance with the terms hereof.

(c) The City shall use good faith commercially reasonable efforts to assist the Team Owner in preserving and maintaining the Team PDL License Agreement.

(d) The City shall not commit or permit any waste on or about the Public Spaces nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on or about the Public Spaces or use the Public Spaces for any unlawful purposes.

8.4 <u>City Representations and Warranties</u>. The City hereby represents and warrants to the Team Owner that, as of the Effective Date:

(a) The City has all necessary power and authority to enter into this Lease and to consummate the transactions herein contemplated.

(b) The execution, delivery and performance of this Lease by the City is within the City's powers and has been duly authorized by all necessary action of the City.

(c) Neither the execution and delivery of this Lease nor the consummation of any of the transactions contemplated herein nor compliance with the terms and provisions hereof will contravene any Applicable Law to which the City is subject or any judgment, decree, license, order or permit applicable to the City.

(d) Upon the execution of this Lease by the City, the City will have caused all governmental proceedings required to be taken by or on behalf of the City to authorize the City to make and deliver this Lease and to perform the covenants, obligations and agreements of the City hereunder.

(e) This Lease is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the City, threatened against or affecting the City, of which the City in good faith believes that the outcome would materially and adversely affect the validity or enforceability of, or the authority of the City under, this Lease to perform its obligations under this Lease.

(g) The City has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Lease.

(h) Other than the Ground Lease, the Bond Documents and the Nondisturbance Agreement, there are no, and as of the Rent Commencement Date there shall be no, liens, judgments or claims to the Leased Premises that will affect the Team Owner's right to occupy and enjoy the Leased Premises; *provided* that no representation is made with respect to any liens created by the Team Owner or any Affiliate thereof.

ARTICLE IX

TAXES

9.1 Team Owner Taxes. The Team Owner shall pay or cause to be paid, when due and payable, any applicable sales taxes or, other than the taxes described in Section 9.2, other taxes directly applicable to Team Owner's use of the Leased Premises or revenues generated by Team Owner therefrom, and all taxes related to Team Owner's fixtures, furnishings, equipment and other personal property relating to the Leased Premises.

9.2 City Taxes. The City shall pay or cause to be paid, when due and payable, or, if applicable, waive the payment of all real estate taxes, charges and assessments, if any, levied against the Leased Premises and/or the Team Owner's leasehold interest therein, or, in each case, any portion thereof or interest therein.

9.3 New Taxes. If, after the Rent Commencement Date, (i) any new taxes or assessments or increases in any existing taxes or assessments (including sales taxes, business license taxes and gross receipt taxes) are levied or imposed, without Team Owner's prior written consent, upon the Leased Premises, the Team Owner, its affiliates, or the Team (or any portion of or interest in any of the foregoing) by any public or private entity controlled by the City or any affiliates of the City; and (ii) such new taxes, assessments and/or increases disproportionately affect the Leased Premises and/or Team Owner's use thereof, then, in each case, Team Owner shall be entitled to a credit, payment or other reimbursement to reimburse Team Owner or its affiliates for any such taxes paid by the Team Owner or its affiliates.

ARTICLE X

INSURANCE

10.1 Insurance.

(a) The Team Owner shall, at its sole cost and expense, obtain and maintain during the Lease Term the insurance policies below which will adequately and sufficiently protect the Team Owner, its agents, representatives and servants from losses arising directly or indirectly from the Parties' use of the Leased Premises. The City, the Corporation and the Property Owner shall be named on the insurance certificate(s) as additional insured in connection with the operations of the Team Owner under the commercial general liability policy.

(i) Commercial general liability insurance, including products/completed operations, broad form contractual liability, broad form property damage liability, host legal liquor liability and dram shop liability; with a Blanket Waiver of Subrogation Endorsement and with the following limits:

(A) ONE MILLION DOLLARS ($1,000,000) per occurrence;

(B) TWO MILLION DOLLARS ($2,000,000) general aggregate;

(C) TWO MILLION DOLLARS ($2,000,000) products/completed operations aggregate;

(D) ONE MILLION DOLLARS ($1,000,000) personal and advertising injury;

(E) ONE MILLION DOLLARS ($1,000,000) fire damage legal liability; and

(F) ONE MILLION DOLLARS ($1,000,000) host liquor liability.

(ii) Commercial automobile liability insurance, written with Symbol 1 (if available), or Symbols 7, 8, and 9 (if symbol 1 is not available), with a Combined Single Limit of ONE MILLION DOLLARS ($1,000,000); with a Blanket Waiver of Subrogation Endorsement.

(iii) Commercial umbrella liability insurance with a FIVE MILLION DOLLAR ($5,000,000) per occurrence/annual aggregate limit.

(iv) Workers' compensation (statutory benefits coverage A, B and C) plus employers liability, in the amounts of FIVE HUNDRED THOUSAND ($500,000) per employee per accident, FIVE HUNDRED THOUSAND ($500,000) per employee per disease and FIVE HUNDRED THOUSAND ($500,000) policy aggregate; with the umbrella policy to extend over employer liability; with a Blanket Waiver of Subrogation Endorsement.

(b) The Team Owner shall obtain property insurance to cover the Team Owner's personal property, equipment and leasehold improvements at the Leased Premises during the Lease Term.

(c) The City shall cause the Corporation to obtain and maintain property insurance at all times during the Lease Term, insuring all buildings and structures comprising the Stadium against all risk of direct physical loss or damage to the same extent and with comparable coverage as other buildings owned by the City. Such insurance coverage may be maintained by any combination of policies, including any policies maintained by the City.

(d) The City, or the Corporation, at the direction of the City (or, if the Team Owner is undertaking Capital Maintenance and Repairs in accordance with Section 6.4, the Team Owner) shall cause its construction manager or general contractor undertaking Capital Maintenance and Repairs to maintain additional property insurance written on the so-called "Builder's Risk Completed Value Non-Reporting Form" during any period in which any Capital Maintenance and Repairs work is being made to the Leased Premises, the anticipated costs of which exceed $100,000 in the aggregate, with no coinsurance requirement, and containing a provision granting the insured permission to complete.

(e) The Team Owner shall cause each Concessionaires that sells any alcoholic beverages to obtain a Liquor Liability Policy of TWO MILLION DOLLARS ($2,000,000) per occurrence and in the aggregate which names each of the City, the Team Owner, the Corporation and the Property Owner as an additional insured.

(f) All insurance policies shall:

(i) be issued by insurance companies authorized to do business in the State of South Carolina, and rated "A-VII" or better by A.M. Best Company (or equivalent); and

(ii) require the insurer to notify the Named Insured, in writing, not less than thirty (30) days prior to any cancellation or termination thereof, except in the event of non-payment of premium in which case the notice period shall be not less than five (5) Business Days, to the extent the insurer agrees to provide such notices.

(g) Each Party shall provide Certificates of Insurance to the other Party evidencing that all insurance required hereunder is in place.

(h) Each Party shall timely pay all premiums due for all insurance policies required hereunder and shall not do anything at the Leased Premises that would impair or invalidate any material obligations of any insurer thereunder. If a Party fails to obtain and pay for any of the insurance policies required hereunder, and such failure continues for five (5) Business Days after written notice thereof from the non-defaulting Party, then, in addition to all other rights and remedies of the non-defaulting Party, the non-defaulting Party shall have the right, but not the obligation, to secure the appropriate insurance policies. Any amounts paid by the non-defaulting Party in connection with obtaining such insurance shall be immediately due and payable from the defaulting Party, and the defaulting Party shall pay all such amounts to the non-defaulting Party upon demand therefor, together with interest at the Default Rate.

(i) To the extent permitted by the insurers providing the Corporation's General Liability Policies, the Corporation will name the Property Owner and Team Owner as Additional Insured on its General Liability Policies in connection with the operations of the Corporation.

10.2 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Lease should be borne by insurance to the extent of available coverage. Accordingly, the Parties waive all rights against each other (and against the agents, employees, representatives and/or insurers of the other) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, even though such loss or damage might have been occasioned by the negligence of such other Party (its agents, employees and/or representatives); *provided* that this waiver of rights shall (i) only be applicable to the extent of insurance proceeds actually paid to the Party suffering such loss or damage, and (ii) only be applicable and in force only with respect to loss or damage covered by the waiving Party's property insurance and occurring during such time as the waiving Party's applicable insurance policies contain a clause or endorsement to the effect that any such waiver shall not adversely affect or impair such policy or the right of the waiving party to recover thereunder. The Parties shall give written notice of the terms of this mutual waiver of rights to their respective insurers and shall have their insurance policies endorsed with a Waiver of Subrogation.

ARTICLE XI

CONDEMNATION; CASUALTY

11.1 Condemnation.

(a) If all of the Stadium or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Lease shall automatically terminate on the earlier to occur of (i) the date on which title to the Stadium vests in the condemning authority; or (ii) the date on which the Team Owner is dispossessed of the Stadium. Except as otherwise required by issues of public safety, the City shall not exercise its power of eminent domain on all or any portion of the Leasehold Estate.

(b) If a portion of the Leased Premises or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects the Team Owner's ability to use or otherwise operate and derive revenue from the Leased Premises, the Team Owner shall have the right to terminate this Lease effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Leased Premises vests in the condemning authority; or (ii) the date on which the Team Owner is dispossessed of the portion of the Leased Premises, by giving written notice to the City no later than sixty (60) days after the Team Owner's receipt of notice of the partial condemnation.

(c) If a portion of the Leased Premises or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and the Team Owner does not terminate this Lease pursuant to the terms and conditions of Section 11.1(b), (i) this Lease shall be deemed terminated with respect to only the condemned portion of the Leased Premises or use thereof, (ii) the Team Owner's obligation to pay rent under this Lease shall be equitably reduced, as determined by the Parties in good faith, taking into account the Team Owner's prior use of the condemned portion of the Leased Premises and the potential of such portion to generate revenue for the Team Owner, and (iii) the City shall, at its sole cost and expense, promptly make any Capital Maintenance and Repairs that the Parties reasonably deem necessary as a result of such condemnation.

(d) Each Party shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Leased Premises or the use thereof. Neither Party shall have any rights to any award made to the other Party.

(e) If all or a portion of the Leased Premises or the use thereof is temporarily condemned, this Lease shall remain in full force and effect, but the Team Owner's obligation to pay rent under this Lease shall be equitably reduced or abated, as determined by the Parties in good faith, taking into account the Team Owner's prior use of the condemned portion of the Leased Premises and the potential of such portion to generate revenue for the Team Owner.

11.2 Casualty.

(a) If, at any time during the Lease Term, the Leased Premises or any part thereof shall be damaged or destroyed by Casualty, then the Team Owner shall promptly secure the area of damage or destruction to safeguard against injury to Persons or property.

(b) If the Leased Premises or any portion thereof is damaged or destroyed by Casualty, then neither Party, subject to Section 11.2(d), shall have the right to terminate this Lease and the City shall promptly use commercially reasonable efforts to restore and repair the Leased Premises to a condition substantially similar to that prior to such Casualty and the Lease Term shall be extended by the period of restoration and repair provided the insurance proceeds are sufficient for such purpose.

(c) During any period that the Leased Premises is unusable by the Team Owner due to Casualty the obligations of the Team Owner to pay rent under this Lease shall abate. The Parties agree to work together in good faith to determine the most efficient and cost effective way to insure against the loss of rent due to a Casualty and to cooperate in the procurement of the appropriate insurance to insure against such loss.

(d) If the Leased Premises or any portion thereof is damaged or destroyed by Casualty and (i) such damage or destruction (A) causes the Leased Premises to be unusable by the

Team Owner for Stadium Events, and (B) such unusable condition cannot be remedied within twelve (12) months after the date of such Casualty (as reasonably determined by the City's construction consultants), or (ii) the insurance proceeds are insufficient to pay the cost of restoring the Leased Premises, then, either Party shall have the right to terminate this Lease.

ARTICLE XII

TRANSFERS AND ASSIGNMENTS

12.1 Team Owner Transfers. The occurrence of any one of the following events (each a "**Transfer**") without the prior written consent of the City shall constitute an event of default under this Lease, unless such event is a Permitted Transfer:

(i) any direct or indirect sale, assignment, transfer, sublease, license or other disposition of the Leased Premises or any right, title, interest or obligation of the Team Owner under this Lease, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation);

(ii) any mortgage, pledge, encumbrance or other hypothecation of the Leased Premises or any right, title or interest of the Team Owner under this Lease; and

(iii) any direct or indirect issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of any Person or any transfer of an equity or beneficial interest in any Person that directly or indirectly results in either (i) a change of the Controlling Person of the Team Owner, or (ii) the creation of a Controlling Person of the Team Owner, where none existed before.

12.2 Permitted Transfers. Notwithstanding anything in Section 12.1 to the contrary, the following shall not constitute a Transfer (a "**Permitted Transfer**"), and the City's consent to such Permitted Transfer shall not be required under this Lease:

(a) any Use Agreement; *provided* that such Use Agreement is made subject and subordinate to this Lease and conforms to the Operating Standard;

(b) any issuance or transfer of any securities or interests, having ordinary voting power for the election of directors (or other comparable controlling body) of any Person that does not result in either (i) a change of the Controlling Person of the Team Owner or (ii) the creation of a Controlling Person of the Team Owner where none existed before;

(c) any transfer that results in a tenant under this Lease (i) with substantial experience in the management and operation of a professional baseball team and related stadium and (ii) (A) that has entered into a PDL License Agreement (as defined herein) or similar agreement for operation of a baseball team at the Stadium or (B) if the Team PDL License Agreement is terminated for any reason other than a Team Owner's default under the Team PDL License Agreement or if the Team PDL License Agreement is terminated as a result of a Team Owner's default under the Team PDL License Agreement that is attributable to a City Default, that operates a team in an independent professional baseball league and has the right, and has agreed, to operate such team at the Stadium; and

(d) any transfer required by any Baseball Authority.

12.3 Assignment by the City. The City may assign all of its rights and obligations under this Lease and under the Ground Lease only to a Governmental Authority; *provided* that the City remains liable for the City's financial obligations contained in this Lease unless such financial obligations are specifically assumed by any such Governmental Authority. The Team Owner acknowledges and agrees that the execution and delivery of the Bond Documents shall not constitute an assignment of the City's rights and obligations for purposes of the foregoing sentence, and that the execution and delivery of the Bond Documents by the City is not prohibited by the terms of this Lease.

ARTICLE XIII

DEFAULTS; REMEDIES; TERMINATION

13.1 Default by Team Owner. An event of default by the Team Owner (a "**Team Owner Default**") shall be deemed to have occurred under this Lease upon the occurrence of any of the following:

(a) the failure by the Team Owner to make any payment of rent or Facility Fee Proceeds as they respectively fall due under this Lease and which failure is not cured within five (5) Business Days after the Team Owner receives written notice from the City of such failure;

(b) the falsity of any material representation or warranty of the Team Owner under this Lease, or the failure of the Team Owner to observe or to perform any other material obligation, condition or covenant on its part to be performed or observed in accordance with this Lease and such failure remains uncured for more than (60) days after the Team Owner receives written notice from the City of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(c) the Team PDL License Agreement is terminated as a result of the Team Owner's default under such license and such default is not attributable to a City Default;

(d) an Insolvency Event has occurred with respect to the Team Owner; or

(e) substantially all of the Team Owner's assets are levied upon by virtue of a writ of court of competent jurisdiction or the Team Owner ceases to do business in any manner.

13.2 City's Remedies. Subject to this Section 13.2 and Section 16.1, upon the occurrence of any Team Owner Default, the City may, in its sole discretion, pursue any one or more of the following remedies, in addition to any other remedies available to the City at law or in equity or as otherwise specified in this Lease, after delivery of written notice to the Team Owner:

(a) The City may terminate this Lease, and upon such termination the City may forthwith reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or further notice of any kind and be entitled to recover, as damages under this Lease, a sum of money equal to the total of (i) the reasonable cost of recovering the Leased Premises, (ii) the reasonable cost of removing and storing the Team Owner's personal property or any other Person's property left on the Leased Premises, (iii) the unpaid rent, Facility Fees and any other sums accrued hereunder at the date of termination, and (iv) any increase in insurance premiums caused by the vacancy of the Leased Premises. If the City shall elect to terminate this Lease, then the City shall at once have all the rights of reentry upon the Leased Premises, without becoming liable for damages or guilty of trespass.

(b) The City may terminate the Team Owner's right of occupancy of all or any part of the Leased Premises and reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or further notice of any kind to the Team Owner and without terminating this Lease, without acceptance of surrender of possession of the Leased Premises, and without becoming liable for damages or guilty of trespass, in which event the City shall make commercially reasonable efforts to relet the Leased Premises or any part thereof for the account of the Team Owner for a period equal to or lesser or greater than the remainder of the Lease Term on whatever terms and conditions the City, in its sole discretion, deems advisable. The Team Owner shall be liable for and shall pay to the City all rent and Facility Fees payable by the Team Owner under this Lease plus an amount equal to (i) the reasonable cost of recovering possession of the Leased Premises, (ii) the reasonable cost of removing and storing any of the Team Owner's personal property or any other occupant's property left on the Leased Premises, (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Leased Premises, and (iv) the reasonable cost of any repairs, changes, alterations or additions necessary for reletting, all reduced by any sums received by the City through any reletting of the Leased Premises and/or any decreases in insurance premiums resulting from the termination of possession of the Leased Premises; *provided* that in no event shall the Team Owner be entitled to any excess of any sums obtained by reletting over and above the rent provided in this Lease to be paid by the Team Owner to the City. For the purpose of such reletting, the City is authorized to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary. The City may sue to recover any sums falling due under the terms of this <u>Section 13.2(b)</u> from time to time. No reletting shall be construed as an election on the part of the City to terminate this Lease unless a written notice of such intention is given to the Team Owner by the City. Notwithstanding any such reletting without termination, the City may at any time thereafter elect to terminate this Lease for such Team Owner Default and exercise any of its rights under this <u>Article XIII</u>.

(c) The City may enter upon the Leased Premises and do whatever the Team Owner is obligated to do under the terms on this Lease, including taking all reasonable steps necessary to maintain and preserve the Leased Premises, and the Team Owner agrees in such circumstance to reimburse the City on demand for any expenses which the City may incur in effecting compliance with the Team Owner's obligations under this Lease (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate, and the Team Owner further agrees that the City shall not be liable for any damages resulting to the Team Owner from such action. No action taken by the City under this

Section 13.2(c) shall relieve the Team Owner from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

(d) The City may exercise any and all other remedies available to the City at law or in equity (to the extent not otherwise specified or listed in this Section 13.2), including enforcing specific performance of the Team Owner's obligation to operate the Stadium in accordance with this Lease, and seeking monetary damages, including interest on unpaid rent and Facility Fees due under this Lease at the Default Rate.

If the City should terminate this Lease in accordance with this Section 13.2, the Team Owner shall assign to the City any and all right, title and interest in any contracts entered into by the Team Owner for supplies, services, concessionaires, merchandisers or other vendors, or other similar agreements necessary for the operation of the Leased Premises (other than those contracts with an Affiliate of the Team Owner).

13.3 Default by City.

(a) An event of default by the City (a "**City Default**") shall be deemed to have occurred under this Lease to the extent that any material representation or warranty of the City under this Lease is false or if the City fails to perform or observe any material obligation or condition on its part to be performed or observed in accordance with this Lease, and such failure remains uncured for more than sixty (60) days after the City receives written notice from the Team Owner of such failure (or such longer period as may be reasonably required to effect such cure if such cure cannot be effected within such sixty (60) day period using reasonable efforts).

(b) Upon the occurrence of a City Default, the Team Owner shall be entitled to seek all rights and remedies available to it at law or in equity, including the right to: (i) seek monetary damages; (ii) terminate this Lease; and (iii) cure such default on behalf of the City and bill the City for all reasonable costs incurred by the Team Owner (including attorneys' fees) to affect such cure.

13.4 Termination of Team PDL License Agreement. If the Team PDL License Agreement is terminated for a reason other than a Team Owner default under the Team PDL License Agreement and the Team Owner has complied with its obligations in Section 8.1(c), or if the Team PDL License Agreement is terminated for a Team Owner's default under the Team PDL License Agreement that is attributable to a City Default, then the Team Owner shall have the option to (i) make a Permitted Transfer under Section 12.2(c), or (ii) terminate this Lease upon written notice to the City; *provided* that if the Team Owner does not exercise either of the options described in clauses (i) or (ii) within 180 days of the termination of the Team PDL License Agreement, then the City shall have the right to terminate this Lease upon written notice to the Team Owner.

13.5 Team Owner Buy Out Right. Notwithstanding anything to the contrary in this Lease, prior to the end of the Lease Term the Team Owner may terminate this Lease without penalty upon written notice to the City and receipt by the City of a payment from the Team Owner in an amount equal to: (a) the remaining annual base rental payments (based on the annual base rental amount in effect for the then current Lease Year) that would have been due through the end of the Lease Term then in effect, and (b) the Capital Maintenance and Repair expenses paid by the City during the five (5) years preceding such termination.

13.6 **Remedies Cumulative**. Except as expressly limited in this Article XIII, the remedies described herein are cumulative and are not intended to be exclusive of any other remedies to which the Parties may be entitled at law or in equity. The failure of a Party to (a) insist in any one or more instances upon the strict performance or observance of any of the obligations or conditions of this Lease by the other Party; or (b) exercise any remedy contained herein for any nonperformance or nonobservance of any obligation or condition by the other Party shall not be considered a waiver of such Party's rights to later insist upon performance of observance or to exercise its remedies. Additionally, the exercise or commencement of the exercise of any right or remedy by a Party shall not preclude the simultaneous or later exercise of any or all other rights and remedies available to such Party.

13.7 **No Indirect Damages**. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS LEASE OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES; *PROVIDED* THAT (A) THE FOREGOING SHALL NOT APPLY TO ANY RENT OR FACILITY FEES (OR ANY CLAIMS THEREFOR) AND (B) WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF ANY PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

13.8 **No Waivers**. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Lease or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Lease, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

13.9 **No Accord and Satisfaction**. Without limiting the generality of Section 13.6, the receipt by the City of rent or Facility Fees due under this Lease with knowledge of an alleged breach by the Team Owner of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to the rent or Facility Fees received). The payment by the Team Owner of the rent or Facility Fees due under this Lease with knowledge of an alleged breach by the City of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach. No acceptance by a Party of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. Each Party may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

ARTICLE XIV

SURRENDER OF POSSESSION; HOLDING OVER

14.1 Surrender of Possession. The Team Owner shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to the City the Leased Premises, free of any tenancies, Use Agreements or similar agreements with vendors or third-parties for use of or operations within the Stadium which extend beyond the Lease Term, and in a clean condition and free of debris or as otherwise provided for in this Lease, subject to the terms of ARTICLE XI.

14.2 Removal of Team Owner's Personal Property.

(a) All personal property of the Team Owner installed, placed or used in the operation of the Stadium throughout the Lease Term shall be deemed to be the property of the Team Owner. All such personal property shall be removed by the Team Owner on or before the Lease Expiration Date; *provided* that the Team Owner shall promptly repair any damage to the Stadium caused by such removal.

(b) Any personal property of the Team Owner which shall remain in the Stadium after the Lease Expiration Date may, at the option of the City, be deemed to have been abandoned by the Team Owner and either may be retained by the City as its property or be disposed of, without accountability, in such manner as the City may determine necessary, desirable or appropriate, and the Team Owner, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by the Team Owner, together with reasonable outside counsel's fees, charges and costs actually incurred.

14.3 Holding Over. In the case of any holding over or possession by the Team Owner of the Leased Premises after the Lease Expiration Date without the approval of the City, the Team Owner shall pay the City rent at one hundred twenty-five percent (125%) of the rent and the Facility Fees that would have been applicable during such period of time had this Lease been in effect. Further, in the event that the Team Owner holds over beyond any date for surrender of the Leased Premises set forth in a written notice demanding possession thereof in accordance with the terms of this Lease, the Team Owner shall reimburse the City for all actual expenses and losses incurred by the City by reason of the City's inability to deliver possession of the Leased Premises to a successor tenant, together with interest on such expenses and losses at the Default Rate from the date such expenses are incurred until reimbursed by the Team Owner, together with the City's reasonable outside counsel's fees, charges and costs actually incurred. The acceptance of rent and Facility Fees due under this Section 14.3 by the City shall not constitute an extension of the Lease Term or afford the Team Owner any right to possession of the Leased Premises beyond any date through which such rent and Facility Fees shall have been paid by the Team Owner and accepted by the City. Rent and Facility Fees due under this Section 14.3 shall be due to the City for the period of such holding over whether or not the City is seeking to evict the Team Owner, and, unless the City otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the approval of the City, whether or not the City has accepted any sum due pursuant to this Section 14.3.

ARTICLE XV

FORCE MAJEURE AND EFFECT OF DELAYS

15.1 Excusable Team Owner Delay.

(a) Regardless of the existence or absence of references to Excusable Team Owner Delay elsewhere in this Lease, any deadline or time period within which the Team Owner must fulfill the obligations of the Team Owner elsewhere in this Lease, other than any obligation to make any monetary payment, including rent and Facility Fees, shall each be adjusted as appropriate to include that number of days of delay in the performance by the Team Owner of its obligations hereunder actually resulting from such Excusable Team Owner Delay, unless otherwise expressly provided in this Lease to the contrary; *provided* that Team Owner complies with the requirements of this Article XV.

(b) With respect to each occurrence of Excusable Team Owner Delay, the Team Owner shall, within ten (10) Business Days of the Team Owner's knowledge of the occurrence of such event of Excusable Team Owner Delay, give written notice to the City of the event constituting Excusable Team Owner Delay, the Team Owner's good faith estimate of the Excusable Team Owner Delay period resulting therefrom and the basis therefor, and the Team Owner's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If the City believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, the City shall give written notice to the Team Owner of the claimed deficiency and the Team Owner shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from the Team Owner shall be required with respect to a continuing Excusable Team Owner Delay, except that the Team Owner shall promptly (and in no event less often than every thirty (30) days) give notice to the City of any further changes in the additional time for performance claimed by reason of the continuing delay. The City shall have the right to challenge the Team Owner's assertion of the occurrence of an Excusable Team Owner Delay, the Team Owner's good faith estimate of the Excusable Team Owner Delay period or changes in the additional time for performance claimed by reason of the Excusable Team Owner Delay if the City sends notice to the Team Owner within thirty (30) days after receipt by the City of such claim of Excusable Team Owner Delay or notice from the Team Owner of further changes to such dates as a result of such Excusable Team Owner Delay, as the case may be (which challenge shall be deemed to have been made if the City gives notice to the Team Owner of any claimed deficiency in documentation as provided for above in this Section 15.1).

15.2 Excusable City Delay.

(a) Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Lease, any deadline or time period within which the City must fulfill the obligations of the City in this Lease shall each be adjusted as appropriate to include that number of days of delay in the performance by the City of its obligations hereunder actually resulting from such Excusable City Delay; *provided* that (i) the obligation to pay amounts when due pursuant to the terms of this Lease is not subject to adjustment or extension due to Excusable City Delay unless otherwise expressly provided herein to the contrary and (ii) the City complies with the requirements of this Article XV.

(b) With respect to each occurrence of Excusable City Delay, the City shall, within ten (10) Business Days after the City's knowledge of the occurrence of such event of Excusable City Delay, give notice to the Team Owner of the event constituting Excusable City Delay, the City's good faith estimate of the Excusable City Delay period resulting therefrom and the basis therefor, the City's good faith estimate of any adjustment resulting therefrom that is to be made in time for performance, together with reasonable documentation supporting the adjustments proposed. If the Team Owner believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, the Team Owner shall give notice to the City of the claimed deficiency and the City shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from the City shall be required with respect to a continuing Excusable City Delay, except that the City shall promptly (and in no event less often than every thirty (30) days) give notice to the Team Owner of any further changes in the additional time for performance claimed by reason of the continuing delay. The Team Owner shall have the right to challenge the City's assertion of the occurrence of an Excusable City Delay, or the City's good faith estimate of the Excusable City Delay period, or changes in the additional time for performance claimed by reason of Excusable City Delay if the Team Owner gives notice to the City within thirty (30) days after receipt by the Team Owner of such claim of Excusable City Delay or notice from the City of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if the Team Owner gives notice to the City of any claimed deficiency in documentation as provided for above in this Section 15.2).

15.3 Continued Performance; Exceptions. Upon the occurrence of any delay, the Parties shall endeavor to continue to perform their obligations under this Lease so far as reasonably practicable. Toward that end, each Party hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by an Excusable Team Owner Delay or Excusable City Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Lease after the occurrence of any Excusable Team Owner Delay or Excusable City Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any delay.

ARTICLE XVI

RULES AND REGULATIONS OF BASEBALL AUTHORITIES

16.1 PDL Rules and Regulations.

(a) Notwithstanding any other provision of this Lease, this Lease and any rights granted to the City or the Team Owner under this Lease shall in all respects be subordinate to the

PDL Rules and Regulations, as long as the Team Owner is party to the Team PDL License Agreement then in effect. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at the Team Owner's sole cost and expense, and at no cost or liability to any MLB PDL Entity or the City or to any individual or entity related thereto. The territory within which the City is granted rights under this Lease is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the Team's Marketing Territory (as defined in the Team PDL License Agreement), as established and amended from time to time. No rights, exclusivities or obligations involving the internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Lease, except as are specifically approved in writing by the applicable MLB PDL Entities. The Team Owner hereby represents and warrants to the City that, as of the Effective Date, the terms of this Lease are not inconsistent with the terms of any PDL Rules and Regulations. The provisions of this Section 16.1 are for the benefit of MLB PDL, the Team Owner, and the City.

(b) The City agrees that if the date upon which any termination or suspension of this Lease falls during the regular season or postseason, the effective date of such termination or suspension shall be the first day of the month following the final Home Game of such regular season or postseason, and in no event shall the City terminate or suspend the Team Owner's rights under this Lease during any regular season or postseason.

(c) If, at any time prior to the expiration of the term of this Lease, this Lease is terminated by City for any reason (and any legal action challenging the right of City to terminate this Lease and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance) and the Team PDL License Agreement has been terminated, the City agrees to enter into a lease with substantially similar terms to this Lease with any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to City. To the extent that such lease is not entered into, the City agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, the City shall offer to lease the Leased Premises to such PDL Club. For the avoidance of doubt, this Section 16.1 shall survive the termination of this Lease.

(d) As long as the Team Owner is party to the Team PDL License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 16.1 and each other provision in this Lease that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 16.1, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.

(e) Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 16.1 other than for fraudulent acts or willful misconduct with respect to this Section 16.1 by MLB PDL, and the City hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Lease shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

16.2 Team Owner's Obligations. The Team Owner agrees in any event that if compliance by it with PDL Rules and Regulations results in a failure of the Team Owner to fulfill its obligations under this Lease, the City may enforce remedies for the Team Owner's failure to fulfill its obligations as provided in this Lease, except that specific performance is not an available remedy where specific performance would result in Team Owner's noncompliance with PDL Rules and Regulations.

16.3 Review by MLB PDL Entities. The Parties acknowledge and agree that MLB PDL Entities may be required or permitted, pursuant to the PDL Rules and Regulations, to review and approve this Lease. To the extent one or more of such parties has the right to approve this Lease (or any provision thereof), the Team Owner shall promptly and diligently pursue such approval. In the event any such third party exercises or threatens to exercise any right it may have to withhold its approval of this Lease, then the Parties shall use commercially reasonable efforts to cooperate in good faith with such third party(s) to amend this Lease as may be necessary to obtain such approval. If, despite the Parties' cooperation and commercially reasonable efforts, the Parties are not able to amend the Lease as required to obtain the approvals described in this Section 16.3, then this Lease shall be rescinded.

ARTICLE XVII

ENVIRONMENTAL PROVISIONS

17.1 Remedial Work and Hazardous Materials.

(a) Except for actions which are the responsibility of the Team Owner under Section 17.1(b), from and after the Rent Commencement Date, the City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event at, in, on or under the Leased Premises ("**City's Remedial Work**").

(b) The Team Owner shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event originating at, in, on or under the Leased Premises that are caused by the Team Owner or its Affiliates, vendors, contractors, licensees, or assignees ("**Team Owner's Remedial Work**"). Prior to undertaking any Team Owner's Remedial Work, the Team Owner shall obtain the approval of the City of the steps Team Owner proposes to take with respect to any Team Owner's Remedial Work and the Team Owner shall select, subject to the approval of the City, an independent environmental consultant or engineer to oversee the Team Owner's Remedial Work.

(c) The Team Owner shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Leased Premises; *provided* that the

Team Owner may use, store and dispose of reasonable quantities of Hazardous Materials at the Leased Premises as may be reasonably necessary for the Team Owner to operate the Stadium pursuant to the terms of this Lease, so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

(d) The Team Owner shall give the City immediate oral and follow-up written notice within seventy-two (72) hours of any actual or threatened Environmental Event.

(e) To the extent the same is the responsibility of such Party in accordance with the provisions of this Section 17.1, each Party agrees to cure any Environmental Event in accordance with all Environmental Laws and such cure shall be deemed part of the Team Owner's Remedial Work or the City's Remedial Work, as applicable.

17.2 Team Owner Release. THE TEAM OWNER HEREBY RELEASES THE CITY AND ITS AFFILIATES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT THE TEAM OWNER MAY HAVE WITH RESPECT TO THE LEASED PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF THE TEAM OWNER'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.

17.3 City Release. THE CITY HEREBY RELEASES THE TEAM OWNER AND ITS AFFILIATES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT THE CITY MAY HAVE WITH RESPECT TO THE LEASED PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF THE CITY'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.

ARTICLE XVIII

DISPUTE RESOLUTION

18.1 Dispute Resolution Generally. If any dispute, controversy or claim between or among the Parties arises under this Lease or is related in any way to this Lease or the relationship of the Parties thereunder (a "**Dispute**"), then the Parties shall first attempt in good faith to settle and resolve such Dispute by mutual agreement in accordance with this Article XVIII. If a Dispute arises, either Party shall have the right to notify the other Party that it has elected to implement the following procedures. Within thirty (30) days after delivery of any such notice by one Party to the other Party regarding a Dispute, the Parties shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute. If a mutual resolution and settlement are not obtained at such meeting, then the Parties shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within sixty (60) days after the notice of the Dispute was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Parties takes place within the thirty (30) day period following delivery of the initial notice, then each of the Parties may seek injunctive relief or other relief at any time thereafter from any court of competent jurisdiction in the State of South Carolina.

18.2 Emergency Relief. Notwithstanding any provision of this Lease to the contrary, each of the Parties may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in the State of South Carolina if a Dispute requires emergency relief before the matter is resolved under the dispute resolution procedures outlined in Section 18.1. Notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties agree that the provisions of Section 18.1 shall govern the ultimate resolution of any portion of the Dispute.

ARTICLE XIX

NOTICES

19.1 Notices Generally. All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier or certified mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; or (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail. All such notices shall be addressed to the appropriate Party as follows:

If to the City:

City of Spartanburg, South Carolina
Attention: City Manager
187 Broad Street
Spartanburg, South Carolina 29306

with copies to:

City of Spartanburg, South Carolina
Attention: City Manager
187 Broad Street
Spartanburg, South Carolina 29306

If to the Team Owner:

[●]

with copies to:

[●]

Each Party may from time to time designate a different address for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this Article XIX.

19.2 Concurrent Notice to Developer. If and when the City delivers to the Team Owner a written notice or request under this Lease, the City shall send a copy of such written notice or request concurrently therewith to the Developer in accordance with Section 19.1 at [●].

ARTICLE XX

MISCELLANEOUS

20.1 Partial Invalidity. If any Section or Article of this Lease or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease or the application of such Section or Article to Persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section and Article hereof shall be valid and enforceable to the fullest extent permitted by law.

20.2 Obligations of the Parties. The obligations and undertakings of the City and the Team Owner under or in accordance with this Lease are and shall be the obligations solely of the City and the Team Owner, respectively. Except as otherwise expressly stated herein, no recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of any Party in his or her individual capacity on account of any obligation or undertaking of or any act or omission by any Party under or pursuant to this Lease.

20.3 Time of the Essence. Time is of the essence with respect to all Sections and Articles of this Lease.

20.4 Successors and Assigns. This Lease and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

20.5 Entire Agreement. This Lease, the Development Agreement, and the Nondisturbance Agreement (including all exhibits attached thereto) constitute the entire and exclusive agreements between the Parties with respect to the subject matter contained herein and therein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Lease, the Development Agreement, and the Nondisturbance Agreement (including all exhibits attached thereto) with respect to the subject matter thereof.

20.6 **Amendment, Modification or Alteration**. No amendment, modification, or alteration of the terms of this Lease shall be binding unless in writing, dated subsequent to the date hereof, and duly executed by the Parties. In addition, this Lease may not be amended, renewed, modified, assigned or transferred without the prior receipt of all necessary PDL Approvals.

20.7 **Table of Contents; Headings; Exhibits**. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Lease are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Lease. All exhibits attached to this Lease are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided* that in the event of a conflict between the terms of the text of this Lease and any exhibits, the text of this Lease shall control.

20.8 **Nondisturbance**. The City agrees that the Team Owner's interest in the Leasehold Estate, relative to the interest therein of any creditors, bondholders, underwriters, trustees or other third parties related to the financing of the Leased Premises, shall be subject to the Nondisturbance Agreement and the Bond Documents.

20.9 **Public Statements**. Should either Party desire or intend to make any public statements and/or releases to the public, the media or otherwise, oral or written, which in any way relates to this Lease, the Parties shall first use all reasonable efforts to issue a joint statement or release. Any Party which intends to make a statement or release regarding same shall provide other party a copy of same at least twelve (12) hours prior to releasing the statement or release to the public, the media or any other Person.

20.10 **Counterparts**. This Lease may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

20.11 **Governing Law**. THIS LEASE AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF SOUTH CAROLINA (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS). IN THE EVENT OF ANY PROCEEDINGS REGARDING THIS LEASE, THE PARTIES AGREE THAT THE VENUE SHALL BE THE STATE COURTS OF SOUTH CAROLINA OR ANY FEDERAL COURT WHOSE JURISDICTION INCLUDES SPARTANBURG COUNTY, SOUTH CAROLINA.

20.12 **WAIVER OF JURY TRIAL**. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS LEASE.

20.13 **Payment on Business Days**. If any payment under this Lease is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

20.14 **Relationship of the Parties; No Partnership**. The relationship of the Parties under this Lease is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Lease to the contrary, neither the obligation to pay a Party any amounts due hereunder nor any other aspect of this Lease shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between the Parties.

20.15 Non-Merger of Estates. The interests of each Party in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises shall join in the execution of a written instrument effecting such merger of estates.

20.16 Covenants Running with the Estates in Land. The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Lease, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Leased Premises and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, the Parties, and their respective permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Lease, such that this Lease shall, until the Lease Expiration Date, bind the owner and holder of any fee or leasehold interest in or to the Leased Premises or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

20.17 Survival of Existing Claims. Termination of this Lease shall not alter any existing claim of any Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect to such existing claims shall survive termination.

20.18 Cooperation with Respect to Issuance of Bonds. The City and the Team Owner acknowledge and agree that issuing the Bonds will require the City, the Corporation, the Developer and the Team Owner to work closely together and cooperate with regard to provision of appropriate disclosure to Bond purchasers. The City and the Team Owner agree to cooperate in the preparation of any reports or information reasonably necessary or desired by the underwriter of the Bonds, disclosing the nature and extent of the Team Owner's and/or the City's rights and obligations under this Lease, the Development Agreement, the Parking Agreement, any other agreement entered into by the City or the Team Owner in connection with the development and use of the Stadium, or the Team PDL License Agreement, or disclosing the Team Owner's experience in operating minor league baseball teams.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Lease to be effective as of the Effective Date.

CITY:

CITY OF SPARTANBURG, SOUTH CAROLINA

By: ____________________________
Name: __________________________
Title: ___________________________

TEAM OWNER:

DBH KINSTON, LLC

By: ____________________________
Name: __________________________
Title: ___________________________

EXHIBIT A

DEFINITIONS AND USAGE

Rules as to Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) "Include," "includes" and "including" shall be deemed to be followed by ", but not limited to," whether or not they are in fact followed by such words or words of like import.

(2) "Writing," "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to herein means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) "Hereof," "herein," "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article," "Section," "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this **Exhibit A** are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Lease and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) "Shall" and "will" have equal force and effect.

(10) Unless otherwise specified, all references to a specific time of day shall be based upon Eastern Standard Time, as applicable on the date in question in Spartanburg, South Carolina.

(11) References to “$” or to “dollars” shall mean the lawful currency of the United States of America.

Definitions

“**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“**Applicable Law**” means all applicable federal, state and local laws, ordinances and regulations.

“**Baseball Authority**” means any baseball governing body with jurisdiction over the Team, including MLB PDL.

“**Baseball Season**” means each annual baseball season during the Lease Term running from approximately March 1 through September 30 of the applicable calendar year and includes, and may be modified from time to time by the Team Owner to include, all pre-season games, regular season games and postseason games.

“**Base Lease**” is defined in the recitals.

“**Bond Documents**” is defined in the recitals.

“**Bonds**” is defined in the recitals.

“**Business Day**” means a day of the year that is not a Saturday, Sunday, or a day on which commercial banks are not required to close in Spartanburg, South Carolina.

“**Capital Maintenance and Repairs**” is defined in Section 6.1(a).

“**Capital Maintenance Fund**” is defined in Section 6.3.

“**Capital Maintenance Plan**” is defined in Section 6.2(a).

“**Casualty**” means, with respect to the Leased Premises, physical destruction or other property casualty resulting from any fire or any other Force Majeure Event or other sudden, unexpected or unusual cause.

“**City**” is defined in the preamble.

“**City Default**” is defined in Section 13.3(a).

“**City Events**” is defined in Section 4.4(a).

“**City Representative**” is defined in Section 2.1.

“**City’s Remedial Work**” is defined in Section 17.1(a).

“**Co-Branded Team Name and Logo**” is defined in Section 7.4(b).

“**Commissioner**” means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

“**Comparable Properties**” means one or more first-class, High A caliber, multi-purpose minor league baseball stadiums hosting PDL Clubs at the level at which the Team competes (as mutually agreed upon by the City and the Team Owner) that (i) have been constructed (and completed) during the seven (7) year period ending on the Rent Commencement Date; (ii) are generally comparable in size, design and quality of construction to the Stadium, taking into account use of technology and provision of fan amenities; (iii) comply with Professional Baseball Standards, including the PDL Rules and Regulations, that are consistently applied without discrimination in application to the Team, Team Owner or Stadium, and with all Applicable Law; and (iv) are located in the United States. Without limitation of the foregoing, Comparable Properties include (but which may not be included in the future if such properties no longer meet the definition of Comparable Properties) the stadiums in (i) Beloit, Wisconsin, (ii) Fort Wayne, Indiana, and (iii) Winston-Salem, North Carolina.

“**Concessionaire**” is defined in Section 5.4.

“**Control**” means the possession, directly or indirectly, of the power to either (i) vote 50% or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of a Person or (ii) direct or cause the direction of management, policies or Major Decisions of a Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“**Controlling Person of the Team Owner**” means any Person that directly or indirectly Controls the Team Owner.

“**Corporation**” is defined in the recitals.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor, for the South Region, all items (1982-84 = 100), or any successor index thereto, reasonably determined by the Parties, appropriately adjusted. In the event that the CPI is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or any other nationally-recognized publisher of similar statistical information. If the CPI ceases to be published, and there is no successor thereto, such other index as the Parties reasonably agree shall be substituted for the CPI.

“**CPI Increase**” means the percentage increase in CPI over the Lease Year which was five (5) Lease Years prior to the date of calculation, as calculated by the fraction (a) whose numerator is (i) the most current CPI available on the date of calculation *minus* (ii) the CPI of the first day of the Lease Year which was five (5) Lease Years prior to the date of calculation (the “**Base CPI**”), and (b) whose denominator is the Base CPI; *provided* that in no event shall the CPI Increase be less than zero. For example, if the most current CPI available on the date of calculation is 330 and the Base CPI is 300, then the CPI Increase is 10%.

"**Default Rate**" means the "prime rate" as published in the "Money Rates" section of The Wall Street Journal, plus two (2) percentage point; *provided* that if such rate is, at any time during the Lease Term, no longer so published, the "Default Rate" shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a "prime rate," plus two (2) percentage point; and *provided further* that in no event shall the Default Rate be in excess of the maximum interest rate allowed by Applicable Law.

"**Development Agreement**" is defined in the recitals.

"**Dispute**" is defined in Section 18.1.

"**Effective Date**" is defined in the preamble.

"**Environmental Claim**" means any action or proceeding regarding the Leased Premises (i) arising under an Environmental Law or (ii) related to or arising out of an actual or alleged Environmental Event.

"**Environmental Event**" means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Leased Premises caused by a third party; (iii) any event on, at or from the Leased Premises, or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; (v) the existence or discovery of any escape, seepage, leakage, spillage, emission, discharge or disposal of or other release or any kind of Hazardous Materials on, at or from the Leased Premises which may cause a threat or actual injury to human health, the environment, plant or animal life; or (vi) any Environmental Claim, or the filing or imposition of any environmental lien against the Leased Premises, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (i) through (v) preceding.

"**Environmental Laws**" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include the Solid Waste

Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001the Endangered Species Act, as amended, 16 U.S.C. §§1531 et seq.

"**Excusable City Delay**" means any City delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No City delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

"**Excusable Team Owner Delay**" means any Team Owner delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No Team Owner delay arising from the failure to make funds available for any purpose shall ever be an Excusable Team Owner Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Team Owner Delay.

"**Facility Fee**" is defined in Section 3.8.

"**Facility Fee Proceeds**" is defined in Section 3.8.

"**Force Majeure Event**" means any act that (i) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Lease or delays such affected Party's ability to do so, (ii) is beyond the reasonable control of the affected Party, and (iii) is not due to the affected Party's fault or negligence; *provided* that under no circumstances shall a Force Majeure Event include general economic hardship. Subject to the satisfaction of the conditions set forth in (i) through (iii) above, a Force Majeure Event shall include:

(a) natural phenomena, such as storms, floods, lightning and earthquakes;

(b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism;

(c) transportation disasters, whether by ocean, rail, and/or air;

(d) strikes, lockouts or other labor disputes, including a strike or lockout by Minor League Baseball players or umpires;

(e) fires;

(f) pandemics declared by a Governmental Authority;

(g) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Lease or any Applicable Law;

(h) title disputes; and

(i) third party litigation.

"**Governmental Authority**" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

"**Ground Lease**" is defined in the recitals.

"**Hazardous Materials**" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

"**Home Games**" is defined in Section 4.3(a).

"**Initial Term**" is defined in Section 3.5.

"**Insolvency Event**" means, with respect to any Person, (i) such Person's or any of its subsidiaries' (a) failure to generally pay its debts as such debts become due, (b) admitting in writing its inability to pay its debts generally or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against such Person or any of its subsidiaries (a) seeking to adjudicate it a bankrupt or insolvent, (b) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (c) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (iii) such Person's or any of its subsidiaries' taking any corporate action to authorize any of the actions set forth above in this definition.

"**Installment Agreement**" is defined in the recitals.

"**Lease**" is defined in the preamble.

"**Lease Expiration Date**" means the date of termination of this Lease at the conclusion of the Lease Term or sooner pursuant to any applicable provision hereof.

"**Leased Premises**" is defined in the recitals.

"**Leasehold Estate**" is defined in Section 3.1(a).

"**Lease Term**" means the Initial Term and any Renewal Period.

"**Lease Year**" means each consecutive twelve (12) calendar month period during the Lease Term.

"**Major Decisions**" means the approval of (i) any Transfer or Permitted Transfer, (ii) any pledge or encumbrance of the Team Owner's assets as security for any debt, (iii) any management agreement or concessionaire agreement, (iv) any operating or capital budgets for the Leased Premises, or (v) any booking policies or procedures for the Leased Premises.

"**Major League Baseball**" means, depending on the context, any or all of (i) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof, and/or (ii) the Major League Clubs acting collectively.

"**Major League Club**" means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

"**Major League Constitution**" means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

"**MLB PDL**" means, as applicable, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.

"**MLB PDL Entity**" means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.

"**Naming Rights**" is defined in Section 7.4(a).

"**New Professional Baseball Standards**" means any new Professional Baseball Standards that are adopted after the Effective Date and that are consistently applied without discrimination to the Team, Team Owner or the Stadium.

"**Nondisturbance Agreement**" means the Recognition and Nondisturbance Agreement, dated as of [the date hereof], by and among the Team Owner, the City, and the Property Owner.

"**Obscene Material**" means pornographic material or material which is obscene under standards set forth in any Applicable Law.

"**Operating Expenses**" is defined in Section 5.1(a).

"**Operating Standard**" means the operation and use of the Stadium on a full-service basis in a manner consistent with the standards that a reasonable and prudent operator of Comparable Properties would reasonably be expected to undertake and follow if it were the operator of the Stadium, in accordance with the standards and requirements of MLB PDL or similar governing baseball body with jurisdiction over the Team.

"**Operator**" is defined in Section 5.1(b).

"**Other Stadium Agreement**" is defined in Section 4.3(a).

"**Parking Agreement**" means an agreement executed by the Team Owner and the Property Owner, on terms reasonably acceptable to the Team Owner, that governs parking and parking facilities for the benefit of the Stadium Site.

"**Party**" or "**Parties**" is defined in the preamble.

"**PDL Approval**" means any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

"**PDL Club**" means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.

"**PDL Governance Agreement**" means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.

"**PDL Governing Documents**" means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.

"**PDL License Agreement**" means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including the Team PDL License Agreement.

"**PDL Rules and Regulations**" means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically related to or generally applicable to the Professional Development League System or the PDL Clubs, including

agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or
one or more of the PDL Clubs.

"**Permitted Transfer**" is defined in Section 12.2.

"**Permitted Use**" is defined in Section 4.1.

"**Person**" means any individual, any estate of an individual during the period of the probate of such estate, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

"**Professional Baseball Standards**" means any professional baseball standards of any Baseball Authority that are applicable to the Team, including the PDL Rules and Regulations.

"**Professional Development League System**" means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Clubs.

"**Property Owner**" is defined in the recitals.

"**Public Spaces**" means the property owned by the City outside and adjacent to the Stadium, and located on either of the two properties identified on **Exhibit B** as "TRACT 2" (comprised of 1.148 acres), or "REMAINDER" (comprised of 7.659 acres).

"**Qualified Concessionaire**" means (a) a concessionaire which runs concessions at any other minor league baseball venue or at any Major League Baseball, National Football League, National Hockey League, National Basketball Association or Major League Soccer venue or (b) an Affiliate of the Team Owner.

"**Qualified Operator**" means (a) a nationally recognized stadium or entertainment facility operator that as of the effective date of the management agreement then in effect, operates, either directly or through its affiliates, at least three (3) Comparable Properties, or (b) an Affiliate of the Team Owner.

"**Renewal Period**" is defined in Section 3.6.

"**Rent Commencement Date**" means the Project Completion Date (as defined in the Development Agreement).

"**Routine Maintenance**" means all work (including all labor, supplies, materials and equipment) that is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and components that form any part of the Stadium in a manner reasonably consistent with the standards at other Comparable Properties; *provided* however, Routine Maintenance shall not include items designated as "Capital Repair Responsibility" in **Exhibit D**. Routine Maintenance shall include the following: (i) preventative or routine maintenance that is stipulated in any operating manuals for the components of the Stadium; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) routine maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) touch-up painting; (vi) cleaning prior to, during and following, and necessary as a direct result of, all events at the Stadium (other than any work required to be performed by City for any City Events); and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use. Routine Maintenance shall include the items and tasks identified as "Routine Maintenance Responsibility" in **Exhibit D**.

"**Stadium**" is defined in the recitals.

"**Stadium Events**" is defined in Section 4.3(a).

"**Stadium Site**" is defined in the recitals.

"**Stadium Site Plan**" is defined in the recitals.

"**Team**" is defined in the recitals.

"**Team Owner**" is defined in the preamble.

"**Team Owner Default**" is defined in Section 13.1.

"**Team Owner Representative**" is defined in Section 2.2.

"**Team Owner's Remedial Work**" is defined in Section 17.1(b).

"**Team PDL License Agreement**" means that certain player development license agreement entered into between Team Owner and MLB PDL pursuant to which the Team has been granted the right to participate in the Professional Development League System.

"**Transfer**" is defined in Section 12.1.

"**Untenantability Period**" shall mean the period following the determination by MLB PDL, in a written directive, declaration or ruling addressed to Team Owner (sent in good faith and not at the request of Team Owner) and provided to the City that the condition of the Stadium is such that MLB PDL prohibits the playing of Home Games at the Stadium, in each case pursuant to which a Home Game cannot reasonably be held, or reasonably be foreseen to be held, at the Stadium in accordance with MLB PDL standards for exhibition of MLB PDL games, as such standards may be determined and applied by MLB PDL from time to time; *provided* that such standards are consistently applied without discrimination in application to the Team, Team Owner or the Stadium.

"**Use Agreement**" means a use, lease, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Leased Premises for any Permitted Use, but shall not include any of the foregoing for all or substantially all of the Leased Premises.

"**Warning Notice**" is defined in Section 6.4(a).

"**Work Demand**" is defined in Section 6.4(a).

EXHIBIT B

STADIUM SITE

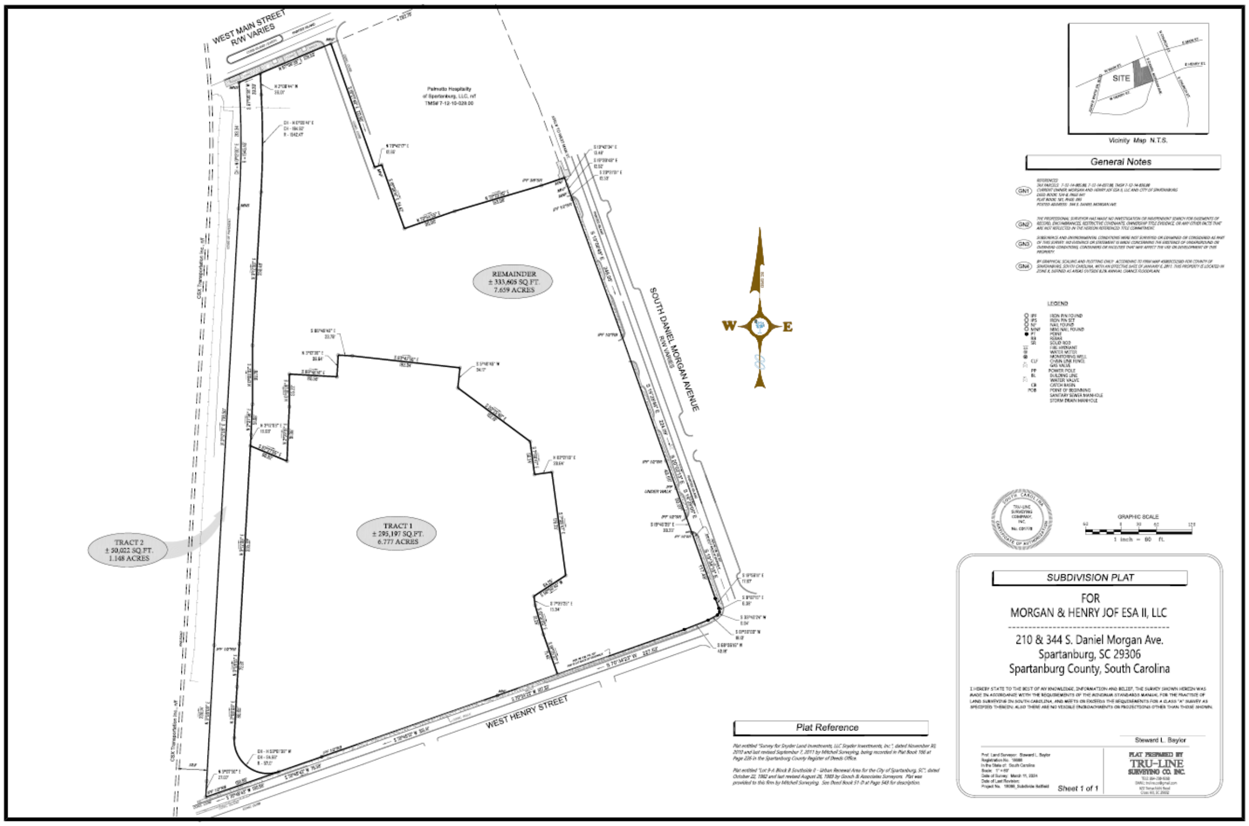

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EXHIBIT C

STADIUM SITE PLAN

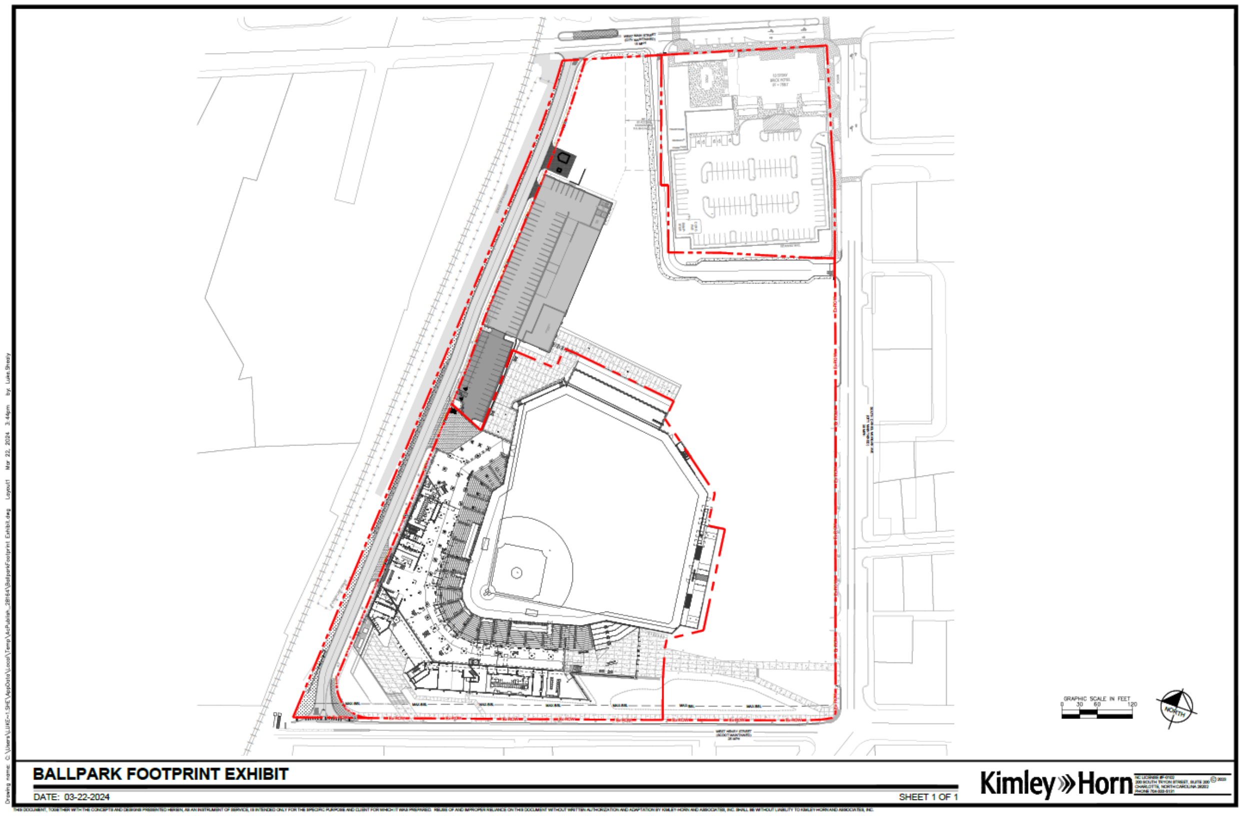

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EXHIBIT D

CAPITAL REPAIR AND ROUTINE MAINTENANCE RESPONSIBILITIES

[See attached]

EXHIBIT (Draft 9-19-23)
CAPITAL REPAIR & ROUTINE MAINTENANCE RESPONSIBILITIES

Key:
R = Capital Repair Responsibility
M = Routine Maintenance Responsibility
1 = Includes support structure and electrical service but excludes signage material fabrication & installation.
2 = Includes storage system but excludes consumables.

#	DESCRIPTION	CAPITAL FUND	TEAM OWNER
	Any FF&E originally supplied by team		R, M
I.	STRUCTURE / ENCLOSURE		
1	Structural steel / metal / concrete / masonry components	R, M	-
2	Roofs	R, M	-
3	Window & Doors	R	M
4	Concourse Concrete / Walkways	R	M
5	Painting of Exposed Structural Steel	R, M	-
6	Sealants/ Caulking/ Waterproofing	R, M	-
II.	ARCHITECTURAL & INTERIORS		
A.	FINISHES		
1	Casework / Carpentry / Millwork / Cabinetry	R	M
2	Drywall / Tile / Paint / Acoustic Panels / Wallcoverings	R	M
3	Flooring / Ceilings	R	M
4	Toilet Partitions / Accessories / Baby Changing Stations	R	M
B.	SIGNAGE		
1	Advertising Panels & Graphics	-	R, M
2	Wayfinding & Code Required Signage	R	M
3	Flagpoles	R	M
4	Flags	-	R,M
5	Decorative Banners / Graphics	-	R,M
6	Naming Rights / Marquee Signage	R, 1	M
8	Fixed Marketing Signage	-	R, M
9	Electronic Marketing Signage	-	R,M
C.	ARTWORK		
1	Wall Mounted, Hung Artwork / Photos, or Murals	-	R, M
2	Public Artwork (typically ground mounted, free standing)	R	M
III.	STADIUM SYSTEMS		
1	Landscaping and Irrigation	R	M
2	Mechanical / Electrical / Plumbing	R	M
3	HVAC	R	M
4	Lighting (excludes field lighting)	R	M
5	Elevators	R	M
6	Emergency Generator	R	M
IV.	PLAYING FIELD		
1	Field Drainage / Irrigation System	R	M
2	Foul ball netting, backstop, foul poles	R	M

#	DESCRIPTION	CAPITAL FUND	TEAM OWNER
3	Outfield fence / Field Wall Padding (excluding advertising)	R	M
4	Dugout Benches, Helmet Storage, Bat Racks	R	M
5	Batters Eye	R	M
6	Playing Field Sports Lighting	R	M
V.	FURNITURE, FIXTURES & EQUIPMENT		
A.	FIXED SPECTATOR SEATING		
1	Fixed Armchairs / Seating	R	M
2	Four Top Tables & Chairs	R	M
3	Picnic Tables	R	M
B.	LOOSE SEATING		
1	Folding Chairs / Folding Chair Carts	-	R, M
2	Rocking Chairs	-	R, M
3	Cabanas	-	R, M
4	Cabana Furniture	-	R, M
5	Party Deck Tables & Chairs	-	R, M
C.	INTERIOR FURNITURE		
1	Groundskeeping Office & Locker Room	-	R, M
2	Building Maintenance Office	-	R, M
3	Home & Visitor Clubhouses	-	R, M
4	Umpire / Mascot / Talent / Staff Locker Rooms	-	R, M
5	Entry Lobbies & Corridors	-	R, M
6	Commissary / Food Service Office	-	R, M
7	Box Office / Fan Accommodations / Security / First Aid	-	R, M
8	Premium Suites / Club	-	R, M
9	Press Box	-	R, M
10	Administrative Offices	-	R, M
D.	CROWD CONTROL EQUIPMENT		
1	Crowd Control Barriers (Bike Racks)	-	R,M
2	Walk-thru Metal Detectors (w/ power)	-	R,M
3	Wand Metal Detectors	-	R,M
4	Tensa-Barriers	-	R,M
5	2-way Radios / Chargers	-	R,M
6	Camera for Incident Documentation	-	R,M
7	Bullhorns	-	R,M
E.	EVENT EQUIPMENT		
1	Pipe and drape / Table Skirting / Carpet Sections	-	R, M
2	Portable press conference lighting	-	R, M
3	Photographer's ladder	-	R, M
4	Portable Sound Systems / Video Projectors / Screens	-	R, M
5	Portable Podiums / Platforms / Dance Floors	-	R, M
F.	SAFETY / FIRST AID EQUIPMENT		
1	Fire Extinguishers	R	M
2	Eye Wash Stations	R	M
3	Medtronic LifePak AEDs	R	M
4	Curtain System	R	M
5	Wheel Chairs	-	R, M
6	Heavy Duty Transport Stretcher	-	R, M
7	Small Equipment and Supplies	-	R, M
8	Medical Golf Cart	-	R, M

#	DESCRIPTION	CAPITAL FUND	TEAM OWNER
9	Blood-born Pathogen Containers	-	R, M
10	Back Boards w/ neck brace	-	R, M
11	Cots	-	R, M
12	Portable Fans	-	R, M
13	Emergency Response Supplies	-	R, M
14	Plastic Water Coolers (Gatorade-type)	-	R, M
G.	**JANITORIAL**		
1	Storage Shelving	R	M
2	Cleaning Equipment (scrubbers, etc.)	-	R, M
3	Cleaning Tools (mops, brooms, etc.)	-	R, M
4	Cleaning Supplies	-	R, M
5	Deodorizer Systems	-	R, M
6	Walk-off Mats	-	R, M
7	Trash / Recycling Containers (Small & Large)	-	R, M
8	Trash Compactor / Dumpster	-	R, M
9	Recycling Compactor / Dumpster	-	R, M
10	Cardboard Bailer	-	R, M
H.	**BUILDING MAINTENANCE**		
1	Shop Buildout	R	M
2	Storage Shelving	R	M
3	Equipment (work carts, lifts, etc.)	-	R, M
4	Tools (small & large)	-	R, M
I.	**PLAYING FIELD MAINTENANCE**		
1	Shop Buildout	R	M
2	Storage Shelving	R	M
3	Equipment (mowers, tractors, etc.)	-	R, M
4	Tools (small & large)	-	R, M
J.	**RESIDENTIAL APPLIANCES** (ice makers, refrigerators, etc.)		
1	Groundskeeping Office & Locker Room	-	R, M
2	Building Maintenance Office	-	R, M
3	Home & Visitor Clubhouses	-	R, M
4	Umpire / Mascot / Talent / Staff Locker Rooms	-	R, M
5	Ticket Office / Fan Accommodations / Security / First Aid	-	R, M
6	Premium Suites / Club	-	R, M
7	Press Box	-	R, M
8	Administrative Offices	-	R, M
K.	**OTHER**		
1	Site Furnishings (benches, trash cans, bike racks)	R	M
2	Playground Equipment/Splashpad	R	M
3	Window Coverings / Shades / Blinds	R	M
VI.	**FOOD SERVICE / MERCHANDISE / APPLIANCES**		
A.	**FOOD SERVICE EQUIPMENT**		
1	Food Service Equipment (grills, fryers, ovens, etc.)	-	R, M
2	Portable Food & Beverage Carts	-	R, M
3	Portable Hot Boxes	-	R, M
4	Condiment Carts	-	R, M
5	Smallwares (utensils, glasses, etc.)	-	R, M
6	CO2 / Grease Storage	R, 2	M
7	Beverage Systems (beer, soda, etc.)	-	R, M
8	Menu Boards	-	R, M

#	DESCRIPTION	CAPITAL FUND	TEAM OWNER
9	Walk-In Coolers & Freezers	R	M
10	Countertops & Supports	R	M
11	Grease Hoods	R	M
12	Grease Trap	R	M
13	Grab n Go / Self Payment Systems	-	R, M
14	Self Service Tap Systems	-	R, M
B.	**MERCHANDISE EQUIPMENT**		
1	Retail Store Displays, Racks & Shelving	-	R, M
2	Portable Merchandise Carts	-	R, M
3	Tensa-Barriers	-	R, M
5	Branding Signage	-	R, M
4	Storage Shelving	-	R, M
C.	**MATERIAL HANDLING EQUIPMENT**		
1	Food Service	-	R, M
2	Merchandise	-	R,M
IX.	**TEAM EQUIPMENT**		
A.	**GAME EQUIPMENT**		
1	Bases, Homeplates, Pitching Rubbers	-	R, M
2	Batting Practice Cage / Pitching Screens	-	R, M
B.	**CLUBHOUSE EQUIPMENT**		
1	Training Equipment (portable tubs, x-ray, etc.)	-	R, M
2	Conditioning & Weight Equipment	-	R, M
3	Entertainment (video games, etc.)	-	R, M
4	Laundry Equipment (washers & dryers)	-	R, M
5	Batting/Pitching Tunnel Netting & Turf	-	R, M
6	Batting/Pitching Tunnel Equipment	-	R, M
C.	**ADMINISTRATIVE EQUIPMENT**		
1	Personal Computers / Laptops / Keyboards	-	R, M
3	Server / Rack / Switch / Firewall	-	R, M
4	Copier / Printers / Scanners	-	R, M
5	Mail Equipment	-	R, M
6	Power Strips	-	R, M
7	Software	-	R, M
8	Shredders	-	R, M
9	Filing Cabinets	-	R, M
10	Storage Shelving	R	M
X.	**TECHNOLOGY**		
1	Main Video / Scoreboard	R	M
2	Ribbon Board below Suites	R	M
3	Video Production Equipment	R	M
4	In-game Production Cameras	R	M
5	Broadcast Cabling	R	M
6	Bowl Sound System incl. Public Address	R	M
7	Tele/Data Network Pathways	R	M
8	Tele/Data Network Cabling	R	M
9	Telephone System	-	R, M
10	IPTV System & TVs	-	R, M
11	Access Control System	R	M
12	CCTV / Surveillance System	R	M

#	DESCRIPTION	CAPITAL FUND	TEAM OWNER
13	Wi-Fi System	-	R, M
14	DAS (cell signal amplifier)	-	R, M
15	Point of Sale System	-	R, M
16	Video Coaching System	-	R, M
17	Ticketing System	-	R, M
18	ATM's	-	R, M
19	UPS / Battery Back-up Systems	R	M

Inspections Required: (a) Fire Panel - annually, (b) Sprinkler Systems- annually, (c) Fire Pumps, Backflow domestic - annually, (d) Kitchen Hoods - annually, (e) Elevators per Local Requirements, (f) Fire and Security Monitoring, (g) HVAC (exhaust fans, cooling towers, chillers, etc.) - quarterly, (h) Pest Control - monthly, (i) Generator - semi-annually, (j) UPS - semi-annually, (k) Grease Traps - annually, (l) Ice makers- semi-annually, (m) Window cleaning - semi-annually, (n) Partition walls - semi-annually, (o) Flooring - quarterly.

ORDINANCE NO. ________

CONSENTING TO THE REMOVAL OF CERTAIN PROPERTY LOCATED IN THE CITY OF SPARTANBURG FROM THE JOINT COUNTY INDUSTRIAL/BUSINESS PARK (CITY OF SPARTANBURG ECONOMIC DEVELOPMENT PARTNERSHIP PARK) ESTABLISHED BY AND BETWEEN SPARTANBURG COUNTY AND CHEROKEE COUNTY; CONSENTING TO THE ADDITION OF SUCH PROPERTIES TO A NEW JOINT COUNTY INDUSTRIAL/BUSINESS PARK TO BE ESTABLISHED BY AND BETWEEN SPARTANBURG COUNTY AND CHEROKEE COUNTY; CONSENTING TO THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF JOINT COUNTY INDUSTRIAL/BUSINESS PARK (CITY OF SPARTANBURG ECONOMIC DEVELOPMENT PARTNERSHIP PARK) BETWEEN SPARTANBURG COUNTY AND CHEROKEE COUNTY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (CITY OF SPARTANBURG ECONOMIC DEVELOPMENT PARTNERSHIP PARK) BETWEEN THE CITY OF SPARTANBURG AND SPARTANBURG COUNTY; AND OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Spartanburg, South Carolina (the "City"), is a body politic and corporate located in Spartanburg County, South Carolina;

WHEREAS, through the City's governing body, the City Council (the "Council"), the City is entitled to exercise all the powers and privileges provided to municipal corporations in the State of South Carolina;

WHEREAS, Spartanburg County, South Carolina ("Spartanburg County") has heretofore established a joint county industrial/business park (the "DDD Park") with Cherokee County, South Carolina ("Cherokee County") pursuant to an Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) dated as of December 31, 2018 (the "Original DDD Park Agreement"), such DDD Park being located on lands located wholly within the City only, in accordance with Article VIII, Section 13(D) of the South Carolina Constitution and South Carolina Code Annotated sections 4-1-170, -172 and -175 (collectively, "MCIP Act"); and

WHEREAS, the MCIP Act requires that, if a joint county industrial and business park encompasses all or a portion of a municipality, the counties which create such joint county industrial and business park must obtain the consent of the municipality prior to the creation of the joint county industrial and business park; and

WHEREAS, the City by and through City Ordinance No. 12-604.4-11.19.18, enacted on December 19, 2018, granted its consent to the inclusion of the property to be contained within the DDD Park as set forth in the Original DDD Park Agreement; provided, such consent was conditioned upon and subject to the execution and delivery by the City and Spartanburg County of an Intergovernmental Agreement relating to, among other things, the distribution of the fees-in-lieu of tax paid on behalf of properties located in the DDD Park; and

WHEREAS, in furtherance of the foregoing, the City and Spartanburg County have heretofore executed and delivered an Intergovernmental Agreement (City of Spartanburg Economic Development Partnership Park) dated as of December 31, 2018 (the "Original DDD Intergovernmental Agreement"); and

WHEREAS, the Original DDD Intergovernmental Agreement provides that any removal or addition of property to the DDD Park shall be subject to prior consent of the City; and

WHEREAS, Spartanburg County desires to remove certain properties identified in the attached Exhibit A hereto and incorporated herein by reference (the "Core Properties") from the DDD Park, and to place such Core Properties in a new joint county industrial/business park to be established by and between Spartanburg County and Cherokee County (the "New Park") in order to, among other things, effectuate certain economic development incentives with respect to certain public and private development anticipated to occur on the Core Properties to wit: special source credits (the "SSRCs") to be provided to Morgan & Henry JOF ESA II, LLC pursuant to Special Source Credit Agreements in substantially the forms attached hereto as Exhibit B (the SSRC Agreements"); and

WHEREAS, Spartanburg County desires to amend and restate the Original Park Agreement by entering into an Amended and Restated Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) (the "Amended and Restated DDD Park Agreement") in substantially the form attached hereto as Exhibit C and incorporated herein by reference, in order to: (a) revise the description of properties located in the Park in order to remove therefrom the Core Properties; and (b) extend the date prior to which the Amended and Restated DDD Park Agreement may not be terminated by Cherokee County or Spartanburg County; and

WHEREAS, the City and Spartanburg County desire to amend and restate the Original DDD Intergovernmental Agreement by entering into and Amended and Restated Intergovernmental Agreement (City of Spartanburg Economic Development Partnership Park) (the "Amended and Restated DDD Intergovernmental Agreement") in substantially the form attached hereto as Exhibit D and incorporated herein by reference in order to provide for the application of Economic Development Partnership Funds (as defined therein) in accordance with an Intergovernmental Agreement (Stadium Development Project) to be entered into by and between the City and Spartanburg County (the "Stadium Intergovernmental Agreement"); and

WHEREAS, subject to and conditional upon the execution and delivery of the Stadium Intergovernmental Agreement by and between the City and Spartanburg County, the City desires to: (a) provide its consent for the removal of the Core Properties from the DDD Park and the placement of the Core Properties in the New Park; (b) consent to the provision of the SSRCs pursuant to the SSRC Agreements; (c) authorize the execution and delivery of the Amended and Restated DDD Intergovernmental Agreement, and (d) consent to the execution and delivery of the Amended and Restated DDD Park Agreement by and between Spartanburg County and Cherokee County.

NOW, THEREFORE, be it ordained by the Council as follows:

Section 1. Consent to Removal of Core Properties from the DDD Park, Placement of the Core Properties in the New Park, and Provision of the SSRCs Pursuant to the SSRC Agreements. Subject to and conditional upon (i) the execution and delivery of the Stadium Intergovernmental Agreement by and between the City and Spartanburg County, and (ii) the execution and delivery of the Amended and Restated DDD Intergovernmental Agreement by and between the City and Spartanburg County, the City hereby consents to (A) the removal of the Core Properties from the DDD Park, (B) the placement of the Core Properties in the New Park, and (C) the provision of the SSRCs to Morgan & Henry JOF ESA II, LLC pursuant to the SSRC Agreements in substantially the forms attached hereto as Exhibit B.

Section 2. Approval of Amended and Restated DDD Intergovernmental Agreement. The form of the Amended and Restated DDD Intergovernmental Agreement attached hereto as Exhibit D is hereby approved, and, subject to and conditional upon the execution and delivery of the Stadium Intergovernmental

Agreement by and between the City and Spartanburg County, the Mayor and the City Manager, or either of them acting alone, are each hereby authorized to execute and deliver the Amended and Restated DDD Intergovernmental Agreement, in substantially the form hereby approved, together with such additions, modifications and changes as may be approved, upon the advice of counsel, with such approval being evidenced by the execution and delivery thereof.

Section 3. Consent to Amended and Restated DDD Park Agreement. Subject to and conditional upon (i) the execution and delivery of the Stadium Intergovernmental Agreement by and between the City and Spartanburg County, and (ii) the execution and delivery of the Amended and Restated DDD Intergovernmental Agreement by and between the City and Spartanburg County, the City hereby consents to the execution and delivery of the Amended and Restated DDD Park Agreement, in substantially the form attached hereto as Exhibit C, by and between Spartanburg County and Cherokee County. The Mayor and the City Manager, or either of them acting alone, are each hereby authorized to execute such documents or consents, or take such further action as may be reasonably necessary to evidence the City's consent to the execution and delivery of the Amended and Restated DDD Park Agreement by and between Spartanburg County and Cherokee County.

Section 4. Further Acts. The Mayor, the City Manager, the City Attorney and the City Clerk are each authorized to execute any documents and take any further actions as may be reasonably necessary to further the intent of this Ordinance.

[Execution Page Follows]

Enacted by the City Council of the City of Spartanburg, South Carolina, this 13th day of May, 2024.

CITY OF SPARTANBURG, SOUTH CAROLINA

____
Mayor

(SEAL)

ATTEST:

____
City Clerk

First Reading: April 8, 2024
Second Reading: May 13, 2024

EXHIBIT A

PROJECT CORE PROPERTIES

Spartanburg County Property Description

Grain 1 (Office 1) Property

The northwestern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Remainder, +- 333,605 sq. ft, 7.659 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: northwestern portion of 7-12-14-005.00

Grain 2 (Multi-Family 1 Property)

The southeastern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Remainder, +- 333,605 sq. ft, 7.659 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: southeastern portion of 7-12-14-005.00

Herald Journal 1 (Office 2 Property)

The western portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 1 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: western portion of 7-12-20-030.00

Herald Journal 2 (Hotel) Property

The eastern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 1 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Together with any additional land to the south of West Main and west of Spring Street conveyed in the future to Johnson Development Associates, Inc. or its successors and assigns by the City of Spartanburg pursuant to that certain Development Agreement between the City of Spartanburg and Johnson Development Associates, Inc. dated as of October 11, 2023.

Tax Map Number: eastern portion of 7-12-20-030.00

Magnolia (Multi-Family 2) Property

That certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 2 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: 7-12-20-048.00

TOGETHER WITH:

Lying and being in the City of Spartanburg, Spartanburg County, South Carolina, and more particularly described as follows:

BEGINNING at a 1/2" iron rebar found at the intersection of the northwestern corner of the property conveyed to Thomas H. Jones by instrument recorded in Deed Book 46-S, Page 302, Office of the RMC for Spartanburg County and the western margin of the right-of-way of South Spring Street; thence running with the northern boundary of the Thomas H. Jones property (now or formerly) S 73-19-16 W 110.89 feet to a 1" iron pipe found at the northwestern corner of a twenty-foot (20') wide alley (being a portion of the A. F. McDowell estate (now or formerly)); thence with the western margin of said alley S 19-19-32 E 24.91 feet to an 1/2" iron rebar found; thence continuing with the northern boundary of the Thomas H. Jones property (now or formerly) S 71-27-33 W 83.25 feet to the corner of a block retaining wall on the eastern side of an unopened alley; thence with said block retaining wall N 20-12-44 W 163.45 feet to the intersection of a block retaining wall and the southwestern corner of a garage building, said point also lying on the northern margin of Pollard Street (an unopened street) and the eastern boundary of the unopened alley, said point also being the easternmost corner of the property conveyed to Gerald Smith as shown on plat recorded in Plat Book 5, Page 45, Office of the RMC for Spartanburg County; thence with the northeastern boundary of the Gerald Smith property (now or formerly) N 20-13-27 W 143.32 feet to a corner of the garage building lying on the southern margin of the right-of-way of West Broad Street (said point lying S 12-49-25 E 1.14 feet from an "X" in concrete); thence with the southern margin of the right-of-way of West Broad Street the following two courses and distances: (1) N 69-05-39 E 94.29 feet to a 1/2" rebar found; and (2) N 69-05-39 E 106.25 feet to a calculated point lying at the intersection of the southern margin of the right-of-way of West Broad Street and the western margin of the right-of-way of South Spring Street; thence with the western margin of the right-of-way of South Spring Street the following two (2) courses and distances: (1) S 19-00-00 E 211.65 feet to a 1/2" iron rebar found; and (2) S 19-00-00 E 81.97 feet to the point and place of BEGINNING, containing 1.348 acres, more or less, as shown on survey prepared by John F. Tinsley, Professional Land Surveyor (Registration Number 16824), dated September 8, 1997, and revised September 29, 1997 (the **"Survey"**) and identified as Project Number 2533. Be all measurements a little more or less.

TMS# 7-12-21-50

53706806 v4

TOGETHER WITH:

Parcel 1
All that certain piece, parcel or lot of land, situate, lying and being in the state of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 16,17,18,19,20,21,47,48, and sixteen foot Alley (16') of Central Development Company Subdivision as shown on a survey prepared for Gerald Smith, dated June 21, 1994 and recorded in Plat Book 125, Page 796, Office of the Register of Deeds for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plats and records thereof.

Parcel 2
ALSO AND INCLUDING: All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina being shown and designated as 0.203 acres, more or less, as shown on a survey prepared for Gerald Smith, dated May 13, 1999 and recorded in Plat Book 144, Page 785, Office of the Register of Deeds for Spartanburg County, S.C.

LESS AND EXCEPTING FROM THAT 0.203 ACRES: All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina being shown and designated as 0.12 acres, more or less, as shown on survey prepared for Gerald Smith, dated October 24, 2002 and recorded in Plat Book 153, Page 592, Office of the Register of Deeds for Spartanburg County, S.C.

Parcel 3
All of my right, title and interest in and to that certain "Former Alley" as shown on a plat entitled Gerald Smith dated May 13, 1999 and recorded in Plat Book 144, Page 785 in the Register of Deeds Office for Spartanburg County, S.C.

Parcel 4
All of my right, title and interest, if any, in and to Pollard Street which adjoins subject property.

Tax Map Numbers: 7-12-20-049.00 AND 7-12-20-049.02

Stadium Site

That certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Tract 1, +- 295,197 sq. ft, 6.777 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: 7-12-14-005.03

EXHIBIT B

FORMS OF SPECIAL SOURCE CREDIT AGREEMENTS

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA,

and

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability
company

[Grain 2, Multi-Family 1]

Dated as of ____________, 2024

SPECIAL SOURCE CREDIT AGREEMENT
[Grain 2 (Multi-Family 1)]

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 20__ (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC,** a limited liability company organized and existing under the laws of the State of South Carolina (the "Company").

W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the "Land"); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed-use commercial facility in the County, the primary use of which is intended be a multi-family commercial housing facility (the "Project"), which will result in an expected aggregate investment of at least $75,000,000 by December 31 of the fifth (5th) year after the year in which any portion of the Project is first placed in service (the "Investment Period"); and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 4, Chapter 29 thereof (the "FILOT Act"), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company's investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"Affiliate" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"*Development Agreement*" shall mean that certain Development Agreement between Johnson Development Associates and the City of Spartanburg dated October 11, 2023, as the same may be amended from time to time.

"Fee Payments" shall mean the payments in lieu of taxes made by the Company with respect to the Project by virtue of the Project's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments in respect of the Company's investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

"*Investment Clawback Percentage*" shall mean 100% minus the percentage of the Company's actual investment in the Project within the Investment Period to the Investment Target.

"Investment Period" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Investment Target" shall mean the investment by the Company of at least $75,000,000 in the Project.

"Land" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"*Public Infrastructure Target*" shall mean the construction of parking garages or other covered parking in the City of Spartanburg, South Carolina containing at least 1,500 spaces.

"*Public Infrastructure Clawback Percentage*" shall mean 100% minus the percentage of the number of parking spaces available in the parking garages or other covered parking constructed by the Company in the City of Spartanburg in connection with the Project (and other projects immediately surrounding the Project) to 1,500.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South

Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause the Investment Target to be achieved during the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(c) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement pursuant to its terms cannot be terminated by either party thereto prior to December 31, 2059 (the "Original Termination Date"). The County agrees that the Project will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the annual Fee Payment to be first payable on or before the January 15th immediately following the year immediately following the first year in which any portion of the Project is first placed in service, the County shall provide to the Company Infrastructure Credits for a period of thirty (30) consecutive years in an amount sufficient to reduce the Fee Payment to [$43,634] per year.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company be entitled to claim or receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which an Infrastructure Credit is taken.

(c) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by them collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the Company for the same expenditure.

(d) Should the Investment Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Investment Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Investment Clawback Percentage, plus interest at the rate payable for late payment of taxes. Should the Public Infrastructure Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Public Infrastructure Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Public Infrastructure Clawback Percentage, plus interest at the rate payable for late payment of taxes.

For example, and by way of example only, if the Company invests $60,000,000 within the Investment Period and constructs parking garages with 1,125 parking spaces or other covered

parking by the end of the Investment Period, the Investment Clawback Percentage would equal 20% (100% - [$60,000,000 / $75,000,000] and the Public Infrastructure Clawback Percentage would equal 25% (100% - [1,125 / 1,500]. The Company would be responsible for repaying 22.5% of the infrastructure credits previously received by the Company ([20% x 50%] + [25% x 50%]), and any infrastructure credits otherwise payable under this Agreement would be reduced by 22.5%.

Provided, the Company may request an extension of the deadline for compliance with the Public Infrastructure Target and the County will consider in good faith any such request.

(e) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or the Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or the Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every

power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

(a) if to the County:

Spartanburg County, South Carolina Administration Building, Suite 1000
366 North Church Street
Spartanburg, South Carolina 29303
Attn: County Administrator
Facsimile No. (864) 596-2232

with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney Facsimile No. (864) 596-2232
(b) if to the Company:	Morgan & Henry JOF ESA II, LLC One Morgan Square 100 Dunbar Street Spartanburg, SC 29306 Attn: General Counsel

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return receipt requested, restricted delivery, postage prepaid, addressed as follows:

A duplicate copy of each notice, certificate, request or other communication given under this

with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of

the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and Morgan & Henry JOF ESA II, LLC has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:____

B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____

Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:___________________________________
Title:____________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

The southeastern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Remainder, +- 333,605 sq. ft, 7.659 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: southeastern portion of 7-12-14-005.00

[To be updated upon recordation of subdivision plat]

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 2024 (the "Agreement") between Spartanburg County, South Carolina and Morgan & Henry JOF ESA II, LLC (the "Company"), as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company is as follows:

(a)		$	________________
(c)	Total Infrastructure Credits received	$	________________

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:____________________________________
Its:_______________________________________

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA,

and

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability
company

[Grain 1, Office 1]

Dated as of ____________, 2024

SPECIAL SOURCE CREDIT AGREEMENT
[Grain 1 (Office 1)]

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 20__ (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC,** a limited liability company organized and existing under the laws of the State of South Carolina (the "Company").

W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the "Land"); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed-use commercial facility in the County, the primary use of which is intended be a commercial office facility (the "Project"), which will result in an expected aggregate investment of at least $70,000,000 by December 31 of the fifth (5^{th}) year after the year in which any portion of the Project is first placed in service (the "Investment Period"); and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 4, Chapter 29 thereof (the "FILOT Act"), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company's investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"Affiliate" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"*Development Agreement*" shall mean that certain Development Agreement between Johnson Development Associates and the City of Spartanburg dated October 11, 2023, as the same may be amended from time to time.

"Fee Payments" shall mean the payments in lieu of taxes made by the Company with respect to the Project by virtue of the Project's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments in respect of the Company's investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

"*Investment Clawback Percentage*" shall mean 100% minus the percentage of the Company's actual investment in the Project within the Investment Period to the Investment Target.

"Investment Period" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Investment Target" shall mean the investment by the Company of at least $70,000,000 in the Project.

"Land" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"*Public Infrastructure Target*" shall mean the construction of parking garages or other covered parking in the City of Spartanburg, South Carolina containing at least 1,500 spaces.

"*Public Infrastructure Clawback Percentage*" shall mean 100% minus the percentage of the number of parking spaces available in the parking garages or other covered parking constructed by the Company in the City of Spartanburg in connection with the Project (and other projects immediately surrounding the Project) to 1,500.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South

Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause the Investment Target to be achieved during the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(c) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement pursuant to its terms cannot be terminated by either party thereto prior to December 31, 2059 (the "Original Termination Date"). The County agrees that the Project will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the annual Fee Payment to be first payable on or before the January 15th immediately following the year immediately following the first year in which any portion of the Project is first placed in service, the County shall provide to the Company Infrastructure Credits for a period of thirty (30) consecutive years in an amount sufficient to reduce the Fee Payment to [$43,634] per year.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company be entitled to claim or receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which an Infrastructure Credit is taken.

(c) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by them collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the Company for the same expenditure.

(d) Should the Investment Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Investment Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Investment Clawback Percentage, plus interest at the rate payable for late payment of taxes. Should the Public Infrastructure Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Public Infrastructure Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Public Infrastructure Clawback Percentage, plus interest at the rate payable for late payment of taxes.

For example, and by way of example only, if the Company invests $56,000,000 within the Investment Period and constructs parking garages or other covered parking with 1,125 parking *spaces by the end of the Investment Period, the Investment Clawback Percentage would equal 20% (100% - [$56,000,000 / $70,000,000] and the Public Infrastructure Clawback Percentage would equal 25% (100% - [1,125 / 1,500]. The Company would be responsible for repaying 22.5% of the infrastructure credits previously received by the Company ([20% x 50%] + [25% x 50%]), and any infrastructure credits otherwise payable under this Agreement would be reduced by 22.5%.*

Provided, the Company may request an extension of the deadline for compliance with the Public Infrastructure Target and the County will consider in good faith any such request.

(e) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or the Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or the Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every

power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

(a) if to the County:

Spartanburg County, South Carolina Administration
Building, Suite 1000
366 North Church Street
Spartanburg, South Carolina 29303
Attn: County Administrator
Facsimile No. (864) 596-2232

with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney Facsimile No. (864) 596-2232

(b) if to the Company: Morgan & Henry JOF ESA II, LLC
One Morgan Square
100 Dunbar Street
Spartanburg, SC 29306
Attn: General Counsel

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return receipt requested, restricted delivery, postage prepaid, addressed as follows:

A duplicate copy of each notice, certificate, request or other communication given under this

with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and Morgan & Henry JOF ESA II, LLC has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:______________________________________

B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____

Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:______________________________________
Name:__________________________________
Title:___________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

The northwestern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Remainder, +- 333,605 sq. ft, 7.659 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: northwestern portion of 7-12-14-005.00

[To be updated upon recordation of subdivision plat]

54229316 v1

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 2024 (the "Agreement") between Spartanburg County, South Carolina and Morgan & Henry JOF ESA II, LLC (the "Company"), as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company is as follows:

(a)		$	________________
(c)	Total Infrastructure Credits received	$	________________

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:____________________________________
Its:_______________________________________

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA,

and

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability
company

[Herald Journal 2, Hotel]

Dated as of ____________, 2024

54229403 v1

SPECIAL SOURCE CREDIT AGREEMENT
[Herald-Journal 2 (Hotel)]

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 20__ (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC,** a limited liability company organized and existing under the laws of the State of South Carolina (the "Company").

W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the "Land"); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed-use commercial development in the County, the primary use of which is intended be a hotel (the "Project"), which will result in an expected aggregate investment of at least $60,000,000 by December 31 of the fifth (5th) year after the year in which any portion of the Project is first placed in service (the "Investment Period"); and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 4, Chapter 29 thereof (the "FILOT Act"), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company's investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"Affiliate" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"*Development Agreement*" shall mean that certain Development Agreement between Johnson Development Associates and the City of Spartanburg dated October 11, 2023, as the same may be amended from time to time.

"Fee Payments" shall mean the payments in lieu of taxes made by the Company with respect to the Project by virtue of the Project's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments in respect of the Company's investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

"*Investment Clawback Percentage*" shall mean 100% minus the percentage of the Company's actual investment in the Project within the Investment Period to the Investment Target.

"Investment Period" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Investment Target" shall mean the investment by the Company of at least $60,000,000 in the Project.

"Land" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"*Public Infrastructure Target*" shall mean the construction of parking garages or other covered parking in the City of Spartanburg, South Carolina containing at least 1,500 spaces.

"*Public Infrastructure Clawback Percentage*" shall mean 100% minus the percentage of the number of parking spaces available in the parking garages or other covered parking constructed by the Company in the City of Spartanburg in connection with the Project (and other projects immediately surrounding the Project) to 1,500.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South

Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause the Investment Target to be achieved during the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(c) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

<u>SECTION 2.03. Covenants of the County.</u>

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement pursuant to its terms cannot be terminated by either party thereto prior to December 31, 2059 (the "Original Termination Date"). The County agrees that the Project will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the annual Fee Payment to be first payable on or before the January 15th immediately following the year immediately following the first year in which any portion of the Project is first placed in service, the County shall provide to the Company Infrastructure Credits for a period of thirty (30) consecutive years in an amount sufficient to reduce the Fee Payment to [$32,692.20] per year.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company be entitled to claim or receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which an Infrastructure Credit is taken.

(c) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by them collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the Company for the same expenditure.

(d) Should the Investment Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Investment Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Investment Clawback Percentage, plus interest at the rate payable for late payment of taxes. Should the Public Infrastructure Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Public Infrastructure Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Public Infrastructure Clawback Percentage, plus interest at the rate payable for late payment of taxes.

For example, and by way of example only, if the Company invests $48,000,000 within the Investment Period and constructs parking garages with 1,125 parking spaces or other covered

parking by the end of the Investment Period, the Investment Clawback Percentage would equal 20% (100% - [$48,000,000 / $60,000,000] and the Public Infrastructure Clawback Percentage would equal 25% (100% - [1,125 / 1,500]. The Company would be responsible for repaying 22.5% of the infrastructure credits previously received by the Company ([20% x 50%] + [25% x 50%]), and any infrastructure credits otherwise payable under this Agreement would be reduced by 22.5%.

Provided, the Company may request an extension of the deadline for compliance with the Public Infrastructure Target and the County will consider in good faith any such request.

(e) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or the Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or the Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every

power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

(a) if to the County: Spartanburg County, South Carolina Administration
Building, Suite 1000
366 North Church Street
Spartanburg, South Carolina 29303
Attn: County Administrator
Facsimile No. (864) 596-2232

with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney Facsimile No. (864) 596-2232

(b) if to the Company: Morgan & Henry JOF ESA II, LLC
One Morgan Square
100 Dunbar Street
Spartanburg, SC 29306
Attn: General Counsel

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return receipt requested, restricted delivery, postage prepaid, addressed as follows:

A duplicate copy of each notice, certificate, request or other communication given under this

with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of

the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and Morgan & Henry JOF ESA II, LLC has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:____
B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____
Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:______________________________________
Name:__________________________________
Title:___________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

The eastern portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 1 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Together with any additional land to the south of West Main and west of Spring Street conveyed in the future to Johnson Development Associates, Inc. or its successors and assigns by the City of Spartanburg pursuant to that certain Development Agreement between the City of Spartanburg and Johnson Development Associates, Inc. dated as of October 11, 2023.

Tax Map Number: eastern portion of 7-12-20-030.00

[To be updated upon recordation of subdivision plat]

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 2024 (the "Agreement") between Spartanburg County, South Carolina and Morgan & Henry JOF ESA II, LLC (the "Company"), as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company is as follows:

(a)		$	________________
(c)	Total Infrastructure Credits received	$	________________

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:____________________________________
Its:_______________________________________

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA,

and

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability
company

[Herald Journal 1, Office 2]

Dated as of ____________, 2024

SPECIAL SOURCE CREDIT AGREEMENT
[Herald-Journal 1 (Office 2)]

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 20__ (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC,** a limited liability company organized and existing under the laws of the State of South Carolina (the "Company").

W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the "Land"); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed-use commercial facility in the County, the primary use of which is intended be a commercial office facility (the "Project"), which will result in an expected aggregate investment of at least $40,000,000 by December 31 of the fifth (5^{th}) year after the year in which any portion of the Project is first placed in service (the "Investment Period"); and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 4, Chapter 29 thereof (the "FILOT Act"), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company's investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"Affiliate" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"*Development Agreement*" shall mean that certain Development Agreement between Johnson Development Associates and the City of Spartanburg dated October 11, 2023, as the same may be amended from time to time.

"Fee Payments" shall mean the payments in lieu of taxes made by the Company with respect to the Project by virtue of the Project's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments in respect of the Company's investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

"*Investment Clawback Percentage*" shall mean 100% minus the percentage of the Company's actual investment in the Project within the Investment Period to the Investment Target.

"Investment Period" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Investment Target" shall mean the investment by the Company of at least $40,000,000 in the Project.

"Land" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"*Public Infrastructure Target*" shall mean the construction of parking garages or other covered parking in the City of Spartanburg, South Carolina containing at least 1,500 spaces.

"*Public Infrastructure Clawback Percentage*" shall mean 100% minus the percentage of the number of parking spaces available in the parking garages or other covered parking constructed by the Company in the City of Spartanburg in connection with the Project (and other projects immediately surrounding the Project) to 1,500.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South

Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause the Investment Target to be achieved during the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(c) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement pursuant to its terms cannot be terminated by either party thereto prior to December 31, 2059 (the "Original Termination Date"). The County agrees that the Project will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the annual Fee Payment to be first payable on or before the January 15th immediately following the year immediately following the first year in which any portion of the Project is first placed in service, the County shall provide to the Company Infrastructure Credits for a period of thirty (30) consecutive years in an amount sufficient to reduce the Fee Payment to [$21,794.80] per year.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company be entitled to claim or receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which an Infrastructure Credit is taken.

(c) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by them collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the Company for the same expenditure.

(d) Should the Investment Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Investment Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Investment Clawback Percentage, plus interest at the rate payable for late payment of taxes. Should the Public Infrastructure Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Public Infrastructure Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Public Infrastructure Clawback Percentage, plus interest at the rate payable for late payment of taxes.

For example, and by way of example only, if the Company invests $32,000,000 within the Investment Period and constructs parking garages with 1,125 parking spaces or other covered

parking by the end of the Investment Period, the Investment Clawback Percentage would equal 20% (100% - [$32,000,000 / $40,000,000] and the Public Infrastructure Clawback Percentage would equal 25% (100% - [1,125 / 1,500]. The Company would be responsible for repaying 22.5% of the infrastructure credits previously received by the Company ([20% x 50%] + [25% x 50%]), and any infrastructure credits otherwise payable under this Agreement would be reduced by 22.5%.

Provided, the Company may request an extension of the deadline for compliance with the Public Infrastructure Target and the County will consider in good faith any such request.

(e) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or the Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or the Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every

power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

(a) if to the County: Spartanburg County, South Carolina Administration Building, Suite 1000
366 North Church Street
Spartanburg, South Carolina 29303
Attn: County Administrator
Facsimile No. (864) 596-2232

with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney Facsimile No. (864) 596-2232

(b) if to the Company: Morgan & Henry JOF ESA II, LLC
One Morgan Square
100 Dunbar Street
Spartanburg, SC 29306
Attn: General Counsel

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return receipt requested, restricted delivery, postage prepaid, addressed as follows:

A duplicate copy of each notice, certificate, request or other communication given under this

with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of

the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and Morgan & Henry JOF ESA II, LLC has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:____
B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____
Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:___________________________________
Title:____________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

The western portion of that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 1 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: western portion of 7-12-20-030.00

[To be updated upon recordation of subdivision plat]

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 2024 (the "Agreement") between Spartanburg County, South Carolina and Morgan & Henry JOF ESA II, LLC (the "Company"), as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company is as follows:

(a)		$	________________
(c)	Total Infrastructure Credits received	$	________________

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:____________________________________
Its:_______________________________________

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA,

and

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability
company

[Magnolia, Multi-Family 2]

Dated as of ____________, 2024

SPECIAL SOURCE CREDIT AGREEMENT
[Magnolia Financial (Multi-Family 2)]

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 20__ (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC,** a limited liability company organized and existing under the laws of the State of South Carolina (the "Company").

W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the Company will operate the Project (as defined below) on the land in the County described in Exhibit A hereto, owned by the Company (the "Land"); and

WHEREAS, the Company has represented that they intend to invest in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute a mixed-use commercial facility in the County, the primary use of which is intended be a multi-family commercial housing facility (the "Project"), which will result in an expected aggregate investment of at least $60,000,000 by December 31 of the fifth (5^{th}) year after the year in which any portion of the Project is first placed in service (the "Investment Period"); and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Land as being included within the Park, and the County desires to cause the Park to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes, or, if applicable, any negotiated payments in lieu of taxes pursuant to the Code of Laws of South Carolina 1976, as amended, including Title 4, Chapter 29 thereof (the "FILOT Act"), that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of the Company's investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"Affiliate" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"*Development Agreement*" shall mean that certain Development Agreement between Johnson Development Associates and the City of Spartanburg dated October 11, 2023, as the same may be amended from time to time.

"Fee Payments" shall mean the payments in lieu of taxes made by the Company with respect to the Project by virtue of the Project's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments in respect of the Company's investment in Cost of the Infrastructure set forth in Section 3.02(a) hereof.

"*Investment Clawback Percentage*" shall mean 100% minus the percentage of the Company's actual investment in the Project within the Investment Period to the Investment Target.

"Investment Period" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Investment Target" shall mean the investment by the Company of at least $60,000,000 in the Project.

"Land" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Project.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"*Public Infrastructure Target*" shall mean the construction of parking garages or other covered parking in the City of Spartanburg, South Carolina containing at least 1,500 spaces.

"*Public Infrastructure Clawback Percentage*" shall mean 100% minus the percentage of the number of parking spaces available in the parking garages or other covered parking constructed by the Company in the City of Spartanburg in connection with the Project (and other projects immediately surrounding the Project) to 1,500.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South

Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) The Company shall use commercially reasonable efforts to cause the Investment Target to be achieved during the Investment Period.

(d) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(e) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(f) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(c) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement pursuant to its terms cannot be terminated by either party thereto prior to December 31, 2059 (the "Original Termination Date"). The County agrees that the Project will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the annual Fee Payment to be first payable on or before the January 15th immediately following the year immediately following the first year in which any portion of the Project is first placed in service, the County shall provide to the Company Infrastructure Credits for a period of thirty (30) consecutive years in an amount sufficient to reduce the Fee Payment to [$1,095] per year.

(b) Notwithstanding anything herein to the contrary, under no circumstances shall the Company be entitled to claim or receive any abatement of *ad valorem* taxes for any portion of the investment in the Project for which an Infrastructure Credit is taken.

(c) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by them collectively with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit B. Further, any amount of reimbursement of the Company for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the Company for the same expenditure.

(d) Should the Investment Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Investment Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Investment Clawback Percentage, plus interest at the rate payable for late payment of taxes. Should the Public Infrastructure Target not be met by the end of the Investment Period, fifty percent (50%) of the infrastructure credits otherwise payable under this Agreement shall be reduced by the Public Infrastructure Clawback Percentage, and the Company shall be retroactively liable to the County for the product of fifty percent (50%) of the infrastructure credits previously received by the Company and the Public Infrastructure Clawback Percentage, plus interest at the rate payable for late payment of taxes.

For example, and by way of example only, if the Company invests $48,000,000 within the Investment Period and constructs parking garages with 1,125 parking spaces or other covered

parking by the end of the Investment Period, the Investment Clawback Percentage would equal 20% (100% - [$48,000,000 / $60,000,000] and the Public Infrastructure Clawback Percentage would equal 25% (100% - [1,125 / 1,500]. The Company would be responsible for repaying 22.5% of the infrastructure credits previously received by the Company ([20% x 50%] + [25% x 50%]), and any infrastructure credits otherwise payable under this Agreement would be reduced by 22.5%.

Provided, the Company may request an extension of the deadline for compliance with the Public Infrastructure Target and the County will consider in good faith any such request.

(e) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(f) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(g) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by the County or the Company, respectively, specifying the failure and requesting that it be remedied is given to the County by the Company, or to the Company by the County, by first-class mail, the County or the Company, respectively, shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case the Company or the County, as the case may be, in their discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the County or the Company hereunder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the County or the Company to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every

power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the County and the Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County or the Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

(a) if to the County:

Spartanburg County, South Carolina Administration
Building, Suite 1000
366 North Church Street
Spartanburg, South Carolina 29303
Attn: County Administrator
Facsimile No. (864) 596-2232

with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney Facsimile No. (864) 596-2232

(b) if to the Company:

Morgan & Henry JOF ESA II, LLC
One Morgan Square
100 Dunbar Street
Spartanburg, SC 29306
Attn: General Counsel

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return receipt requested, restricted delivery, postage prepaid, addressed as follows:

A duplicate copy of each notice, certificate, request or other communication given under this

with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

Agreement to the County or the Company shall also be given to the others. The County and the Company may, by notice given under this Section 6.06, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of

the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and Morgan & Henry JOF ESA II, LLC has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:______________________________________
B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____
Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:______________________________________
Name:__________________________________
Title:___________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

REAL PROPERTY DESCRIPTION

That certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being Parcel 2 as described in Survey prepared by J. Jeffrey Cobb, Registration No. 9667 in the State of South Carolina, dated November 28, 2011, last revised December 22, 2011, and filed as a Plat in Plat Book 166, Page 389, Spartanburg County records. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: 7-12-20-048.00

TOGETHER WITH:

TOGETHER WITH:

Parcel 1
All that certain piece, parcel or lot of land, situate, lying and being in the state of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 16,17,18,19,20,21,47,48, and sixteen foot Alley (16') of Central Development Company Subdivision as shown on a survey prepared for Gerald Smith, dated June 21, 1994 and recorded in Plat Book 125, Page 796, Office of the Register of Deeds for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plats and records thereof.

Parcel 2
ALSO AND INCLUDING: All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina being shown and designated as 0.203 acres, more or less, as shown on a survey prepared for Gerald Smith, dated May 13, 1999 and recorded in Plat Book 144, Page 785, Office of the Register of Deeds for Spartanburg County, S.C.

LESS AND EXCEPTING FROM THAT 0.203 ACRES: All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina being shown and designated as 0.12 acres, more or less, as shown on survey prepared for Gerald Smith, dated October 24, 2002 and recorded in Plat Book 153, Page 592, Office of the Register of Deeds for Spartanburg County, S.C.

Parcel 3
All of my right, title and interest in and to that certain "Former Alley" as shown on a plat entitled Gerald Smith dated May 13, 1999 and recorded in Plat Book 144, Page 785 in the Register of Deeds Office for Spartanburg County, S.C.

Parcel 4
All of my right, title and interest, if any, in and to Pollard Street which adjoins subject property.

Tax Map Numbers: 7-12-20-049.00 AND 7-12-20-049.02

[To be updated upon recordation of subdivision plat]

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 2024 (the "Agreement") between Spartanburg County, South Carolina and Morgan & Henry JOF ESA II, LLC (the "Company"), as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company is as follows:

(a)		$	________________
(c)	Total Infrastructure Credits received	$	________________

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the Company is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:____
Name:_____________________________________
Its:_______________________________________

Exhibit B

SPECIAL SOURCE CREDIT AGREEMENT

between

SPARTANBURG COUNTY, SOUTH CAROLINA

and

MORGAN & HENRY JOF ESA II, LLC

[Stadium Site]

Dated as of ____________, 2024

SPECIAL SOURCE CREDIT AGREEMENT

THIS SPECIAL SOURCE CREDIT AGREEMENT, dated as of ____________, 2024 (the "Agreement"), between **SPARTANBURG COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and **MORGAN & HENRY JOF ESA II, LLC** (the "Company").

W I T N E S S E T H :

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure Credit Act"), to provide infrastructure credit financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County, all within the meaning of Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Infrastructure"); and

WHEREAS, the County, the Company, the City of Spartanburg, South Carolina (the "City"), Spartanburg Stadium Development Corporation (the "Corporation"), and DBH Kinston, LLC (the "Team Owner") are working cooperatively on a project (the "Project") which includes the development and construction of a minor league baseball stadium with an expected capacity of approximately 3,500 seats (the "Stadium") on certain real property located in the City and the County as described in Exhibit A hereto (the "Stadium Site"). The Stadium Site is owned by the Company, and will be leased to the City pursuant to a Ground Lease (the "Ground Lease") with a term of 35 years (the "Ground Lease Term"). The Corporation intends to issue installment purchase revenue bonds (the "Bonds") to pay for the costs of construction of the Stadium. Pursuant to a Base Lease and Conveyance Agreement (the "Base Lease"), the City will convey the Stadium to the Corporation, and sublease the Stadium Site to the Corporation. Pursuant to an Installment Purchase and Use Agreement (the "Installment Agreement"), the City will acquire undivided interests in the Stadium periodically from the Corporation in exchange for payment of installment or acquisition payments (the "Installment Payments") that the Corporation will, in turn, use to pay debt service on the Bonds. Further, pursuant to the Installment Agreement, the City will have the right to use and to sublease or enter into use agreements with third parties for the use of all or portions of the Stadium and the Stadium Site. The City intends to enter into a Stadium Sublease Agreement (the "Baseball Sublease") with the Team Owner for an initial term of 20 years, with two (2) additional five (5) year renewal periods (collectively, the "Baseball Sublease Term"), whereby the Team Owner will lease the Stadium and the Stadium Site from the City for the operation of a multi-purpose minor league baseball stadium for professional baseball and other sporting activities, and community and cultural uses and events; and

WHEREAS, the County and Cherokee County have established a joint county industrial and business park (the "Park") by entering into an Agreement for Development for Joint County Industrial/Business Park (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Title 4, Chapter 1 Code of Laws of South Carolina 1976 (collectively, the "Multi-County Park Act"), as amended, and will designate the Stadium Site as being included within the Park, and the County desires to cause the Stadium Site to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of the Infrastructure Credit Act as provided herein; and

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes in the total amount equivalent to the *ad valorem* property taxes or fees-in-lieu of taxes, if any, that would have been due and payable but for the location of the Stadium Site within the Park; and

WHEREAS, pursuant to the Infrastructure Credit Act, the County has agreed to provide certain credits to the Company in respect of its investment in the Infrastructure with respect to the Project, and is delivering this Agreement in furtherance thereof; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on ___________, 2024, following conducting a public hearing on ______________, 2024;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I

DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"*Affiliate*" shall mean any entity controlling, controlled by, or under common control with another entity. For purposes of this definition, control shall be defined as ownership of fifty percent or more of the total equity interests or voting power in an entity, or the ability to otherwise control the direction and management of such entity. Johnson Development Associates, Inc. shall be considered an Affiliate of the Company. Affiliate shall further include the City, the Corporation, and the Team Owner if and to the extent each aforementioned party executes and delivers to the County a Joinder Agreement in the form attached hereto as Exhibit B.

"Agreement" shall mean this Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"City" shall mean the City of Spartanburg, South Carolina.

"Company" shall mean Morgan & Henry JOF ESA II, LLC, a South Carolina limited liability company.

"Corporation" shall mean Spartanburg Stadium Facilities Corporation.

"Cost of the Infrastructure" shall mean to extent permitted by law, the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of design and engineering of the Infrastructure; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties

required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; (e) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure; and (f) all legal, accounting and related costs properly capitalizable to the cost of the Infrastructure.

"County" shall mean Spartanburg County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

"Fee Payments" shall mean the payments in lieu of taxes due with respect to any property (including a leasehold interest in property) located in the Park by virtue of such property's location in (a) the Park or (b) in any joint county industrial park created by the County and a partner county pursuant to the Park Agreement qualifying under Section 4-1-170 of the Multi-County Park Act or any successor provision.

"FILOT Act" shall mean Title 4, Section 29, of the Code.

"Infrastructure" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"Infrastructure Credit Act" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Infrastructure Credits" shall mean the credits to the Fee Payments set forth in Section 3.02(a) hereof.

"Multi-County Park Act" shall mean Title 4, Chapter 1 of the Code, and all future acts amendatory thereto.

"Ordinance" shall mean the ordinance enacted by the County Council on ___________, 2024, authorizing the execution and delivery of this Agreement.

"Park Agreement" shall mean the Agreement for Development for Joint County Industrial/Business Park dated as of __________, _____ between the County and Cherokee County, South Carolina, as the same may be further amended or supplemented from time to time or such other agreement as the County may enter with respect to the Project to offer the benefits of the Infrastructure Credit Act to the Company hereunder.

"Park" shall mean (i) the joint county industrial park established pursuant to the terms of the Park Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the Act, or any successor provision, with respect to the Stadium Site.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

"Project" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Stadium Site" shall have the meaning set forth with respect to such term in the recitals to this Agreement.

"Team Owner" shall mean DBH Kinston, LLC, a Delaware limited liability company.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto.

(b) The County proposes to provide the Infrastructure Credits to reimburse the Company for a portion of the Cost of the Infrastructure for the purpose of promoting economic development of the County.

(c) To the best knowledge of the undersigned representatives of the County, the County is not in violation of any of the provisions of the laws of the State of South Carolina, where any such default would affect the validity or enforceability of this Agreement.

(d) To the best knowledge of the undersigned representatives of the County, the authorization, execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best knowledge of the County, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound.

(e) To the best knowledge of the undersigned representatives of the County, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the undersigned representatives of the County is there any basis therefor.

SECTION 2.02. Representations and Covenants by the Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and qualified to do business in the State of South Carolina, has power to enter into this Agreement and to carry out its obligations hereunder, and by proper limited liability company action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(c) To the best knowledge of the Company, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the power of the Company to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the Company is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the knowledge of the Company is there any basis therefore.

(d) The Company agrees to reimburse the County for all reasonable expenses, including attorney's fees, to which it might be put in the review of this Agreement and in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions.

(e) The Company agrees to maintain such books and records with respect to the Project as will permit verification of the Company's compliance with the terms of this Agreement and the certifications submitted to the County pursuant to Section 3.02(b) hereof. The Company may, by clear, written designation, conspicuously marked, designate with respect to any book and records delivered or made available to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

SECTION 2.03. Covenants of the County.

(a) To the best of its ability, the County will at all times maintain its corporate existence and will use its best efforts to maintain, preserve, and renew all its rights, powers and privileges; and it will comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to this Agreement.

(b) The County acknowledges that the Park Agreement will expire pursuant to its terms on December 31, 2059 (the "Original Termination Date"). The County agrees that the Stadium Site will be included in the Park created pursuant to the Park Agreement or another Park of the County's choosing for at least the term of the Infrastructure Credits hereunder.

(c) The County covenants that it will from time to time, at the request and expense of the Company, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute a general obligation or an indebtedness of the County within the meaning of any State constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the full faith, credit or taxing power of the State, or any other political subdivision of the State.

ARTICLE III

INFRASTRUCTURE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure.

The Company, together with the City, the Corporation, and the Team Owner, shall be responsible for payment of all Costs of the Infrastructure with respect to the Project as and when due.

SECTION 3.02. Infrastructure Credits.

(a) In order to reimburse the Company for a portion of the Cost of the Infrastructure with respect to the Project, commencing with the first annual Fee Payment due hereunder, anticipated to be the Fee Payment payable on or before January 15, 2026, the County shall provide the Company Infrastructure Credits against the Fee Payments, if any, which would otherwise be due in an annual amount equal to (a) one hundred percent (100%) of the Fee Payments due for the Ground Lease Term with respect to the Stadium Site, the Stadium, and any leasehold interest in any of the foregoing. The County understands that the primary property tax liability (or liability for payments in lieu of taxes) for the Stadium Site and the Stadium will fall entirely on the Company. However, if it is determined that any property tax (or payment in lieu of tax) on the Stadium Site or Stadium applies to the City, the Corporation, or the Team Owner, the County preapproves the addition of the City, the Corporation, and/or the Team Owner to this Agreement upon execution by the City, the Corporation, or the Team Owner, as applicable, of a Joinder Agreement in the form attached hereto as Exhibit B.

(b) In no event shall the aggregate amount of all Infrastructure Credits claimed by the Company exceed the amount expended by the Company, City, the Corporation, and the Team Owner with respect to the Infrastructure at any point in time. The Company shall be responsible for making written annual certification as to compliance with the provisions of the preceding sentence through the delivery of a certification in substantially the form attached hereto as Exhibit C. Further, any amount of reimbursement of the City, the Corporation, the Company or the Team Owner for Infrastructure expenditure by way of an Infrastructure Credit may not be duplicated through an infrastructure credit to the City, the Corporation, the Company or the Team Owner for the same expenditure.

(c) As provided in Section 4-29-68 of the Code, to the extent any Infrastructure Credit is taken against fee in lieu of tax payment on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the Project shall be due for the two (2) years immediately following such removal.

(d) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE INFRASTRUCTURE CREDITS.

(e) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Fee Payments for the Project in the Park. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

ARTICLE IV

CONDITIONS TO DELIVERY OF AGREEMENT; TITLE TO PROJECT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) A copy of the Park Agreement, duly certified by the Clerk of the County Council to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(c) Such additional related certificates, instruments or other documents as the Company may reasonably request in a form and substance acceptable to the Company and the County.

SECTION 4.02. Transfers of Project; Assignment of Interest in this Agreement by the Company. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interest in this Agreement, to others; provided, however, that any transfer by the Company of any of its interest in this Agreement to any other Person shall require the prior written consent of the County, which shall not be unreasonably withheld. No such sale, lease, conveyance, grant or assignment shall relieve the County from the County's obligations to provide Infrastructure Credits to the Company or any assignee of the same, under this Agreement as long as such assignee is qualified to receive the Infrastructure Credits under the Infrastructure Credit Act. Notwithstanding the above, the County preapproves any assignment to an Affiliate so long as the Company (or the Affiliate) provides written notice to the County within sixty (60) days of such assignment.

SECTION 4.03. Assignment by County. The County shall not assign, transfer, or convey its obligations to provide Infrastructure Credits hereunder to any other Person, except as may be required by South Carolina law.

ARTICLE V

DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If the County or the Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement on its part to be performed, which failure shall continue for a period of thirty (30) days after written notice by any of the parties hereto, specifying the failure and requesting that it be remedied, is given to the other parties hereto by first-class mail, such party shall be in default under this Agreement (an "Event of Default").

SECTION 5.02. Remedies and Legal Proceedings by the Company or the County. Upon the happening and continuance of any Event of Default, then and in every such case, any party hereto in its discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its or their rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) exercise any or all rights and remedies provided by applicable laws of the State of South Carolina; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved hereunder to the parties hereto is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of any party hereto to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this Article V to any party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Termination. Subject to Sections 5.01 and 5.02 above, this Agreement shall terminate on the date upon which all Infrastructure Credits provided for herein have been credited to the Company.

SECTION 6.02. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the Parties Hereto. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person, other than the parties hereto, any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the parties to this Agreement.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement, the Infrastructure Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.05. No Liability for Personnel of the County. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Infrastructure Credits or this Agreement or be subject to any personal liability of accountability by reason of the issuance thereof.

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States certified mail, return-receipt requested, restricted delivery, postage prepaid, addressed as follows:

(a)	if to the County:	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Administrator
	with a copy to: (which shall not constitute notice to the County)	Spartanburg County, South Carolina Administration Building, Suite 1000 366 North Church Street Spartanburg, South Carolina 29303 Attn: County Attorney
(b)	if to the Company:	Morgan & Henry JOF ESA II, LLC One Morgan Square 100 Dunbar Street Spartanburg, SC 29306 Attn: General Counsel
	with a copy to: (which shall not constitute notice to the Company)	Haynsworth Sinkler Boyd, P.A. P.O. Box 11889 Columbia, SC 29201 Attn: Will Johnson

A duplicate copy of each notice, certificate, request or other communication given under this Agreement to any party hereto shall also be given to the other parties hereto. Any party hereto may, by notice given under this Section 6.06 to the other parties hereto, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.07. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.09. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.10. Waiver. A party to whom an obligation is owed under this Agreement may waive compliance by the party owing such obligation only in a writing signed by the waiving party.

SECTION 6.11. Indemnity.

(a) Notwithstanding the fact that it is the intention of the parties that the County, its members, officers, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Infrastructure Credits, by reason of the execution of this Agreement, by the reason of the performance of any act requested of it by the Company, or by reason of the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is proximately caused by (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(b) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement.

SECTION 6.12. Facsimile/Scanned Signature

The Parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the Parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Spartanburg County, South Carolina, has caused this Agreement to be executed by the Spartanburg County Administrator and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council, and the Company has caused this Agreement to be executed by an authorized officer, all as of the day and year first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:______________________________________
B. Cole Alverson
Spartanburg County Administrator

ATTEST:

____
Clerk to County Council of
Spartanburg County, South Carolina

[Signature page 1 to Special Source Credit Agreement]

MORGAN & HENRY JOF ESA II, LLC

By:____________________________________
Name:________________________________
Title:_________________________________

[Signature page 2 to Special Source Credit Agreement]

EXHIBIT A

STADIUM SITE DESCRIPTION

The southwestern portion of that certain property located on lands bounded by West Main Street, the AC Hotel, Daniel Morgan Avenue, Henry Street, and the CSX Railroad, consisting of approximately 6.777 acres, more or less, and identified as Spartanburg County Tax Map Number 7-12-14-005.03.

EXHIBIT B

JOINDER AGREEMENT

Reference is hereby made to the Special Source Credit Agreement dated as of ____________, 20__ (the "Agreement") between Spartanburg County, South Carolina (the "County") and Morgan & Henry JOF ESA II, LLC (the "Company").

1. Joinder to Agreement.

[________________], a [STATE] [corporation]/[limited liability company]/[limited partnership] (the "Affiliate") authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Agreement [except the following: ___________________________], and (b) shall receive the benefits as provided under the Agreement in the same manner such benefits apply to the Company.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Agreement.

3. Representations of the Affiliate.

The Affiliate represents and warrants to the County as follows:

(a) The Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Affiliate's execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the incentives provided by this Joinder Agreement have been instrumental in inducing the Affiliate to join with the Company in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 6.06 of the Agreement shall be sent to:

[___________]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

____________________	______________________________________
Date	Name of Entity
	By:___________________________________
	Its:___________________________________

EXHIBIT C

INFRASTRUCTURE INVESTMENT CERTIFICATION

I ________________, the _____________ of Morgan & Henry JOF ESA II, LLC (the "Company"), do hereby certify in connection with the Special Source Credit Agreement dated as of ____________, 20__ (the "Agreement") between Spartanburg County, South Carolina and the Company, as follows:

(1) As of December 31, 20__, the total amount of Infrastructure Credits received by the Company, or, to the extent added as a party to the Agreement, the City of Spartanburg, South Carolina, Spartanburg Stadium Facilities Corporation, and/or DBH Kinston, LLC) (the "SSRC Parties"), pursuant to the Agreement is as follows: $_________________.

(2) As of December 31, 20__, the total amount of investment in Costs of Infrastructure by the SSRC Parties is not less than $__________.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of __________, 20__.

MORGAN & HENRY JOF ESA II, LLC

By:______________________________________
Name:____________________________________
Its:______________________________________

EXHIBIT C

FORM OF OF AMENDED AND RESTATED DDD PARK AGREEMENT

53706806 v4

Exhibit C

STATE OF SOUTH CAROLINA	)	**AMENDED AND RESTATED AGREEMENT FOR**
	)	**DEVELOPMENT OF JOINT COUNTY**
COUNTY OF SPARTANBURG	)	**INDUSTRIAL/BUSINESS PARK**
COUNTY OF CHEROKEE	)	**(City of Spartanburg Economic Development**
	)	**Partnership Park)**

This **AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF JOINT COUNTY INDUSTRIAL/BUSINESS PARK** (this ***"Agreement"***) with respect to property located within Spartanburg County and Cherokee County is made and entered into as of this ___ day of _____________, 2024, by and between Spartanburg County and Cherokee County.

W I T N E S S E T H:

WHEREAS, Spartanburg County, South Carolina (***"Spartanburg County"***) and Cherokee County, South Carolina (***"Cherokee County"***) are contiguous counties, which pursuant to Ordinance No. O-18-62 enacted by Spartanburg County Council on December 17, 2018, and Ordinance No. 2018-19 enacted by Cherokee County Council on December 17, 2018, have each previously determined that, in order to promote economic development and thus provide additional employment opportunities within both of said counties and within the City of Spartanburg, South Carolina (the ***"City"***), there should be established, within the City, a Joint County Industrial/Business Park (the ***"Park"***); and

WHEREAS, in accordance therewith, Spartanburg County and Cherokee County previously executed and delivered an Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) dated as of December 31, 2018 (the "Original Park Agreement") which provided for certain property described therein to be located in the Park; and

WHEREAS, Spartanburg County and Cherokee County have determined that it is necessary to amend and restate the Original Park Agreement, pursuant to this Agreement, in order to: (a) revise the description of properties located in the Park to reflect the removal of certain properties from the Park, so that the remaining properties in the Park shall be those described in Exhibit A hereto, and (b) extend the date prior to which this Agreement may not be terminated by either party; and

WHEREAS, as a consequence of the establishment of the Park, property comprising the Park and all property having a situs therein shall be exempt from *ad valorem* taxation pursuant to Article VIII, Section 13 of the South Carolina Constitution, but the owners or lessees of such property shall pay annual fees in an amount equal to that amount for which such owner or lessee would be liable except for such exemption;

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Binding Agreement. This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Spartanburg County and Cherokee County, and their successors and assigns.

2. Authorization. Article VIII, Section 13(D) of the Constitution of South Carolina provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the partner counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a manner in which the value of property in such park will be considered for purposes of bonded indebtedness of political

subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of taxable property in all school districts in South Carolina. Section 4-1-170, Code of Laws of South Carolina, 1976, as amended (the ***"Code"***) satisfied the conditions imposed by Article VIII, Section 13(D) of the Constitution and provides the statutory vehicle whereby a joint county industrial or business park may be created. The City, by its Ordinance No. 12-604.4-12.19.18 dated December 19, 2018, and by its Ordinance No. ______ dated May 13, 2024, has consented to (i) the creation and continuation of the Park in accordance with the requirements of Section 4-1-170 of the Code, (ii) the removal of certain properties from the Park such that the remaining properties in the Park shall be those as described in the attached Exhibit A; and (iii) the execution and delivery of this Agreement. The City will provide infrastructure for the Park and the Park will encompass City property, and the City will be paid through the distribution of revenues collected pursuant to this Agreement.

3. Location of the Park.

(A) As of the date of this Agreement, the Park consists of properties located wholly within the City, as further identified in Exhibit A hereto. It is specifically recognized that the Park may, from time to time, consist of non-contiguous properties within each county. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances or resolutions of the County Councils of both Spartanburg County and Cherokee County and an ordinance or resolution of the City consenting to the enlargement or diminution.

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached to the approving ordinances or resolutions an Exhibit A which shall contain a legal description of the new property to be added and/or diminished.

(C) Prior to the adoption by Spartanburg County Council and by Cherokee County Council of ordinances or resolutions authorizing the changing of the boundaries of the Park, separate public hearings shall first be held by Spartanburg County Council and by Cherokee County Council. Notice of such public hearings shall be published in newspapers of general circulation in Spartanburg County and Cherokee County, respectively, at least once and not less than fifteen (15) days prior to such hearing.

(D) The owner, or, if applicable, lessee of any property located within the Park, may remove personal property from the Park at any time, unless specifically prohibited otherwise.

4. Fee-in-Lieu of Taxes. Pursuant to Article VIII, Section 13(D), South Carolina Constitution, property located in the Park shall be exempt from *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Agreement an amount (referred to as fees-in-lieu of *ad valorem* property taxes) equivalent to the *ad valorem* property taxes that would have been due and payable but for the location of such property within the Park, provided that this paragraph shall not prohibit Spartanburg County or Cherokee County from entering into a negotiated fee-in-lieu of tax incentive agreement applicable to any property located within the Park and any personal property whether or not subject to such negotiated fee-in-lieu of tax incentive may be removed from the Park without the City's consent. Payments of fees-in-lieu of taxes will be made on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate as late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. The counties, acting by and through the Treasurers of Spartanburg County and Cherokee County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

5. Allocation of Expenses. Spartanburg County and Cherokee County shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in Spartanburg County portion of the Park:

(1)	Spartanburg County	100%
(2)	Cherokee County	0%

If property is in Cherokee County portion of the Park:

A.	Spartanburg County	0%
B.	Cherokee County	100%

6. Allocation of Revenues. Spartanburg County and Cherokee County shall receive an allocation of all revenue generated by the Park through payment of fees-in-lieu of *ad valorem* property taxes or from any other source (net of any special source revenue credits provided by either County) in the following proportions:

If property is in Spartanburg County portion of the Park:

A.	Spartanburg County	99%
B.	Cherokee County	1%

If property is in Cherokee County portion of the Park:

A.	Spartanburg County	1%
B.	Cherokee County	99%

7. Revenue Allocation Within Each County. Revenues generated by the Park through the payment of fees-in-lieu of *ad valorem* property taxes shall be distributed to Spartanburg County and to Cherokee County, as the case may be, according to the proportions established by Paragraph 6 herein. With respect to revenues allocable to Cherokee County by way of fees-in-lieu of taxes generated within Cherokee County, such revenue shall be distributed within Cherokee County in the manner provided by ordinance of the Cherokee county council; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts receivable in any fiscal year by a taxing entity, the governing body of such taxing entity shall allocate the revenues received to operations and/or debt service of such entity. With respect to revenues allocable to Spartanburg County by way of fees-in-lieu of taxes generated within Spartanburg County, such revenues shall be distributed within Spartanburg County in the manner provided by ordinance of Spartanburg County Council and the Amended and Restated Intergovernmental Agreement between Spartanburg County and the City dated ___________ ___, 2024 (the ***"Intergovernmental Agreement"***), as such Intergovernmental Agreement may be amended from time to time.

8. Fees-In-Lieu of Taxes Pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina. It is hereby agreed that the entry by Spartanburg County into any one or more fee-in-lieu of tax agreements pursuant to Title 4 or Title 12 of the Code with respect to property located within the Park and the terms of such agreements shall be at the sole discretion of Spartanburg County.

9. Regulation and Jurisdiction. Any ordinances of Spartanburg County and Cherokee County concerning zoning, health and safety regulations, and building code requirements will apply for the respective portions of the Park in Spartanburg County and Cherokee County. The Sheriff's Departments of Spartanburg County and Cherokee County will have jurisdiction to make arrests and exercise all authority and power within the boundaries of the respective portions of the Park in Spartanburg County and Cherokee County. Emergency services and all other municipal services will be provided in the Park by whatever providers provide such services in the respective Spartanburg County and Cherokee County portions of the Park.

10. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to Spartanburg County and Cherokee County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraph 6 and 7 herein.

11. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

12. Termination. Notwithstanding any provision of this Agreement to the contrary, Spartanburg County and Cherokee County agree that this Agreement may not be terminated by either party prior to the later of: (a) December 31, 2056, and (b) the latest date on which the use of revenues generated by the Park are necessary to facilitate the payment of special source revenue bonds under Section 4-29-68 of the Code (or successor statute), or are necessary to make a payment derived from or to provide a credit against such Park revenues in accordance with Section 4-1-175 of the Code (or successor statute).

[Remainder of Page Intentionally Left Blank]

WITNESS our hands and seals as of the date first above written.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

By:____

Spartanburg County Administrator

ATTEST:

By:_____________________________________

Debbie C. Zeigler
Clerk to County Council
Spartanburg County, South Carolina

CHEROKEE COUNTY, SOUTH CAROLINA

(SEAL)

By:____

Chairman, Cherokee County Council

Attest:

____

Clerk to County Council
Cherokee County, South Carolina

EXHIBIT A

CITY OF SPARTANBURG PROPERTIES

The Park is comprised of the property having the following Spartanburg County Tax Map Numbers as of the date hereof[1] (the "Park Property"):

ATTACHED – List 1

The Park shall also be comprised of the property having the following Spartanburg County Tax Map Numbers as of the date hereof, but only upon the expiration of the redevelopment plan for the Saint John/Daniel Morgan tax increment finance district (the "SJ/DMTIF"), or the earlier removal of any of such parcels of property from the SJ/DMTIF.

ATTACHED – List 2

In addition, the Park Property shall include all property vertically or horizontally located on or within the Spartanburg County Tax Map Numbers identified above, including, but not limited to, condominiums or other properties subject to any horizontal property regime, notwithstanding that such property bears different Spartanburg County Tax Map Numbers from those identified above.

Notwithstanding the foregoing, the Park Property shall exclude any portion of the real property located on or within the Spartanburg County Tax Map Numbers identified above which is taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina 1976, as amended, but only during the tax years in which such property meets the qualifications of Section 12-43-220(c).

[1] Note: Attach updated listing of Spartanburg County Tax Map Numbers for both List 1 and List 2. Will need to EXCLUDE the properties related to the CORE project, including the Stadium Site.

EXHIBIT D

FORM OF AMENDED AND RESTATED DDD INTERGOVERNMENTAL AGREEMENT

Exhibit D

STATE OF SOUTH CAROLINA	)	
	)	**AMENDED AND RESTATED**
CITY OF SPARTANBURG	)	**INTERGOVERNMENTAL AGREEMENT**
	)	**(City of Spartanburg Economic Development**
COUNTY OF SPARTANBURG	)	**Partnership Park)**

This **AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT** (the ***"Agreement"***) dated as of the ___ day of __________, 2024 is made and entered into by and between the City of Spartanburg, South Carolina (the ***"City"***) and Spartanburg County, South Carolina (the ***"County"***), and amends and restates the Intergovernmental Agreement (City of Spartanburg Economic Development Partnership Park) (the ***"Original Agreement"***) dated as of the 31st day of December, 2018 (***"Effective Date"***) by and between the City and the County.

WHEREAS, the County has previously established jointly with the Partner County (as defined below), a Joint County Industrial and Business Park (the ***"Park"***) pursuant to an Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Project) dated as of December 31, 2018 which contains certain tracts of land located within the City and the County as provided in Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the ***"Code"***) in order to promote the economic welfare of the citizens of the City, the County and the Partner County; and

WHEREAS, the County and the Partner County have executed, or intend to execute, an Amended and Restated Agreement for Development of Joint County Industrial/Business Park (City of Spartanburg Economic Development Partnership Park) (the ***"Park Agreement"***) in order to reflect the removal of certain properties originally located in the Park, and to provide that the Park Agreement may not be terminated by either party prior to the Park Termination Date (as defined below); and

WHEREAS, the City Council (as defined below), by and through the City Ordinances (as defined below), has authorized the execution and delivery of the Original Agreement and this Agreement, and consented to continued inclusion of the Park Property (as defined below) within the Park in accordance with the requirements of Section 4-1-170 of the Code; and

WHEREAS, the County Council (as defined below), by and through the County Ordinances (as defined below), has authorized the execution and delivery of the Original Agreement, this Agreement and the Park Agreement; and

WHEREAS, the Partner County Council (as defined below), by and through the Partner County Ordinances (as defined below) has authorized the execution and delivery of the Park Agreement; and

WHEREAS, as a consequence of the establishment of the Park, the Park Property shall be exempt from *ad valorem* taxation during the term of the Park Agreement, but the owners or lessees of such property shall pay annual fees during that term in an amount equal to that amount of *ad valorem* taxes or other in-lieu-of payments that would have been due and payable except for such exemption; and

WHEREAS, as permitted by the Park Agreement, the City and the County desire to provide for the distribution of Park Fees (as defined below) to the City and the County and such other political subdivisions and overlapping taxing districts which would, but for the Park Agreement, receive *ad valorem* taxes in the Park (the ***"Participating Taxing Entities"***).

NOW, THEREFORE, BE IT AGREED:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall for all purposes of this Agreement, have the meanings herein specified.

"Action Fund" shall mean the separate fund of the City in which shall be deposited annually the Action Fund Amount. Such funds shall be maintained by the City and held in trust for the Downtown Partnership.

"Action Fund Amount" shall have the meaning given such term in Section 3.2(a)(iv) below.

"Agreement" shall mean this Amended and Restated Intergovernmental Agreement.

"City" shall mean the City of Spartanburg, South Carolina.

"City Council" shall mean the City Council of the City as the governing body of the City.

"City Ordinances" shall mean, collectively, Ordinance No. 12-604.4-12.19.18 enacted by the City Council on December 19, 2018 and Ordinance No. ______ enacted by the City Council on May 13, 2024, authorizing execution and delivery of the Park Agreement, the Original Agreement and this Agreement.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"County" shall mean Spartanburg County, South Carolina.

"County Council" shall mean the County Council of the County as the governing body of the County.

"County Ordinances" shall mean, collectively, Ordinance No. O-18-62 enacted by the County Council on December 17, 2018 and Ordinance No. _____ enacted by the County Council on _________ ___, 2024, authorizing execution and delivery of the Park Agreement, the Original Agreement and this Agreement.

"Downtown Partnership" shall mean a committee of five (5) individuals who govern the expenditure of the Remaining Economic Development Partnership Funds.

"Effective Date" shall mean the date first set forth in the preamble to this Agreement.

"Economic Development Partnership Funds" shall mean twenty-five percent (25%) of the Net Park Fees.

"Event of Default" shall have the meaning given such term in Section 6.1 below.

"Force Majeure" shall mean a failure or delay in the performance of a party's obligations hereunder on account of strikes, riots, insurrection, fires, flood, storm, explosions, earthquakes, pandemic flu, acts of God, war, governmental action or labor conditions.

"Funding Requirements" shall mean the Funding Requirements as defined in Section 4.2(c) of the Stadium Intergovernmental Agreement.

"Major Decision" shall mean any decision of the Downtown Partnership where the expenditures from the Major Project Fund or the Action Fund shall (i) equal or exceed $100,000, either individually or in the aggregate, in one or more years, to a project, individual, entity or multiple projects, individuals or entities which shall have a substantially similar common purpose (e.g., companies related through common ownership, streetscape improvements or façade improvements that are part of a common program or initiative, a singular event where multiple requests are made from different sources (e.g., the Criterium)); or (ii) constitute a pledge or commitment which exceeds two (2) years in length.

"Major Project Fund" shall mean the separate fund of such name held by the Treasurer of the County in which shall be deposited annually the Major Project Fund Amount. Such funds shall be maintained by the County and held in trust for the Downtown Partnership.

"Major Project Fund Amount" shall have the meaning given such term in Section 3.2(a)(iii) below.

"Net Park Fees" shall mean, with respect to each tax year, all Park Fees remaining: (i) after distribution of the Partner County Park Fees in accordance with Section 3.1 below, and (ii) after application of any SSRCs issued by the County and payment of debt service and other amounts due or required to be paid in connection with any SSRBs issued by the County in accordance with Section 3.2(a)(i) below.

"Original Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Park" shall have the meaning given such term in the recitals of this Agreement.

"Park Agreement" shall have the meaning given such term in the recitals of this Agreement.

"Park Fees" shall mean the annual fees paid in each tax year by the owners or lessees of property situated within the Park in accordance with the Park Agreement, Section 4-1-170 of the Code and Section 13 of Article VIII of the Constitution of the State, in an amount equal to the amount of *ad valorem* taxes or other in-lieu-of payments that would have been due and payable except for the exemption provided in Section 13 of Article VIII of the Constitution of the State. Notwithstanding the foregoing, Park Fees shall be deemed to specifically exclude incremental real property tax revenues attributable to tax increment districts created pursuant to Section 31-6-10 *et seq*. of the Code.

"Park Property" shall mean all parcels of real property contained within the Park pursuant to the Park Agreement and this Agreement, as the same may be amended from time to time, which as of the date of this Agreement include the parcels described on <u>Exhibit A</u> attached hereto.

"Park Termination Date" shall mean the later of: (a) December 31, 2056, and (b) the latest date on which the use of revenues generated by the Park are necessary to facilitate the payment of any SSRB, or are necessary to make a payment derived from or to provide any SSRCs against such Park revenues in accordance with Section 4-1-175 of the Code (or successor statute).

"Participating Taxing Entities" shall have the meaning given such term in the recitals of this agreement.

"Partner County" shall mean Cherokee County, South Carolina.

"Partner County Council" shall mean the County Council of the Partner County as the governing body of the Partner County.

"Partner County Ordinances" shall mean, collectively, Ordinance No. 2018-19 enacted by the Partner County Council on December 17, 2018, and Ordinance No. ______ enacted by the Partner County Council on _________ ___, 2024, authorizing the execution and delivery of the Park Agreement.

"Partner County Park Fees" shall have the meaning given such term in Section 3.1 below.

"Partnership Non-Profit" shall have the meaning given such term in Section 5.7(b) below.

"Remaining Economic Development Partnership Funds" shall mean the Economic Development Partnership Funds remaining, if any, after distribution of such funds to meet the Funding Requirements in accordance with Section 3.2(a)(ii) below.

"SSRBs" shall mean special source revenue bonds issued by the County or the City in accordance with Section 4-29-68 of the Code.

"SSRCs" shall mean credits against Park Fees or payments derived from and approved for payment by the Downtown Partnership from the Remaining Economic Development Partnership Funds in accordance with Section 4-1-175 of the Code or credits against fee-in-lieu of tax payments in accordance with Section 12-44-70 of the Code.

"Stadium Intergovernmental Agreement" shall mean the Intergovernmental Agreement (Stadium Development Project) dated as of ____________ ___, 2024 by and between the City and the County, as approved by Ordinance No. ______ of the City Council enacted on May 13, 2024, and by Ordinance No. _______ of the County Council enacted on _________ ___, 2024.

"Term" shall mean the term of this Agreement, which is to commence as of the Effective Date and end on the Park Termination Date.

ARTICLE II

THE PARK

Section 2.1 Inclusion of Park Property in Park. Pursuant to Section 4-1-170 of the Code, the City hereby consents to the inclusion of the Park Property in the Park as of the Effective Date. Except as provided herein, any removal or addition of Park Property to the Park shall be subject to prior consent of the City. To the extent any removal shall adversely affect the collateral source or pledge for any SSRB, removal of Park Property from the Park shall be subject to prior consent of all of the holders of such outstanding SSRBs, if any.

Section 2.2 Other Changes to Park Property. Notwithstanding the foregoing, the County shall have sole discretion to add or remove Park Property in the instance of (i) subdivision of a parcel of Park Property, (ii) change in use of a parcel of Park Property relating to owner-occupied property so as to remain consistent with state law or (iii) in the opinion of legal counsel to the County, a parcel of Park Property should be removed to avoid litigation. Upon written notice from the City to the County, which such notice shall be deemed the City's consent as required under the Code, parcels currently in the City's "Business Corridor Program" shall be removed from their applicable multi-county industrial business park and placed into the Park as Park Property. In addition, this Agreement shall be deemed the City's consent to the removal of any other parcel from an existing multi-county industrial business park and adding the same to the Park; provided, however, no such transfer shall occur until any applicable incentive agreements related to such parcels expire in accordance with their terms if, in the opinion of legal counsel to the County, the current incentive agreements will be adversely affected, or if the beneficiaries of such incentives do not agree to any necessary amendments to their incentive documents.

ARTICLE III

PARK FEES

Section 3.1 Distribution of Partner County Park Fees. As to all Park Property, Park Fees shall be distributed to the Partner County in accordance with the Park Agreement, such Park Fees being hereinafter referred to as the ***"Partner County Park Fees."***

Section 3.2 Distribution of Remaining Park Fees. After distribution of the Partner County Park Fees to the Partner County, the remaining Park Fees received by the County with respect to each tax year shall be distributed in accordance with (a) and (b) below.

(a) During the Term, the Park Fees received by the County with respect to each tax year shall be distributed as follows:

(i) First, to pay annual debt service on any SSRBs issued by the County or to grant or otherwise make available by the County any SSRCs pursuant to Section 4-1-175 or Section 4-29-68 of the Code, or any successor statutes or provisions, payable in whole or in part by or from Park Fees generated from any identified parcels in the Park.

(ii) Second, for the "Term" (as defined in the Stadium Intergovernmental Agreement) of the Stadium Intergovernmental Agreement, the amount of Economic Development Partnership Funds as necessary to meet the Funding Requirements shall be deposited in the Revenue Fund (as defined in the Stadium Intergovernmental Agreement) in accordance with the provisions of Section 4.2(d) of the Stadium Intergovernmental Agreement.

(iii) Third, during the Term, seventy-two percent (72%) of the Remaining Economic Development Partnership Funds for each tax year (the ***"Major Project Fund Amount"***) shall be deposited in the Major Project Fund; (A) so long as SSRBs have not been issued by the City, to be held by the County Treasurer and used in accordance with the provisions of Articles IV and V below or (B) if SSRBs, to be paid from the Major Project Fund, have been issued by the City in connection with a Major Decision, to be used, for a period of up to ten (10) years but not to exceed the expiration of the Term, to repay such SSRBs issued by the City so long as such SSRBs remain outstanding.

(iv) Fourth, during the Term, twenty-eight percent (28%) of the Remaining Economic Development Partnership Funds for each tax year (the ***"Action Fund Amount"***) shall be contributed to the Action Fund to be held by the City and used in accordance with the provisions of Articles IV and V below;

(v) Fifth, the remainder of the Net Park Fees shall be distributed to the Participating Taxing Entities, in a pro-rata fashion based on comparative millage rates for the year in question for such Participating Taxing Entities;

(b) provided, however, that (i) all Participating Taxing Entities which overlap the Park Property shall receive some portion of the revenues generated from such properties; and (ii) all revenues receivable by a Participating Taxing Entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of such Participating Taxing Entity.

Section 3.3 Timing of Payment or Distribution. All distributions and payments of the Economic Development Partnership Funds into the Revenue Fund to meet the Funding Requirements of the Stadium Intergovernmental Agreement as described above under Section 3.2(a)(ii) shall occur on or before March 1 of each year. All distributions and payments of Remaining Economic Development Funds shall be made not later than thirty (30) days after the end of the calendar quarter in which the County receives payment of Park Fees from the occupants of the Park. In the event that the payment made by any occupant of the Park is made under protest or is otherwise in dispute, the County shall not be obligated to pay to the Economic Development Partnership Funds more than the Economic Development Partnership Funds' share of the undisputed portion thereof until thirty (30) days after the final resolution of such protest or dispute.

ARTICLE IV

USE OF REMAINING ECONOMIC DEVELOPMENT PARTNERSHIP FUNDS

Section 4.1 Use of Action Fund. The Action Fund shall be applied within the Park by the Downtown Partnership: (a) solely for economic development purposes (as set forth in Section 4-29-68 of the Code) and (b) for the following: (i) expenditures or reimbursement of expenditures for costs of public infrastructure; (ii) grants for investment in real or personal property or infrastructure and/or job creation; and (iii) the provision of SSRCs by the City or County. In no event shall Park Fees be used or expended by the Downtown Partnership for any purposes unrelated to economic development within the Park.

Section 4.2 Use of the Major Project Fund. The Major Project Fund shall be used to prepay all or a portion of the costs, including but not limited to debt service on SSRBs, associated with a project which the City intends to or would otherwise issue SSRBs to pay for all or portion of the acquisition or construction costs related thereto. Other permissible uses of the Major Project Fund include the acquisition and/or construction of one or more parking garages, streetscape improvements, pedestrian and vehicular road and right-of-way improvements, parks and recreational facilities and related improvements, storm drainage improvements, parking lots and other parking improvements, and improvements to other infrastructure owned or controlled by the City and/or County. In no event shall the Downtown Partnership spend more than the prior year's deposit into the Major Project Fund on any one project.

Section 4.3 Special Source Revenue Bonds and Credits. The County may, during the Term of this Agreement, without obtaining the prior written consent of the City, issue any SSRBs payable in whole or in part from, or grant or otherwise make available any SSRCs against or payment derived from, Park Fees, as provided by Section 3.2(a)(i), so long as, after giving effect to such SSRCs or SSRBs, a sufficient amount of Park Fees remains to repay any other SSRBs issued and outstanding at such time. The City may, during the Term of this Agreement, without obtaining the prior written consent of the County issue any SSRBs payable in whole or in part from, or grant or otherwise make available any SSRCs against or payment derived from, Net Park Fees received by the City pursuant to Section 3.2(a)(v) above, so long as, after giving effect to such SSRCs or SSRBs, a sufficient amount of Park Fees remains to repay any other SSRBs issued and outstanding at such time. The City can issue SSRBs approved by the Downtown Partnership as a Major Decision if also approved by resolution of both the City Council and the County Council.

ARTICLE V

DOWNTOWN PARTNERSHIP

Section 5.1 Committee Composition. The Remaining Economic Development Partnership Funds shall be governed by the Downtown Partnership Committee. Three individuals shall be appointed by City Council and two individuals shall be appointed by County Council.

Section 5.2 Committee Meetings.

(a) Annual Organization Meeting shall be the first meeting of the calendar year for the purpose of electing officers and appointing a chairperson to preside over meetings of the Committee. The Annual Organization Meeting shall be held on a date determined by the Downtown Partnership.

(b) Regular meetings of the Downtown Partnership may be held at such time as a majority interest of the Downtown Partnership may determine from time to time. The Downtown Partnership shall meet on an "as needed" basis but no less than once per calendar quarter.

(c) Special meetings of the Downtown Partnership may be held upon the call of the chairperson of the Downtown Partnership or upon the written request of two (2) or more members. Any action which may be taken during any regular may also be taken at a special meeting.

Section 5.3 Terms of Committee Members. Committee members shall be appointed to three (3) year terms. To accomplish a staggering of terms of the membership of the Committee, the initial term of one (1) member appointed by City Council shall be one (1) year. The initial term of the second member appointed by City Council and the first member appointed by Council Council shall be two (2) years. The initial term of the last member appointed by City Council and County Council shall be three (3) years.

Section 5.4 Rules. Meetings of the Downtown Partnership shall be conducted in accordance with the latest edition of Roberts Rules of Order.

Section 5.5 Compensation. The members shall receive no compensation for service on the Downtown Partnership.

Section 5.6 Spending Limitations. All Major Decisions of the Downtown Partnership shall require an affirmative vote of at least eighty (80%) percent of the total membership of the Downtown Partnership. All other decisions that are not Major Decisions of the Downtown Partnership shall require an affirmative vote of a simple majority of the total membership of the Downtown Partnership. To the extent an affirmative vote of the Downtown Partnership is obtained in accordance with the two previous sentences, as applicable, and allocation of moneys in the Remaining Economic Development Partnership Funds is to be used in accordance with Article IV above, no further action of the City Council or County Council shall be required except if required by any applicable law.

Section 5.7 Funding for SSRBs and SSRCs. Notwithstanding the foregoing, the Downtown Partnership shall not have the power to issue SSRBs or grant SSRCs but, subject to the provisions relating to a Major Decision, shall have the authority to contribute and pledge all or a portion of the Major Project Fund to the repayment of SSRBs or provision of SSRCs. Any contribution or pledge of the Major Project Fund Amount for SSRBs or SSRCs shall be delivered in writing to the County and appropriate moneys shall automatically be withdrawn from the Major Project Fund and deducted from any distribution under Section 3.3 above. The City can issue SSRBs approved by the Downtown Partnership as a Major Decision if also approved by resolution of both the City Council and the County Council.

Section 5.8 Expenditures not Enumerated.

(a) To the extent the Downtown Partnership desires to expend moneys from the Major Project Fund for a use not expressly enumerated in Article IV above, an affirmative vote of the Downtown Partnership, City Council and County Council must first be obtained.

(b) Upon the approval of County Council and City Council, the Downtown Partnership may enter into an agreement with a separate non-profit entity (***"Partnership Non-Profit"***) to receive funds to be used for economic development purposes in the Park; provided, however, the agreement documents with the Partnership Non-Profit shall provide that no moneys from the Remaining Economic Development Partnership Funds shall be commingled with funds received by the Partnership Non-Profit.

ARTICLE VI

DEFAULT; REMEDIES

Section 6.1 Events of Default. Each of the following shall be an "Event of Default" under this Agreement:

(a) Any party hereto shall fail to observe and perform any agreement, term, or condition contained in this Agreement, and the continuation of the failure for a period of thirty (30) days after written notice thereof shall have been given to such party by any other party hereto; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected, but not within the applicable period, that failure shall not constitute an Event of Default so long as such party institutes curative action within the applicable period and diligently pursues that action to completion.

(b) The County or City shall act to abrogate this Agreement, the Park Agreement (as to the County) or the County Ordinance or City Ordinance, as applicable.

(c) Notwithstanding the foregoing, if, by reason of Force Majeure, the defaulting party is unable to perform or observe any agreement, term, or condition hereof which would give rise to an Event of Default under paragraph (a) hereof, provided the inability to perform is other than the payment of money, that party shall not be deemed in default during the continuance of that inability. That party, however, shall promptly give notice to the other parties hereto of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within that party's discretion.

Section 6.2 Remedies on Default. Upon the happening and continuance of any Event of Default, then and in every such case the non-defaulting party in its discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the defaulting party to carry out any agreements with or for its benefit and to perform its duties under this Agreement;

(b) bring suit upon this Agreement;

(c) by action or suit in equity require the defaulting party to account as if it were the trustee of an express trust for the non-defaulting party; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the non-defaulting party's rights.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Notices. All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either hand delivered or deposited in the United States mail, certified mail, return receipt requested, with postage pre-paid, and addressed to the party or parties for whom intended as follows:

If to the County:

Spartanburg County, South Carolina
366 North Church Street (29303)
PO Box 5666 (29304)
Spartanburg, South Carolina
Attention: County Administrator

If to the City:

City of Spartanburg
187 West Broad Street
Spartanburg, South Carolina 29303
Attention: City Manager

The County or the City by notice given hereunder, may designate any further or different address as to which subsequent notices, certificates, requests, or other communications shall be sent.

Section 7.2 No Personal Liability. No covenant, obligation, or agreement contained herein shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the County or the City, other than in his or her official capacity, and neither the members of the County Council or the City Council, nor any official executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the County or the City contained in this Agreement.

Section 7.3 Agreement Binding. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the County and the City and their respective successors and assigns, and shall at all times be deemed an agreement authorized pursuant to Article VIII, Section 13 of the South Carolina Constitution.

Section 7.4 Amendment, Termination and Assignment. This Agreement may not be effectively amended, changed, modified, altered, terminated or assigned, except in accordance with the express provisions of this Agreement or with the written consent of all parties hereto, and, if applicable, any holders of SSRBs.

Section 7.5 Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 7.6 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 7.7 Sections; Headings. The sections, headings and other titles to paragraphs of this Agreement are inserted solely for the convenience of reference. None shall in any way define, limit, extend or aid in the construction of the scope, extent, meaning or intent of this Agreement.

Section 7.8 No Construction Against Drafter. The parties hereby acknowledge that they have reviewed this Agreement and concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

Section 7.9 Time of the Essence. The parties hereto specifically agree that time is of the essence of this Agreement with respect to the performance of the obligation of the parties under this Agreement.

Section 7.10 No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement except for any bondholders of SSRBs.

Section 7.11 Effective Date; Term. This Agreement shall become effective as of the Effective Date. This Agreement shall continue in full force and effect throughout the Term. Upon the end of the Term, this Agreement shall expire without further action or acknowledgment from either party hereto.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the County and the City have caused this Agreement to be duly executed in their respective names as of the Effective Date.

SPARTANBURG COUNTY, SOUTH CAROLINA

(SEAL)

____
Cole Alverson, County Administrator

ATTEST:

____
Debbie C. Zeigler, Clerk to County Council

CITY OF SPARTANBURG, SOUTH CAROLINA

(SEAL):

____
Chris Story, City Manager

ATTEST:

____
Christie B. Lindsey, City Clerk

Exhibit D

EXHIBIT A

CITY OF SPARTANBURG PROPERTIES

The Park is comprised of the property having the following Spartanburg County Tax Map Numbers as of the date hereof[1] (the "Park Property"):

ATTACHED – List 1

The Park shall also be comprised of the property having the following Spartanburg County Tax Map Numbers as of the date hereof, but only upon the expiration of the redevelopment plan for the Saint John/Daniel Morgan tax increment finance district (the "SJ/DMTIF"), or the earlier removal of any of such parcels of property from the SJ/DMTIF.

ATTACHED – List 2

In addition, the Park Property shall include all property vertically or horizontally located on or within the Spartanburg County Tax Map Numbers identified above, including, but not limited to, condominiums or other properties subject to any horizontal property regime, notwithstanding that such property bears different Spartanburg County Tax Map Numbers fromthose identified above.

Notwithstanding the foregoing, the Park Property shall exclude any portion of the real property located on or within the Spartanburg County Tax Map Numbers identified above which is taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina 1976, as amended, but only during the tax years in which such property meets the qualifications of Section 12-43-220(c).

[1] Note: Attach updated listing of Spartanburg County Tax Map Numbers for both List 1 and List 2. Will need to EXCLUDE the properties related to the CORE project, including the Stadium Site.

CITY OF SPARTANBURG, SOUTH CAROLINA

ORDINANCE NO. __________

AUTHORIZING THE ISSUANCE OF SPARTANBURG STADIUM FACILITIES CORPORATION INSTALLMENT PURCHASE REVENUE BONDS (CITY OF SPARTANBURG PROJECT), TAXABLE SERIES 2024, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING $67,500,000, BY SPARTANBURG STADIUM FACILITIES CORPORATION TO PROVIDE FUNDING TO FINANCE THE COSTS OF DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MULTI-USE MUNICIPAL STADIUM INTENDED FOR USE PRINCIPALLY AS A MINOR LEAGUE BASEBALL VENUE; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AGREEMENT BY AND BETWEEN THE CITY AND JOHNSON DEVELOPMENT ASSOCIATES, INC. OR AN AFFILIATE OR SUBSIDIARY THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A BASE LEASE AGREEMENT BY AND BETWEEN THE CITY AND THE CORPORATION, AND THE CONVEYANCE OF CERTAIN PROPERTY OF THE CITY TO THE CORPORATION THEREUNDER; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AND USE AGREEMENT BY AND BETWEEN THE CITY AND THE CORPORATION; CONSENTING TO THE FORM OF A TRUST AGREEMENT TO BE ENTERED INTO BY THE CORPORATION AND THE TRUSTEE FOR THE BONDS; AND MAKING PROVISION FOR ALL OTHER MATTERS RELATING TO THE FOREGOING.

Enacted: May 13, 2024

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA:

ARTICLE I
FINDINGS OF FACT

SECTION 1.01. ***Findings of Fact.*** As an incident to the enactment of this Ordinance, the City Council of the City of Spartanburg, South Carolina (the ***"Council"),*** the governing body of the City of Spartanburg, South Carolina (the ***"City"),*** finds that the facts set forth in this Article exist, and the statements made with respect thereto are true and correct.

(a) The City has entered into that certain Development Agreement with Johnson Development Associates, Inc. (***"JDA"***) dated as of October 11, 2023 (the ***"Development Agreement"***), through which JDA has agreed to design and construct a minor league baseball stadium in the City, such stadium being more fully described therein (the ***"2024 Project"***), along with certain other public and private improvements as part of a significant mixed-use development in the City.

(b) Through the Development Agreement, the City has agreed to defray the cost of the initial construction of the 2024 Project and certain related public improvements from certain identified sources of funds described therein, including, without limitation, proceeds of installment purchase revenue bonds to be issued by a nonprofit corporation to be organized on behalf of the City.

(c) Spartanburg Stadium Facilities Corporation, a South Carolina nonprofit corporation (the ***"Corporation"),*** has been incorporated for the purpose of supporting certain activities of the City.

(d) It is proposed that the Corporation will issue its Spartanburg Stadium Facilities Corporation Installment Purchase Revenue Bonds (City of Spartanburg Project) Taxable Series 2024 (the ***"Series 2024 Bonds"***) in the aggregate principal amount of not exceeding $67,500,000 for the purpose of providing funds to finance: (1) the costs of the design, acquisition, construction and equipping of the 2024 Project to be located on land (the ***"2024 Real Property"***) to be ground leased to the City by JDA or an affiliate or subsidiary of JDA (the ***"Ground Lessor"***) pursuant to a Ground Lease Agreement (the ***"Ground Lease"***), (2) paying rent (***"Base Lease Rent"***) to the City to allow the City to make certain deposits to the revenue fund (the ***"Revenue Fund"***) to be established by the City pursuant to an intergovernmental agreement to be entered into by and between the City and Spartanburg County for the purpose of providing for the aggregation of various sources of revenue to pay debt service on the Series 2024 Bonds and to defray certain capital maintenance and improvement of the 2024 Project, (3) paying a portion of the interest due on the Series 2024 Bonds, and (4) paying the costs of issuance of the Series 2024 Bonds.

(e) In order to effectuate the design, acquisition, construction and equipping of the 2024 Project, the, the City will be requested to:

1. enter into the Ground Lease with the Ground Lessor. **<u>Exhibit 1</u>** to this Ordinance;

2. enter into a Base Lease Agreement (the ***"Base Lease")*** with the Corporation, pursuant to which it will sublease to the Corporation the 2024 Real Property on which the 2024 Project is to be located. **<u>Exhibit 2</u>** to this Ordinance; and

3. enter into an Installment Purchase and Use Agreement (the ***"Purchase and Use Agreement")*** pursuant to which the City will make Installment Payments, including Base Payments and Additional Payments (as such terms are defined therein), to the Corporation and thereby purchase the 2024 Project (and, if applicable, the Existing Facilities (as such term is defined below)) in installments; **<u>Exhibit 3</u>** to this Ordinance;

(f) In addition, the City has been advised by its legal counsel and municipal advisor that it may be advantageous for the City, in order to facilitate the successful issuance of the Series 2024 Bonds, to, under the Base Lease, lease the land having Spartanburg County TMS No. 7-12-09-099.00 on which the City's Fire Department headquarters and command center facility is located (the ***"Existing Real Property"***) and convey improvements located thereon, including such headquarters facility (the ***"Existing Facilities"***), to the Corporation, and to, under the Purchase and Use Agreement purchase the Existing Facilities from the Corporation along with the 2024 Project through the making of Installment Payments thereunder.

(g) In order to provide funds for the foregoing purposes, it is proposed that the Corporation issue the Series 2024 Bonds under and by the terms of a Trust Agreement by and between the Corporation and U.S. Bank Trust Company, National Association, as trustee. **Exhibit 4** to this Ordinance

ARTICLE II
AUTHORIZATION OF AND CONSENT TO FINANCING DOCUMENTS

SECTION 2.01. ***Ground Lease, Base Lease and Purchase and Use Agreement.*** The forms, terms and provisions of the Ground Lease, Base Lease and Purchase and Use Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Ground Lease, Base Lease and Purchase and Use Agreement were set out in this Ordinance in their entirety. The Mayor or the City Manager of the City is hereby authorized and empowered to execute, acknowledge and deliver the Ground Lease to the Ground Lessor, and the Base Lease and Purchase and Use Agreement to the Corporation. The Base Lease and Purchase and Use Agreement are to be in substantially the forms now before this meeting and hereby approved, or with such changes therein as may be deemed necessary by the persons executing the same, upon advice of counsel, to accomplish the purposes of the transactions contemplated therein and in this Ordinance and as shall not be inconsistent with or contrary to such purposes. The execution of the Ground Lease, Base Lease and Purchase and Use Agreement shall constitute conclusive evidence of the persons executing the same of their approval of any and all such changes. The Base Lease and Purchase and Use Agreement may be modified as necessary to subject the Existing Real Property and Existing Facilities thereto as contemplated by 1.01(f) above if the Mayor or City Manager shall determine such modification to be necessary or desirable for the purpose of successful issuance of the Series 2024 Bonds or achieving the lowest cost of funds in connection therewith, with the advice of the City's municipal advisor and legal counsel.

SECTION 2.02. ***Consent to the Trust Agreement.*** The Council hereby consents to and approves the Trust Agreement in the form now before this meeting, with such changes as may be hereafter made as shall be in furtherance of the transactions contemplated therein and in this Ordinance and as shall not be inconsistent with or contrary to the matters contemplated herein. The Council hereby further consents to the execution and delivery of the Trust Agreement by the parties thereto. In the event it is determined to be necessary to execute and deliver an assignment in a document separate from the Trust Agreement, the Council hereby consents to and approves the execution and delivery of such an assignment by the Corporation.

SECTION 2.03. ***Consent to and Approval of Organization of the Corporation, the Actions of the Corporation and the Issuance of the Series 2024 Bonds.*** The Council hereby approves the organization and incorporation of the Corporation. The Council further consents to and approves the undertaking by the Corporation of the activities necessary to accomplish the financing, design, acquisition, construction and equipping of the 2024 Project. The Council hereby consents to and approves the issuance, sale, execution and delivery of the Series 2024 Bonds in the aggregate principal amount of not exceeding $67,500,000, to provide funds to: (1) finance the costs of the design, acquisition, construction and equipping of the 2024 Project, (2) pay Base Lease Rent to the City to allow the City to make certain deposits to Revenue Fund, (3) pay a portion of the interest due on the Series 2024 Bonds and (4) pay the costs of issuance of the Series 2024 Bonds.

ARTICLE III
CONSENT TO SALE OF THE SERIES 2024 BONDS

SECTION 3.01. ***Bond Purchase Agreement.*** The Council hereby authorizes the City Manager, upon advice of the legal counsel, to execute a Bond Purchase Agreement (the ***"Bond Purchase Agreement")*** among the City (if the City is a party), the Corporation and the underwriter related to the sale of the Series 2024 Bonds.

SECTION 3.02. ***Official Statement.*** The Council hereby approves the use by the Corporation of a Preliminary Official Statement (the ***"Preliminary Official Statement"***) in connection with the offer and sale of the Series 2024 Bonds, provided that prior to distribution of the Preliminary Official Statement, the City Manager shall receive the advice of counsel in connection therewith. After the acceptance of an offer to purchase the Series 2024 Bonds from the underwriter, the Council hereby approves the use and distribution by the Corporation of a final Official Statement (the ***"Official Statement"***).

SECTION 3.03. ***Sale and Award of the Series 2024 Bonds.*** The City Manager is hereby authorized, empowered and directed to accomplish the purposes of the transactions contemplated in this Ordinance and as shall not be inconsistent with or contrary to such purposes. The City hereby authorizes, approves and ratifies the actions of the Corporation, in conjunction with the City Manager, in negotiating the terms of the Series 2024 Bonds.

ARTICLE IV
GENERAL AUTHORIZATION

SECTION 4.01. ***General Authorization.*** The Mayor, the Mayor Pro-Tempore, the City Manager, the City Clerk, the Director of Finance and Budget, the City Attorney and the officials of the City, acting jointly or individually, are hereby authorized to execute and deliver such documents, agreements and certificates and take such actions as are necessary or useful in connection with the issuance of the Series 2024 Bonds, including, but not limited to, such documents, agreements, certificates or actions as are necessary, useful or contemplated under the Ground Lease, the Bond Purchase Agreement, the Base Lease Agreement, the Purchase and Use Agreement, the Trust Agreement, the Preliminary Official Statement and the Official Statement and other documents related hereto (including, but not limited to, one or more 15c2-12 Certificates, and one or more Continuing Disclosure Certificates or Agreements relating to the issuance of the Series 2024 Bonds) as are required to comply with the terms thereof. The City Manager and the Director of Finance and Budget are authorized to adopt written procedures relating to compliance with continuing disclosure obligations in connection with the Series 2024 Bonds.

SECTION 4.02. ***Effective Date.*** This Ordinance shall take effect immediately upon its second reading and no further authorization is required to execute and deliver all documents, agreements and certificates required to effect the sale, issuance and delivery of the Series 2024 Bonds. This Ordinance shall be construed liberally to effect the intent of the Council.

[Execution Page Follows]

Enacted by the City Council of the City of Spartanburg, this 13th day of May, 2024.

CITY OF SPARTANBURG, SOUTH CAROLINA

(SEAL)

Mayor

ATTEST:

Clerk

Date of First Reading: April 8, 2024
Date of Second Reading: May 13, 2024

APPROVED AS TO FORM:

City Attorney

[Execution Page]

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "**Agreement**"), dated and effective as of ____________, 2024 (the "**Effective Date**"), by and among MORGAN & HENRY JOF ESA II, LLC, a South Carolina limited liability company (hereinafter referred to as "**Ground Lessor**"), the CITY OF SPARTANBURG, SOUTH CAROLINA (hereinafter referred to as "**City**" or "**Ground Lessee**"), each a "**Party**" and collectively the "**Parties**."

WHEREAS, the Ground Lessor is an affiliate of Johnson Development Associates, Inc., a South Carolina corporation ("**JDA**") and the owner of certain real property containing approximately 6.777 acres in Spartanburg County, South Carolina (the "**County**"), which property is more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "**Premises**");

WHEREAS, in that certain Development Agreement between JDA and the City, dated as of October 11, 2023 (the "**Development Agreement**"), JDA agreed with the City to develop a significant mixed-use project on certain parcels of property located in the City to include the design, construction and development of a minor league baseball stadium on land owned by Ground Lessor (the "**Stadium**"), surface and garage parking, public infrastructure, office buildings, multi-family housing, and a hotel, among other improvements, and the City agreed to use commercially reasonable efforts to issue installment purchase revenue bonds in an amount sufficient to result in bond proceeds to pay costs of the Stadium and Public Infrastructure (as such term is defined therein) estimated to be $58,600,000.

WHEREAS, the City and Spartanburg Stadium Facilities Corporation, a South Carolina nonprofit corporation (the "**Corporation**"), have executed and entered into that certain Base Lease and Conveyance Agreement dated of even date herewith (the "**Base Lease**"), pursuant to which, following the lease of the Premises to the City pursuant to this Agreement the City, will sublease the Premises to the Corporation.

WHEREAS, in that certain Project Development Agreement between JDA and DBH Kinston, LLC, a Delaware limited liability company (the "**Team Owner**"), of even date herewith, JDA has agreed, on the terms described therein, to design, develop, construct, and furnish on behalf of the City, for initial ownership by the Corporation, the Stadium on the Premises on the terms described therein.

WHEREAS, the City and the Corporation have executed and entered into that certain Installment Purchase and Use Agreement (the "**Purchase and Use Agreement**") dated of even date herewith, pursuant to which the Corporation has agreed to cause the construction of the Stadium, the City has agreed to purchase the Stadium in installments by making semi-annual installment payments to the Corporation, and the Corporation has agreed that during the term of the Purchase and Use Agreement the City shall have the right of occupancy and use of the Stadium and shall be permitted to enter into leases or other agreements with third parties for the occupancy and use of all or a portion of the Stadium.

WHEREAS, pursuant to the terms of the Purchase and Use Agreement, the City has agreed to act on the Corporation's behalf in causing the Stadium to be constructed and equipped, and, pursuant to the terms of a Construction Administration Agreement executed and entered into by and among the City, the Corporation, the Ground Lessor and JDA of even date herewith (the "**Construction**

Administration Agreement") the City has appointed JDA as its agent for the management and administration of the design, construction and completion of the Stadium.

WHEREAS, the City, as sublessor, and the Team Owner, as sublessee, have entered into a Stadium Sublease Agreement dated of even date herewith (the "**Stadium Sublease**"), pursuant to which the Stadium will be subleased by the City to the Team Owner, as owner of the Minor League Baseball team currently known as the Down East Wood Ducks (as the same may be renamed, the "**Team**").

WHEREAS, as of the Effective Date, the Team will be owned by the Team Owner, the Team will holds a player development license granted by MLB Professional Development Leagues, LLC, pursuant to which Team Owner has been granted the right to operate the Team in a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball that is known as the Professional Development League System (the "**PDL License**") and all requisite approvals from Major League Baseball for the relocation of the Team to Spartanburg have been obtained.

WHEREAS, pursuant to the Stadium Sublease, (i) the City has agreed to sublease to the Team Owner, and the Team Owner has agreed to sublease from the City, the Stadium and the Premises, and (ii) the Team Owner has agreed that the Team shall play all of its home preseason, regular season and playoff games at the Stadium beginning upon completion of the Stadium and for no fewer than twenty (20) full minor league baseball seasons, subject to certain exceptions set forth in the Stadium Sublease.

WHEREAS, to finance a portion of costs of design, construction, acquisition and equipping of the Stadium site, the Corporation will issue its Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024 in the amount of not exceeding $[_______] (the "**Bonds**"). The Bonds will be issued pursuant to a Trust Agreement entered into by and between the Corporation and U.S. Bank Trust Company, National Association (the "**Trustee**"), of even date herewith (the "**Trust Agreement**").

WHEREAS, subject to the terms and conditions contained herein, the Ground Lessor desires to ground lease the Premises to the Ground Lessee and the Ground Lessee desires to lease the Premises from the Ground Lessor.

NOW, THEREFORE, for an in consideration of Ten and No/100 Dollars ($10.00), the premises, mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals, Defined Terms.

(a) Recitals. The Recitals are incorporated as if fully set forth herein.

(b) Definitions. Capitalized words and terms used herein shall have the meanings set forth below, in the recitals hereto, or elsewhere in the text hereof, unless the context or use clearly indicates another meaning or intent. As used herein:

"**Affiliate**" and "**Affiliates**" shall mean a Person which shall Control, be under the Control of, or be under common Control with the Person in question.

"**Assignment**" shall mean the sale, exchange, assignment, or other disposition of all of Ground Lessee's interest in this Agreement and the leasehold estate created thereby, whether by operation of law or otherwise.

"Bond Agreements" means, collectively, the Base Lease, the Purchase and Use Agreement, the Trust Agreement, and such other agreements or documents relating to the Bonds and the security therefor.

"**Business Day**" shall mean any day which is not a Saturday, Sunday, or a day observed as a holiday by either the State or the federal government.

"**Control**" shall mean the ownership of more than fifty percent (50%) of the outstanding voting ownership interests of the Person in question or the power to direct the management of the Person in question.

"**Environmental Claim**" means any action or proceeding regarding the Premises (i) arising under an Environmental Law or (ii) related to or arising out of an actual or alleged Environmental Event.

"**Environmental Event**" means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Premises caused by a third party; (iii) any event on, at or from the Premises, or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; (v) the existence or discovery of any escape, seepage, leakage, spillage, emission, discharge or disposal of or other release or any kind of Hazardous Materials on, at or from the Premises which may cause a threat or actual injury to human health, the environment, plant or animal life; or (vi) any Environmental Claim, or the filing or imposition of any environmental lien against the Premises, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (i) through (v) preceding.

"**Environmental Laws**" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001the Endangered Species Act, as amended, 16 U.S.C. §§1531 et seq.

"**Governmental Authority**" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

"**Hazardous Materials**" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

"**Improvements**" shall mean all buildings and other improvements now located, or hereafter erected, on the Premises (including the Stadium), together with all fixtures now or in the future installed or erected in or upon the Premises or such improvements owned or leased by Ground Lessor or Ground Lessee (including, without limitation, boiler(s), field and Stadium lighting fixtures, scoreboards, signage, equipment, elevators, escalators, machinery, pipes, conduits, wiring, and heating, ventilation, and air conditioning systems).

"**Major Sublease**" shall mean a Sublease that (i) demises more than 5,000 rentable square feet of space in the Stadium or of the surrounding Premises; or (ii) the annualized rent payable by the lessee/licensee under the subject Sublease exceeds $50,000.00. The Stadium Sublease is a Major Sublease hereunder.

"**Notice Address**" means:

If to the Ground Lessor:	MORGAN & HENRY JOF ESA II, LLC c/o Johnson Development Associates, Inc. 100 Dunbar Street, Suite 400 Spartanburg, SC 29306 Attn: Legal Department
If to the Ground Lessee:	City of Spartanburg, South Carolina Attention: City Manager 187 Broad Street Spartanburg, South Carolina 29306

or such additional or different address, notice of which is given under Section 28 hereof.

"**Person**" shall mean any individual, corporation, partnership, firm, or other legal entity.

"**Sublease**" shall mean any lease, sublease, occupancy, license, or concession agreement for the use or occupancy of space in the Improvements or area(s) within the Premises (other than this Agreement).

"**Sublessee**" shall mean any tenant, subtenant, licensee, or other occupant of space in the Improvements (other than Ground Lessee).

"**Trust Agreement**" means the Trust Agreement of even date herewith entered into between the Corporation and the Trustee in connection with, and relating to, the security for the Bonds.

"**VCC**" shall mean Voluntary Cleanup Contract VCC 18-5959-NRP between the Ground Lessor and the South Carolina Department of Health and Environmental Control ("**SCDHEC**"), dated as of April 19, 2019, under SCDHEC's Voluntary Cleanup Program, as amended. The original VCC included 10.49 acres of property identified by Tax Map Serial Numbers 7-12-14-005.00 and 7-12-14-0052.02. VCC amendments occurred on August 30, 2019, adding 1.37 acres of property identified by Tax Map Serial Number 7-12-14-037.00; June 29, 2023, adding 1.96 acres of property with no assigned Tax Map Serial Number; and October 30, 2023, adding 1.57 acres of property identified by Tax Map Serial Numbers 7-12-14-004.02, 7-12-14-036.00, and 7-12-14-036.01.

2. Leasing of Premises. The Ground Lessor represents and warrants unto Ground Lessee that Ground Lessor is the owner of the Premises in fee simple, and that the Ground Lessee shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance of the Ground Lessor or any person claiming under the Ground Lessor, and free and clear of all liens or encumbrances (other than this Agreement and the Bond Agreements). The Ground Lessor does hereby demise and lease the Premises to the Ground Lessee, and the Ground Lessee does hereby take and lease the Premises from the Ground Lessor, on and subject to the terms and conditions hereinafter set forth. This Agreement is a ground lease only. So long as this Agreement is in effect and the City is the Ground Lessee interest hereunder, title to any Improvements constructed on the Premises and equipment that may be installed on the Premises (excluding fixtures and equipment installed by Team Owner) shall remain vested in the Ground Lessee.

3. Term of Agreement. This Agreement shall be effective, and the term hereunder (the "**Term**") shall commence, on the Effective Date and shall continue through and until the earlier of April 1, 2059 or the date on which the Base Lease expires or is earlier terminated.

4. Base Rent and Additional Rent. The Ground Lessee agrees that, upon execution of this Agreement, the Ground Lessee shall pay to the Ground Lessor base rent ("**Base Rent**"), commencing on the Effective Date and continuing annually thereafter through the end of the Term in the cash amount of One and 00/100 Dollars ($1.00) per annum. The Base Rent shall not be subject to abatement or diminution notwithstanding anything to the contrary contained herein. The Ground Lessee shall also pay as additional rent (the "**Additional Rent**") all charges, costs, expenses and other payments, if any, that the Ground Lessee assumes or agrees to pay under any of the provisions of this Agreement, which amount shall not be subject to abatement or diminution notwithstanding anything to the contrary contained herein. Base Rent and Additional Rent are referred to in this Agreement collectively as "**Rent**."

5. Taxes. The Ground Lessor shall be responsible for any *ad valorem* property taxes levied against the Ground Lessor's fee interest in the Premises, exclusive of the Improvements located on the Premises. The Ground Lessee acknowledges and agrees that, should the leasehold interest of the Ground Lessee under this Agreement be taxable for property tax purposes, the Ground Lessee shall be responsible for any *ad valorem* property taxes levied against the Ground Lessee's leasehold interest in the Premises and any Improvements located thereon during the Term.

6. Utilities and Other Charges. The Ground Lessee shall pay all charges for all public and private utility services (including, but not limited to, gas, electric, telephone, water and sewer services, as applicable) rendered to or used in connection with the Premises and incurred during the Term, promptly as such charges become due. At all times during the Term, the Ground Lessee shall also be responsible for the payment of, or shall cause to be paid, all charges for garbage pickup, refuse removal, Premises security and the like, promptly as and when such charges become due.

7. Insurance. The Ground Lessor acknowledges that under the Stadium Sublease, the City is obligated to cause the Corporation to obtain and maintain property insurance at all times during the term of the Stadium Sublease, insuring the Improvements, including all buildings and structures comprising the Stadium, against all risk of direct physical loss or damage to the same extent and with comparable coverage as other buildings owned by the City. It is the obligation of the Team Owner to obtain and maintain the property casualty, liability, auto liability, insurance coverages (including all buildings, equipment, and leasehold improvements) as more specifically provided in the Stadium Sublease. Anything in this Agreement to the contrary notwithstanding, the Parties hereto hereby waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, officers and employees, for the loss or damage that may occur to the Stadium or the Premises or to all property, whether real, personal or mixed, located on the Premises by reason of fire, the elements, or any other cause (except as may be caused by the gross negligence, willful misconduct or intentional misconduct by such Party) which is covered by any casualty or property damage insurance required to be carried by the releasing Party or the Team Owner, as the case may be (but irrespective of whether such coverage is being carried by the releasing Party).

8. Stadium Construction. In accordance with the covenants and undertakings existing and contemplated under the Development Agreement and Construction Administration Agreement, JDA and Ground Lessor shall construct the Stadium on the Premises, including obtaining all necessary governmental permits and certificates for the commencement and prosecution of the construction of the Stadium and any related Improvements other than those the Team Owner agrees to construct or provide pursuant to the Stadium Sublease. Any construction at the Premises shall comply with all federal, state and local laws, ordinances and regulations (collectively, "**Applicable Law**") and applicable restrictive covenants, if any, affecting the Premises.

9. Limited Liability of Ground Lessor. After JDA's final completion and handover of the Stadium to the Ground Lessee or the Corporation, as the case may be, and subject to the terms of this Agreement and the Stadium Sublease, the Ground Lessee shall be entitled to and in exclusive control and possession of the Premises, and except as otherwise expressly and specifically provided herein, the Ground Lessor shall not be liable for any damage or destruction of any property or injury or death to any person happening on or about the Premises, unless such liability arises in connection with the obligations of JDA or Ground Lessor, or both of them, and related to one or more of the design, development, construction, fixturing or furnishing of the Stadium. The provisions of Section 21 hereof permitting the Ground Lessor to enter and inspect the Premises are made solely for the purpose of

enabling the Ground Lessor to become informed as to whether or not the Ground Lessee is complying with the agreements, terms, covenants and conditions hereof.

10. Liens. Other than liens arising in connection with the design, development, construction, fixturing or furnishing of the Stadium, for which the Ground Lessee shall have no liability, duty or obligation, the Ground Lessee shall not permit any lien to attach to the Premises for any labor or materials in connection with any construction or other work performed on the Premises by or at the request of the Ground Lessee (individually, a "**Ground Lessee Lien**' and, collectively, the "**Ground Lessee Liens**"). If a Ground Lessee Lien attaches to the Ground Lessor's fee interest in the Premises, the Ground Lessee shall promptly have such lien released, bonded off or otherwise affirmatively insured against by a national title insurance company reasonably acceptable to the Ground Lessor.

11. Condition of the Premises. The Ground Lessee accepts the Premises in its "as is" condition on the date hereof. UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, THE GROUND LESSOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PREMISES OR THAT THE SAME WILL BE SUITABLE FOR THE GROUND LESSEE'S PURPOSES OR NEEDS. Without limitation of the foregoing, the Ground Lessor shall not be responsible for any change in the condition of the Premises occurring after the date hereof that is not caused in whole or in part by the Ground Lessor.

12. Environmental Matters

(a) Except for actions which are the responsibility of the Ground Lessee under Section 12(b), from and after the Effective Date the Ground Lessor shall be responsible for performing or causing to be performed, and for paying the cost of performing, all corrective or remedial actions (including all investigation, monitoring, etc.) with respect to any Environmental Event at, in, on or under the Premises required by Applicable Law or any VCC ("**Ground Lessor's Remedial Work**"). The Ground Lessor shall indemnify, defend, and save harmless the Ground Lessee and the Corporation and their respective officers, managers, employees and agents (each, as applicable, an "**Indemnified Party**") against and from any and all claims, actions and proceedings (and all costs, expenses and liabilities incurred in or in connection with each such claim, action or proceeding brought thereon, including reasonable attorneys' fees and disbursements): (i) arising under the Stadium Sublease and relating to any Environmental Event at, in, on or under the Premises required by Applicable Law or any VCC, unless such claims, actions or proceedings are the responsibility of the Ground Lessee under Section 12 (b) below; or (ii) arising in connection with or resulting from the performance or a failure to perform Ground Lessor's Remedial Work by the Ground Lessor, its Affiliates, or any employees, agents or independent contractors of the Ground Lessor or its Affiliates; excluding, however, claims or liabilities incurred by the Ground Lessor or its Affiliates arising from the gross negligence or willful misconduct of any Indemnified Party. In case any action or proceeding be brought against any Indemnified Party by reason of any such claim, the Ground Lessor, upon notice from the Indemnified Party, shall cause such action or proceeding to be defended at the Ground Lessor's expense by counsel reasonably acceptable to the Indemnified Party. The indemnification obligation in this Section 12(a) shall survive any termination of this Agreement.

(b) The Ground Lessee shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event originating at, in, on or under the Premises (collectively, "**Ground Lessee's**

Remedial Work") that are caused by the Ground Lessee or its affiliates, vendors, contractors, licensees, or assignees other than JDA or the Ground Lessor and their respective Affiliates, employees, agents and independent contractors. Prior to undertaking any Ground Lessee's Remedial Work, the Ground Lessee shall obtain the approval of the Ground Lessor of the steps Ground Lessee proposes to take with respect to any Ground Lessee's Remedial Work and the Ground Lessee shall select, subject to the approval of the Ground Lessor, an independent environmental consultant or engineer to oversee the Ground Lessee's Remedial Work.

(c) The Ground Lessee shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Premises; *provided* that the Ground Lessee may permit the use, storage and disposal of reasonable quantities of Hazardous Materials at the Premises as may be reasonably necessary for the Team Owner to operate the Stadium pursuant to the terms of the Stadium Sublease, so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

(d) During the Term, the Ground Lessee shall give the Ground Lessor immediate oral and follow-up written notice within seventy-two (72) hours of any actual or threatened Environmental Event of which it has actual knowledge.

(e) To the extent the same is the responsibility of such party in accordance with the provisions of this Section 12, each party agrees to cure any Environmental Event in accordance with all Environmental Laws and such cure shall be deemed part of the Ground Lessor's Remedial Work or the Ground Lessee's Remedial Work, as applicable.

(f) **THE GROUND LESSEE HEREBY RELEASES THE GROUND LESSOR AND ITS AFFILIATES, VENDORS, CONTRACTORS, LICENSEES OR ASSIGNEES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT THE GROUND LESSEE MAY HAVE WITH RESPECT TO THE PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF THE GROUND LESSEE'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.**

(g) **THE GROUND LESSOR HEREBY RELEASES THE GROUND LESSEE AND ITS AFFILIATES, VENDORS, CONTRACTORS, LICENSEES OR ASSIGNEES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT THE GROUND LESSOR MAY HAVE WITH RESPECT TO THE PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF THE GROUND LESSOR'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,**

COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.

13. Assignment and Sublease.

(a) The Ground Lessee shall have the right, without the consent of, but upon prior written notice to, the Ground Lessor, to enter into an Assignment or Major Sublease with any one or more of Team Owner, Corporation, Trustee or an Affiliate of any of them (each being a "**Preapproved Subtenant**") for the use permitted by this Agreement. Any other Assignment or Major Sublease shall require the prior written consent of the Ground Lessor, not to be unreasonably withheld, conditioned or delayed. The Ground Lessee shall notify the Ground Lessor of its intention to enter into any Assignment or Major Sublease with a Preapproved Subtenant (other than the Stadium Sublease) at least thirty (30) days before the proposed effective date or commencement date of such Assignment or Major Sublease. The Ground Lessee shall deliver, or shall cause to be delivered, to the Ground Lessor within ten (10) Business Days after the effective date of an Assignment or Major Sublease with a Preapproved Subtenant, a fully executed copy of the Assignment or a fully executed copy of the Major Sublease, as applicable.

(b) The Ground Lessor hereby acknowledges its review and approval of the Base Lease, the Purchase and Use Agreement, and the Stadium Sublease. The Ground Lessee shall have no obligation to obtain the approval of the Ground Lessor for a Sublease if the proposed Sublease meets the following requirements: (i) it is subordinate and subject to this Agreement by operation of law or its express terms; (ii) it demises not more than 5,000 rentable square feet of space in the Stadium or of the surrounding Premises; (iii) the annualized rent payable by the lessee/licensee under the subject Sublease does not exceed $50,000.00; (iv) the term of the Sublease does not extend beyond the Term; (v) the permitted use under the Sublease is consistent with the Permitted Use as defined under the Stadium Sublease and is not competitive with the business operations of JDA or the Team Owner; and (vi) upon the earlier termination of this Agreement, the Sublessee agrees to attorn to, or agrees to enter into a direct lease with the Ground Lessor on the terms of its Sublease for the balance of the unexpired term of the Sublease.

(c) The Ground Lessee, from time to time, may request, by notice to the Ground Lessor, that the Ground Lessor grant non-disturbance protection to a Sublessee under a particular Sublease, which notice shall be accompanied by a true and complete copy of the fully executed related Sublease (any such notice being herein called a "**Sublessee NDA Request Notice**").

(d) The Ground Lessor, subject to and in the manner provided in this Section 13, agrees to enter into a subordination, non-disturbance, and attornment agreement (a "**Sublessee NDA Agreement**") in form and substance satisfactory to the Ground Lessor with the Sublessee described in the Sublessee NDA Request Notice, provided that such Sublease satisfies all of the following criteria (herein collectively called the "**Sublessee NDA Criteria**"), as applicable:

(i) such Sublease shall be in form and substance satisfactory to the Ground Lessor; provided, however, a Major Sublease with a Preapproved Subtenant on the same terms, provisions, and conditions as in the Stadium Sublease (i.e. the terms, provisions, and conditions of this Agreement are incorporated by reference in and made a part of the Major Sublease) shall be deemed satisfactory to the Ground Lessor; and

(ii) such Sublease shall have a term not longer than the then-remaining term of the Stadium Sublease.

(e) If: (i) the Ground Lessor receives a Sublessee NDA Request Notice; and (ii) the Sublease described in, and accompanying, such notice satisfies the Sublessee NDA Criteria, then: (A) the Ground Lessor, within ten (10) Business Days after its receipt of a Sublessee NDA Request Notice, shall prepare and deliver to the Ground Lessee a form of Sublessee NDA Agreement (unexecuted) between the Ground Lessor, the Ground Lessee, and such Sublessee; and (B) the Ground Lessor, promptly after it shall receive: (y) such form of Sublessee NDA Agreement fully executed by the Ground Lessee and Sublessee; and (z) payment of its reasonable and actual out-of-pocket costs, including without limitation, attorneys' fees and disbursements, incurred in connection with the Sublessee NDA Request or Sublessee NDA Agreement, shall counter-execute the Sublessee NDA Agreement and return it to the Ground Lessee; provided, however, that the Ground Lessor shall have no obligations under this Section 13(e) during any period that an Event of Default shall have occurred and be continuing.

(f) Notwithstanding the foregoing, the Ground Lessor and the Ground Lessee agree to execute and deliver the Recognition and Non-Disturbance Agreement among the Ground Lessor, the Ground Lessee, and the Team Owner in the form attached hereto as Exhibit B attached hereto and made a part hereof by this reference (the "**Non-Disturbance Agreement**").

14. Removal of Improvements. At the termination or earlier expiration of this Agreement, (i) the Ground Lessee shall have no obligation to remove or cause to be removed the Stadium or other Improvements, fixtures, equipment and/or components that the Ground Lessee or Team Owner may have acquired and installed on the Premises and (ii) any amounts remaining in the Capital Maintenance Fund (as defined in the Stadium Sublease) shall remain the property of the Ground Lessee; *provided* that such amounts shall be made available to the Ground Lessor and JDA for costs to be incurred to either restore or demolish the Stadium, at the discretion of the Ground Lessor and JDA.

15. Adjacent Surface Parking Lot. Pursuant to that certain Project Development Agreement between JDA and Team Owner, JDA agreed to improve a parcel adjacent to the Premises with a surface parking lot for use by one or more of the Team Owner, the Team and Stadium operations personnel (the "**Stadium Lot**"). The Ground Lessor and JDA acknowledge and agree that installation of the Stadium Lot is an integral feature of and amenity for the use and operation of the Stadium for minor league baseball games and City-authorized events. Subject to the terms and conditions of the Stadium Sublease and that certain Parking Area License Agreement pertaining to the Stadium Lot between the Ground Lessor and the Team Owner and the respective rights and obligations of the Team Owner and the Ground Lessor thereunder, JDA and the Ground Lessor agree that:

(a) To the extent reasonably necessary to fulfill its obligations under the Stadium Sublease and for use during City Events (as such term is defined in the Stadium Sublease), the City shall be entitled to use the Stadium Lot free of charge for vehicular parking and ingress and egress to and from the Stadium by City, its employees, agents and independent contractors, and by City's customers, licensees and/or invitees, including utility, emergency and delivery trucks and other vehicles, subject to (i) the prior written consent of Team Owner, and (ii) the City's and Ground Lessor's execution of a parking area license agreement under which the City is granted the same rights and assumes the same obligations of the Team Owner as are set forth in the Parking Area License Agreement and which is of substantially the same form and substance as the Parking Area License Agreement in the form attached hereto as Exhibit C attached hereto and made a part hereof by this reference, provided, however, that the Stadium Lot shall not be used by the City for the storage of any City property, equipment or vehicles. Such use of the Stadium Lot shall be in a lawful and orderly manner, and City shall comply with Applicable Law; and

(b) If the Stadium Sublease is no longer in effect, then the City, its employees, agents and independent contractors and the City's customers, licensees and/or invitees shall have unrestricted access to and shall be permitted to use the Stadium Lot free of charge and without permission or authorization from the Ground Lessor, JDA, Team Owner or any of their respective Affiliates, subject to the City's and Ground Lessor's execution of a parking area license agreement under which the City is granted the same rights and assumes the same obligations of the Team Owner as are set forth in the Parking Area License Agreement and which is of substantially the same form and substance as the Parking Area License Agreement in the form attached hereto as Exhibit C attached hereto and made a part hereof by this reference.

16. Opposition to Team Relocation. If and to the extent JDA has the right, pursuant to any contractual arrangement in effect during the Term, to object to the relocation of the Team from the Stadium as the Team's home venue, or to prevent the Team Owner from relocating the Team from the Stadium as the Team's home venue, JDA will not relinquish or diminish such contractual right, and agrees to exercise such contractual right to object to or prevent the relocation of the Team.

17. Events of Default and Remedies**.**

(a) Ground Lessee's Default. The following acts, events or conditions will be deemed to be events of default by the Ground Lessee under this Agreement if not cured within the applicable cure period, if any (each an "**Event of Default**"):

(i) the Ground Lessee fails to pay any installment of Rent or any other charge or assessment against the Ground Lessee after the due date thereof and such failure continues for ten (10) Business Days after notice of such failure of payment; provided, however, such notice and such grace period will be required of the Ground Lessor only one (1) time during any calendar year, and an event of default will immediately occur upon the second (2^{nd}) failure by the Ground Lessee to make a timely payment as aforesaid within that calendar year;

(ii) the Ground Lessee or any guarantor becomes insolvent, files a petition for protection under the U.S. Bankruptcy Code (or similar law) or a petition is filed against the Ground Lessee or any guarantor under such laws and is not dismissed within forty-five (45) days after the date of such filing, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due;

(iii) a receiver or trustee is appointed for the Premises or for all or substantially all of the assets of the Ground Lessee or of any guarantor of this Agreement;

(iv) the Ground Lessee creates or permits anything to be done that creates a lien upon the Premises and such lien is not released, bonded off or otherwise affirmatively insured against by a national title insurance company reasonably acceptable to the Ground Lessor within thirty (30) days after Ground Lessor's written demand; and

(v) the Ground Lessee fails to comply with any other term, provision, covenant or warranty made under this Agreement by the Ground Lessee, other than the payment of the Rent or any other charge or assessment payable by the Ground Lessee, and does not cure such failure within thirty (30) days after notice thereof to the Ground Lessee; provided, however, that if any such failure is curable but not capable of being cured within such thirty (30) day period, no event of default will have occurred if the Ground Lessee commences its efforts to cure such failure within such thirty (30) day period and diligently and continuously pursues such cure to completion within ninety (90) days after such notice.

(b) The City's Cure Right. The Ground Lessor shall give the City written notice of any default under this Agreement irrespective of whether the City is then the Ground Lessee under this Agreement, and no remedy shall be exercised by Ground Lessor unless such default remains uncured thirty (30) days after the City's receipt of such written notice. Such thirty (30) day period shall be extended for such time as is reasonably necessary to remedy such default if (a) the default is of a nature that cannot reasonably be cured within a thirty (30) day period, and (b) the City is actively taking measures to cure such default. Prior to any termination of the City's interest in, to or under this Agreement, reasonable notice and right to cure, on the same terms as are available to the City under this Agreement, shall be given to the Trustee and the Corporation as direct and intended third party beneficiaries of this Agreement.

(c) Remedy for an Event of Default. Upon the occurrence of any Event of Default by the Ground Lessee, and after all applicable cure periods hereunder, the Ground Lessor shall have the right, then or at any time thereafter while the Event of Default continues uncured, to terminate this Agreement effective at such time as may be specified by written notice to the Ground Lessee, and recover possession of the Premises from the Ground Lessee.

(d) Ground Lessor's Default and Ground Lessee's Remedies. The Ground Lessor shall be in default hereunder in the event the Ground Lessor has not begun and pursued with reasonable diligence the cure of any failure of the Ground Lessor to meet its obligations under this Agreement within thirty (30) days after the receipt by the Ground Lessor of written notice from the Ground Lessee of the alleged failure to perform (each a "**Ground Lessor Default**"); provided, however, such thirty (30) day period shall be extended for such time as is reasonably necessary to remedy such default if (a) the default is of a nature that cannot reasonably be cured within a thirty (30) day period, and (b) the Ground Lessor is actively taking measures to cure such default. In the event of a Ground Lessor Default, the Ground Lessee shall have such remedies as are available to the Ground Lessee at law or in equity, unless expressly stated otherwise in this Agreement. In addition, in the event that the Ground Lessor has not, in good faith, disputed the Ground Lessee's allegation of a Ground Lessor Default, then if the Ground Lessor fails to cure any default within the cure period referenced above, the Ground Lessee shall have the right, after notice to the Ground Lessor, to incur any reasonable expense necessary to remedy the Ground Lessor Default (i.e., to exercise "self-help"). The Ground Lessor shall reimburse the Ground Lessee for any such expenses within thirty (30) days of the Ground Lessor's receipt of an invoice therefor.

(e) Non-disturbance of Team Owner. If the Ground Lessee's interest in, to or under this Agreement is terminated by the Ground Lessor, and if such interest in this Agreement is not assumed by the Corporation or the Trustee, then so long as the Team Owner is not then in default (beyond any applicable notice and cure periods) in the payment of rent or additional rent or other charges under the Stadium Sublease or in the performance of any of the terms, covenants or conditions of the Team Owner under the Stadium Sublease, (i) subject to the terms and conditions of the Non-Disturbance Agreement, Ground Lessor will not disturb the Team Owner's right to use or occupy the Premises in accordance with the Stadium Sublease; (ii) the Stadium Sublease will continue as a direct lease between the Ground Lessor and the Team Owner with the same force and effect as if the Ground Lessor, as landlord, and the Team Owner, as tenant, had entered into a lease as of the date of termination of the Ground Lease containing the same terms, covenants and conditions as those contained in the Stadium Sublease, for the remaining term of the Stadium Sublease; and (iii) each of the matters identified in clauses (i) and (ii) shall be immediately effective and self-operative as of such date of termination of the Ground Lease without the execution of any further instruments by any of the Parties. Notwithstanding the continuing nature of the Stadium Sublease, the Ground Lessor will not (i) be liable to the Team Owner for any damages arising against the Ground Lessee, in its capacity as landlord under the Stadium Sublease, which accrue prior to the effective date of the termination of the Ground Lease; (ii) be liable for any other act or omission of the Ground Lessee (e.g., the Ground Lessee's failure to fulfill a Capital Maintenance and Repair obligation under the Stadium Sublease) in its capacity as landlord under the Stadium Sublease.

(f) Enforcement of Stadium Sublease; Notices of Default. If the Ground Lessee notifies the Team Owner of a default or claimed default by the Team Owner under the Stadium Sublease, the Ground Lessee shall send a copy of such written notice concurrently therewith to the Ground Lessor. Nothing in this Agreement is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of the Ground Lessor, if any, to enforce the Stadium Sublease at any time in the event of a default by the Team Owner beyond applicable notice and cure periods in the performance of any of the terms, covenants or conditions of the Stadium Sublease on the Team Owner's part to be performed; provided, however, Ground Lessor shall not exercise any such right or remedy unless, after ten (10) business days' prior written notice to the Ground Lessee, the Ground Lessee fails to initiate steps to enforce the terms of the Stadium Sublease. If the Ground Lessor notifies the Ground Lessee of a default or claimed default by the Ground Lessee under this Agreement, the Ground Lessor shall send a copy of such written notice concurrently therewith to the Team Owner. If the Team Owner notifies the Ground Lessee of a default or claimed default by the Ground Lessee under the Stadium Sublease, the Ground Lessee shall send a copy of such written notice concurrently therewith to the Ground Lessor.

(g) Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

18. Consent to Jurisdiction. All legal actions relating to this Agreement shall be adjudicated in the courts of the State of South Carolina having jurisdiction in Spartanburg County, South Carolina. The Ground Lessee and the Ground Lessor irrevocably consent to the personal and subject matter jurisdiction of those courts in any legal action relating to this Agreement, and neither the Ground Lessee nor the Ground Lessor shall not assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for the Ground Lessee or Ground Lessor or any principal of the Ground Lessee or Ground Lessor.

19. Attorneys' Fees. In the event either Party hereto commences litigation or arbitration against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation through all appellate levels.

20. Surrender. Upon expiration of the Term, or upon any earlier termination of this Agreement, the Ground Lessee shall immediately remove its personalty from the Premises and, subject to Section 14, surrender to the Ground Lessor the Premises with the then existing improvements constructed and located thereon. The obligations imposed under the preceding sentence shall survive the termination or expiration of this Agreement.

21. Right of Inspection**.** Subject to reasonable security and safety regulations and upon reasonable notice, the Ground Lessor and its agents shall have the right during normal business hours to inspect the Premises.

22. No Personal Liability of Representatives of the Parties. No official, member, director, officer, agent, or employee of the Ground Lessor or the Ground Lessee shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as company or entity agreements, undertakings, representations, and warranties, as appropriate, of the Ground Lessor or the Ground Lessee, as the case may be. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of the Ground Lessor and the Ground Lessee into this Agreement.

23. No Waiver. No failure by either Party to insist upon strict performance by the other Party of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by a Party to observe or comply with any provision hereof.

24. Quiet Enjoyment. Provided that the Ground Lessee performs all covenants, agreements and obligations to be performed by the Ground Lessee hereunder, the Ground Lessor covenants and agrees that the Ground Lessee shall have the peaceful and quiet enjoyment of the Premises against any and all claims of all persons claiming by, through or under the Ground Lessor, on and subject to all of the term and conditions of this Agreement.

25. Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

26. Severability. The invalidity or enforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. Entire Agreement. Time is of the essence of this Agreement. This Agreement constitutes the sole and entire agreement of the Parties relating to the ground lease of the Premises and is binding upon the Ground Lessor and the Ground Lessee, their heirs, successors, legal representatives and assigns.

28. Notices. Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Ground Lessee or the Ground Lessor, as set forth below, shall be deemed to have been properly given, rendered or made only if either (i) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent via nationally recognized overnight courier for next business day delivery, addressed to each other Party at such Party's Notice Address (or to such other address as any particular Party may designate for notices to it to each other Party from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the date of personal delivery, the first business day after having been deposited with the courier service or the United States Postal Service.

29. Invalidity; Governing Law; Jurisdiction and Venue. If any clause or provision of this Agreement or the specifications is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity effective during the term, the intention of the parties hereto is that the remaining parts of this Agreement shall not be affected thereby unless such invalidity is essential to the rights of both parties. This Agreement shall be deemed to be a contract made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the internal laws of the State of South Carolina, without regard to choice of law rules. THE PARTIES AGREE THAT ANY ACTION RELATING TO, OR ARISING OUT OF, THIS AGREEMENT OR THE PREMISES SHALL BE INSTITUTED AND PROSECUTED IN THE COURTS OF THE COUNTY OF SPARTANBURG, STATE OF SOUTH CAROLINA, AND EACH PARTY AGREES TO SUBMIT, AND DOES HEREBY SUBMIT, TO THE PERSONAL JURISDICTION AND VENUE OF SAID COURTS OF THE COUNTY OF SPARTANBURG, STATE OF SOUTH CAROLINA, AND DOES FURTHERMORE EXPRESSLY AND SPECIFICALLY WAIVE ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUCH LITIGATION. EACH OF THE PARTIES FURTHER ACKNOWLEDGE THAT NEITHER IT NOR THE POTHER PARTY HAS ANY EXPECTATION THAT, AND THERE IS NO BASIS FOR, ANY SUCH ACTION BEING INSTITUTED OR MAINTAINED IN ANY COURT EXCEPT THOSE SPECIFIED HEREINABOVE, AND SAID PARTY COVENANTS AND AGREES THAT IT SHALL IN NO EVENT INSTITUTE OR PROSECUTE ANY SUCH ACTION IN ANY OTHER COURT OTHER THAN AS EXPRESSLY AUTHORIZED HEREIN, AND THAT THIS PARAGRAPH SHALL BAR AND SERVE AS A COMPLETE DEFENSE TO ANY ACTION BROUGHT OR PROSECUTED BY OR ON BEHALF OF SAID PARTY IN ANY OTHER COURT.

30. Effect; Amendment; Counterparts. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement may be modified or amended only in a writing signed by both Parties. This Agreement may be executed in any number of counterparts and by different parties to this Agreement on separate counterparts, each of which, when so executed, will be deemed an original, but all such counterparts will constitute one and the same agreement. Any signature delivered by a Party by facsimile or electronic transmission will be deemed to be an original signature.

31. Limitation on Liability. Notwithstanding anything contained in this Agreement or any other documents or instruments executed in connection herewith, it is understood and agreed that in no event (except for the intentional and willful bad faith actions of either Party) shall the Ground Lessee or the Ground Lessor be able to claim or otherwise seek consequential, punitive or lost business damages as a result of any breach or action (or failure to act) by the other Party (or its officers, members, agents or representatives) in connection with this Agreement, the Premises, or any other related matter, and the

right of the Ground Lessee and the Ground Lessor to seek the same is hereby expressly waived and forever relinquished.

32. No Partnership or Agency. No partnership or agency relationship between or among the Parties shall be created as a result of this Agreement.

33. Leasehold Estate. The Ground Lessor and the Ground Lessee hereby expressly declare that this Agreement is intended to evidence a leasehold estate (i.e., an estate for years) for the benefit of Ground Lessee, and (ii) not to evidence a license or usufructuary interest.

34. Recordation. This Agreement, or a memorandum hereof, may be recorded in the office of the Register of Deeds of Spartanburg County, South Carolina on title to the Premises and the Stadium Lot.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their representatives duly authorized thereunto, effective as of the date first above written.

GROUND LESSOR:

MORGAN & HENRY JOF ESA II, LLC,
a South Carolina limited liability company

By: ______________________________

Name: ______________________________

Title: ______________________________

The undersigned is executing under seal this Agreement to confirm its agreement and intention to be bound by and timely perform only those obligations specified for performance by JDA as more particularly set forth in the above Agreement.

JOHNSON DEVELOPMENT ASSOCIATES, INC., a South Carolina corporation

By:______________________________

Name:______________________________

Title:______________________________

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GROUND LESSEE:

CITY OF SPARTANBURG, SOUTH CAROLINA

By: ____

Name: ____

Title: ____

[Signature Page to Ground Lease Agreement]

EXHIBIT A

DESCRIPTION OF THE PREMISES

That certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, City and County of Spartanburg, being shown and designated as Tract 1, +- 295,197 sq. ft., 6.777 acres, on a subdivision plat prepared for Morgan & Henry JOF ESA II, LLC by Tru-Line Surveying Co., Inc. dated March 11, 2024 and recorded in Plat Book 185 at Page 83 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Tax Map Number: 7-12-14-005.03

EXHIBIT B

FORM OF NON-DISTURBANCE AGREEMENT

[SEE ATTACHED]

EXHIBIT C

FORM OF PARKING AREA LICENSE AGREEMENT

Exhibit 2 to Ordinance 2024-_________

BASE LEASE AND CONVEYANCE AGREEMENT

between

CITY OF SPARTANBURG, SOUTH CAROLINA
as Lessor

and

SPARTANBURG STADIUM FACILITIES CORPORATION
as Lessee

Dated as of _________ __, 2024

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BASE LEASE AGREEMENT

THIS BASE LEASE AGREEMENT dated _________ __, 2024 (this **"Base Lease"**) made and entered into by and between the CITY OF SPARTANBURG, SOUTH CAROLINA, a political subdivision of the State of South Carolina (the **"City"**), as lessor, and the SPARTANBURG STADIUM FACILITIES CORPORATION, a nonprofit corporation duly organized under the laws of the State of South Carolina (the **"Corporation"**), as lessee.

WITNESSETH:

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31 of the Code of Laws of South Carolina, 1976, as amended; and

WHEREAS, the City is a political subdivision of the State (as defined herein) and is authorized under the provisions of Sections 5-7-30 and 5-7-40, Code of Laws of South Carolina 1976, as amended (the **"Act"**), to enter into this Base Lease; and

WHEREAS, the City has leased from Morgan & Henry JOF ESA II, LLC (the **"2024 Real Property Owner"**) the 2024 Real Property (as such term is defined herein) pursuant to that certain Ground Lease Agreement entered into between the City and the 2024 Real Property Owner dated as of __________ __, 2024 (the **"Ground Lease"**). The 2024 Real Property is comprised of certain parcels of undeveloped land upon which the 2024 Project (as defined in the hereinafter defined Purchase and Use Agreement) will be constructed; and

WHEREAS, the City owns the Existing Real Property (as such term is defined herein), which is comprised of one or more parcels of land upon which the Existing Facilities (as such term is defined herein) are located; and

WHEREAS, the City desires to sublease the 2024 Real Property, and lease the Existing Real Property, to the Corporation and to convey the Exiting Facilities to the Corporation so that the Corporation may provide funds to the City to defray the design, acquisition, construction and equipping of the 2024 Project and to provide funds to the City in the form of Base Lease Rent (as defined herein) to provide for certain deposits to the Revenue Fund; and

WHEREAS, the Facilities (as such term is defined herein) will be sold by the Corporation to the City under the terms of an Installment Purchase and Use Agreement dated of even date herewith (the **"Purchase and Use Agreement"**) between the Corporation and the City; and

WHEREAS, the payments to be made under the Purchase and Use Agreement and the rights of the Corporation thereto (except for certain reserved rights as provided therein) are to be assigned to U.S. Bank Trust Company, National Association, as trustee (the **"Trustee"**), pursuant to the terms of a Trust Agreement dated of even date herewith (the **"Trust Agreement"**), between the Corporation and the Trustee, in order to secure and provide a source of payment for certain bonds, the proceeds of which are to be used for the purposes described above and in the Trust Agreement; and

WHEREAS, the City desires to enter into this Base Lease in order to achieve the foregoing purposes;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements, including the payment of the Base Lease Rent herein set forth, the City and the Corporation do hereby covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions of Words and Terms. Capitalized terms not otherwise defined herein are used with the meanings provided therefor in the Trust Agreement or the Purchase and Use Agreement, unless some other meaning is plainly intended. In addition, the following terms shall have the meanings set forth below, unless some other meaning is plainly intended:

"2024 Real Property" means the real property, absent any improvements thereon, on which the 2024 Project is or will be located, as described in Exhibit A hereto.

"Act" means Sections 5-7-30 and 5-7-40, Code of Laws of South Carolina 1976, as amended.

"Additional Real Property" means any real property made subject to this Base Lease. "Base Lease Rent" means the amount set forth in Section 3.4 of this Base Lease.

"Base Lease Term" means the term of this Base Lease which ends on the earlier of (i) November 1, 2059, or (ii) the date on which the Series 2024 Bonds are discharged within the meaning of Section 3.19(d) of the Trust Agreement.

"City" means the City of Spartanburg, South Carolina.

"Corporation" means the Spartanburg Stadium Facilities Corporation, a nonprofit corporation formed under the laws of the State of South Carolina, and its successors and assigns.

"Corporation Representative" means the person or persons at the time designated to act on behalf of the Corporation in matters relating to this Base Lease, the Purchase and Use Agreement and the Trust Agreement as evidenced by a written certificate furnished to the City and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Corporation by its President or any Vice President. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Corporation Representative.

"Council" means the City Council of the City, as the governing body of the City, and any successor body.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the City or the Corporation.

“Event of Default” means (a) with respect to the Purchase and Use Agreement, any Event of Default as defined in Section 8.1 of the Purchase and Use Agreement, and (b) with respect to the Trust Agreement, any Event of Default as defined in Section 7.1 of the Trust Agreement.

“Existing Facilities” means the City’s Fire Department Headquarters Facility generally located upon the Existing Real Property.

“Existing Real Property” means the real property, absent any improvements thereon, on which the Existing Facilities are located, as more specifically described on Exhibit A hereto.

“Facilities” shall collectively mean and refer to the Existing Facilities and the 2024 Project.

“Fiscal Year” means the 12-month period adopted by the City as its fiscal year for financial reporting purposes. Currently, such Fiscal Year for the City begins on July 1 of each year.

“Installment Payments” means those payments required to be made by the City by Sections 4.1, 4.2 and 4.4 of the Purchase and Use Agreement.

“Ordinance” means the Ordinance enacted by the Council on ____________ __, 2024, authorizing the City's execution and delivery of this Base Lease and the Purchase and Use Agreement and consenting to the Trust Agreement.

“Purchase and Use Agreement” shall mean the Installment Purchase and Use Agreement dated of even date herewith between the Corporation and the City.

“Real Property” shall collectively mean and refer to the Existing Real Property and the 2024 Real Property.

“Revenue Fund” means the Revenue Fund established and held by the City pursuant to the Intergovernmental Agreement entered into by and between the City and Spartanburg County, South Carolina, dated as of _______ __, 2024.

“State” means the State of South Carolina.

“Trust Estate” means the Trust Estate described in the Granting Clauses of the Trust Agreement.

“Trustee” means U.S. Bank Trust Company, National Association, a corporation organized and existing under the laws of the United States of America, and its successor or successors and any other trustee which at any time may be substituted in its place pursuant to and at the time serving as trustee under the Trust Agreement.

Section 1.2 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

The table of contents hereto and the headings and captions herein are not a part of this document.

Section 1.3 Accounting Terms. Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by accounting principles generally accepted in the United States as from time to time in effect.

[END OF ARTICLE I]

ARTICLE 2
REPRESENTATIONS

Section 2.1 Representations by the City. The City represents, warrants and covenants as follows:

(a) The City is a political subdivision of the State.

(b) The conveyance of title to the Existing Facilities and the demise and lease of the Existing Real Property, and the demise and sublease of the 2024 Real Property, by the City to the Corporation, as provided in this Base Lease, in order to allow the Corporation to provide for the design, acquisition, construction and equipping of the 2024 Project and, through the payment of Base Lease Rent, the deposit of certain moneys in the Revenue Fund, by the issuance of the Series 2024 Bonds and to provide for the sale of the Facilities to the City pursuant to the Purchase and Use Agreement have been undertaken to enable the City to provide suitable public facilities in the City.

(c) The Council has full power and authority to enact the Ordinance and the City has full power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(d) Neither the execution and delivery of this Base Lease, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound.

(e) The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in the Real Property or the Facilities shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Base Lease or the Purchase and Use Agreement.

(f) The 2024 Property Owner is the fee owner of the 2024 Real Property. The 2024 Real Property as it exists on the date hereof is free and clear of all liens, encumbrances and restrictions (including, without limitation, leases) other than Permitted Encumbrances.

(g) The City is the fee owner of the Existing Real Property. The Existing Real Property as it exists on the date hereof is free and clear of all liens, encumbrances and restrictions (including, without limitation, leases) other than Permitted Encumbrances.

Section 2.2 Representations by the Corporation. The Corporation represents, warrants and covenants as follows:

(a) The Corporation is a nonprofit corporation duly incorporated under the laws of the State and has corporate power to enter into this Base Lease, the Purchase and Use Agreement and the Trust Agreement. By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Base Lease, the Purchase and Use Agreement and the Trust Agreement.

(b) The execution and delivery of this Base Lease, the Purchase and Use Agreement and the Trust Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(c) To provide funds to defray the costs of the 2024 Project and, through the payment of Base Lease Rent, certain deposits to the Revenue Fund, the Corporation will enter into the Trust Agreement pursuant to which it will issue the Series 2024 Bonds payable from and secured by the Installment Payments under the Purchase and Use Agreement.

[END OF ARTICLE II]

ARTICLE 3
LEASE OF EXISTING REAL PROPERTY; SUBLEASE OF THE 2024 REAL PROPERTY; CONVEYANCE OF EXISTING FACILITIES

Section 3.1 Lease of Real Property and Conveyance of Existing Facilities. The City hereby demises and leases the Existing Real Property, and demises and subleases the 2024 Real Property, to the Corporation and the Corporation hereby leases and subleases (as applicable) the Real Property from the City for a term which ends on the expiration of the Base Lease Term for the rentals and other consideration set forth in Section 3.4 hereof and in accordance with the provisions of this Base Lease. The City hereby conveys the Existing Facilities to the Corporation and the Corporation hereby accepts such conveyance from the City. The parties hereto agree to amend Exhibit A to this Base Lease by the execution of a Supplement to Base Lease Agreement, in substantially the form of Exhibit B attached hereto, from time to time, if the City acquires Additional Real Property which should become subject to this Base Lease.

Section 3.2 Purchase of Facilities. Pursuant to the terms of the Purchase and Use Agreement, the Corporation will design, acquire, construct and equip the 2024 Project and will convey title to the Facilities (including, but not limited to, the 2024 Project) to the City, but subject to the terms of the Trust Agreement and the reservation of certain rights under this Base Lease.

Section 3.3 Assignments, Subleases and Mortgages. Except as contemplated by the Trust Agreement or permitted by the Purchase and Use Agreement, the Corporation may not (a) mortgage or otherwise encumber or assign its rights under this Base Lease, (b) lease, assign, transfer or otherwise dispose of its interest in the Real Property or the Facilities or any portion thereof or (c) remove, modify or alter the Real Property or the Facilities, without the consent of the City.

Section 3.4 Rent and Other Consideration. As and for rental hereunder and in consideration for the leasing of the Real Property to the Corporation hereunder, the Corporation agrees (a) to pay to the City from the proceeds of the Series 2024 Bonds the aggregate sum of $____________ (representing an initial payment of Base Lease Rent), which the City hereby covenants will be deposited in the Revenue Fund and used or applied to make Installment Payments under the Purchase and Use Agreement or to maintain or improve the 2024 Project, (b) to pay to the City an annual amount of Base Lease Rent of One Dollar per year, and (c) to fulfill its obligations with respect to the Facilities as provided in the Purchase and Use Agreement.

Section 3.5 Taxes and Insurance. The City shall pay and have responsibility for all taxes on and insurance of the Real Property and the Facilities. All insurance shall provide that the proceeds shall be payable to the City, the Corporation or the Trustee as their interests may appear.

Section 3.6 Granting of Easements, Rights of Way, Releases and Substitutions of Property. From time to time during the term hereof and so long as there is not an existing Event of Default under the Purchase and Use Agreement and there has not occurred an Event of Nonappropriation that has not been waived by the Corporation or the Trustee (if applicable), the Corporation, at the request of the City, may execute such instruments (or, in the case of the 2024

Real Property, such direction or requests to the 2024 Real Property Owner as are necessary) to provide for (or, in the case of the 2024 Real Property, to cause the 2024 Real Property Owner to provide for) the granting of easements or rights of way for road construction, utilities or in such other instances as the City certifies are not inconsistent or incompatible with the continued use of the balance of the Real Property for its intended purposes. Such instruments may include a termination of this Base Lease with respect to such portion of the Real Property as is affected thereby or an acceptance or acknowledgment of the right of the grantee of any such easement or right-of-way to continue to use such property notwithstanding the exercise of any rights or remedies afforded to the Corporation hereunder or under the Purchase and Use Agreement. Any request from the City hereunder shall be accompanied by copies of any instruments proposed to be executed together with a certificate from the City to the effect that: (a) the continued use of the Real Property affected thereby will not be impaired or hampered thereby; (b) access to the Real Property for ingress and egress will be adequate for the purposes for which the Real Property is intended to be used; and (c) the value of the Real Property to the City will not be significantly diminished thereby.

The Corporation may also terminate this Base Lease with respect to any portion of the Real Property deemed excess or unneeded for the continued operation of the Facilities and the related facilities for the purposes for which they were designed or are then being used, and release its interest in such portion to the City, upon receipt by the Corporation of the following: (a) a plat showing the location of the Facilities and related facilities and the portion of the Real Property deemed excess or unneeded; (b) an amendment to Exhibit A hereto revising the description of the affected parcel of property; (c) a certificate from an engineer or architect stating that the remaining Real Property will be adequate for the continued operation of the Facilities and related facilities for the purpose for which they were designed or are then being used including a certification that there will be adequate access to the remaining Real Property for ingress and egress to all Facilities; and (d) a certification from the City that the portion of the Real Property being released from the provisions hereof is excess to or unneeded for the continued operation of the Facilities and related facilities for the purposes for which they were designed or are then being used.

[END OF ARTICLE III]

ARTICLE 4
TERMINATION

Section 4.1 Termination.

(a) This Base Lease shall terminate upon the completion of the Base Lease Term; provided, however, in the event the City exercises the option to purchase the Facilities as provided in Section 9.1 of the Purchase and Use Agreement and satisfies the conditions thereof, then this Base Lease shall be considered terminated through merger of the leasehold interest with the interest of the City and, provided further, that upon any partition of the Facilities pursuant to Section 2.4 of the Purchase and Use Agreement, this Base Lease shall be terminated with respect to that portion of the Real Property (the **"City Real Property"**) relating to any City Facilities (as defined in the Purchase and Use Agreement) and the City Real Property shall no longer be subject to this Base Lease and the Corporation shall have no interest therein.

(b) The Corporation agrees, upon any termination or completion of the Base Lease Term or the exercise by the City of its option to purchase as provided in Section 9.1 of the Purchase and Use Agreement, to quit and surrender the Real Property and that all title and interest in the Facilities and the Real Property shall vest in the City free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances. The Corporation agrees, upon any partition of the Facilities provided for in Section 2.4 of the Purchase and Use Agreement, to quit and surrender the City Real Property and that all title and interest in the City Facilities and the City Real Property shall vest in the City free and clear of the encumbrance of this Base Lease and any other encumbrances except Permitted Encumbrances.

If an Event of Default under the Purchase and Use Agreement occurs or if the City fails to continue the Purchase and Use Agreement for the entire term thereof for any reason, the Corporation shall have the right of possession of the portion of the Real Property (the **"Corporation Real Property"**) relating to the Corporation Facilities (as defined in the Purchase and Use Agreement) as the result of a partition as provided for in Section 2.4 of the Purchase and Use Agreement for the remainder of the Base Lease Term and shall have the right to sublease the Corporation Facilities or transfer its leasehold interest in the Corporation Real Property and in this Base Lease upon whatever terms and conditions it deems prudent; provided that the Corporation Facilities shall always be operated in compliance with all applicable governmental rules, regulations and orders. Both parties acknowledge that the City has an insurable interest in the Corporation Facilities but not in any additions, alterations, furnishings and fixtures provided in connection with the use of the Corporation Facilities by the Corporation or any person to whom the Corporation enters into a lease, license or other such agreement providing for occupancy temporary or long-term. Therefore, the City's obligation to provide insurance and pay taxes under the provisions of Section 3.5 hereof shall be limited to the Real Property and the Facilities as they existed as of the Partition Date (as defined in the Purchase and Use Agreement) and the Corporation shall provide the City with adequate public liability and comprehensive risk insurance covering any additions, alterations, furnishings and fixtures to the Corporation Facilities acquired, constructed or installed after the Partition Date, and shall pay all taxes relating to any additions, alterations, furnishings and fixtures located therein for the remainder of the Base Lease Term and will furnish the City with evidence thereof. In the event that the Corporation shall receive a payment for the transfer of its leasehold interest or total rental payments for subleasing that are, after the payment of the Corporation's expenses in connection therewith, including fees and expenses of the Trustee, in excess of the principal amount of the Bonds then Outstanding (as defined in the Trust Agreement) at the time of termination or default and the interest and premium, if any, due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the City by the Corporation, its assigns or its lessee.

Section 4.2 Default by the Corporation. The City shall not have the right to exclude the Corporation from the Real Property or the Facilities or to take possession of the Real Property or the Facilities (except pursuant to the Purchase and Use Agreement) or to terminate this Base Lease prior to the termination of the Base Lease Term notwithstanding any default by the Corporation hereunder; except that if, upon exercise of the option to purchase the Corporation's entire interest in the Facilities granted to the City in Article IX of the Purchase and Use Agreement and after the payment of the purchase price specified therein and the other sums payable under the Purchase and Use Agreement, the Corporation fails to convey its interest in the Facilities to the City pursuant to said option, then the City shall have the right to terminate this Base Lease, such termination to be effective 30 days after delivery of written notice of such termination to the Corporation. However, in the event of any default by the Corporation hereunder, the City may maintain an action, if permitted in equity, for specific performance.

Section 4.3 Quiet Enjoyment. Subject to the Purchase and Use Agreement, the Corporation at all times during the term of this Base Lease shall peaceably and quietly have and enjoy the Real Property and the Facilities.

Section 4.4 No Merger. Except as expressly provided herein, no union of the interests of the City and the Corporation herein or in the Purchase and Use Agreement shall result in a merger of this Base Lease and the title to the Facilities.

Section 4.5 Waiver of Personal Liability. All liabilities under this Base Lease on the part of the Corporation are fully corporate liabilities of the Corporation as a corporation, and, to the extent permitted by law, the City hereby releases each and every incorporator, member, director and officer of the Corporation of and from any personal or individual liability under this Base Lease, including without limitation the obligation to make payment of the Base Lease Rent. No incorporator, member, director or officer of the Corporation shall at any time or under any circumstances be individually or personally liable under this Base Lease for anything done or omitted to be done by the Corporation hereunder.

Section 4.6 Maintenance of Premises. Subject to the provisions of the Purchase and Use Agreement, the Corporation covenants that it will maintain or cause to be maintained the Real Property, and will not cause, permit or suffer to be caused or permitted waste thereto. At the conclusion of the term of this Base Lease, the Real Property shall be returned to the City, together with the Facilities and any other improvements thereto, in substantially the condition thereof as of the date hereof or the date the Additional Real Property is added hereto, subject to normal wear and tear. Except as contemplated under the Purchase and Use Agreement, the Corporation shall not make or consent to any other improvements, modifications or alterations to the Real Property or the Facilities or any portion thereof, or remove any part thereof without the prior written consent of the City. Prior to an Event of Nonappropriation that has not been waived, in the event of any damage, destruction or condemnation of any of the Real Property, the provisions of Article VII of the Purchase and Use Agreement shall be deemed to apply with respect to the Real Property in like manner as provided therein with respect to Project, and the net proceeds from any insurance policies, performance bonds or condemnation awards shall be applied in the same manner for the benefit of Real Property as are Net Proceeds under Section 7.2 of the Purchase and Use Agreement. After an Event of Nonappropriation that has not been waived, in the event of any damage, destruction or condemnation of any of the Real Property, the proceeds of any insurance or condemnation awards allocable to the Corporation's interest in the Real Property shall be applied as directed by the Trustee either in the manner provided in Section 7.2 of the Purchase and Use Agreement or to the retirement of all Bonds then Outstanding and the excess, if any, remaining thereafter to such use as the City may direct.

[END OF ARTICLE IV]

ARTICLE 5
CONTROL OF REAL PROPERTY AND FACILITIES DURING BASE LEASE TERM

Section 5.1 Control of Real Property and Facilities During Base Lease Term. Subject to the provisions of the Purchase and Use Agreement and Section 4.6 hereof, during the Base Lease Term, the Corporation shall have complete control over the Real Property and the Facilities and their operation.

[END OF ARTICLE V]

ARTICLE 6
MISCELLANEOUS

Section 6.1 Covenants Running with the Real Property. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the Real Property and shall attach and bind and inure to the benefit of the City and the Corporation and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

Section 6.2 Binding Effect. This Base Lease shall inure to the benefit of and shall be binding upon the City, the Corporation and their respective successors and assigns.

Section 6.3 Severability. In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 6.4 Amendment, Changes and Modifications. This Base Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, if and to the extent required by the Trust Agreement, other than (a) to make any Additional Real Property subject to this Base Lease, (b) as provided in Section 3.6 hereof in connection with the granting of easements, releases and substitutions, or (c) in connection with Section 5.3(c) of the Trust Agreement.

Section 6.5 Execution in Counterparts. This Base Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

Section 6.6 Applicable Law. This Base Lease shall be governed by and construed in accordance with the laws of the State.

Section 6.7 Captions. The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

Section 6.8 Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Base Lease to be given to or filed with the City, the Corporation, or the Trustee if the same is given or filed in the manner and at the addresses specified in the Trust Agreement.

Section 6.9 Successors and Assigns. All covenants, promises and agreements contained in this Base Lease by or on behalf of or for the benefit of the City or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 6.10 Compliance. Notwithstanding anything in this Base Lease to the contrary, during the term of this Base Lease, neither the Corporation nor any assignee of the Corporation's interest hereunder nor any sublessee of the Corporation shall operate the Facilities for any purpose which is not in compliance with all applicable governmental rules, regulations and orders.

Section 6.11 Stadium Sublease Recognition, Nondisturbance and Attornment. Notwithstanding any other provision of this Base Lease, the Purchase and Use Agreement, or any other agreement between the City and the Corporation, and in particular, notwithstanding Section 3.3 of this Base Lease, the City and the Corporation acknowledge that the City has entered into a Stadium Sublease Agreement of even date herewith (the "**Stadium Sublease**") with DBH Kinston, LLC (together with any successors or assignees permitted under the Stadium Sublease, "**DBH**"), whereby the City will sublease its interests in the 2024 Real Property and the 2024 Project (pursuant to the Purchase and Use Agreement) to DBH for the term of the Stadium Sublease. The Stadium Sublease shall be subordinate to the terms of this Base Lease and the Purchase and Use Agreement; however, the following provisions shall apply with respect to the Stadium Sublease.

(a) The Corporation hereby consents to the execution and delivery of the Stadium Sublease by the City and DBH; however, this consent shall not release the City from any existing or future duty, obligation or liability of the City to the Corporation under this Base Lease or under the Purchase and Use Agreement. Neither the City nor the Corporation will join DBH as a party defendant in any action or proceeding for the purpose of terminating all or any portion of DBH's right, title and interest in, to and under the Leased Premises (as defined in the Stadium Sublease) or DBH's right, title and interest in, to and under the Stadium Sublease because of any default or event of default by City or the Corporation under this Base Lease or the Purchase and Use Agreement as long as DBH is not in default (beyond any applicable notice and cure periods) in the payment of rent or additional rent or other charges under the Stadium Sublease or in the performance of any of the terms, covenants or conditions of DBH under the Stadium Sublease.

(b) If the City's interest in, to or under the Purchase and Use Agreement is terminated and the 2024 Project is partitioned under provisions of Sections 2.2 and 2.4 of the Purchase and Use Agreement (such event, a "**Partition Event**") such that the Corporation and the City are tenants in common of the 2024 Project, then, so long as DBH is not then in default (beyond any applicable notice and cure periods) in the payment of rent or additional rent or other charges under the Stadium Sublease or in the performance of any of the terms, covenants or conditions of DBH under the Stadium Sublease, (a) neither the City nor the Corporation will disturb DBH's right to use nor DBH's possession of the 2024 Real Property or the 2024 Project, (b) the Stadium Sublease will continue as a direct lease, in whole or in part, among the City and the Corporation, as tenants in common lessors (and the Stadium Sublease shall be deemed amended to the extent necessary to add the Corporation as a landlord party thereunder) and DBH, as lessee, with the same force and effect as if the City and Corporation, as tenant in common lessors, and DBH, as lessee, had entered into a lease as of the date of termination of the Purchase and Use Agreement containing the same terms, covenants and conditions as those contained in the Stadium Sublease, for a term equal to the unexpired term of the Stadium Sublease, and (c) DBH hereby agrees to thereupon attorn to the City and Corporation as its tenant in common lessors under the Stadium Sublease, such attornment to be immediately effective and self-operative without the execution of any further instruments by any party. In such event, DBH, the City and the Corporation agree to enter into a new direct lease, if so requested by any of the three parties, upon the same terms and conditions as the Stadium Sublease. The rights and obligations of DBH upon such attornment will, for the balance of the term of the Stadium Sublease, be the same as set forth in the Stadium Sublease. The rights of the City and the Corporation, as lessor tenants in common, upon such attornment will, for the balance of the term of the Stadium Sublease, be the same as set forth with respect to the City under the

Stadium Sublease. The obligations of the City under the Stadium Sublease, including, without limitation, the obligation to repair, maintain or improve the 2024 Real Property or 2024 Project, to provide security for the 2024 Project and to make payment of any amounts under the Stadium Sublease, shall remain the sole obligations of the City, and shall in no way become obligations of the Corporation. Notwithstanding the foregoing sentence, any right of offset which DBH may have against the City as lessor under the Stadium Sublease with respect to rental or other payments due under the Stadium Sublease shall, upon such attornment, also continue and exist with respect to rental or other payments due to the City and the Corporation under the Stadium Sublease or the above described direct lease between the City and the Corporation, as lessor tenants in common, and DBH, as lessee. DBH shall, in the event of a Partition Event, make payment of all rental payments and other amounts due under the amended Stadium Sublease or such applicable direct lease to the City, and the City shall be required to use and apply such payments, and pay portions of such payments to the Corporation (or to the Trustee on the Corporation's behalf) as set forth in Section 2.4 of the Purchase and Use Agreement.

(c) Upon a termination of the Purchase and Use Agreement in which there is no partition of the Facilities and/or in which a partition of the Facilities results in the Corporation owning one hundred percent (100%) of the 2024 Project (a "**Nonpartition Termination**"), the Corporation will be bound to DBH, and DBH will be bound to the Corporation, under all of the terms and conditions of the Stadium Sublease to the same extent as if the Corporation had been an existing party thereto and neither the City nor the Corporation will disturb DBH's right to use nor DBH's possession of the 2024 Real Property or the 2024 Project; provided, however, that the Corporation will not: (i) be liable to DBH for any damages arising against the City which accrue prior to the effective date of the Nonpartition Termination; (ii) be liable for any other act or omission of the City; provided, however, nothing herein shall be deemed to be a waiver of DBH's rights or remedies in the event such act or omission is of a continuing nature, such as, for example, the City's failure to fulfill a repair obligation, and such default is not cured by the Corporation; (iii) be subject to any offsets or defenses which DBH may have against the City, subject to DBH's continued right of offset for any default by the City which remains uncured provided notice of such default has been provided to the Corporation; (iv) be liable to DBH for any security deposits (unless same have been delivered to the Corporation) nor bound by any rent which DBH might have paid to the City more than thirty (30) days in advance of the due date therefor under the terms of the Stadium Sublease; or (v) be bound by any material amendment or modification of the Stadium Sublease made after the date hereof without the Corporation's consent (which consent may not be unreasonably withheld, conditioned or delayed) that (A) results in a reduction or rent or other sums due and payable pursuant to the Stadium Sublease, (B) modifies any operating covenant of DBH in the Stadium Sublease, (C) reduces the term of the Stadium Sublease, (D) terminates the Stadium Sublease, (E) modifies the terms of the Stadium Sublease regarding surrendering possession of the 2024 Real Property or the 2024 Project, (F) provides for payment of rent more than one month in advance, (G) modifies the permitted uses under the Stadium Sublease, (H) modifies the provisions regarding DBH's obligation to comply with all laws (including environmental laws) or (I) materially increases the City's obligations under the Stadium Sublease; unless such amendment or modification was made pursuant to a right or option granted to DBH pursuant to the Stadium Sublease. Nothing contained herein is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of the Corporation, from and after the attornment described in this clause (c) above, to enforce its rights under the Stadium Sublease, if the Corporation has succeeded to the interest of the City in the Stadium Sublease, in the event of default by DBH beyond applicable notice and cure periods in the performance of any of the terms, covenants or conditions of the Stadium Sublease on DBH's part to be performed.

(d) If and when the Corporation or the City notify the other of a default or claimed default under this Base Lease or the Purchase and Use Agreement, the notifying party shall also send a copy of the written notice concurrently to DBH. If the City provides written notice of an Event of Nonappropriation to the Corporation or the Trustee under the Purchase and Use Agreement, the Corporation shall also send a copy of such written notice to DBH.

(e) Except as otherwise set forth herein, nothing herein contained shall be deemed a waiver of any of the Corporation's or the City's rights under this Base Lease or the Purchase and Use Agreement. In no event shall the Corporation be deemed to be in privity of contract with DBH or owe any obligation or duty to DBH under this Base Lease or the Purchase and Use Agreement or otherwise, except as set forth herein or in the Purchase and Use Agreement. In the event of any sale of the Corporation's leasehold interest in the 2024 Real Property or the Corporation's ownership interest in the 2024 Project, or other transfer of any interest therein, by the Corporation, the Corporation will be entirely freed and relieved of all covenants and obligations of the Corporation hereunder from and after the date of the transfer; *provided* that the Corporation causes any subsequent owner of the Corporation's leasehold interest in the 2024 Real Property or the Corporation's ownership interest in the 2024 Project to agree, in any sale instrument involving the sale of the Corporation's leasehold interest in the 2024 Real Property or the Corporation's ownership interest in the 2024 Project, to be bound by the covenants and obligations of the Corporation under this Section 6.11 of this Base Lease.

[END OF ARTICLE VI; SIGNATURE PAGE FOLLOWS]

WITNESS the due execution of this Base Lease as of the date first written above.

WITNESS: CITY OF SPARTANBURG, SOUTH CAROLINA

______________________ By:______________________________
Its: Mayor

____

SPARTANBURG STADIUM FACILITIES CORPORATION

______________________ By:______________________________
Its: President

____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that the Mayor of the City of Spartanburg, South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of __________, 2024.

____
Notary Public, State of South Carolina
Notary Name Printed: __________________
My Commission Expires:________________

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that the President of Spartanburg Stadium Facilities Corporation personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _________, 2024.

____
Notary Public, State of South Carolina
Notary Name Printed: __________________
My Commission Expires:________________

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

EXISTING REAL PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, being shown as Lot Number 1 containing 3.96 acres on plat of survey for J M Smith Corporation by Gooch & Associates, P.A., dated May 4, 2005 and revised June 6, 2006 and recorded in Plat Book 159, Page 969, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

2024 REAL PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, City of Spartanburg, being shown and designated as Tract 1 on a survey entitled "Subdivision Plat for Morgan & Henry JOF ESA II, LLC", prepared by Stewart L. Baylor for Tru-Line Surveying Co., Inc., PLS# C01770, dated Mach 11, 2024, and recorded March 14, 2024, in Book 185 at Page 83, in the Register of Deeds Office for Spartanburg County, South Carolina.

EXHIBIT B

FORM OF SUPPLEMENT TO BASE LEASE AGREEMENT
(ADDITIONAL REAL PROPERTY)
CITY OF SPARTANBURG, SOUTH CAROLINA

THIS SUPPLEMENT TO BASE LEASE AGREEMENT (this "Supplement") dated _________ __, 20__, by and between CITY OF SPARTANBURG, SOUTH CAROLINA, a political subdivision duly existing under the laws of the State of South Carolina, as lessor (the "City"), and the SPARTANBURG STADIUM FACILITIES CORPORATION, a South Carolina nonprofit corporation duly organized and existing under the laws of the State of South Carolina, as lessee (the "Corporation").

WITNESSETH

WHEREAS, the City and the Corporation have entered into that certain Base Lease Agreement dated _________ __,20__ (the "Base Lease"), and pursuant to Section 3.1(a) thereof, enter into this Supplement for the purposes set forth herein (with all capitalized terms used in this Supplement having the meanings set forth in the Base Lease).

NOW, THEREFORE, for and inconsideration of the mutual promises and covenants herein contained, the parties hereto hereby agree as follows:

The Base Lease is hereby amended to delete Exhibit A attached thereto and replace it in its entirety with Exhibit A-1 attached hereto.

Except as amended herein, the Base Lease shall remain in full force and effect.

[INSERT SIGNATURE PAGE]

INSTALLMENT PURCHASE AND USE AGREEMENT

between

SPARTANBURG STADIUM FACILITIES CORPORATION

as Seller

and

CITY OF SPARTANBURG, SOUTH CAROLINA

as Buyer

$[ ]

Spartanburg Stadium Facilities Corporation

Installment Purchase Revenue Bonds

(City of Spartanburg Project)

Taxable Series 2024

Dated: _________ ____, 2024

All rights, title and interested of Spartanburg Stadium Facilities Corporation in this Installment Purchase and Use Agreement (with certain exceptions) have been assigned to U.S. Bank Trust Company, National Association, as Trustee under the Trust Agreement dated of even date herewith, and are subject to the security interest of the Trustee.

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INSTALLMENT PURCHASE AND USE AGREEMENT

This INSTALLMENT PURCHASE AND USE AGREEMENT dated _________ __, 2024 (this ***"Purchase and Use Agreement"***), is made and entered into by and between the SPARTANBURG STADIUM FACILITIES CORPORATION (together with its successors and assigns, the "***Corporation***"), a nonprofit corporation formed under the laws of the State of South Carolina (the ***"State"***), as seller, and the CITY OF SPARTANBURG, SOUTH CAROLINA (the "***City***"), a political subdivision organized under the laws of the State, as buyer.

WITNESSETH

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31, Code of Laws of South Carolina, 1976, as amended; and

WHEREAS, the City is a political subdivision of the State and is authorized under the provisions of Sections 5-7-30 and 5-7-40, Code of Laws of South Carolina, 1976, as amended (the "***Act***"), to enter into this Purchase and Use Agreement; and

WHEREAS, the Corporation and the City have entered into a Base Lease and Conveyance Agreement dated of even date herewith (the "***Base Lease***") pursuant to which the City has conveyed the Existing Facilities (as such term is defined in the Base Lease) to the Corporation, is leasing the Existing Real Property (as such term is defined in the Base Lease), and is subleasing the 2024 Real Property (as such term is defined in the Base Lease) to the Corporation so that the Corporation, as consideration, may provide for (i) the design, acquisition, construction and equipping from the proceeds of the Series 2024 Bonds (as defined herein) of the 2024 Project (as such term is hereafter defined), and (ii) the payment to the City of the Base Lease Rent (as defined in the Base Lease) which will be deposited by the City in the Revenue Fund; and

WHEREAS, in order to provide funds (together with other available amounts) (i) to defray costs of design, acquisition, construction and equipping of the 2024 Project, (ii) to pay Base Lease Rent to the City under the Base Lease to be deposited in the Revenue Fund, (iii) to pay the interest coming due on the Series 2024 Bonds through November 1, 2024, (iv) paying the costs of issuance of the Series 2024 Bonds, the Corporation has entered into a Trust Agreement dated of even date herewith (the "***Trust Agreement***") by and between the Corporation and U.S. Bank Trust Company, National Association, as trustee (the "***Trustee***"), and authorized the issuance of its $____________ Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024 (the "***Series 2024 Bonds***") thereunder; and

WHEREAS, the City Council of the City (the "***City Council***"), the governing body of the City, has enacted a bond ordinance on _______ __, 2024 (the "***Bond Ordinance***") (all capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Bond Ordinance), the provisions of which authorize the City to enter into an installment purchase transaction for the purpose of effecting the financing of the 2024 Project and the City's ultimate purchase thereof, subject to the conditions set forth in the Bond Ordinance; and

WHEREAS, the City has agreed to make certain payments (the "***Installment Payments***") for the acquisition of the Facilities (as such term is defined herein), and in return the Corporation has agreed to issue the Series 2024 Bonds for the purposes set forth herein, including to defray the costs of and provide for the 2024 Project and, pending the acquisition of the Facilities pursuant to this Purchase and Use Agreement, the City shall be entitled to the use and occupancy of the Real Property (as such term is defined herein) and the Facilities; and

WHEREAS, the rights to receive Installment Payments are being assigned by the Corporation to the Trustee under the Trust Agreement as security and a source of payment for the Series 2024 Bonds;

NOW, THEREFORE, for and in consideration of the undertaking of the Corporation to design, acquire, construct and equip the 2024 Project and to pay the Base Lease Rent to the City, the undertaking of the City to pay the Installment Payments hereunder, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Corporation and the City, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. Capitalized terms not otherwise defined herein shall have the meanings provided therefor in the Trust Agreement or as set forth below.

*"**2024 Project**"* means, subject to Section 3.1 hereof, the design, acquisition, construction and equipping of a multi-use municipal stadium intended for use principally as a minor league baseball venue to be constructed on the 2024 Real Property, including fixtures and any future additions, modifications and substitutions thereto, and any personal property located on the 2024 Real Property financed with the proceeds of the Series 2024 Bonds. The 2024 Project is described on Exhibit A attached hereto.

*"**2024 Real Property**"* shall have the meaning set forth in the Base Lease. As of the date of this Purchase and Use Agreement, the "2024 Real Property" is as described on Exhibit B hereof.

"***2024 Real Property Owner***" shall mean Morgan & Henry JOF ESA II, LLC.

"***Acquisition and Construction Contracts***" means any acquisition or construction contract between the City, on behalf of the Corporation, and any contractor or other person or between any contractor or subcontractor and other person (under which contract the City has rights thereunder) with respect to the 2024 Project to be financed with Bond Proceeds.

"***Additional Bonds***" has the meaning given in the Trust Agreement.

"***Additional Facilities***" means any facilities of the City acquired, improved, renovated or constructed by the Corporation with the proceeds of Additional Bonds and made subject to this Purchase and Use Agreement by an amendment to Exhibit B hereof.

"***Additional Payments***" means that portion of the Installment Payments specified in Sections 4.1, 4.2 and 4.4 hereof as Additional Payments.

"***Additional Real Property***" means any real property in addition to the Real Property that is or will become the site of Additional Facilities and as described in a supplement to the Base Lease.

"***Available Sources***" means any legally available funds lawfully appropriated by the Council, and which may include, but is not limited to, general fund monies, proceeds of general obligation debt or Additional Bonds, accommodations fees and hospitality fees imposed and collected pursuant to Title 6, Chapter 1, Articles 5 and 7, respectively, of the Code of Laws of South Carolina 1976, as amended, revenues derived from the 2024 Project, including particularly stadium revenues, and any other funds deposited in the Revenue Fund from time to time.

“***Base Payments***” means that portion of the Installment Payments specified in Section 4.1 hereof as Base Payments.

“***Base Lease***” means the Base Lease and Conveyance Agreement dated of even date herewith, between the City and the Corporation, as it may be amended or supplemented from time to time.

“***Base Lease Rent***” has the meaning given to such term in the Base Lease.

“***Bond Fund***” means the fund of such name established pursuant to Section 5.5 of the Trust Agreement.

“***Bond Proceeds***” means the gross proceeds received from the issuance and sale of the Series 2024 Bonds.

“***City Facilities***” means that portion of the Facilities allocated to the City as the result of a partition under the provisions of Section 2.4 hereof.

“***Completion Date***” means the date on which the Corporation and the City provide the final requisition to the Trustee pursuant to Section 3.4(b) hereof.

“***Corporation Facilities***” means that portion of the Facilities allocated to the Corporation as the result of a partition under the provisions of Section 2.4 hereof.

“***Council***” means the City Council of the City, as the governing body of the City, and any successor body.

“***Environmental Laws***” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidance, orders and consent decrees relating to health, safety and environmental matters, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superfund and environmental cleanup programs and laws and U.S. Department of Transportation regulations.

“***Event of Default***” means the events set forth in Section 8.1 of this Purchase and Use Agreement.

“***Event of Nonappropriation***” means (i) the failure by the City, for any reason, to specifically budget and appropriate moneys for a Fiscal Year that may be lawfully used to pay amounts due hereunder for such Fiscal Year or (ii) the provision by a City Representative of written notice to the Corporation and the Trustee of the City's intention to not appropriate funds that may be lawfully used to pay amounts due hereunder for a Fiscal Year. An Event of Nonappropriation will be deemed to occur on the earlier of the date on which the City gives notice to the Corporation and the Trustee under clause (ii) above or July 1 of a Fiscal Year with respect to which a budget has been adopted which fails to appropriate amounts due hereunder for such Fiscal Year; provided, however, that an Event of Nonappropriation may be waived as provided for in Section 4.7 herein. Notwithstanding the foregoing, an Event of Nonappropriation shall not be deemed to occur if the City adopts an ordinance prior to July 1 of any Fiscal Year authorizing the issuance of bonds, notes or other obligations for the purpose of paying all Installment Payments due in the succeeding Fiscal Year.

“***Existing Facilities***” has the meaning given such term in the Base Lease, and the Existing Facilities are described on <u>Exhibit A</u> hereto.

"***Existing Real Property***" shall have the meaning set forth in the Base Lease. As of the date of this Purchase and Use Agreement, the "Existing Real Property" is as described on Exhibit B hereof.

"***Facilities***" means, collectively, the 2024 Project and the Existing Facilities.

"***Fiscal Year***" means the fiscal year of the City, currently beginning on each July 1 and ending on the succeeding June 30.

"***Force Majeure***" means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

"***Hazardous Material***" means and includes any pollutant, contaminant, or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead), the generation, handling, storage, transportation, disposal, treatment, release, discharge or emission of which is subject to any Environmental Law.

"***Holder***" or "***Bondholder***" means the Person in whose name a Bond is registered on the Register, subject to Section 12.14 of the Trust Agreement.

"***Installment Payments***" means the payments to be paid by the City pursuant to Sections 4.1, 4.2 and 4.4 hereof.

"***Net Proceeds***" when used with respect to any proceeds from policies of insurance required hereby or any condemnation award, or any proceeds resulting from default under, or recovery under performance and payment bonds related to, any Acquisition or Construction Contract relating to the Facilities, or proceeds from any liquidation of any part of the Facilities, means the amount remaining after deducting from the gross proceeds thereof all expenses, including, without limitation, reasonable attorney's fees and costs, incurred in the collection of such proceeds or award.

"***Partition Consultant***" means a person, firm or corporation selected by the City and approved by the Trustee in its reasonable discretion, who or which is experienced in public finance and in the valuation of public facilities and is not a full-time employee of the Trustee, the City or the Corporation.

"***Partition Date***" shall have the meaning given such term in Section 2.4 hereof.

"***Permitted Encumbrances***" means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Sections 4.1 and 4.2, respectively, of this Purchase and Use Agreement; (ii) the other Security Documents; (iii) utility, access and other easements and rights-of-way, restrictions and exceptions which do not interfere with or impair the use of the Real Property or the Facilities, including rights or privileges in the nature of easements; (iv) any financing statements filed to provide notice of security interests pursuant to this Purchase and Use Agreement or the Trust Agreement; and (v) the matters described on Exhibit C hereto.

"***Project Fund***" means the fund of such name established pursuant to Section 5.2 of the Trust Agreement.

"***Purchase Option Price***" means an amount equal to the amount required to defease or otherwise discharge the Series 2024 Bonds under the Trust Agreement plus the amount of any Additional Payments which are due or accrued hereunder at the time which any purchase option hereunder is exercised.

"***Purchase Price***" means the sum of all Base Payments to be made hereunder which Purchase Price may be recalculated in the event of any prepayment of Base Payments provided for in Section 9.1 hereof.

"***Real Property***" means, collectively, the Existing Real Property and the 2024 Real Property.

"***Security Documents***" means this Purchase and Use Agreement, the Base Lease, the Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Holders of the Series 2024 Bonds.

"***Series 2024 Bonds***" means any or all of the $____________ Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024 of Spartanburg Stadium Facilities Corporation, authorized by and secured under the Trust Agreement, and as may be issued in a single series or from time to time in multiple series.

"***Stadium Sublease***" shall have the meaning set forth for such term in Section 2.1 below.

"***State***" means the State of South Carolina.

"***Taxable Series***" means a series of the Series 2024 Bonds so designated, the interest upon which is not excludable from income for federal income tax purposes.

"***Waiver Period***" means the period of time commencing on the date an Event of Nonappropriation is deemed to occur and ending and including the next following July 31.

Section 1.2 Terms Defined in the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement unless the context clearly indicates to the contrary.

Section 1.3 City Representations, Warranties and Covenants. The City makes the following representations, warranties and covenants:

(a) The City is a political subdivision of the State and has full power and legal right to enter into this Purchase and Use Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The City's actions in making and performing its obligations under this Purchase and Use Agreement and the Base Lease have been duly authorized by all necessary governmental action and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the City or its properties are bound.

(b) The City will take such action as is necessary to assure that the 2024 Project is completed, furnished and occupied by the City. In the event the amounts available from the Bond Proceeds appear to be insufficient for such purpose, the City will use its best efforts to take one or more of the following steps: (i) cooperate with the Corporation to make such modifications or changes in the 2024 Project as will allow the cost thereof to be funded within the amount available from the Bond Proceeds and such available funds; (ii) make arrangements with the Corporation for the sale of Additional Bonds; or (iii) provide for the payment of such costs from Available Sources.

(c) The City will take such action as is necessary to ensure that the Bond Proceeds, other than amounts set aside in the Trust Agreement for payment of costs of issuance, payment of interest or funding of reserves, are applied solely to pay the costs of the 2024 Project and payment of Base Lease Rent.

(d) There are no proceedings pending or, to the knowledge of the City, threatened against or affecting the City, except as disclosed in the official statement for the Series 2024 Bonds, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, operations, prospects or condition (financial or otherwise) of the City, or the corporate existence or powers or ability of the City to enter into and perform its obligations under this Purchase and Use Agreement or the Base Lease.

(e) The execution and delivery of this Purchase and Use Agreement and the Base Lease (together, the "***City Agreements***"), and the consummation of the transactions provided for herein and therein, and compliance by the City with the provisions of the City Agreements:

(i) are within the governmental powers and have been duly and validly authorized by all necessary governmental and other action on the part of the City; and

(ii) do not and will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, loan agreement or other agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the City (other than this Purchase and Use Agreement) or any governmental restriction to which the City is a party or by which the City, its properties or operations may be bound or with the giving of notice or the passage of time or both would constitute such a breach or default or result in the creation or imposition of any such lien, charge or encumbrance, which breach, default, lien, charge or encumbrance could materially and adversely affect the validity or the enforceability of the City Agreements or the City's ability to perform fully its obligations under the City Agreements; nor will such action result in any violation of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the City, its properties or operations are subject.

(f) No event has occurred and no condition exists that constitutes an Event of Default or which, upon the execution and delivery of this Purchase and Use Agreement, or the passage of time or giving of notice or both, would constitute an Event of Default. The City is not in violation in any material respect, and has not received notice of any claimed material violation (except such violations as do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the City with the terms hereof, or the other Security Documents), of any terms of any court order, statute, regulation, ordinance, agreement, or other instrument to which it is a party or by which it, its properties or its operations may be bound.

(g) This Purchase and Use Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity; anything herein to the contrary notwithstanding, this Purchase and Use Agreement is subject in its entirety to the right of the City to terminate this Purchase and Use Agreement and all the terms and provisions hereof by failing to budget and appropriate moneys specifically to pay Installment Payments, as provided in Sections 2.2, 4.6 and 4.7 hereof.

(h) The use and the operation of the Real Property and the Facilities in the manner contemplated will not conflict in any material respect with any zoning, water or air pollution or other ordinance, order, law, rule, or regulation applicable to the Real Property and the Facilities including, without limitation, Environmental Laws. The Existing Facilities have been designed, and the City has caused or will cause the 2024 Project to be designed in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, planning, building, safety and environmental quality. The City will operate or will cause the Facilities to be operated in compliance with the requirements of all such laws, ordinances, rules and regulations, including, without limitation, Environmental Laws. The City further covenants and agrees to comply in all material respects with and materially conform to, or use its reasonable efforts to cause other persons whose obligation it is to so comply by contract or pursuant to law to comply in all material respects with and materially conform to, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and every applicable governmental authority, including Environmental Laws applicable to the Real Property and the Facilities, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Real Property and the Facilities, including building and zoning codes and ordinances (collectively, the "***Legal Requirements***"), provided that the City shall not be in default hereunder so long as the City promptly after receiving an actual written notice of any noncompliance, files a copy thereof with the Trustee and the City commences and uses its diligent efforts to cause compliance with such Legal Requirements, as long as the failure to comply and conform does not subject the Real Property or the Facilities to any material danger of being forfeited or lost as a result thereof. The City possesses or will possess, and the City hereby agrees to maintain and obtain in the future, all necessary licenses and permits, or rights thereto, to operate the Facilities as proposed to be operated, and all such licenses, permits or other approvals required in connection with the operation of the Facilities have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals that are not yet required and that will be duly obtained not later than the time required or the failure to obtain which will not materially and adversely affect the operation of the Facilities. The City covenants and agrees to do all things necessary to preserve and keep in full force and effect its franchises, rights, powers and privileges as the same relate to the Facilities.

(i) The City has approved the Corporation and the issuance by the Corporation of the Series 2024 Bonds.

(j) The City has not terminated any lease, lease-purchase agreement or installment purchase agreement by nonappropriation.

(k) The officer of the City charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Council in any Fiscal Year in which this Purchase and Use Agreement shall be in effect, provision for all Installment Payments required for such Fiscal Year under this Purchase and Use Agreement.

(l) To its knowledge, except as disclosed in the official statement for the Series 2024 Bonds, Hazardous Materials have not at any time been generated, used, treated, recycled, stored on, or transported to or from, or released, deposited or disposed of on the portion of the Real Property owned by it on the date hereof other than in compliance at all times with all applicable Environmental Laws.

Section 1.4 Corporation Representations, Warranties and Covenants. The Corporation makes the following representations, warranties and covenants:

(a) The Corporation is a duly organized and validly existing nonprofit corporation created under the laws of the State, has the requisite power to carry on its present and proposed activities, and has full power, right and authority to enter into this Purchase and Use Agreement, the Trust Agreement and the Base Lease and to perform each and all of the obligations of the Corporation provided therein.

(b) The Corporation has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each of the Acquisition and Construction Contracts to which it is or will be a party.

(c) By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Purchase and Use Agreement, the Base Lease and the Trust Agreement.

(d) The execution and delivery by the Corporation of this Purchase and Use Agreement, the Base Lease and the Trust Agreement and the consummation by the Corporation of the transactions contemplated hereby and thereby have not and will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(e) Each of this Purchase and Use Agreement, the Base Lease, the Trust Agreement and each Acquisition and Construction Contract to which the Corporation is or will be a party has been or will be duly executed and delivered by the Corporation and constitutes or will constitute a legal and valid obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as enforcement may be limited by laws affecting creditors' rights generally and except as equitable remedies may be limited by judicial discretion.

(f) There is no litigation pending and served on the Corporation that challenges the Corporation's authority to execute, deliver or perform its obligations under this Purchase and Use Agreement and the Corporation has disclosed any threatened litigation with respect to such matters of which the Corporation is aware.

(g) The Corporation is in material compliance with all applicable laws, regulations and ordinances, including, but not limited to, those applicable to the Corporation's activities in connection with this Purchase and Use Agreement.

(h) The Corporation is a South Carolina nonprofit, public benefit corporation, no part of the net income of which inures to the benefit of any private individual or organization.

(i) To finance the 2024 Project, to pay Base Lease Rent and for such other purposes contemplated hereby and by the Trust Agreement, the Corporation will enter into the Trust Agreement pursuant to which it will issue the Series 2024 Bonds payable from and secured by the Installment Payments under this Purchase and Use Agreement.

[END OF ARTICLE I]

ARTICLE II
INSTALLMENT SALE OF FACILITIES;
USE OF REAL PROPERTY AND FACILITIES AND TERM THEREOF

Section 2.1 Installment Sale of Facilities; Use of Real Property and Facilities; Term. The Corporation hereby agrees to sell the Facilities to the City in accordance with the provisions hereof. On the date hereof, the Corporation has a valid leasehold interest in the Real Property and holds fee title to the improvements thereon.

Upon the payment of each payment of Base Payments from funds other than amounts constituting Bond Proceeds (including income from the investment of such amounts), title to an undivided interest in the Facilities equal to that percentage of the Purchase Price represented by such payment will transfer from the Corporation to the City without further action by either party hereto.

Any prepayment of Base Payments which is used to redeem the Series 2024 Bonds will result in a recalculation of the Purchase Price to take account of such prepayment and, upon the making of such prepayment, the City shall be credited with an undivided ownership interest in the Facilities equal to that percentage of the total Purchase Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.

Subject to the provisions of Article VIII hereof, the City shall have the exclusive right to occupy and use the Real Property and the Facilities during the term hereof. Subject to the provisions of Sections 2.2 and 2.3 hereof, this Purchase and Use Agreement shall be for a term beginning with the date of execution and delivery hereof, and ending on November 1, 20__.

During the term hereof, the City may permit use of all or portions of the Real Property and the Facilities subject to the following limitations: (i) the Real Property and the Facilities shall not be used in any manner that interferes with the use of such property by the City for the purposes for which it was designed or is then being used; and (ii) any such agreement shall, subject to the provisions of the Stadium Sublease (as such term is defined herein), be voidable by the Trustee upon the occurrence of an Event of Default or an Event of Nonappropriation hereunder.

The City and the Corporation understand and agree that the City has entered into a Stadium Sublease Agreement of even date herewith (as the same may be modified, amended or assigned, the "***Stadium Sublease***") with DBH Kinston, LLC ("***DBH***") relating to the 2024 Project.

Section 2.2 Termination. The term of this Purchase and Use Agreement shall terminate upon the earliest of any of the following events:

(a) The occurrence of an Event of Nonappropriation which is not thereafter duly waived or cured within the Waiver Period;

(b) The purchase by the City of all of the Facilities as provided in Article IX of this Purchase and Use Agreement;

(c) The occurrence of an Event of Default under and termination of this Purchase and Use Agreement by the Corporation or Trustee under Article VIII hereof; or

(d) The later of November 1, 20__, which date constitutes the last day of the term hereof, or such date as all Installment Payments due hereunder shall be paid in full.

Termination of the term of this Purchase and Use Agreement shall terminate all obligations of the City under this Purchase and Use Agreement, including its obligations to pay future Installment Payments, and other amounts that have not been appropriated (excluding, however, amounts payable under Section 2.3 hereof and other amounts specifically provided for herein), subject to identification as provided in Section 2.4 hereof, shall terminate the City's rights of possession under this Purchase and Use Agreement of the Corporation Facilities (except to the extent of any conveyance pursuant to Article IX of this Purchase and Use Agreement); but all other provisions of this Purchase and Use Agreement, including all obligations of the Corporation with respect to the Holders of the Bonds and the receipt and disbursement of funds and all rights and remedies of the Corporation specifically provided herein, shall be continuing until the Trust Agreement is discharged as provided therein. Notwithstanding the foregoing, termination of the term of this Purchase and Use Agreement shall not impair the City's rights as landlord or the Corporation's rights as tenant under the Base Lease, except as provided in the Base Lease.

Section 2.3 Holdover Terms. In the event the City fails to deliver possession to the Corporation of the Corporation Facilities or any part thereof pursuant to Section 2.4 hereof, the City shall be unconditionally liable for the payment of all Installment Payments, including Additional Payments, for successive six month periods with each such period commencing on the Bond Payment Date following the last due date of Base Payments hereunder until the City delivers possession of the Corporation Facilities to the Corporation. The obligations of the City under this Section 2.3 shall not in any manner constitute a pledge of the full faith, credit or taxing power of the City within the meaning of any State constitutional or statutory provision.

Section 2.4 Surrender of Possession Upon Termination; Partition of Undivided Interests. Upon the occurrence of either an Event of Default or an Event of Nonappropriation which results in termination hereof, upon the written direction of the Trustee, the City and the Corporation shall proceed to partition the Facilities so that the percentage of undivided interests in the title to the Facilities will be converted, to the extent feasible, into like percentages of title in accordance with Exhibit E hereof and the following provisions. The date upon which the Trustee gives such written direction shall be the "Partition Date."

Division of Facilities. Within a reasonable time after the Partition Date, the Trustee shall propose a division of the Facilities. The Trustee may in its sole discretion require that a Partition Consultant be selected by the City, with the approval of the Trustee in its reasonable discretion, to assist, consult with and make recommendations to the Trustee in the division of the Facilities. The Trustee and the Partition Consultant, if selected, shall endeavor, to the extent practicable, to allocate the Facilities between the City and the Corporation in a fair and equitable fashion taking into account the following factors: (1) entire buildings/Facilities, if possible, will be assigned to each of the City and the Corporation; and (2) the Trustee and the Partition Consultant, if selected, and upon consultation with a majority in interest of the Holders, shall propose such partition as will, in the aggregate, best protect the interests of the Holders (subject to the provisions of this Section 2.4).

Valuation of Facilities. For purposes of any partition, the Facilities are valued in the amount set forth on Exhibit E hereof and the percentages of the Facilities being purchased on an annual basis are also set forth on Exhibit E hereof. In allocating the Facilities to the percentage of undivided interests to be conveyed to the City or retained by the Corporation, such values and percentages as set forth on Exhibit E hereof shall be used.

Partition Report; Finality. The Trustee or the Partition Consultant, if selected, shall make a report regarding the division of the Facilities as soon as practicable after the Partition Date. In the discretion of the Trustee the partition report shall be final and binding upon all parties.

Partial Conveyance. In the event that portions of a building/facility are assigned to the City and the Corporation, the City and the Corporation shall be tenants in common as to such building/facility for the remaining term of the Base Lease; provided, however (i) the City shall remain liable and responsible for its liabilities, expenses and obligations with respect to any third party contracts relating to such building/facility, including but not limited to the Stadium Sublease, and (ii) all revenues due the City pursuant to any such third party contracts (including but not limited to the Stadium Sublease) relating to such building/facility shall be applied first to the City's liabilities, expenses and obligations related to such building/facility thereunder (including, but not limited to, maintenance, maintenance reserves, taxes and insurance), with any remainder split between the Corporation and the City in accordance with their respective ownership interest in such building/facility. Notwithstanding the foregoing, the City shall have the option within 60 days after the partition report becomes final to purchase the Corporation's interest in such building/facility for a price equal to the value of the Corporation's interest in such building/facility in accordance with Exhibit E hereof, and upon such conveyance the Corporation shall have no further interest in said building/facility. Failing the exercise of such option, the City and Corporation shall remain tenants in common as described above.

Instruments of Conveyance. Within a reasonable time (but in no event later than 60 days) after the partition report becomes final, the City and the Corporation shall exchange deeds or other instruments vesting title to such of the Facilities as is required to effect such partition; provided, however, that any conveyance deed or other instrument made by the Corporation shall be made in the manner and subject to the conditions set forth in Section 9.2 hereof. Immediately thereafter, the City shall deliver or cause to be delivered peaceable possession of the Corporation Facilities to the Corporation, together with the related portion of the Real Property, without delay, in good repair and operating condition, excepting reasonable wear and tear.

[END OF ARTICLE II]

ARTICLE III
THE 2024 PROJECT; FINANCING

Section 3.1 Issuance of Series 2024 Bonds; Purchase and Installation or Construction of the 2024 Project. Upon the issuance of the Series 2024 Bonds, the Trustee will deposit from the proceeds of the Series 2024 Bonds, the amount specified in Section 5.1(a) of the Trust Agreement to be used (among other things) to pay the costs of design, acquisition, construction and equipping of the 2024 Project.

The Corporation and the City acknowledge that the City will be responsible for any and all Acquisition and Construction Contracts necessary or appropriate for the purchase and installation, or for any construction or installation to be performed in connection with the 2024 Project and the City shall be the agent of the Corporation for all such purposes. The City may install machinery, equipment and other tangible personal property in the Facilities and on the Real Property and all such machinery, equipment and other tangible personal property not acquired or financed with the proceeds of the Bond Proceeds will remain the sole property of the City.

Section 3.2 Administration of Acquisition and Construction Contracts. The City shall be responsible for preparing, administering, amending and enforcing the Acquisition and Construction Contracts to be entered into with respect to the 2024 Project and the 2024 Real Property and for litigating or settling all claims thereunder. The City and the Corporation, as their interests may appear, will be entitled to the benefit of all warranties, guaranties and indemnities provided under the Acquisition and Construction Contracts and by law.

Section 3.3 Notices and Permits. The Corporation shall cooperate with the City in order to give or cause to be given all notices and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of public authorities applying to or affecting the conduct of any work relating to the Facilities. The City will defend and save the Corporation, the Trustee and their respective members, directors, officers, agents and employees harmless from all liabilities, damages or fines due to failure to comply therewith.

Section 3.4 Disbursements from the Project Fund.

(a) The balance of the Bond Proceeds (net of any underwriter's discount and costs of issuance) shall be deposited by the Trustee into the Project Fund (and the accounts therein described in Section 5.1 of the Trust Agreement). Thereafter, disbursements from the Project Fund shall be made for costs of the 2024 Project, to pay the Base Lease Rent to the City and for such other purposes contemplated by Section 5.3 of the Trust Agreement.

(b) As provided in Section 5.3(c) of the Trust Agreement, the final requisition from the Project Fund shall contain, among other things, a certification by the Corporation and the City stating that the 2024 Project have been substantially completed in accordance with the applicable Acquisition and Construction Contracts and other terms and conditions of this Purchase and Use Agreement and the 2024 Project (as applicable) comply in all material respects with all applicable governmental regulations. Upon receipt of such final requisition, the Trustee shall apply any balance then remaining in the Project Fund in the manner provided in Section 5.4 of the Trust Agreement. As used in this paragraph, “substantial completion” of the 2024 Project shall mean completion such that a certificate of occupancy could be issued notwithstanding the fact that certain minor items of work remain to be done.

Section 3.5 Defaults Under Acquisition and Construction Contracts. In the event of any material default by a supplier, contractor or subcontractor under any of the Acquisition and Construction

Contracts, or in the event of a material breach of warranty with respect to any property, fixtures, materials, workmanship or performance under any Acquisition and Construction Contract, the City and the Corporation shall promptly proceed, and may do so in conjunction with others, to pursue diligently such remedies as are available against the applicable supplier, contractor or subcontractor and/or against any surety of any bond securing the performance of the Acquisition and Construction Contracts. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the City or the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement.

Section 3.6 Worker's Compensation Insurance. The City and the Corporation shall take such steps as are necessary to ensure that worker's compensation insurance is in force with respect to any Acquisition and Construction Contracts.

Section 3.7 Contractor's Performance. The City and the Corporation shall take such steps as are necessary to ensure contractor's performance.

The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with contractor's performance remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the City and the Corporation of any amounts theretofore paid by either of them, and not previously reimbursed, for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid into the Project Fund if received before the Completion Date, or if received thereafter, shall be deposited as otherwise provided in Section 7.2 of this Purchase and Use Agreement.

Section 3.8 General Public Liability and Property Damage Insurance. The City and the Corporation shall take such steps as are necessary to ensure that comprehensive general public and property damage liability insurance with respect to the Facilities are provided in the same manner as would be applicable to any contracts of the City. The Net Proceeds of any insurance policies required by this section or any amounts recovered by way of damages, refunds, adjustments, proceeds or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorney's fees and costs), and after reimbursement to the City or the Corporation of any amounts not to exceed $100,000 theretofore paid by the City or the Corporation and not previously reimbursed to the City or the Corporation for actions taken by the City or the Corporation to restore damaged portions of the Facilities to a condition necessary to secure the Facilities and prevent further loss shall be paid into the Project Fund before the Completion Date or, if received thereafter, shall either be deposited as provided in Section 7.2 of this Purchase and Use Agreement; provided, however, such deposit shall not exceed the amount necessary to fulfill the obligations of the City under this Purchase and Use Agreement as determined by the Trustee.

[END OF ARTICLE III]

ARTICLE IV
INSTALLMENT PAYMENTS; ASSIGNMENT TO TRUSTEE

Section 4.1 Installment Payments.

(a) Installment Payments to Constitute a Current Expense of the City. The Corporation and the City understand and intend that the obligation of the City to pay Installment Payments hereunder shall constitute a current expense of the City and are dependent upon lawful appropriations of funds being made by the Council from Available Sources to pay Installment Payments due in each Fiscal Year hereunder, and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the Available Sources, general tax revenues, funds, moneys or credit of the City.

(b) Payment of Base Payments. Subject to an Event of Nonappropriation as described in Section 4.7 hereof, on or before the 15th day prior to each Bond Payment Date during the period this Purchase and Use Agreement is in effect, the City shall pay to the Trustee as assignee of the Corporation, the Base Payments (exclusively from Available Sources specifically budgeted and appropriated for such purpose in lawful money of the United States of America), which payments shall be made to the Trustee as assignee of this Purchase and Use Agreement, in the amounts set forth on Exhibit D hereto (less any funds held for the payment of capitalized interest in the Facilities Purchase Account of the Bond Fund created with respect to the Series 2024 Bonds pursuant to Sections 5.1(f) and 5.5(a) of the Trust Agreement); provided, that nothing herein shall constitute a pledge of the Available Sources, general tax revenues, funds, moneys or credit of the City, and payments on account thereof, if and when received by the Trustee, shall satisfy the City's obligation to make any Base Payment then due and shall constitute such Base Payment to the extent received. Each payment of the Base Payments shall be in consideration for the conveyance of title to an undivided ownership interest in the Facilities as and to the extent provided in Section 2.1 hereof. As further consideration for the receipt of the Base Payments, the City shall be entitled to the use and occupancy of all of the Real Property and the Facilities during the applicable Fiscal Year in which such payments are or will be made.

(c) Payment of Additional Payments. The City agrees to pay, subject to the provisions of Section 4.7 hereof, the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in Sections 4.2 and 4.4 hereof to the parties referred to therein;

(ii) Any amounts due upon receipt of written notice from the Trustee pursuant to Section 5.5(e) of the Trust Agreement;

(iii) Within the period of time specified in Sections 5.5(e) and 5.7(i) of the Trust Agreement, the amount of moneys necessary to re-establish a subaccount of the Reserve Account established for a particular series of Bonds at the applicable Reserve Requirement as may be required pursuant to said Sections 5.5(e) and 5.7(i) of the Trust Agreement;

(iv) All reasonable costs and expenses incurred or to be paid by the Corporation or the Trustee, as the case may be, under the terms of this Purchase and Use Agreement or the Trust Agreement, including, without limitation, the amounts specified in Section 4.4 hereof and amounts payable by the Corporation pursuant to or contemplated by repurchase, forward delivery or other investment agreements which are Permitted Investments under the Trust Agreement; and

(v) Amounts required to pay premiums on liability insurance for the Corporation, directors and officers insurance for the Corporation, and insurance for the Real Property or the Facilities if such amounts are not paid directly by the City to the applicable insurer.

The Corporation may, but shall be under no obligation to, advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the Real Property and the Facilities, (ii) for the discharge of mechanic's and other liens relating to the Real Property and the Facilities, (iii) to obtain and maintain insurance for the Real Property and the Facilities and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the City fails to do so as required by this Purchase and Use Agreement or the Base Lease. As provided in Section 6.11 of the Trust Agreement, the Trustee may take any such action. Any such advances shall continue to be due as Additional Payments hereunder.

(d) Credits. The amount payable by the City as Base Payments will be reduced by the amount of money in the applicable subaccount of the Facilities Purchase Account to be credited against those payments, including without limitation accrued interest on the Series 2024 Bonds to the extent such amounts will be used to make payments on the Series 2024 Bonds. In this connection, if applicable, when amounts remaining in a subaccount of the Reserve Account equal or exceed the remainder of the applicable Base Payments due, such amounts shall be transferred to the applicable subaccount of the Facilities Purchase Account as and when needed for payment of such Base Payments.

(e) Continuation of Term by City. The City has no reason to believe, as of the date hereof, that it will not continue making Installment Payments through the entire term of this Purchase and Use Agreement, and reasonably believes that it will pay the Installment Payments due or coming due hereunder in order to continue to use the Facilities. The City covenants, to the extent permitted by law, and subject to the City's ability to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof, to maintain its capacity to issue general obligation debt that does not require voter approval, in amounts and at times, together with other Available Sources, sufficient to make Base Payments when due; provided, however, that the City makes no representation or warranty as to its ability to issue general obligation debt in the future. The City shall deliver notice to the Trustee within five days of receipt of a petition conforming to Section 5-17-20 of the Code of Laws of South Carolina, 1976, requesting repeal of an ordinance authorizing general obligation debt.

All representations and covenants contained in this Purchase and Use Agreement are subject to the ability of the City to terminate this Purchase and Use Agreement and all obligations hereunder as provided in Section 4.7 hereof.

Section 4.2 Installment Payments Not Subject to Reduction, Offset or Other Credits.

(a) The City and the Corporation intend that this Purchase and Use Agreement shall yield, net, the Base Payments specified in Section 4.1 hereof during the term of this Purchase and Use Agreement, and that all costs, expenses, liabilities and obligations of any kind and nature whatsoever including, without limitation, any ad valorem taxes or other taxes levied against holders of real or personal property, insurance premiums, utility charges and assessments and all operation, maintenance, repair and upkeep expenses relating to the Real Property and the Facilities and the use of the Real Property and the Facilities which do not constitute Base Payments, or other obligations relating to the Real Property and the Facilities which may arise or become due during the term of this Purchase and Use Agreement and which the Corporation except for this Purchase and Use Agreement or the terms of the Base Lease would ordinarily be required to pay as owner of the Real Property and the Facilities (regardless of whether the City as owner would be so required to pay) shall either be paid under the provisions of the Base Lease or be included in the Installment Payments and paid by the City as Additional Payments under this paragraph (a). The City acknowledges that, under the provisions of the Base Lease, it has retained responsibility for the payment of taxes and insurance on the Real Property and the Facilities and the property associated therewith and the obligations of the City under the Base Lease are not subject to the limitations of Section 4.6 hereof.

(b) All payments of Additional Payments referred to in Section 4.2(a) above shall be made by the City in immediately available funds on a timely basis directly to the person or entity to which such payments are owed; provided, however, subject to the terms hereof and the other Security Documents, the City shall not be required to pay, discharge or remove any tax, lien, or assessment, or any mechanic's, laborer's or materialman's lien or encumbrance, or any other imposition or charge against the Real Property and the Facilities or any part thereof, or comply with any law, ordinance, order, rule, regulation or requirement, as long as the City shall, after prior written notice to the Corporation and the Trustee, at the City's expense, contest the same or the validity thereof in good faith, by action or inaction which shall operate to prevent (i) the collection of the tax, lien, assessment, encumbrance, imposition or charge so contested, or the enforcement of such law, ordinance, order, rule, regulation or requirement, as the case may be, and (ii) the sale of the Facilities or any part thereof to satisfy the same or to enforce such compliance; provided further, that the City shall have given reasonable security as may be demanded by the Corporation, the Trustee, or both, to insure such payment and prevent any sale or forfeiture of the Facilities or any part thereof by reason of such nonpayment or noncompliance.

Section 4.3 Prepayment of Installment Payments. The City may prepay Installment Payments in whole or in part as provided in, and under the conditions prescribed under, Section 9.1 hereof, or at any time that the City so determines for the purpose of providing for the redemption of Series 2024 Bonds as provided in Section 4.1 of the Trust Agreement or the purchase of Series 2024 Bonds as provided in Section 4.4 of the Trust Agreement. The City shall notify the Trustee in writing of the dates on which the Series 2024 Bonds corresponding to any prepayment hereunder are to be redeemed or purchased (as applicable) and the amount to be so redeemed or purchased on each such date, all in accordance with the provisions of the Trust Agreement. The Trustee may request such reasonable information and reports as may be necessary to establish the sufficiency of the payments to be made at the time of such prepayment or purchase, respectively.

Section 4.4 Administrative Expenses. Subject to the provisions of Section 4.7 hereof, the City shall pay as Additional Payments (i) the periodic fees and reasonable expenses from time to time of the Trustee and any Paying Agent incurred in administering the Trust Agreement and the Series 2024 Bonds, and (ii) any reasonable expenses, including but not limited to fees for legal, financial and accounting services and costs of directors and officers insurance incurred by the Corporation or the Trustee to compel full and punctual performance of this Purchase and Use Agreement in accordance with the terms hereof.

Section 4.5 Assignment of Purchase and Use Agreement; Manner of Payment. As security for and the source of payment of the Series 2024 Bonds, pursuant to the Trust Agreement, the Corporation has assigned to the Trustee all of its right, title and interest in and to this Purchase and Use Agreement, except for the right of the Corporation to receive indemnity against claims and payment of its fees and expenses pursuant to Sections 4.2, 4.4, and 5.5 hereof. The City consents and agrees to the assignment of this Purchase and Use Agreement as provided herein. The City covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Purchase and Use Agreement, and to make all payments required by the City under this Purchase and Use Agreement (other than payment for indemnity and fees and expenses of the Corporation) directly to the Trustee, all without set-off, defense or counterclaim by reason of any dispute which the City may have with the Corporation or the Trustee.

Section 4.6 Limited and Special Obligation of City. Upon the occurrence of an Event of Nonappropriation, this Purchase and Use Agreement may be terminated as of the end of the last Fiscal Year which is not affected by such Event of Nonappropriation, and the City shall not be obligated to pay the Installment Payments provided for in this Purchase and Use Agreement beyond the end of such Fiscal Year (except as otherwise provided herein); provided, however, that the Trustee, acting at the direction of Bondholders, may waive an Event of Default pursuant to Section 4.7(c)(ii) hereof. If this Purchase and Use Agreement is terminated under this Section 4.6 or as provided in Section 4.7 or Section 2.2, the City agrees to peaceful delivery of that portion of the Facilities to be retained by the Corporation or its assigns as provided in Section 2.4 hereof.

The obligations of the City to make Installment Payments required under this Article IV and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Purchase and Use Agreement. Notwithstanding any dispute involving the City and any of the Corporation, any contractor, subcontractor, or supplier of materials or labor, or any other person, the City shall make all Installment Payments when due and shall not withhold any Installment Payments pending final resolution of such dispute, nor shall the City assert any defense or right of set-off, recoupment, or counterclaim against its obligation to make such payments required under this Purchase and Use Agreement.

The City's obligation to make Installment Payments during the term of this Purchase and Use Agreement shall not be abated through accident or unforeseen circumstances. The City agrees not to suspend, reduce, abrogate, diminish, postpone, modify, discontinue, withhold, or abate any portion of the payments required pursuant to this Purchase and Use Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the Real Property or the Facilities, failure of the Corporation to complete the design, acquisition, construction, or equipping of the 2024 Project, failure of the City to occupy or to use the Facilities as contemplated in this Purchase and Use Agreement or otherwise, any change or delay in the time of availability of the 2024 Real Property or the 2024 Project, any acts or circumstances which may impair or preclude the use or possession of the Real Property or the Facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the Real Property or the Facilities or in the suitability of the Real Property or the Facilities for the City's purposes or needs, failure of consideration, the invalidity of any provision of this Purchase and Use Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the Real Property or the Facilities, the taking by eminent domain of title to or the use of all or any part of the Real Property or the Facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Purchase and Use Agreement.

Nothing contained in this section shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained. In the event the Corporation should fail to perform any such agreement on its part, the City may institute such action against the Corporation as the City may deem necessary to compel performance so long as such action does not abrogate the City's obligations under this Purchase and Use Agreement. The City may, however, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its right of possession, occupancy, and use under this Purchase and Use Agreement, and in such event the Corporation hereby agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the Corporation in any such action or proceeding if the City shall so request. It is the intention of the parties that the payments required by this Purchase and Use Agreement will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the City's obligation to pay Installment Payments hereunder as set forth above.

The obligations of the City under this Purchase and Use Agreement shall not constitute a pledge of the full faith, credit or taxing power of the City within the meaning of any State constitutional or statutory provision.

Section 4.7 Event of Nonappropriation. Upon the occurrence of an Event of Nonappropriation, the following provisions shall apply:

(a) If written notice is given by a City Representative to the Corporation and the Trustee that it will not appropriate funds from any Available Source in the next succeeding Fiscal Year for payment of Installment Payments or if an Event of Nonappropriation is otherwise deemed to have occurred, the Trustee shall as soon as practicable give written notice to the City and the Corporation stating that an Event of Nonappropriation has occurred; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.

(b) Subject to Article VIII hereof and the provisions of subsections (c) and (d) of this Section 4.7, this Purchase and Use Agreement will be terminated pursuant to Section 2.2.

(c) Subject to Article VIII hereof and the provisions of subsection (d) of this Section 4.7, the Trustee shall waive any Event of Nonappropriation if (i) such Event of Nonappropriation is cured by the City before the Waiver Period has expired and in the Trustee's judgment such waiver is in the best interest of the Holders of the Bonds, or (ii) the Trustee, acting upon the direction of the Holders of the majority in aggregate principal amount of the Outstanding Bonds, elects to waive such Event of Nonappropriation for any reason.

(d) Subject to Article VIII hereof and notwithstanding the provisions of subsection (c) of this Section 4.7, the Trustee shall waive any Event of Nonappropriation (but only an Event of Nonappropriation which occurs pursuant to clause (i) of the definition thereof) which is cured by (i) the City's specifically budgeting and appropriating, prior to expiration of the Waiver Period, moneys sufficient to pay Installment Payments coming due hereunder for such Fiscal Year that may be lawfully used to make such payment, or (ii) the issuance of bonds, notes or other obligations prior to the expiration of the Waiver Period for the purpose of, and providing sufficient funds for, refunding, refinancing and discharging all outstanding Series 2024 Bonds.

If an Event of Nonappropriation occurs and is not waived, the City shall not be deemed to be in default under this Purchase and Use Agreement and shall not be obligated to make payment of any future Installment Payments due hereunder or any other payments provided for herein which accrue after the beginning of the Fiscal Year with respect to which there has occurred an Event of Nonappropriation; provided, the City shall continue to be liable for Installment Payments pursuant to Section 2.3 hereof.

The City, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under Section 2.4 hereof and shall vacate and deliver over to the Trustee the Corporation Facilities no later than 60 days after the partition report becomes final in accordance with Section 2.4 hereof.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the Trust Agreement for the benefit of the Holders of the Series 2024 Bonds. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, if such Event of Nonappropriation occurs by notice, or the July 16 following (i) the July 15 on which the City fails to specifically budget and appropriate sufficient moneys to pay the Installment Payments due hereunder, or (ii) the June 1 on which the City fails to enact an ordinance authorizing the issuance of general obligation bonds for the purpose of paying the Installment Payments due hereunder, the

Trustee shall, or may, as the case may be, proceed to exercise its remedies, liquidate its interest in this Purchase and Use Agreement or lease the Corporation Facilities (after the partition and delivery thereof pursuant to Section 2.4 hereof) as provided in Section 8.2 hereof after such dates as follows: (a) on July 1 of a Fiscal Year in the event that a City Representative has provided written notice to the Corporation and the Trustee of the City's intention to not appropriate funds that may be lawfully used to pay Installment Payments due hereunder in such Fiscal Year, or (b) on January 16 of a Fiscal Year in the event that (i) the City fails by the next preceding day to specifically budget and appropriate sufficient moneys that may be lawfully used to pay Installment Payments due hereunder in such Fiscal Year, or (ii) the City did not by the preceding June 1 enact an ordinance authorizing the issuance of general obligation bonds for the purpose of and in principal amount sufficient to pay Installment Payments due hereunder in such Fiscal Year. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Holders of the Bonds as set forth in the Trust Agreement.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees and expenses of the Trustee, and all other amounts which are payable hereunder, in excess of the principal amount of the Outstanding Series 2024 Bonds at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the City by the Trustee, its assigns or its lessee.

[END OF ARTICLE IV]

ARTICLE V
COVENANTS OF THE CITY

Section 5.1 Maintenance and Operation of Real Property and Facilities; Transfers.

(a) Subject to Sections 4.6 and 4.7 herein, the City covenants and represents that during the term of this Purchase and Use Agreement, it shall, at its own cost or expense, use and maintain the Real Property and the Facilities in a sound and economical manner, in compliance with all present and future laws and governmental regulations applicable thereto, and maintain, preserve and keep the Real Property and the Facilities in good repair, working order and condition, and that it shall from time to time make or cause to be made all necessary and proper repairs and renewals so that at all times the operation of the Facilities may be properly and advantageously conducted. This covenant shall not prevent the City from discontinuing operation of the Facilities at any time.

(b) Except as otherwise provided in this Section 5.1 and Section 2.1 hereof, prior to payment of the Series 2024 Bonds in full, the City shall not sell, transfer, lease, sublease or otherwise dispose of all or any portion of the Real Property and the Facilities, or its interests under this Purchase and Use Agreement, except to another political subdivision of the State, which assumes in writing all obligations of the City under this Purchase and Use Agreement and shall enter into no such transaction without the written consent of the Trustee.

Section 5.2 Liens on Real Property or the Facilities. The City shall not create, incur or suffer to exist any lien, charge or encumbrance on the Real Property or the Facilities or its rights under this Purchase and Use Agreement other than any Permitted Encumbrance.

Section 5.3 Representations and Covenants Regarding Tax Exempt Status of Series 2024 Bonds.

(a) Neither the Corporation nor the City shall take any action (including but not limited to any use of the Real Property or the Facilities) or permit any action to be taken on its behalf, or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its expectation on the date of this Purchase and Use Agreement would cause the interest paid on the Series 2024 Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes.

(b) [Omitted]

(c) The City will accept title to the Facilities upon the discharge of the Series 2024 Bonds.

(d) The representations and covenants of this Section 5.3 shall be inapplicable to any Taxable Series.

Section 5.4 Reports and Opinions; Inspections.

(a) The City shall deliver to the Trustee and the Corporation, within 90 days after the end of each Fiscal Year a certificate stating that no Event of Default under this Purchase and Use Agreement has occurred and is continuing and that the Real Property and the Facilities are being used in accordance with the terms of this Purchase and Use Agreement.

(b) The City shall permit the Corporation and the Trustee to examine, visit and inspect, at any reasonable time, the Real Property and the Facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Trustee may reasonably require.

Section 5.5 Immunity of Corporation and Trustee. In the exercise of the powers of the Corporation and the Trustee and their members, directors, officers, employees and agents under the Trust Agreement or this Purchase and Use Agreement including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Corporation nor the Trustee shall be accountable to the City for any action taken or omitted with respect to the Facilities or this Purchase and Use Agreement by either of them or their members, directors, officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred under this Purchase and Use Agreement. The Corporation and the Trustee and their members, officers, employees and agents shall be protected in its or their acting upon any paper or documents believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims based on the Trust Agreement or this Purchase and Use Agreement against any member, director, officer, employee or agent of the Corporation or the Trustee alleging personal liability on the part of such person.

Section 5.6 Compliance with Laws. With respect to the Real Property and the Facilities and any additions, alterations, or improvements thereto, the City will at all times comply with all applicable requirements of federal and state laws and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that the City shall be deemed in compliance with this Section 5.6 so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

Section 5.7 Insurance and Condemnation Proceeds. The City shall not make any disposition nor direct the disposition of insurance or condemnation payments with respect to the Real Property or the Facilities in excess of $250,000 without the prior written consent of the Trustee except as may be required by the terms hereof or of the other Security Documents or of any Permitted Encumbrances existing on the date hereof.

Section 5.8 Filing of Budget with Trustee. During the term of this Purchase and Use Agreement, the City shall file with the Trustee, within 15 days after the beginning of each Fiscal Year, a copy of the annual budget of the City for that Fiscal Year.

Section 5.9 Alterations of the Real Property and the Facilities; Removals. The City, in its discretion and at its expense, may remodel or make such additions, modifications and improvements to the Real Property and Facilities as it may deem to be desirable; provided, that no such additions, modifications or improvements shall adversely affect the structural integrity or strength of, or materially interfere with the use and operations of, the Real Property or the Facilities.

In this connection, the City may remove any items of personal property constituting a part of the Facilities financed by a source of funds other than the proceeds of the Series 2024 Bonds, provided that such removal of the personal property shall not materially diminish the value of the Facilities or materially impair the operation thereof.

In the case of any removal as provided above or any removal of City property not constituting Facilities, the City shall repair any damage resulting from such removal.

Section 5.10 Continuing Disclosure. The City covenants to provide the information required by Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended ("15c2-12"), as an Obligated Person (as defined in 15c2-12) in compliance with the provisions of the Continuing Disclosure

Undertaking attached hereto as Exhibit F (the "Disclosure Undertaking"), if applicable. If the City is obligated to comply with the Disclosure Undertaking pursuant to 15c2-12, then in the event of a failure by the City or any dissemination agent appointed thereby to comply with any provisions of the Disclosure Undertaking, the rights of the Holders of the Series 2024 Bonds to enforce the provisions of the Disclosure Undertaking shall be limited solely to a right, by action in mandamus or specific performance, to compel performance of the parties' obligations under the Disclosure Undertaking.

Any failure by a party to perform in accordance with the Disclosure Undertaking shall not constitute a default on the Series 2024 Bonds or under any other document relating to the Series 2024 Bonds, and all rights and remedies shall be limited to those expressly stated in the Disclosure Undertaking.

[END OF ARTICLE V]

ARTICLE VI
INSURANCE

Section 6.1 Types of Insurance and Coverage Requirements.

(a) The Corporation shall maintain all-risk property insurance on the Facilities, with such deductible provisions as are acceptable to the City. Such insurance shall name the City and the Trustee as loss payees as their interest may appear, be maintained for the duration of this Purchase and Use Agreement and each policy shall be in an amount equal to the replacement value of the Facilities; provided that the City shall periodically review the replacement cost of the Facilities and shall deliver certification of the same to the Corporation and the Trustee.

(b) The City and the Corporation shall maintain, for the duration of this Purchase and Use Agreement, general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than $1,000,000 for a loss arising from a single occurrence and not less than $2,000,000 in the aggregate.

(c) All policies of insurance required hereunder shall be either self-insurance of the City or written by the South Carolina Insurance Reserve Fund, companies rated not lower than A- by A. M. Best Company or in one of the two highest rating categories by Standard and Poor's Credit Markets Services and Moody's Investors Service or by companies acceptable to the Corporation, in each case qualified to do business in the State and each policy shall provide at least 30 days prior written notice to the City, the Corporation, as applicable, before such policy is canceled. The City may provide any part or all of the insurance required hereby under the terms of a policy insuring other facilities or risks or any "blanket" policy. The City covenants that it will take all action, or cause the same to be taken, which may be necessary to enable recovery under the aforesaid insurance policies.

(d) All policies of insurance required hereby shall be open to inspection by the City, the Corporation and the Trustee at all reasonable times. Certificates of insurance describing such policies shall be furnished by the City or the Corporation, as applicable, or the City or the Corporation shall cause the same to be furnished to such other party at or prior to the execution and delivery of this Purchase and Use Agreement, and each renewal thereof immediately upon receipt of the same. If any change shall be made in such insurance as to either amount or type of coverage, a description and notice of such change shall be furnished immediately to the parties hereto by the City or the Corporation, as applicable, or it shall cause the same to be furnished. In the event that the City or the Corporation fails to maintain any insurance as provided in this Section, the Trustee may, following written notice to the City or the Corporation, as applicable, procure and maintain such insurance at the expense of the City or the Corporation, as applicable (reimbursable as provided hereinbefore), but the Trustee shall not be under an obligation to do so.

(e) Any person or entity holding special events at the 2024 Project, whether hosted by the City or a sublessee of the 2024 Project, is required to purchase an event policy of insurance and name the City, the sublessee of the 2024 Project, the Corporation and the 2024 Real Property Owner as additional insured. If the person or entity holding the special event is selling alcohol, liquor liability coverage must be included in the event policy.

(f) The City agrees that it shall certify in writing to the Trustee on June 30 of each year that it is in compliance with this Section 6.1. The Trustee is not responsible for determining the sufficiency of such insurance requirements.

Section 6.2 Self-Insurance Approval. If, at the time of execution of this Purchase and Use Agreement, the City self-insures or at any time hereafter desires to self-insure to the extent permitted by law, the entry into such self-insurance program shall require the written approval of the Corporation.

Section 6.3 Title Insurance. The City shall obtain at the time of execution of this Purchase and Use Agreement a title insurance policy insuring the City's leasehold interest in the 2024 Real Property under the Ground Lease Agreement entered into by and between Morgan & Henry JOF ESA, LLC, as ground lessor, and the City, as ground lessee, subject only to Permitted Encumbrances, in an amount equal to the aggregate Installment Payments designated as principal, naming the Corporation and its successors and assigns as the named insured.

[END OF ARTICLE VI]

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 7.1 Damage, Destruction and Condemnation. If, during the term of this Purchase and Use Agreement, (i) the Facilities or any portion thereof shall be destroyed (in whole or in part), or be damaged by fire or other casualty, or (ii) title to, or the temporary or permanent use of, the Real Property, the Facilities or any portion thereof or the estate of the City or the Corporation in the Real Property, the Facilities or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or (iii) a material defect in construction or installation of the Facilities or any portion thereof shall become apparent, or (iv) title to or the use of all or any portion of the Real Property or the Facilities shall be lost by reason of a defect in title thereto, then the City shall be obligated, subject to the provisions of Sections 4.6 and 4.7 hereof, to continue to pay the amounts specified as Installment Payments under this Purchase and Use Agreement.

Section 7.2 Obligation to Repair or Replace the Facilities. The City, the Corporation and the Trustee shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards made available by reason of any occurrence described in Section 7.1 hereof, to be deposited as provided in Sections 3.5, 3.7 or 3.8, as the case may be, hereof prior to the Completion Date or, after the Completion Date, in a separate trust fund designated as the "Net Proceeds Fund" which the Trustee is hereby directed to establish in such event. All Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Real Property and the Facilities by the City upon receipt of requisitions by the Trustee signed by an authorized official of the City stating with respect to each payment to be made: (i) the requisition number; (ii) the name and address of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; and (iv) that each obligation mentioned therein has been properly incurred, is properly payable from the Net Proceeds held in the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. In carrying out any of the provisions of this Section 7.2, the City shall have all power and authority granted under Article III of this Purchase and Use Agreement; and the Trustee shall cooperate with the City in the administration of such fund and shall not unreasonably withhold its approval of requisitions required by this Section 7.2. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be applied to any lawful and authorized purpose of the City as directed in writing by the City. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be included as part of the Facilities under this Purchase and Use Agreement and the Trust Agreement.

If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Real Property or the Facilities, the City shall be responsible for the completion of the work and the payment of any cost in excess of the amount of the Net Proceeds. In this connection, the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this paragraph, the City shall not be entitled to any reimbursement therefor from the Trustee or the Holders of the Series 2024 Bonds, nor shall the City be entitled to any diminution of any Installment Payments payable under this Purchase and Use Agreement.

Section 7.3 Cooperation of the Parties. The Corporation, the City and the Trustee shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 7.1 of this Purchase and Use Agreement, in making the Net Proceeds available in accordance with Section 7.2 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Real Property, the Facilities or any portion thereof and in the enforcement of all warranties relating to the Real Property or the Facilities. The Corporation hereby designates the City as its agent for the purpose of making collections under such policies, such amounts to be held in trust and applied in accordance herewith. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding with respect to the Real Property, the Facilities or any portion thereof without the written consent of the City and the Trustee.

[END OF ARTICLE VII]

ARTICLE VIII
DEFAULTS AND REMEDIES

Section 8.1 Events of Default. Each of the following events is hereby defined as, and declared to be and shall constitute, an "Event of Default":

(a) failure by the City to make any payment required to be made pursuant to Section 4.1(b) hereof within five days after the same is due (provided, however, that an Event of Nonappropriation shall not result in an Event of Default under this provision); or

(b) failure by the City to timely comply with the provisions of Section 2.4 hereof relating to partition and vacating of Facilities at the times required; or

(c) failure by the City to make any payment required to be made pursuant to Section 4.1(c), 4.2 or 4.4 hereof or under the provisions of the Base Lease within ten days after the same is due; or

(d) failure by the City to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Purchase and Use Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the City by the Trustee; or

(e) if any of the representations and warranties of the City hereunder shall prove to be false or misleading in any material respect as of the date such representations and warranties were made; or

(f) the failure by the City promptly to stay or lift any execution, garnishment or attachment of such consequence as will, in the reasonable judgment of the Trustee, materially impair its ability to carry out its obligations under this Purchase and Use Agreement (provided that the City shall not be in default so long as it is diligently prosecuting a bona fide appeal from any such execution, garnishment or attachment); or

(g) if the City shall (i) apply for or consent to the appointment of a receiver, trustee, or the like of the City or of property of the City, or (ii) admit in writing the inability of the City to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code.

The foregoing provisions of this Section 8.1 are subject to the following provision: If, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the City contained in Articles IV and VI of this Purchase and Use Agreement, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

Section 8.2 Remedies. Whenever any Event of Default referred to in Section 8.1 of this Purchase and Use Agreement shall have happened and be continuing, the Corporation (with written notice promptly given to the Trustee) and the Trustee may terminate the term of this Purchase and Use Agreement and shall give notice to the City to vacate the Corporation Facilities no later than 60 days after the partition report becomes final in accordance with Section 2.4 hereof. Whenever an Event of Nonappropriation shall be deemed to occur, the term of this Purchase and Use Agreement shall terminate pursuant to Section 2.2(a) and the City shall vacate and deliver over to the Trustee possession of the Corporation Facilities by the time specified in the third paragraph of Section 4.7(d) hereof.

Subject to the terms of the Base Lease, the Trustee may also (i) take whatever action at law or in equity which may appear necessary or desirable to enforce its rights in and to the Facilities under this Purchase and Use Agreement or any of the other Security Documents, subject, however, to the limitations set forth herein, and (ii) exercise all the rights and remedies of a secured party under the South Carolina Uniform Commercial Code with respect to any security interests subject thereto.

In addition, the Trustee may, or at the direction of the Holders of the majority in aggregate principal amount of the Outstanding Bonds shall, without any further demand or notice, and subject to the terms of the Base Lease, take one or both of the following additional remedial steps:

(i) The Trustee may liquidate its interest in this Purchase and Use Agreement or sell or assign its interest in the Base Lease; or

(ii) The Trustee may relet or assign its rights to the Corporation Facilities under such terms and conditions as it deems appropriate for the benefit of the Holders of the Bonds.

Notwithstanding anything in this Purchase and Use Agreement to the contrary, (1) in the event of a termination of the City's interest in any portion of the Facilities and subsequent thereto the Trustee shall receive a payment for the transfer of its interest in this Purchase and Use Agreement or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including fees and expenses of the Trustee, in excess of the principal amount of the Outstanding Bonds at the time of the Event of Default or Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the City by the Trustee, its assigns or its lessee and (2) the Trustee shall not be permitted to sell, lease or otherwise dispose of any interest in the Corporation Facilities following an Event of Nonappropriation until the Waiver Period has expired, unless such action is expressly subject to the rights of the Corporation, Trustee or the City, as the case may be, with respect to a cure and waiver of such Event of Nonappropriation.

Section 8.3 Limitations on Remedies. A judgment requiring a payment of money may be entered against the City by reason of an Event of Default or Event of Nonappropriation only as to the City's liabilities described in Section 10.1 of this Purchase and Use Agreement.

Section 8.4 Cumulative Rights. No remedy conferred upon or reserved to the Corporation or the Trustee by this Purchase and Use Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Purchase and Use Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Corporation or the Trustee of any breach by the City of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or failure by the Corporation or the Trustee to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised by the Corporation or the Trustee from time to time and as often as may be deemed expedient.

Section 8.5 Discontinuance of Proceedings. In case the Corporation or the Trustee shall have proceeded to enforce any right under this Purchase and Use Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Corporation or the Trustee, then and in every such case the City, the Corporation and the Trustee shall be restored respectively to their several positions and rights hereunder and all rights, remedies and powers of the City, the Corporation and the Trustee shall continue as though no such proceeding had been taken.

[END OF ARTICLE VIII]

ARTICLE IX
CONVEYANCE OF THE FACILITIES

Section 9.1 Optional Purchase of the Facilities.

(a) Purchase in Full. The City is hereby granted the option to terminate this Purchase and Use Agreement and to purchase the Corporation's interest in the Facilities not theretofore acquired by the City at any time upon payment by the City of the then applicable Purchase Option Price; provided, however, that no such termination shall relieve the City from its obligation to pay administrative expenses as provided in Section 4.4 hereof until the Series 2024 Bonds have been fully discharged and the Trust Agreement terminated. The City shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such purchase or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such purchase, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee. Upon the payment of the Purchase Option Price, the Corporation shall transfer and convey all its remaining interest in the Facilities to the City in the manner provided in Section 9.2 hereof.

(b) Partial Prepayment of Installment Payments and Purchase. From and after November 1, 20__, the City is also granted the option to prepay Installment Payments on the due date of any Base Payments hereunder for the purpose of having such prepayments credited towards the purchase price of the Facilities. The City shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such prepayment or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such prepayment, and shall provide funds for such prepayment or such other assurance thereof as may be acceptable to the Trustee.

Section 9.2 Manner of Conveyance.

(a) Complete Conveyance. At the closing of any purchase or other conveyance of all of the Facilities pursuant to Section 9.1 of this Purchase and Use Agreement, or at the conclusion of the term hereof by the payment of all amounts due hereunder, the Corporation and the Trustee shall execute and deliver to the City all necessary documents assigning, transferring and conveying all interest to the Facilities by an instrument terminating the Base Lease and this Purchase and Use Agreement and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the City, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the City.

(b) Partial Conveyance Resulting from Partition. Upon any conveyance under Section 2.4 hereof, the Corporation and the Trustee shall execute and deliver to the City all necessary documents assigning, transferring and conveying all interest in the City Facilities by an instrument terminating the

Base Lease and this Purchase and Use Agreement with respect to the City Facilities and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the City, subject to the following:

(i) Permitted Encumbrances, other than this Purchase and Use Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation and the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the Corporation or the Trustee as required or permitted by this Purchase and Use Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action or inaction of or consented to by the City.

Neither the Trustee nor the Corporation shall be responsible for the recordation of any deed or other instrument for such purposes.

(c) Partial Conveyance Resulting from Prepayment. Any conveyance resulting from a partial prepayment under Section 9.1(b) hereof shall be made in the manner as all other conveyances with respect to payments on each Bond Payment Date.

[END OF ARTICLE IX]

ARTICLE X
MISCELLANEOUS

Section 10.1 Limitation of Liability of the Corporation and the City. Notwithstanding any other provision of this Purchase and Use Agreement, in the event of any default, including an Event of Default as to the City, by either the Corporation or the City hereunder or under the Trust Agreement, any liability of the Corporation or the City shall be enforceable only out of its respective interest in the Base Lease and under this Purchase and Use Agreement and the moneys to be paid by the City through the later of the end of the Fiscal Year as to which Base Payments have been appropriated for or the conclusion of any holdover term as provided in Section 2.3 hereof, and there shall be no recourse for any claim based on this Purchase and Use Agreement, the Trust Agreement or the Bonds, against any other property of the Corporation or the City or against any officer or employee, past, present or future, of the Corporation or the City or any successor body as such, either directly or through the Corporation or the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Corporation and the City shall be limited to its interests in the Base Lease and interests under this Purchase and Use Agreement and the moneys to be paid by the City hereunder through the later of the end of the Fiscal Year as to which Base Payments have been appropriated therefor or the conclusion of any holdover term as provided in Section 2.3 hereof, and the lien of any judgment shall be restricted thereto, and there shall be no other recourse by the City against the Corporation or the Corporation against the City or any of the property now or hereafter owned by it or either of them.

Section 10.2 Surrender of Possession Upon Termination. Upon termination hereof or upon termination of all rights of the City hereunder, either by reason of an Event of Default or an Event of Nonappropriation, the City covenants that it will deliver or cause to be delivered peaceable possession of such of the Facilities as are determined under Section 2.4 hereof to be Corporation Facilities together with the related portion of the Real Property without delay, upon demand made by the Corporation or the Trustee, in good repair and operating condition, excepting reasonable wear and tear and damage, injury or destruction by fire or other casualty which, under the terms hereof, shall not have been repaired, reconstructed or replaced.

Section 10.3 Notices. Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties hereto as follows:

If to the City:

City of Spartanburg, South Carolina
Attn: City Manager
187 W. Broad Street
Spartanburg, SC 29306

If to the Corporation:

Spartanburg Stadium Facilities Corporation
Attn: President
187 W. Broad Street
Spartanburg, SC 29306

(with copy to the City as described above)

If to the Trustee:

U.S. Bank Trust Company, National Association
[1441 Main Street, Suite 775
Columbia, SC 29201
Attention: Corporate Trust Services]

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, the City or the Trustee to one or more of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

Notwithstanding the foregoing, the City and the Corporation may send notices by electronic mail to the Trustee. The City and Corporation agree that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that instructions that purport to have been sent by an authorized officer of the City or Corporation (an "Authorized Officer"), as applicable, have been sent by such Authorized Officer. The City and the Corporation shall each be responsible for ensuring that only Authorized Officers transmit such instructions to the Trustee, and the City, the Corporation and such Authorized Officers are responsible for safeguarding the use and confidentiality of applicable user and authorization codes, passwords and authentication keys provided by the Trustee. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City and the Corporation agree (i) to assume all risks arising out of the use of electronic mail to submit instructions and direction to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk or interception and misuse by third parties; (ii) that each of them are fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the City or the Corporation, as applicable; (iii) that the security procedures (if any) to be followed in connection with their respective transmission of instructions provide to them a commercially reasonable degree of protection in light of their particular needs and circumstances; and (iv) that they will notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 10.4 Assignments. Except as expressly provided in the Trust Agreement and the provisions of Section 4.5 hereof, this Purchase and Use Agreement may not be assigned by either of the parties hereto without the written consent of the other party hereto and the written consent of the Trustee. Except as provided in Section 8.2 hereof and the provisions of Articles VI and VII of the Trust Agreement, the Trustee shall not be permitted to further assign its interest in this Purchase and Use Agreement. Any assignment in contravention hereof shall be void.

Section 10.5 Severability. In case any provision of this Purchase and Use Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court or administrative body of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this Purchase and Use Agreement shall be construed as if such provision had never been contained herein.

Section 10.6 Amendments. The City and the Corporation may, with the prior consent of the Trustee pursuant to Section 11.1 of the Trust Agreement, but without the consent of the Holders of any Bonds, enter into any amendments hereto at any time for any of the following purposes:

(a) To cure any ambiguity, defect or omission herein or in any amendment hereto; or

(b) To grant to or confer upon the Corporation any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon it; or

(c) To add to the covenants and agreements of the City herein contained, or to surrender any right or power herein reserved to or conferred upon the City; or

(d) To increase the Base Payments hereunder to enable the City to proceed to acquire and install additional assets in addition to the Facilities or modify the Base Payments hereunder in connection with the issuance of Additional Bonds under the Trust Agreement or the redemption, refunding or defeasance of a series of Bonds; or

(e) To reflect a change in applicable law; or

(f) To make any amendments required by Moody's as a condition to rating the Bonds.

The City and the Corporation may, with notice to but without the prior consent of the Trustee, and without the consent of the Holder of any Bond, enter into any amendments hereto at any time and from time to time (i) in connection with the issuance of the Series 2024 Bonds, (ii) to add Additional Real Property to the description in Exhibit B hereto, consistent with amendments made pursuant to Section 3.1 of the Base Lease, (iii) to release property from the description of the Real Property described in Exhibit B hereto, consistent with a termination of the Base Lease pursuant to Section 3.6 of the Base Lease, (iv) to revise the description of Permitted Encumbrances specified in Exhibit C hereto in connection with the foregoing amendments, or (v) in connection with Section 5.3(c) of the Trust Agreement.

Notwithstanding anything herein to the contrary, the parties hereto may execute such supplement to this Purchase and Use Agreement as may be necessary or desirable (with the advice of Bond Counsel) to correct the legal description of the Real Property in connection with such an amendment to the Base Lease and cause such supplement or a short form and summary thereof to be recorded in appropriate official records.

All other amendments must be approved, if and to the extent required by the Trust Agreement, by the Trustee and the Holders of the Bonds.

All amendments hereto or to the Exhibits to this Purchase and Use Agreement shall require an opinion of Bond Counsel to the effect that such amendment is permitted hereunder and under the laws of the State and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest evidenced by or paid on the Bonds.

Section 10.7 Successors and Assigns. All covenants, promises and agreements contained in this Purchase and Use Agreement by or on behalf of or for the benefit of the City or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 10.8 Applicable Law. This Purchase and Use Agreement shall be governed by, and interpreted under, the laws of the State of South Carolina.

Section 10.9 Recordation. At the option of the Corporation this Purchase and Use Agreement or a short form and summary hereof may be recorded in appropriate official records.

[END OF ARTICLE X - SIGNATURE PAGES FOLLOW]

WITNESS the due execution of this Purchase and Use Agreement as of the date first written above.

WITNESS: CITY OF SPARTANBURG, SOUTH CAROLINA

___________________________ By: ____
Its: Mayor

____

SPARTANBURG STADIUM FACILITIES CORPORATION

___________________________ By: ____
Its: President

____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that the Mayor of the City of Spartanburg, South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of __________, 2024.

____
Notary Public, State of South Carolina
Notary Name Printed: ___________________
My Commission Expires:_________________

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that the President of Spartanburg Stadium Facilities Corporation personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _________, 2024.

____
Notary Public, State of South Carolina
Notary Name Printed: ___________________
My Commission Expires:_________________

[Signature Page to Installment Purchase and Use Agreement]

EXHIBIT A

DESCRIPTION OF FACILITIES

EXISTING FACILITIES

The Existing Facilities are a series of three buildings totaling approximately 72,299 square feet, all sharing an address of 450 Wofford Street, Spartanburg, South Carolina 29302. Building "A" contains approximately 6,000 square feet, building "B" contains approximately 44,411 square feet and building "C" contains approximately 16,500 square feet. The Existing Facilities house the City's Fire Department administrative command offices and maintenance facilities, serve as the City's central fire station, house the City's information technology department and data storage equipment, and also serve as multi-departmental storage for various other items of City equipment.

2024 PROJECT

The 2024 Project will be an approximately 205,000 square foot structure constructed as Type II-B construction using structural steel, slab on metal deck, brick exterior skin, metal stud interior framing with drywall, and CMU. It is anticipated that the 2024 Project and will include a baseball field with a fixed, total capacity of at least 5,000 occupants including general-admission seating capacity of approximately 3,500, twelve (12) luxury boxes, each accommodating twelve – fifteen ticketed patrons, one larger party suite accommodating 32 – 50 ticketed patrons, three group seating sections with moveable seating, terraced picnic areas, a +/- 8,725 square foot lawn area with an expected capacity of +/- 1,250, a club space area and a party deck for ancillary entertainment and/or hospitality amenities and a children's play area, food concession stands with first-class kitchens, preparation areas, dry and cold storage, beverage concession bars, a sufficient number of marquees, scoreboards and video boards, a full-service pro-shop and dedicated merchandise store equipped to carry the latest novelty items and licensed merchandise, with exterior and interior access buildout, corporate offices for the Team Owner, locker rooms for the home baseball team and visiting teams, training rooms and a fitness room, and storage space. As of the date hereof, the design of the 2024 Project remains subject to change, and the design of the 2024 Project may be modified without modification or amendment of this Exhibit A.

EXHIBIT B

LEGAL DESCRIPTION OF THE REAL PROPERTY

EXISTING REAL PROPERTY

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, being shown as Lot Number 1 containing 3.96 acres on plat of survey for J M Smith Corporation by Gooch & Associates, P.A., dated May 4, 2005 and revised June 6, 2006 and recorded in Plat Book 159, Page 969, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

2024 REAL PROPERTY

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, City of Spartanburg, being shown and designated as Tract 1 on a survey entitled "Subdivision Plat for Morgan & Henry JOF ESA II, LLC", prepared by Stewart L. Baylor for Tru-Line Surveying Co., Inc., PLS# C01770, dated Mach 11, 2024, and recorded March 14, 2024, in Book 185 at Page 83, in the Register of Deeds Office for Spartanburg County, South Carolina.

EXHIBIT C

PERMITTED ENCUMBRANCES

Existing Real Property

[INSERT]

2024 Real Property

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof.

2. a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession in the Land.

4. Any lien, or right to a lien, for services, labor, or material furnished on or after the effective date hereof.

5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting title that would be disclosed by an accurate and complete land survey of the 2024 Real Property and not shown by the public records.

6. Any mineral or mineral rights leased, granted or retained by current or prior owners.

   NOTE: Upon satisfaction of the applicable requirements set forth in Schedule B-I to First American Title Insurance Commitment No. 2003833-0000079, the Permitted Encumbrances set forth in 1-3, 5, and 6 above will be deemed deleted in their entirety from this list of Permitted Encumbrances.

7. Taxes and assessments for the year 2024 and subsequent years, not yet due and payable.

8. Rights of tenants, as tenants, in possession pursuant to unrecorded leases.

9. Terms and conditions of Ground Lease Agreement from Morgan & Henry JOF ESA II, LLC to the City of Spartanburg, South Carolina, with respect to which a Memorandum of Ground Lease dated May_____, 2024, recorded May_____, 2024 in Deed Book ____, at Page ____ in the Register fo Deeds Office for Spartanburg County, South Carolina.

10. Terms and conditions of Base Lease and Conveyance Agreement from the City of Spartanburg, South Carolina to Spartanburg Staduim Facilities Corporation, with respect to which, a Memorandum of Base Lease dated May____, 2024 was recorded May____, 2024 in Deed Book ____, at Page ____ in the Register of Deeds Office for Spartanburg County, South Carolina.

11. Terms and conditions of the Installment Purchase and Use Agreement by and between Spartanburg Stadium Facilities Corporation, as Seller, and the City of Spartanburg, South Carolina, as Buyer,

dated May ___, 2024 and recorded May ___, 2024 in Book ____ at Page ____, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

12. Easement by and between Spartan Grain and Mill Co. and Duke Power Company dated October 13, 1958, recorded on October 22, 1958, in Book 24-K at Page 324 in the Register of Deeds Office for Spartanburg County, South Carolina.

13. Easement by and between Spartan Grain and Mill Co. and Duke Power Company dated April 26, 1976, recorded on March 16, 1977, in Book 44-L at Page 245, as affected by, a certain easement by and between Rice-Sandzen Associates and Duke Power Company dated December 9, 1986, recorded on February 3, 1987 in Book 52Y, at Page 536, in the Register of Deeds Office for Spartanburg County, South Carolina.

14. Perpetual Right-of-Way Easement from Harvey Associates II to the Commissioner of Public Works of the City of Spartanburg, South Carolina dated May 1, 1989, and recorded May 18, 1989, in Book 55-K at Page 552, in the Register of Deeds Office for Spartanburg County, South Carolina.

15. Conditions, restrictions and matters shown on Declaration of Restrictions by Snyder Land Investments, LLC dated January 23, 2012 and recorded March 2, 2012 in Deed Book 100F at Page 233 in the Register of Deeds Office for Spartanburg County, South Carolina.

16. Conditions, restrictions and matters in a document entitled "Amendment to Use Restrictions" by CSX Transportation, Inc. to Morgan & Henry JOF ESA II, LLC, dated June 8, 2023 and recorded June 8, 2023 in Deed Book 142D at Page 831, as affected by, conditions, restrictions and matters shown in a document entitled Amendment of Use Restrictions from CSX Transportation, Inc. to Snyder Land Investments, LLC and subsequently to Morgan & Henry JOF ESA II, LLC, dated June 8, 2023 and recorded June 8, 2023 in Deed Book 142D at Page 845, as affected by, easement reserved by CSX Transportaion, Inc., as shown in deed dated July 17, 1987, recorded August 25, 1987 in Deed Book 53-M, at Page 733, in the Register of Deeds Office for Spartanburg County, South Carolina.

17. All matters as shown or noted on a plat of survey entitled "Survey for Snyder Land Investments, LLC Snyder Investments, Inc." prepared by Mitchell Surveying dated November 30, 2010 and recorded October 7, 2011 in Plat Book 166 at Page 226, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements.

18. All matters as shown or noted on a plat of survey entitled "ALTA/NSPS Land Title Survey for Morgan & Henry JOF ESA II, LLC 210 S. Daniel Morgan Avenue Spartanburg, SC 29306", prepared by Tru-Line Surveying Co., Inc. dated March 19, 2019 and revised July 10, 2019, recorded July 25, 2019 in Plat Book 176 at Page 144, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements thereon, including 30-foot Right of Way to Reno Street.

19. All matters as shown or noted on a plat of survey entitled "ALTA/NSPS Land Title Survey for Morgan & Henry JOF AAII, LLC 334 S. Daniel Morgan Ave., Spartanburg, SC 29306" prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated January 11, 2019 and recorded May 10, 2022 in Plat Book 181 at Page 395, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:

a. Gravel drive, 10-Foot Sanitary Sewer easement; and
b. Chain link fence, water line easement, retaining wall; and
c. Power meter, heat pump, concrete walk and pad, flag poles; and
d. Fire hydrant, storm drain manhole, gas valve.

20. All matters as shown or noted on a plat of survey entitled “Boundary Survey for Morgan & Henry JOF ESA II, LLC” prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated March 1, 2023 and recorded October 24, 2023 in Plat Book 184 at Page 331, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:
    a. 30-Foot Right of Way to Reno Street; and
    b. Chain link fence, metal shed; gas valve; and
    c. Sanitary Sewer line, water line; and
    d. Variable Right of Way to South Daniel Morgan Avenue.

21. All matters as shown or noted on a plat of survey entitled “Boundary Survey for Morgan & Henry JOF ESA II, LLC” prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated March 1, 2023 and recorded October 24, 2023 in Plat Book 184 at Page 332, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:
    a. Gas valve, metal shed, concrete walk; and
    b. Retaining wall; and
    c. Variable right of way to West Henry Street.

22. All matters as shown or noted on a plat of survey entitled “Boundary Survey for Morgan & Henry JOF ESA II, LLC” prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated March 1, 2023 and recorded October 24, 2023 in Plat Book 184 at Page 333, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:
    a. Gas valves and meter, concrete dock, concrete pads; and
    b. Heat pump, retaining wall, right of way to S. Daniel Morgan Avenue; and
    c. Concrete curb and gutter, monitoring well, water meters; and
    d. Sanitary sewer line easement; and 60-foot access easement.

23. All matters as shown or noted on a plat of survey entitled “Boundary Survey for Morgan & Henry JOF ESA II, LLC” prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated March 1, 2023 and recorded October 24, 2023 in Plat Book 184 at Page 334, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:
    a. Gas valve, metal shed, concrete walk, concrete drive; and
    b. Right of Way to Reno Street; water line; and
    c. Right of way to South Daniel Morgan Avenue; and
    d. Retaining wall, chain link fence, light poles, fire hydrant.

24. All matters as shown or noted on a plat of survey entitled “Combination Survey for Morgan & Henry JOF ESA II, LLC” prepared by Stewart Baylor of Tru-Line Surveying Co., Inc., PLS # 19666 of dated August 30, 2023 and recorded March 4, 2024 in Plat Book 185 at Page 13, in the Register of

Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements, including, but not limited to:

a. Gas valve, metal shed, concrete walk, concrete drive; and
b. Right of Way to Reno Street; water line; and
c. Right of way to South Daniel Morgan Avenue; and
d. Retaining wall, chain link fence, light poles, fire hydrant.

25. All matters as shown or noted on a plat of survey entitled "Subdivision Plat for Morgan & Henry JOF ESA II, LLC", prepared by Stewart L. Baylor for Tru-Line Surveying Co., Inc., PLS# C01770, dated Mach 11, 2024, and recorded March 14, 2024, in Book 185 at Page 83, in the Register of Deeds Office for Spartanburg County, South Carolina, together with any encroachments, underground utilities, easements or rights of access, use, operating or maintenance related to said equipment or improvements thereon.

EXHIBIT D

BASE PAYMENTS SCHEDULE

EXHIBIT E

VALUATION OF FACILITIES

Names of Facilities		Assigned Value of Facilities
2024 Project	$	100,000,000
Existing Facilities		20,000,000
Total	$	120,000,000

Payment Date	Base Payments Allocated to Purchase Price	Percentage of Facilities Purchased	Payment Date	Base Payments Allocated to Purchase Price	Percentage of Facilities Purchased
11/01/2024			05/01/2040		
05/01/2025			11/01/2040		
11/01/2025			05/01/2041		
05/01/2026			11/01/2041		
11/01/2026			05/01/2042		
05/01/2027			11/01/2042		
11/01/2027			05/01/2043		
05/01/2028			11/01/2043		
11/01/2028			05/01/2044		
05/01/2029			11/01/2044		
11/01/2029			05/01/2045		
05/01/2030			11/01/2045		
11/01/2030			05/01/2046		
05/01/2031			11/01/2046		
11/01/2031			05/01/2047		
05/01/2032			11/01/2047		
11/01/2032			05/01/2048		
05/01/2033			11/01/2048		
11/01/2033			05/01/2049		
05/01/2034			11/01/2049		
11/01/2034			05/01/2050		
05/01/2035			11/01/2050		
11/01/2035			05/01/2051		
05/01/2036			11/01/2051		
11/01/2036			05/01/2052		
05/01/2037			11/01/2052		
11/01/2037			05/01/2053		
05/01/2038			11/01/2053		
11/01/2038			05/01/2054		
05/01/2039			11/01/2054		
11/01/2039					

EXHIBIT F

FORM OF CONTINUING DISCLOSURE UNDERTAKING

Spartanburg Stadium Facilities Corporation
Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024

Spartanburg Stadium Facilities Corporation (the "Issuer") has issued the above-referenced bonds (the "Bonds") pursuant to a Trust Agreement dated as of ________, 2024 (the "Trust Agreement") between the Issuer and U.S. Bank Trust Company, National Association (the "Trustee"). This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by and between the Issuer and the City of Spartanburg, South Carolina (the "City"), a municipal corporation organized and existing under the laws of the State of South Carolina (the "State"), in connection with the issuance of the Bonds. The City hereby covenants to provide the information required by the Rule (as defined herein) as an Obligated Person (as defined in the Rule) in connection with the issuance of the Bonds.

In connection therewith, the City covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the beneficial owners and in order to assist the Participating Underwriter (defined below) in complying with the Rule (defined below).

SECTION 2. Definitions. The following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Bonds" shall mean the $_____ Spartanburg Stadium Facilities Corporation Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024, issued by the Issuer, dated _________, 2024.

"Dissemination Agent" shall mean the City or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

"Financial Obligation" is defined by the Rule as, and for purposes of this Disclosure Certificate shall mean: (1) a debt obligation, (2) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (3) a guarantee of either of the foregoing; provided, however, that a "Financial Obligation" shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"National Repository" shall mean for purposes of the Rule, the Electronic Municipal Market Access (EMMA) system created by the Municipal Securities Rulemaking Board or any successor National Repository as determined by the Securities and Exchange Commission.

"Official Statement" shall mean the Official Statement dated __________, 2024 prepared in connection with the Bonds.

"Participating Underwriter" shall mean Wells Fargo Bank, National Association, and any other original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean each National Repository and each State Depository, if any.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State Depository" shall mean any public or private repository or entity designated by the State of South Carolina as a state information depository for the purpose of the Rule. As of the date of this Certificate, there is no State Depository.

SECTION 3. Provision of Annual Reports.

(a) The City shall provide, or shall cause the Dissemination Agent to provide, not later than February 1 of each year, commencing in 2025, to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than fifteen (15) business days prior to such date the City shall provide the Annual Report to the Dissemination Agent, if other than the City; provided, that if the audited financial statements required pursuant to Section 4 hereof to be included in the Annual Report are not available for inclusion in the Annual Report as of such date, unaudited financial statements of the City may be included in such Annual Report in lieu thereof, and the City shall replace such unaudited financial statements with audited financial statements within fifteen (15) days after such audited financial statements become available for distribution. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report.

(b) If the City is unable to provide to the Repositories an Annual Report by the date required in subsection (a), the City shall send a notice to the National Repository and State Depository, if any, in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and each State Depository, if any; and

(2) if the Dissemination Agent is other than the City, file a report with the City certifying whether the Annual Report has been provided pursuant to this Disclosure Certificate, and, if provided, stating the date it was provided, and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. (a) The City's Annual Report shall contain or incorporate by reference the City's most recent audited financial statements, which shall be prepared in conformity with generally accepted accounting principles (or, if not in such conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information) applicable to governmental entities such as the City, and shall, in addition, contain or incorporate by reference the following:

(b) Updates of the financial information and operating data of the City as of the end of the preceding fiscal year for substantially the type of information included in the charts and/or tables under the following headings in the Official Statement, as set forth below:

[INSERT]

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which have been filed with each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Repository. The City shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events (the "Listed Events"):

(1) Principal and interest payment delinquencies;
(2) Non-payment related defaults;
(3) Unscheduled draws on debt service reserves reflecting financial difficulties;
(4) Unscheduled draws on credit enhancements reflecting financial difficulties;
(5) Substitution of credit or liquidity providers, or their failure to perform;
(6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
(7) Modifications to rights of security holders;
(8) Bond calls;
(9) Tender offers;
(10) Defeasances;
(11) Release, substitution, or sale of property securing repayment of the securities;
(12) Rating changes;
(13) Bankruptcy, insolvency, receivership or similar event of the City;
(14) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;
(15) Appointment of a successor or additional trustee or the change of name of a trustee;
(16) Incurrence of a Financial Obligation of the City; or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders;
(17) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event described in subsections (a)(2), (7), (8), (11), (14), (15) or (16) above, the City shall as soon as possible determine if such event would be material under applicable federal securities laws. If the City determines that knowledge of the occurrence of such event would be material under applicable federal securities laws, the City shall promptly, and no later than 10 business days after the occurrence of the event, file a notice of such occurrence with the Repository.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event described in subsections (a)(1), (3), (4), (5), (6), (9), (10), (12), (13) or (17) above, the City shall promptly, and no later than 10 business days after the occurrence of the event, file a notice of such occurrence with the Repository.

(d) Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8), (9), and (10) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to owners of affected Bonds. For the purposes of the event identified in (a)(13) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

<u>SECTION 6.</u> <u>Termination of Reporting Obligation</u>. The City's obligations under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds.

SECTION 7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be the City.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the City, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the City, or the Dissemination Agent to comply with any provision of this Disclosure Certificate, any beneficial owner may take such actions as may be necessary and appropriate, including seeking injunctive relief or specific performance by court order, to cause the City, or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Trust Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City, or the Dissemination Agent to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters, and Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

[Execution page follows]

CITY OF SPARTANBURG, SOUTH CAROLINA

By: ____
City Manager

Dated: __________, 2024

SPARTANBURG STADIUM FACILITIES CORPORATION

By: ____
President

[Execution page]

TRUST AGREEMENT

between

SPARTANBURG STADIUM FACILITIES CORPORATION

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

$_______________

Spartanburg Stadium Facilities Corporation

Installment Purchase Revenue Bonds (City of Spartanburg Project)

Taxable Series 2024

Dated: __________ __, 2024

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TRUST AGREEMENT

This TRUST AGREEMENT dated __________ __, 2024 (this ***"Trust Agreement"***) is made by and between the SPARTANBURG STADIUM FACILITIES CORPORATION (the ***"Corporation"***), a nonprofit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Spartanburg, South Carolina, and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, Columbia, South Carolina, a national banking association organized under the laws of the United States of America, as trustee (the ***"Trustee"***).

PREAMBLES

WITNESSETH:

WHEREAS, the City of Spartanburg, South Carolina (the ***"City"***) is simultaneously herewith entering into a Ground Lease Agreement (the ("***Ground Lease***") dated of even date herewith with Morgan & Henry JOF ESA II, LLC (the "***2024 Real Property Owner***"), pursuant to which the City is leasing from the 2024 Real Property Owner the below defined 2024 Real Property for a lease term expiring _______ __, 2024; and

WHEREAS, the City is simultaneously herewith entering into a Base Lease and Conveyance Agreement dated of even date (the ***"Base Lease"***) with the Corporation, pursuant to which the City is leasing and subleasing (as applicable) to the Corporation that certain real property (excluding any and all improvements thereon) more particularly described in Exhibit A attached to the Base Lease (the "***Real Property***"), as such Exhibit A may be amended from time to time, and has conveyed the existing facilities (the "***Existing Facilities***") located on a portion of the Real Property defined in the Base Lease as the "***Existing Real Property***" to the Corporation; and

WHEREAS, the Corporation is simultaneously herewith entering into an Installment Purchase and Use Agreement dated of even date herewith (the ***"Purchase and Use Agreement"***) with the City pursuant to which, subject to Section 3.1 of the Purchase and Use Agreement, the Corporation has agreed to make, construct or acquire certain improvements comprising the 2024 Project (as defined herein), which 2024 Project will be located on the portion of the Real Property defined in the Base Lease as the "***2024 Real Property***", and the City has agreed to purchase the 2024 Project and the Existing Facilities (collectively, the "***Facilities***") from the Corporation under the provisions of the Purchase and Use Agreement, in consideration for which the City will be entitled to occupy the Facilities in accordance with the terms of the Purchase and Use Agreement; and

WHEREAS, the Corporation has agreed to pay to the City the Base Lease Rent (as defined in the Base Lease) which is expected to be deposited in the Revenue Fund (as such term is defined in the Base Lease) held by the City; and

WHEREAS, in order to provide funds (together with other available amounts) (i) to defray the costs of the 2024 Project, (ii) to pay Base Lease Rent to the City, (iii) to pay the interest coming due on the Series 2024 Bonds (as defined herein) through November 1, 2024 and (iv) to pay costs of issuance of the Series 2024 Bonds, the Corporation intends to issue the Series 2024 Bonds, pursuant to the terms of this Trust Agreement; and

WHEREAS, the Corporation desires to enter into this Trust Agreement in order to prescribe the terms and conditions of the Series 2024 Bonds and the security therefor and to provide for the issuance of one or more series of Additional Bonds (as defined herein) (the Additional Bonds together with the Series 2024 Bonds, are referred to herein as the "Bonds") to be secured under the terms hereof on a parity with the Series 2024 Bonds, and the Corporation and the Trustee are each authorized to execute and deliver this Trust Agreement and to do or cause to be done all acts provided or required herein to be performed on their respective parts; and

WHEREAS, the Bonds are and will be secured by this Trust Agreement, and the Corporation and the Trustee are each authorized to execute and deliver this Trust Agreement and to do or cause to be done all acts provided or required herein to be performed on their respective parts; and

WHEREAS, as the source of payment and security for the Bonds, the rights of the Corporation (except for the hereinafter defined Reserved Rights) under the Purchase and Use Agreement, including certain of the payments to be made by the City thereunder, are being assigned to the Trustee hereunder; and

WHEREAS, the Trustee has accepted the trusts created by this Trust Agreement, and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH, that to secure the payment of the principal of, premium, if any, and interest on the Bonds, to secure the performance and observance of all the covenants, agreements, obligations and conditions contained therein and herein; and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be executed, delivered, held, secured and enforced; and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders thereof, and for other good and valuable consideration, the receipt of which is acknowledged, the Corporation has executed and delivered this Trust Agreement and absolutely assigns hereby and grants a security interest herein to the Trustee, and its successors in trust and assigns, all of the following described collateral, whether presently owned or subsequently acquired by the Corporation (the "Trust Estate"):

GRANTING CLAUSES

Granting Clause First

All right, title and interest of the Corporation in and to the Revenues (as defined herein), including, without limitation, all Installment Payments (as defined in the Purchase and Use Agreement) and other amounts receivable by or on behalf of the Corporation under the Purchase and Use Agreement; subject to certain reserved rights described in Sections 4.2, 4.4, 4.5 and 5.5 of the Purchase and Use Agreement, as described and referenced in Section 4.5 thereof (the "Reserved Rights").

Granting Clause Second

All of the Corporation's right, title, and interest in and to the Facilities, the Purchase and Use Agreement (except for the Reserved Rights), the Base Lease and the property rights evidenced thereby in the Real Property, and in the Facilities, including all of the right, title, and interest of the Corporation in and to (a) the rents, issues, profits, revenues, income, receipts, moneys, royalties, rights, and benefits of and from the Real Property, including title insurance thereto, and from and in connection with the Corporation's ownership of the Facilities, including, without limiting the generality of the foregoing, rents and revenues under any and all leases of the Real Property or the Facilities or any agreement for the operation or management of the Real Property or the Facilities, and (b) all leases of all or part of the Facilities or the Real Property hereafter made, executed, or delivered, whether oral or written, together with any and all renewals, extensions, and modifications thereof and any guarantees of the lessees' obligations thereof and any and all tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts, and other contracts, licenses, and permits now or hereafter affecting the Facilities, the Real Property or any part thereof.

Granting Clause Third

All of the Corporation's rights with respect to any contracts for the acquisition or construction of the 2024 Project, including without limitation the Acquisition and Construction Contracts (as defined in the Purchase and Use Agreement); any insurance or condemnation proceeds with respect to the Facilities, the Real Property or any portion thereof and the proceeds of any other collateral granted hereunder or assigned hereby as security for the Bonds.

Granting Clause Fourth

All moneys and investments in the funds and accounts created pursuant to this Trust Agreement and all income thereon.

TO HAVE AND TO HOLD unto the Trustee and its successors in trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof, and subject to the Bonds provided for herein and the Purchase and Use Agreement, except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds executed and delivered under and secured by this Trust Agreement; for the enforcement of the payment of Base Payments by the City when payable, according to the true intent and meaning thereof and of this Trust Agreement (including without limitation the payment of fees and expenses of the Trustee); and to secure the performance and observance of, and compliance with the covenants, agreements, obligations, terms and conditions of, this Trust Agreement, in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other Bond by reason of series designation, number, date of the Bond or of authorization, sale, execution, delivery or maturity thereof, or otherwise, so that each of the Bonds shall have the same right, lien and privilege under this Trust Agreement as all other Bonds and shall be secured equally and ratably hereby, it being intended that the lien and security of this Trust Agreement shall take effect from the date hereof, without regard to the date of the actual execution, delivery, sale or disposition of the Bonds as though upon that date all of the Bonds were actually executed, sold and delivered to purchasers for value; provided, however, that the amounts on deposit in the subaccounts, if any, of the Facilities Purchase Account (defined herein) and Reserve Account (defined herein) established for a particular series of Bonds shall be available solely for the benefit of such series (and for no other series) of Bonds; and provided, further, that (i) if the principal of the Bonds and premium, if any, and the interest due or to become due with respect thereto shall be well and truly paid, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof; and (ii) if all of the covenants, agreements, obligations, terms and conditions of the Corporation under this Trust Agreement shall have been kept, performed and observed and there shall have been paid to the Trustee, as such and as the Paying Agent (as defined herein), all sums of money due or to become due to it in accordance with the terms and provisions hereof, then, this Trust Agreement and the rights assigned hereby shall cease, determine and be void with respect to the Bonds, except as provided in Section 9.2 hereof with respect to the survival of certain provisions hereof; otherwise, this Trust Agreement shall be and remain in full force and effect.

It is declared that all Bonds executed and delivered hereunder and secured hereby are to be executed, authenticated and delivered, and that all property assigned hereby is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Trust Agreement. The Corporation and the Trustee have each agreed and covenanted, and agree and covenant with each other and with each and all Holders, as follows:

ARTICLE I - DEFINITIONS

SECTION 1.1. DEFINITIONS.

Terms used herein without other definition shall have the meanings provided therefor in the Purchase and Use Agreement unless the context or use clearly indicates another meaning or intent. In addition, the following words and terms shall have the meanings set forth below unless the context or use clearly indicates another meaning or intent:

"2024 Real Property" shall have the meaning set forth in the Base Lease.

"2024 Project" shall have the meaning set forth in the Purchase and Use Agreement.

"Additional Ancillary Projects" means improvements acquired, developed and constructed with proceeds of Additional Bonds, but not made subject to the Base Lease or the Purchase and Use Agreement.

"Additional Bonds" means any Bonds issued pursuant to this Trust Agreement after the issuance of the Series 2024 Bonds and secured by the Trust Estate on a parity with the Series 2024 Bonds, if the Series 2024 Bonds are then Outstanding, under the terms of this Trust Agreement.

"Additional Facilities" means any facilities of the City acquired, constructed or improved by the Corporation with the proceeds of Additional Bonds or other moneys and made subject to the Purchase and Use Agreement and the Base Lease.

"Additional Payments" shall have the meaning set forth in the Purchase and Use Agreement.

"Additional Real Property" means any real property in addition to the Real Property that is or will become the site of Additional Facilities.

"Administrative Fee" means any program or other similar fees (including but not limited to annual facilities review fees) any other reasonable fees and expenses of the Corporation or the Trustee (including legal fees and expenses), in each case in connection with the Bonds, this Trust Agreement, the Purchase and Use Agreement or the Base Lease.

"Authorized Financial Representative" means such person designated by the City as being authorized to act as the Corporation's agent to provide directions with respect to the investment or reinvestment of amounts held by the Trustee in funds and accounts established under this Trust Agreement, which designation shall be evidenced by a written certificate or letter signed by the Mayor or the City Manager delivered to the Trustee and may be revoked, rescinded or replaced by a similar certificate or letter at any time.

"Base Lease" means the Base Lease Agreement dated of even date herewith, between the City and the Corporation, as it may be amended and supplemented from time to time.

"Base Payments" shall have the meaning set forth in the Purchase and Use Agreement.

"Beneficial Owner" means any purchaser who acquires a beneficial ownership interest in a Bond held by the Securities Depository. In determining any Beneficial Owner, the City, the Corporation, the Trustee and the Paying Agent may rely exclusively upon written representations made by and information given to the City, the Corporation, the Trustee and the Paying Agent, as the case may be, by the Securities Depository or its Participants with respect to any Bond held by the Securities Depository or its Participants in which a beneficial ownership interest is claimed.

"Bond" or ***"Bonds"*** means the Series 2024 Bonds and any Additional Bonds issued and secured under the terms hereof.

"Bond Counsel" means a firm of nationally recognized bond counsel experienced in matters relating to the issuance of obligations of states or political subdivisions thereof.

"Bond Fund" means the Bond Fund established pursuant to Section 5.5 hereof.

"Bond Insurer" means the issuer of the Insurance Policy issued in connection with any Bonds.

"Bond Payment Date" means May 1 and November 1 of each year, on and after November 1, 2024, while there are any unpaid or Outstanding Bonds.

"Book-Entry Form" or ***"Book-Entry System"*** means with respect to the Bonds, a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book-entry and (ii) physical Bonds in fully registered form are registered only in the name of a Securities Depository or its nominee as Holder, with the physical Bonds "immobilized" in the custody of the Securities Depository. The book-entry maintained by the Securities Depository is the record that identifies the owners of participatory interests in the Bonds, when subject to the Book-Entry System.

"Business Day" shall mean any day of the week other than Saturday, Sunday or a day which shall be in the State or the state in which the principal office of the Trustee is located a legal holiday or a day on which banking corporations are authorized or obligated by law or executive order to close or a day on which the New York Stock Exchange is closed.

"City" means the City of Spartanburg, South Carolina.

"City Representative" means the person or persons at the time designated to act on behalf of the City in matters relating to the Base Lease, the Purchase and Use Agreement or this Trust Agreement as evidenced by a written certificate furnished to the Corporation and the Trustee containing the specimen signature of such person or persons and signed on behalf of the City by the Mayor or Mayor Pro Tem of the City or the City Manager. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the City Representative.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor internal revenue laws of the United States enacted by the Congress of the United States in replacement thereof. References to the Code and sections of the Code include relevant applicable regulations, temporary regulations and proposed regulations thereunder and any successor provisions to those sections, regulations, temporary regulations or proposed regulations.

"Corporation" means the Spartanburg Stadium Facilities Corporation, a nonprofit corporation formed under the laws of the State, and its successors and assigns.

"Corporation Representative" means the person or persons at the time designated to act on behalf of the Corporation in matters relating to the Base Lease, the Purchase and Use Agreement and this Trust Agreement as evidenced by a written certificate furnished to the City and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Corporation by its President or any Vice President. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Corporation Representative.

"Council" means the City Council of the City, as the governing body of the City, and any successor body.

"Counsel" means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the City or the Corporation.

"Defeasance Obligations" means (a) cash; or (b) Permitted Investments that are (1) United States Treasury Obligations - State and Local Government Series; (2) United States Treasury bills, notes, bonds, or zero coupon treasury bonds all as traded on the open market; (3) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities; (4) obligations of the following agencies which are backed by the full faith and credit of the United States: (A) U.S. Export-Import Bank; direct obligations or fully guaranteed certificates of beneficial ownership, (B) Farmers Home Administration: certificates of beneficial ownership; (C) Federal Financing Bank; (D) General Services Administration: participation certificates; (E) U.S. Maritime Administration: guaranteed Title XI financing; (F) U.S. Department of Housing and Urban Development: project notes; (G) Local Authority bonds; (H) New Communities Debentures - U.S. government guaranteed debentures; or (I) U.S. Public Housing notes and bonds - U.S. government guaranteed public housing bonds; (5) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board; (6) any investments with a long-term credit rating in the highest rating category by Moody's or S&P; (7) State Obligations (as defined in "Permitted Investments" herein); (8) Pre-refunded municipal obligations (as defined in "Permitted Investments" herein), (c) any legally permissible combination of any of the foregoing. Defeasance Obligations must be redeemable only at the option of the holder thereof.

"Event of Default" means an Event of Default under Section 7.1 hereof.

"Event of Nonappropriation" shall have the meaning set forth in the Purchase and Use Agreement.

"***Existing Facilities***" shall have the meaning set forth in the Preambles of this Trust Agreement.

"***Existing Real Property***" shall have the meaning set forth in the Preambles of this Trust Agreement.

"Extraordinary Services" and ***"Extraordinary Expenses"*** means all services rendered and all reasonable expenses properly incurred by the Trustee under this Trust Agreement, other than Ordinary Services and Ordinary Expenses.

"***Facilities***" shall have the meaning given such term in the Preambles of this Trust Agreement.

"Facilities Purchase Account" means the account of such name within the Bond Fund established pursuant to Section 5.5 hereof.

"Favorable Opinion of Bond Counsel" means, with respect to any requested action under this Trust Agreement, an opinion of Bond Counsel, addressed to the Corporation, the Trustee and the City, to the effect that such action is (1) authorized or permitted under this Trust Agreement and (2) will not impair the exemption of interest on Bonds issued as obligations the interest on which is intended to be exempt from State personal income taxation under the laws of the State (subject to customary exceptions).

"Fiscal Year" shall have the meaning set forth in the Purchase and Use Agreement.

"Government Obligations" means any of the following:

(a) direct obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which are fully and unconditionally guaranteed by the United States of America;

(b) non-callable U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series - "SLGS"); and

(c) non-callable direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury; and

(d) prerefunded municipal bonds which are rated "Aaa" by Moody's or "AAA" by S&P.

"Holder" or ***"Holder of a Bond"*** or ***"Bondholder"*** means the Person in whose name a Bond is registered on the Register.

"Installment Payments" means the amounts required to be paid to the Corporation by the City pursuant to Sections 4.1, 4.2 and 4.4 of the Purchase and Use Agreement.

"Insurance Policy" means the financial guaranty insurance policy (if any) issued by the Bond Insurer insuring the scheduled payment of principal of and interest on any Bonds.

"Insurer Default" means any of the following: (a) there shall occur a default in the payment by the Bond Insurer of principal or any interest on any Series 2024 Bonds when required to be made by the Insurance Policy; (b) the Insurance Policy shall have been declared null and void or unenforceable in a final determination by a court of law; (c) a proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of the Bond Insurer in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or for the appointment of a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of the Bond Insurer or for any substantial part of its property or for the winding-up or liquidation of its affairs and such proceeding shall remain undismissed or unstayed and in effect for a period of 30 consecutive days or such court shall enter a decree or order granting the relief sought in such proceeding; or (d) the Bond Insurer shall voluntarily suspend transaction of its business, shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Bond Insurer or for any substantial part of its property, or shall make a general assignment for the benefit of creditors.

"Moody's" means Moody's Investors Service Inc., or its successors or assigns.

"Ordinary Services" and ***"Ordinary Expenses"*** means those services normally rendered, and those expenses normally incurred, by a trustee, registrar or paying agent under instruments similar to this Trust Agreement.

"Outstanding" or ***"outstanding***," when used with reference to the Bonds, means, as of the applicable date, all the Bonds which have been executed and delivered, or which are being delivered by the Trustee under this Trust Agreement, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption on or prior to that date;

(b) Bonds, or the portions thereof, for the payment, redemption or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee pursuant to the provisions of this Trust Agreement on or prior to that date for that purpose (whether upon or prior to the maturity date of those Bonds);

(c) Bonds or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Trust Agreement; and

(d) Bonds in lieu of which others have been executed and delivered under Section 3.12 of this Trust Agreement.

"Participant" means any bank, brokerage house or other financial institution for whom, from time to time, the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository.

"Paying Agent" means the Trustee acting in that capacity.

"Permitted Investments" means (a) any one or more of the investments now or hereafter permitted by applicable State law, including but not limited to Sections 6-5-10 or 11-1-60, Code of Laws of South Carolina 1976, as amended and in effect from time to time, or any authorization relating to the investment of funds hereunder, to the extent such investments are permitted under the laws of the State; and (b) the South Carolina Pooled Investment Fund or similar State administered pool investment fund or as otherwise may be limited pursuant to a Supplemental Agreement, and with respect to moneys in the Facilities Purchase Sub-Account and Reserve Sub-Account, shall include, to the extent permitted by the laws of the State in effect from time to time, the following:

(a) Government Obligations, which are also:

(i) direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"),

(ii) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America,

(iii) obligation fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or

(iv) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated;

(b) Federal Housing Administration debentures;

(c) The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

(i) Federal Home Loan Mortgage Corporation (FHLMC) obligations,

(ii) Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts) – Senior Debt obligations,

(iii) Farm Credit Banks (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) – Consolidated system-wide bonds and note,

(iv) Federal Home Loan Banks (FHL Banks) – Consolidated debt obligations,

(v) Federal National Mortgage Association (FNMA) Senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts),

(vi) Student Loan Marketing Association (SLMA) Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date),

(vii) Financing Corporation (FICO) - Debt obligations, and

(viii) Resolution Funding Corporation (REFCORP) - Debt obligations;

(d) Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated "A-1" or better by S&P, including the Trustee or its affiliates;

(e) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least $5 million, including the Trustee or its affiliates;

(f) Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's;

(g) Money market funds rated "AAm" or "AAm-G" by S&P, or better, including those offered by the Trustee or its affiliates;

(h) "State Obligations", which means:

(i) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated "A3" by Moody's and "A-" by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated,

(ii) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (i) above and rated "A-1+" by S&P and "MIG-1" by Moody's, and

(iii) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (i) above and rated "AA-" or better by S&P and "Aa3" or better by Moody's;

(iv) Pre-refunded municipal obligations rated "AAA" by S&P and "Aaa" by Moody's meeting the following requirements:

(v) (A) the municipal obligations are not subject to redemption prior to maturity or (B) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions,

(vi) the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations,

(vii) the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification"),

(viii) the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligation,

(ix) no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification, and

(x) the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent;

(i) Repurchase agreements with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A" by S&P and Moody's; or (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A" by S&P and Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated "A" or better by S&P and Moody's, provided that:

(i) The market value of the collateral is maintained at levels and upon such conditions as would be acceptable to S&P and Moody's to maintain an "A" rating in an "A" rated structured financing (with a market value approach);

(ii) The Trustee or a third party acting solely as agent therefor or for the Corporation (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

(iii) The repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that, to the extent permitted by law in effect in the State, including the Uniform Commercial Code, the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(iv) All other requirements of S&P in respect of repurchase agreements shall be met, provided that the Trustee shall not be required to enter into repurchase agreements containing provisions regarding the Trustee's duties or liabilities not reasonably acceptable to the Trustee; and

(v) The repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must, at the direction of the Corporation or the Trustee, within ten days of receipt of such direction, repurchase all collateral and terminate the agreement, with no penalty or premium to the Corporation or Trustee.

Notwithstanding the above, if a repurchase agreement has a term of 270 days or less (with no evergreen provision), collateral levels need not be as specified in (i) above, so long as such collateral levels are 103% or better and the provider is rated at least "A" by S&P and Moody's, respectively;

(j) Investment agreements (provided that the Trustee shall not be required to enter into any investment agreement containing provisions regarding the Trustee's duties or liabilities not reasonably acceptable to the Trustee) with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline municipal bond insurance company, claims paying ability, of the guarantor is rated at least "AA" by S&P and "Aa" by Moody's; provided that, by the terms of the investment agreement:

(i) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Series 2024 Bonds;

(ii) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; and the Corporation and the Trustee agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(iii) the investment agreement shall state that is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

(iv) the Corporation or the Trustee receives the opinion of domestic counsel (which opinion shall be addressed to the Corporation) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable);

(v) the investment agreement shall provide that if during its term:

(A) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3," respectively, the provider shall, at its option, within ten days of receipt of publication of such downgrade, either (i) collateralize the investment agreement by delivering or transferring in accordance with applicable State and federal laws (other than by means of entries on the provider's books) to the Corporation, the Trustee or the Holder of the Collateral, collateral free and clear of any third-party liens or claims the market value of which collateral is maintained at levels and upon such conditions as would be acceptable to S&P and Moody's to maintain an "A" rating in an "A" rated structured financing (with a market value approach); or (ii) repay the principal of and accrued but unpaid interest on the investment, and

(B) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3," respectively, the provider must, at the direction of the Corporation or the Trustee, within ten days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Corporation or Trustee,

(vi) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that, to the extent permitted by law in effect in the State, including the Uniform Commercial Code, the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(vii) the investment agreement must provide that if during its term:

(A) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Corporation or the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Corporation or Trustee, as appropriate, and

(B) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Corporation or Trustee, as appropriate; and

(k) such other investments as may be permitted by the Holders.

"Person" or words importing ***"persons"*** means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

"Principal Office" used with respect to the Trustee in its capacity as Trustee or Paying Agent, means the office of the Trustee, located in Columbia, South Carolina, at which the Trustee conducts corporate trust business.

"Project Fund" means the Project Fund established pursuant to Section 5.2 hereof.

"Purchase and Use Agreement" means the Installment Purchase and Use Agreement dated of even date herewith, between the Corporation, as seller, and the City, as buyer, as the same may be amended and supplemented from time to time.

"Purchase Option Price" shall have the meaning set forth in the Purchase and Use Agreement.

"***Real Property***" means, collectively, the Existing Real Property and the 2024 Real Property.

"Record Date" means either a Regular Record Date or a Special Record Date as the case maybe.

"Register" means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 3.13 hereof.

"Regular Record Date" means, with respect to any Bond, the fifteenth day next preceding a Bond Payment Date applicable to such Bond.

"Reserve Account" means the account of such name within the Bond Fund established pursuant to Section 5.5 hereof.

"Reserve Requirement" means, with respect to a series of Additional Bonds, such reserve requirement as may be set forth in the Supplemental Agreement authorizing the issuance of such series of Additional Bonds, if any. There is no Reserve Requirement with respect to the Series 2024 Bonds.

"Reserve Surety" shall have the meaning set forth in Section 5.5(g) hereof.

"Reserved Rights" means the Issuer's rights pursuant to Sections 4.2, 4.4 and 4.5 of the Purchase and Use Agreement, to receive indemnification and other payments and its right to receive certain notices thereunder.

"Revenues" means, with respect to the Bonds, (i) the Installment Payments under the Purchase and Use Agreement, (ii) all other moneys received or to be received by the Trustee under the Purchase and Use Agreement from the lease, sale or other disposition of the Facilities or the Real Property, (iii) any monies and investments in the Bond Fund (including the Facilities Purchase Account and the Reserve Account), and (iv) all income and profit from the investment of the foregoing moneys.

"S&P" means Standard & Poor's Credit Markets Service, a Division of The McGraw-Hill Companies, Inc., or its successors or assigns.

"Securities Depository" means any securities depository that is a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the Bonds, and to effect transfers of the Bonds, in Book-Entry Form, and includes and means, initially, The Depository Trust Company (a limited purpose trust company), New York, New York.

"Securities Depository Nominee" shall mean, with respect to any Securities Depository, such Securities Depository or the nominee of such Securities Depository in whose name the Bonds shall be registered on the Register during the time such Bonds are held under a Book-Entry System through such Securities Depository.

"Series 2024 Bonds" mean the $[___________] Installment Purchase Revenue Bonds (City of Spartanburg Project), Series 2024, of the Corporation, dated the date of their delivery, and authorized by and secured under this Trust Agreement.

"Special Record Date" means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to Section 3.5 hereof.

"State" means the State of South Carolina.

"Supplemental Agreement" means any agreement supplemental to this Trust Agreement entered into between the Corporation and the Trustee in accordance with Article VIII hereof.

"Trust Agreement" means this Trust Agreement dated _________ __, 2024, by and between the Corporation and the Trustee, as the same may be supplemented and amended from time to time by any Supplemental Agreement.

"Trust Estate" means the Trust Estate described in the Granting Clauses hereto.

"Trustee" means U.S. Bank Trust Company, National Association, Columbia, South Carolina, a national banking association, or any successor Trustee that may become the Trustee pursuant to the applicable provisions of this Trust Agreement.

"Underwriter" means Wells Fargo Bank, National Association, as underwriter of the Series 2024 Bonds.

SECTION 1.2. INTERPRETATION.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Code of Laws of South Carolina 1976, as amended, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the City, the Corporation, the Holders, or the Trustee under this Trust Agreement, the Bonds, the Base Lease, the Purchase and Use Agreement or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay principal, premium, if any, or interest on the Bonds in the amount and manner, at the times, and from the sources provided in this Trust Agreement, except as permitted herein.

Unless the context indicates otherwise, words implying the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter" and similar terms refer to this Trust Agreement; and the term "hereafter" means after, and the term "heretofore" means before the date of this Trust Agreement. Words of any gender generally include the correlative words of the other gender, unless the sense indicates otherwise.

References to sections, articles or exhibits, unless otherwise indicated, are to sections and articles of or exhibits to this Trust Agreement.

SECTION 1.3. CAPTIONS AND HEADINGS.

The captions and headings in this Trust Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

[End of Article I]

ARTICLE II - RECITALS AND REPRESENTATIONS SECTION

SECTION 2.1. BASE LEASE AND PURCHASE AND USE AGREEMENT.

The Corporation and the City have entered into (i) the Base Lease under which the City has subleased its interest in the 2024 Real Property to the Corporation, leased its interest in the Existing Real Property to the Corporation and conveyed its interest in the Existing Facilities to the Corporation; and (ii) the Purchase and Use Agreement under the terms of which the City has arranged with the Corporation for the design, acquisition, construction and equipping (as applicable) of the 2024 Project, and for the sale to and use and occupancy by the City of the Facilities, subject to Section 3.1 of the Purchase and Use Agreement.

SECTION 2.2. INSTALLMENT PAYMENTS.

Under the Purchase and Use Agreement, the City is obligated to pay to the Corporation or its assigns during the term thereof Installment Payments for the purchase of the Facilities, subject to the occurrence of an Event of Nonappropriation as set forth in Section 4.7 of the Purchase and Use Agreement, and subject to the City's right to exercise its purchase option as set forth in Section 9.1 of the Purchase and Use Agreement.

SECTION 2.3. ASSIGNMENT AND CONVEYANCE.

(a) For the purpose of securing the payment of the Bonds, the Corporation has assigned, and granted a security interest in, the Trust Estate to the Trustee under the granting clauses hereto. The Corporation hereby represents and confirms that it has full legal power and authority to assign the Trust Estate as enumerated in the granting clauses hereto and that no assignment thereof has been made except to the Trustee. Notwithstanding anything in this Trust Agreement to the contrary, the Corporation shall be required to take any action required of it pursuant to the Purchase and Use Agreement, the Base Lease and any other contracts or agreements for which the Corporation's rights thereunder have been assigned to the Trustee as part of the Trust Estate, unless the Trustee is acting on behalf of the Corporation pursuant to such assignment.

(b) The Corporation and the Trustee intend for this Trust Agreement to be a security agreement within the meaning of the Uniform Commercial Code as adopted by the State (the "UCC"). The intent of the Corporation is to provide to the Trustee, to the fullest extent that the Trust Estate now or hereafter may be subject to a security interest under the UCC, the security interest in the Trust Estate including all presently-owned, or after-acquired property constituting all or a portion of the Trust Estate. The Corporation agrees to prepare, execute (as applicable) and file all initial financing statements necessary to perfect this security interest or other statutory liens held by the Trustee, to the extent required by applicable law. The Trustee shall prepare and file any extensions, continuations or renewals thereof, in such form as the Trustee may require to continue the perfection of this security interest or other statutory liens held by the Trustee, to the extent required by applicable law. With respect to any of the Trust Estate in which a security interest is not perfected by the filing of a financing statement, the Corporation consents and agrees to undertake, and the Trustee agrees to cooperate fully with the Corporation using commercially reasonable efforts, to perfect the security interest granted to the Trustee in the Trust Estate. During the term of the Purchase and Use Agreement, the Trustee may exclusively rely on the City to operate and maintain the Facilities and the Real Property in accordance with all laws, ordinances, rules and regulations, including without limitation, Environmental Laws.

(c) The Corporation and the Trustee intend for this Trust Agreement to be a collateral assignment of all rents, leases, issues and profits created by, or arising out of any right, title or interest of the Corporation in the Trust Estate, including without limitation, all leases, rents, issues, and profits arising out of the Base Lease, the Purchase and Use Agreement, and any future lease or leases now or hereinafter entered into by the Corporation.

SECTION 2.4. POWERS AND TRUSTS GRANTED.

All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Trust Agreement.

SECTION 2.5. OTHER SECURITY DOCUMENTS.

The Corporation shall cause this Trust Agreement (or an assignment agreement of the Corporation in favor of the Trustee, in lieu hereof) and any financing statements relating hereto, to be filed, in such manner and at such places as may be required by law fully to protect the security of the Holders of the Bonds and the right, title and interest of the Trustee in and to the Facilities, the Real Property and the Trust Estate created by this Trust Agreement or any part thereof. The Corporation will cause the Base Lease, the Purchase and Use Agreement and any related instruments or documents, to be recorded and filed in the manner and in the places which may be required by law in order to preserve and protect fully the security of the Holders and the rights of the Trustee hereunder. The Corporation shall execute or cause to be executed any and all further instruments as may be necessary for such protection of the interests of the Holders of the Bonds until the principal of and interest of the Bonds issued hereunder shall have been paid. The Trustee shall execute or join in the execution of any such further or additional instrument and file or join in the filing thereof at such time or times and in such place or places as may be requested by the Corporation in writing to perfect and to preserve the Trust Estate created by this Trust Agreement or any part thereof until the Bonds shall have been paid or discharged in the manner hereinafter provided.

[End of Article II]

ARTICLE III - AUTHORIZATION AND TERMS OF BONDS

SECTION 3.1. PRINCIPAL AMOUNT OF BONDS; DESIGNATION OF BONDS; CONDITIONS TO DELIVERY.

(a) Pursuant to the provisions of this Trust Agreement, there are hereby authorized to be issued one or more series of Bonds of the Corporation. Upon the execution and delivery hereof, there is hereby authorized an initial series of Bonds in the aggregate principal amount of $[_____________] to be designated "Spartanburg Stadium Facilities Corporation, Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024". Any Additional Bonds shall be designated "Spartanburg Stadium Facilities Corporation, Installment Purchase Revenue Bonds" with such further and other designation, including the appropriate series designation, as may be necessary to identify each such series of Additional Bonds.

(b) Upon the execution and delivery of this Trust Agreement, and satisfaction of the conditions established by this Trust Agreement and the Purchase and Use Agreement for delivery of the Series 2024 Bonds, the Corporation shall execute and the Trustee shall authenticate and deliver the Series 2024 Bonds to, or to the order of, the underwriter thereof.

(c) Before the Trustee authenticates and delivers any of the Series 2024 Bonds, the Trustee shall have received a request and authorization from the City and the Corporation, signed on their behalf by a City Representative and a Corporation Representative, respectively, to authenticate and deliver the Series 2024 Bonds to, or on the order of, the underwriter thereof upon payment to the Trustee of the amount specified therein, which amount shall be deposited as provided in Section 5.1 hereof. Executed copies of the following shall be submitted with the request, in connection with the issuance of the Series 2024 Bonds:

(i) This Trust Agreement;

(ii) The Base Lease; and

(iii) The Purchase and Use Agreement;

(d) Bonds and the interest thereon and redemption premium, if any, shall be an obligation of the Corporation, and shall be secured by and payable from the Trust Estate. The Bonds do not and shall not be deemed to constitute or create an indebtedness, liability or obligation of the City within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit of the City. The Bonds and the interest thereon are payable from and secured by the Trust Estate as described in and subject to limitations set forth in this Trust Agreement for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

SECTION 3.2. PURPOSES.

The Series 2024 Bonds are authorized for the principal purposes of defraying the cost of design, acquisition, construction and equipping of the 2024 Project, payment of Base Lease Rent by the Corporation to the City, paying the interest coming due on the Series 2024 Bonds through November 1, 2024 and paying certain costs and expenses relating to the issuance of the Series 2024 Bonds. The funds being used to pay costs of design, acquisition, construction and equipping of the 2024 Project are to be made available through the Project Fund to the Corporation and City (as applicable) pursuant to the provisions of Section 5.3 hereof and the Purchase and Use Agreement.

SECTION 3.3. MATURITY SCHEDULE; DATE; INTEREST RATES.

The Series 2024 Bonds shall mature on November 1 in the years and principal amounts set forth below and shall bear interest (calculated on the basis of a 360-day year consisting of twelve 30-day months) at the interest rates per annum set forth below, payable on each Bond Payment Date:

Year	Principal Amount	Interest Rate

[* Term Bonds, subject to mandatory sinking fund redemption.]

SECTION 3.4. PROVISIONS RELATING TO ADDITIONAL BONDS; CONDITIONS FOR ISSUANCE.

(a) Authorization for Additional Bonds. Additional Bonds may be issued hereunder and secured by the Trust Estate on a parity with the Series 2024 Bonds under the conditions set forth herein.

(b) Purposes for Additional Bonds. Subject to the provisions of applicable law, Additional Bonds may be issued for the purposes of providing funds (i) to refund any of the Series 2024 Bonds or any Additional Bonds theretofore issued, (ii) for the purpose of paying the cost of completing the 2024 Project, and (iii) for the purpose of paying the cost of Additional Facilities or Additional Ancillary Projects.

(c) Conditions to the Issuance of All Additional Bonds. Prior to issuing any Additional Bonds, there shall have been executed and delivered: (i) a Supplemental Agreement authorizing such Additional Bonds and prescribing the terms and details thereof and the purposes for the issuance of such Additional Bonds; (ii) an amendment or supplement to the Purchase and Use Agreement modifying the existing schedule of Installment Payments due thereunder or otherwise providing for Installment Payments thereunder sufficient to provide for the payment of the Additional Bonds, extending the term of the Purchase and Use Agreement, if needed, to the final maturity of such Additional Bonds, making any changes required to make Additional Real Property subject thereto and supplementing Exhibits B and E thereto to provide for the Additional Facilities; (iii) an amendment or supplement to the Base Lease extending the term thereof by at least the same amount of time as any extension to the term of the Purchase and Use Agreement, and making any changes required to make Additional Real Property subject thereto; and (iv) a Favorable Opinion of Bond Counsel. There shall also be provided to the Trustee certified copies of resolutions adopted by the Board of Directors of the Corporation and an ordinance enacted by the Council authorizing the issuance of the Additional Bonds and the execution and delivery of the documents to which each is a party. No Additional Bonds may be issued hereunder if at the time there is an Event of Default or an Event of Nonappropriation unless upon the issuance of such Additional Bonds, no other Bonds will be Outstanding hereunder.

(d) Other Provisions Relating to Additional Bonds. The details of any Additional Bonds, including any Reserve Requirement relating thereto and the payment provisions thereof shall be specified in the Supplemental Agreement hereto providing for the issuance thereof. Such Supplemental Agreement shall include provisions establishing the separate accounts and subaccounts of the Bond Fund and other funds and accounts for such series of Additional Bonds.

SECTION 3.5. PAYMENT OF PRINCIPAL AND INTEREST.

(a) Each of the Series 2024 Bonds shall be authenticated, as provided in Section 3.10 hereof, on such date as it shall be delivered and shall bear interest from the later of the date hereof, or the date to which interest has been paid immediately preceding the authentication date thereof, unless the authentication date thereof is a Bond Payment Date, in which event, each such Series 2024 Bonds shall bear interest from the earlier of such authentication date or the date to which interest has been paid or, in the event no interest has been paid, from the date thereof. Additional Bonds shall be authenticated and bear interest as provided in the Supplemental Agreement prescribing the terms and conditions thereof.

(b) Subject to the provisions of Section 3.18 hereof, the principal of and premium, if any, on the Bonds shall be paid in immediately available funds by check or draft drawn upon the Trustee to the Holders thereof upon presentation and surrender thereof when due at the designated corporate trust office of the Trustee; provided, that any Holder in an aggregate principal amount of not less than $1,000,000 may, by prior written instructions filed with the Trustee prior to the close of business on the applicable Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), request that principal and premium payments be made by wire transfer or other means acceptable to the Trustee to an account in the continental United States. Subject to the provisions of Section 3.18 hereof, the interest on the Bonds shall be paid by check or draft drawn upon the Trustee and mailed to the Holders in whose names the Bonds are registered on the Record Date; provided that any Holder in an aggregate principal amount of not less than $1,000,000 may, by prior written instructions filed with the Trustee prior to the close of business on the applicable Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), request that interest payments for any period be made by wire transfer or other means acceptable to the Trustee to an account in the continental United States.

(c) Any interest on any Bond which is payable, but is not punctually paid or duly provided for, on any Bond Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Owner of such Bond on the relevant Regular Record Date by virtue of having been such Owner. The Trustee may elect to make payment of any Defaulted Interest to the persons in whose names such Bonds (or their respective predecessor Bonds) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Trustee shall determine the amount of Defaulted Interest proposed to be paid on each such Bond and the date of the proposed payment, shall fix a date (a "Special Record Date") for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed first class, postage prepaid, to each Owner not less than five days prior to such Special Record Date at his address as it appears on the Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Bonds (or their respective predecessor Bonds) are registered on such Special Record Date.

SECTION 3.6. DENOMINATION; NUMBERING.

The Series 2024 Bonds shall be issued in denominations of $5,000 or any integral multiple thereof. The Series 2024 Bonds shall be numbered by the Trustee consecutively from 1 upward, preceded by the letter "R". Additional Bonds shall be in such denominations and be numbered in the manner provided in the Supplemental Agreement providing therefor.

SECTION 3.7. PAYING AGENT.

As long as there is any Outstanding Bond under this Trust Agreement, the Corporation shall cause the Trustee to serve as Paying Agent therefor. Notices and demands to or upon the Trustee and the Corporation in respect of the Bonds may be served, at the designated corporate trust office of the Trustee. The Bonds shall be presented for registration of transfers and exchanges in accordance with the provisions of this Trust Agreement at the designated corporate trust office of the Trustee.

SECTION 3.8. FORM OF BONDS.

The Series 2024 Bonds, together with the certificate of authentication and assignment to appear thereon, shall be in substantially the form attached hereto as Exhibit A with necessary and appropriate variations, omissions and insertions as permitted or required by this Trust Agreement. Additional Bonds shall be in such form as is provided in the Supplemental Agreement pursuant to which such Additional Bonds are issued.

SECTION 3.9. EXECUTION OF BONDS.

The Bonds shall be executed in the name of and on behalf of the Corporation by the President or Vice President of the Corporation, and the same shall be attested by the Secretary of the Corporation or such other officer as may be designated by the Board of Directors of the Corporation. Such officers may employ facsimiles of their signatures. In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond such signatures or such facsimiles shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office.

SECTION 3.10. AUTHENTICATION.

Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed by the Trustee shall be entitled to any right or benefit under this Trust Agreement. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Trust Agreement. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by any authorized signatory of the Trustee.

SECTION 3.11. MEDIUM OF PAYMENT.

The Bonds shall be payable with respect to principal, interest and premium, if any, in lawful money of the United States of America.

SECTION 3.12. MUTILATED, LOST, STOLEN OR DESTROYED BONDS.

In the event any Bond is mutilated, lost, stolen or destroyed, the Corporation may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed Bond; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Corporation and to the Trustee evidence of such loss, theft or destruction satisfactory to the Corporation and the Trustee together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Corporation may pay the same. The Corporation and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in this connection.

SECTION 3.13. TRANSFER AND REGISTRATION; PERSONS TREATED AS OWNERS.

(a) As long as there shall be any Outstanding Bonds, the Corporation shall cause books for the registration and transfer of Bonds to be kept which books constitute the Register. The Register shall be kept by the Trustee at its designated corporate trust office. The transfer of each Bond may be registered only upon the Register kept by the Trustee for that purpose by the Holder thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee, duly executed by the Holder or his duly authorized attorney. Upon the registration of transfer of any Bond, the Trustee will authenticate and deliver, subject to the provisions of Section 3.15 hereof, in the name of the transferee, a new Bond or Bonds of the same series, maturity, interest rate and aggregate principal amount as the surrendered Bond.

(b) The Corporation and the Trustee may deem and treat the person in whose name any Bond shall be registered upon the Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, premium, if any, and interest on such Bond and for all other purposes, and all such payments so made to any such Holder or, upon his order, shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Corporation nor the Trustee shall be affected by any notice to the contrary.

SECTION 3.14. INTERCHANGEABILITY OF BONDS.

Bonds, upon surrender thereof at the designated corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the Holder or his duly authorized attorney, may, at the option of the Holder and upon payment by such Holder of any charges made pursuant to Section 3.15 hereof, be exchanged for an equal aggregate principal amount of Bonds of the same series and maturity in any other authorized denomination.

SECTION 3.15. REGULATIONS WITH RESPECT TO EXCHANGES AND TRANSFER.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Corporation shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Trust Agreement. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled and destroyed and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Corporation. All Bonds so destroyed shall thereafter no longer be considered Outstanding Bonds for any purposes of this Trust Agreement. There shall be no charge to the Holder for such exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse itself for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. Neither the Corporation nor the Trustee shall be required to issue, exchange or transfer (i) any Bond during the 15 days immediately preceding any Bond Payment Date, (ii) any Bond during a period beginning at the opening of business 15 days immediately preceding any selection of Bonds to be redeemed and ending at the close of business on the date of the mailing of notice of such redemption or (iii) any Bonds called for redemption in whole or in part.

SECTION 3.16. CANCELLATION AND DESTRUCTION OF MUTILATED, PAID OR SURRENDERED BONDS.

Upon the surrender of mutilated Bonds pursuant to Section 3.12 hereof or Bonds paid or surrendered, the same shall be cancelled and destroyed and shall not be reissued. The Trustee shall cancel and destroy any Bond certificates it has received in accordance with retention policy in effect at the time, and a counterpart of the certificate evidencing such destruction (or other evidence satisfactory to the Corporation) shall be furnished by the Trustee to the Corporation. All Bonds so destroyed shall thereafter no longer be considered Outstanding Bonds for any purposes of this Trust Agreement.

SECTION 3.17. [RESERVED]

SECTION 3.18. BOOK-ENTRY SYSTEM.

Notwithstanding anything to the contrary herein, so long as any series of the Bonds is being held under a Book-Entry System pursuant to this Section 3.18, payment of principal and premium (if any) of and interest on such Bonds and transfers of beneficial ownership of such Bonds will be effected pursuant to rules and procedures established by the Securities Depository. The Series 2024 Bonds shall be initially issued under a Book-Entry System and shall be held thereunder except as provided in this Section 3.18. The Series 2024 Bonds shall be initially issued in the form of a separate, authenticated, fully registered Series 2024 Bond for each series, maturity and interest rate in a principal amount equal to the amount of such maturity and interest rate, and shall be registered on the Register in the name of the Securities Depository Nominee. So long as the Book-Entry System is in effect, the Securities Depository Nominee will be recognized as the Holder of the Series 2024 Bonds for the purposes of (i) paying the principal of, premium, if any, or interest on the Series 2024 Bonds, (ii) selecting the Series 2024 Bonds or portions thereof to be redeemed,

(iii) giving any notice permitted or required to be given to Holders under this Trust Agreement, (iv) registering the transfer of Series 2024 Bonds, and (v) requesting any consent or other action to be taken by the Holders, and for all other purposes whatsoever, and neither the Trustee nor the Corporation shall be affected by any notice to the contrary. Neither the Trustee nor the Corporation shall have any responsibility or obligation to any Participant, any beneficial owner of Series 2024 Bonds or any other person claiming a beneficial ownership interest in the Series 2024 Bonds under or through the Securities Depository or any Participant, or any other person which is not shown on the Register as being a Holder of Series 2024 Bonds with respect to (i) the accuracy of any records maintained by the Securities Depository or any Participant, (ii) the payment to the Securities Depository, any Participant or any beneficial owner of Series 2024 Bonds of any amount in respect of the principal of, premium, if any, or interest on the Bonds, (iii) any notice which is permitted or required to be given to Holders under this Trust Agreement, (iv) the selection by the Securities Depository or any Participant or any other person to receive payment in the event of a partial redemption of the Series 2024 Bonds or (v) any other action taken by the Securities Depository as Holder of the Series 2024 Bonds. So long as the Book-Entry System is in effect, the Trustee shall pay all principal of and premium, if any, and interest on the Series 2024 Bonds only to the Securities Depository or the Securities Depository Nominee, as the case may be, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and premium, if any, and interest on the Series 2024 Bonds to the extent of the sum or sums so paid.

In the event that the Corporation determines that it is in the best interest of the Corporation not to continue the Book-Entry System or that the interest of the beneficial owners of the Series 2024 Bonds may be adversely affected if the Book-Entry System is continued, then the Corporation shall notify the Securities Depository and the Trustee of such determination and the Securities Depository shall immediately notify the Participants of the availability, through the Securities Depository, of physical Series 2024 Bonds. In such event, the Corporation shall execute and the Trustee shall authenticate, register and deliver physical Series 2024 Bonds as requested by the Securities Depository or any Participant or beneficial owner of Series 2024 Bonds in appropriate authorized denominations in exchange for the Series 2024 Bonds registered in the name of Securities Depository Nominee. The Securities Depository may determine to discontinue providing its services as such with respect to the Series 2024 Bonds at any time by giving notice to the Corporation and the Trustee and discharging its responsibilities with respect thereto under applicable laws or the Corporation may determine that the Securities Depository is incapable of discharging its duties as such and may so notify the Securities Depository. In either such event, the Corporation shall either (i) engage the services of another Securities Depository or (ii) deliver physical Series 2024 Bonds in the manner described above; provided, however, that the discontinuation of the Book Entry System of registration and transfer with respect to the Series 2024 Bonds or the replacement of the Securities Depository or any successor depository shall be subject to the applicable rules and procedures of the Securities Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Notwithstanding any other provision of this Trust Agreement to the contrary, so long as the Series 2024 Bonds are registered in the name of Cede & Co., as Securities Depository Nominee, all payments with respect to the principal of, premium, if any, and interest on the Bonds and all notices with respect to the Series 2024 Bonds shall be made and given, respectively, to The

Depository Trust Company, New York, New York, as provided in the Blanket Letter of Representations of the Corporation dated ___________ __, 2024.

In connection with any notice or other communication to be provided to the Holders by the Corporation or the Trustee with respect to any consent or other action to be taken by the Holders, the Corporation or the Trustee, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository notice of such record date not less than 15 days in advance of such record date to the extent possible.

[End of Article III]

ARTICLE IV - REDEMPTION OR PURCHASE OF BONDS

SECTION 4.1. REDEMPTION OF BONDS.

(a) Optional Redemption of Series 2024 Bonds. In the event the City exercises its option pursuant to Section 9.1 of the Purchase and Use Agreement to purchase the Corporation's interest in the Facilities and pay the amount required to defease and redeem the Series 2024 Bonds or to prepay Base Payments or in the event the City makes a voluntary prepayment under Section 4.3 of the Purchase and Use Agreement, the Series 2024 Bonds maturing on and after November 1, 20[__], may be redeemed in whole or in part at any time on and after November 1, 20[__], by the Corporation at a redemption price equal to the principal amount to be redeemed plus accrued interest to the redemption date.

The Series 2024 Bonds shall be redeemed in accordance with this paragraph (a) only by written notice from the City or the Corporation to the Trustee of the redemption of the Series 2024 Bonds and directing the Trustee to give notice thereof to the Holders in accordance with Section 4.2 hereof. Such notice shall specify the redemption date on which the Series 2024 Bonds are to be redeemed, the particular Series 2024 Bonds to be redeemed, and shall be given to the Trustee at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. Prior to the giving of notice by the Trustee to the Holders as provided in Section 4.2 hereof, there shall be deposited with the Trustee funds which, in addition to any other moneys available therefor and held by the Trustee, will be sufficient to redeem at the redemption price thereof all of the redeemable Series 2024 Bonds for which notice of redemption has been given; provided that the Trustee may accept such other assurance from the City or the Corporation as it deems appropriate as to the availability of such funds or may condition any such notice on the receipt of funds at or prior to the date set for redemption.

(b) Mandatory Sinking Fund Redemption of Series 2024 Bonds.

The Series 2024 Bonds maturing on November 1, 20[__], are subject to mandatory sinking fund redemption, at a redemption price equal to the principal amount to be redeemed plus accrued interest, if any, to the redemption date, without premium on November 1 of the years and in the amounts as follows:

Year	Principal Amount

*Final maturity

The Series 2024 Bonds maturing on November 1, 20[__], are subject to mandatory sinking fund redemption, at a redemption price equal to the principal amount to be redeemed plus accrued interest, if any, to the redemption date, without premium on November 1 of the years and in the amounts as follows:

Year	Principal Amount

*Final maturity

The Series 2024 Bonds maturing on November 1, 20[__], are subject to mandatory sinking fund redemption, at a redemption price equal to the principal amount to be redeemed plus accrued interest, if any, to the redemption date, without premium on November 1 of the years and in the amounts as follows:

Year	Principal Amount

*Final maturity

The requirements of subsection (c) are subject, however, to the provision that any partial redemption of Series 2024 Bonds under subsection (a) above shall reduce the mandatory scheduled redemption requirements of subsection (c) as provided in this paragraph. In the event of a partial redemption of Series 2024 Bonds under subsection (a) above, the Trustee shall allocate the principal amount of Series 2024 Bonds redeemed against the next Series 2024 Bonds to be redeemed under subsection (c) or otherwise as directed by a Corporation Representative in writing at least 45 days prior to the date with respect to which any such credit is to be allocated.

At its option, to be exercised on or before the 45th day next preceding any mandatory sinking fund redemption date for Series 2024 Bonds, the Corporation may deliver to the Trustee for cancellation Series 2024 Bonds of the maturity in any aggregate principal amount which have been purchased by the Corporation in the open market. Each Series 2024 Bond so delivered shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund redemption requirement for Series 2024 Bonds on such mandatory sinking fund redemption date and any excess of such amount shall be credited against future mandatory scheduled redemption requirements in chronological order or such other order as directed in writing by the Corporation to the Trustee. The Corporation, will, on or before the 45th day preceding each mandatory sinking fund redemption date, furnish the Trustee with a certificate, signed by a Corporation Representative, stating the extent to which the provisions of the first sentence of this paragraph are to be availed of with respect to such mandatory redemption requirements for such mandatory redemption date; unless such certificate is so timely furnished to the Trustee, the mandatory redemption requirements for such mandatory redemption date shall not be reduced under the provisions of this paragraph.

(c) Partial Redemption of Series 2024 Bonds. If less than all of the Series 2024 Bonds are called for redemption, the Series 2024 Bonds to be redeemed will be selected in the manner that the Corporation shall determine as set forth in a certificate of the Corporation filed with the Trustee. If less than all Series 2024 Bonds of any one maturity are called for redemption, the Trustee shall select the applicable Series 2024 Bonds to be redeemed by lot, each $5,000 portion of the principal being counted as one Series 2024 Bond for this purpose; provided, however, that so long as the only registered owner of the Series 2024 Bond is Cede & Co., such selection shall be made by DTC.

(d) Redemption of Additional Bonds. Provisions relating to the circumstances upon which Bonds other than Series 2024 Bonds may be redeemed shall be as set forth in the Supplemental Agreement providing for the issuance thereof.

SECTION 4.2. NOTICE OF REDEMPTION.

Notice of redemption of the Bonds may only be given if funds for such redemption are irrevocably deposited with the Trustee prior to rendering notice of redemption to the Bondholders, or in the alternative, the notice given by the Trustee to Bondholders expressly states that such redemption is conditioned upon the deposit of funds sufficient for the redemption by the Corporation and that failing such deposit no redemption shall take place. The notice of the call for redemption of Bonds shall identify (i) the CUSIP number or numbers, if any, of the Bonds to be redeemed; (ii) the numbers assigned to such Bonds, and in the case of Bonds called in part only, the amounts being redeemed; (iii) the date of the notice; (iv) the redemption date; (v) the redemption price; (vi) the address of the Trustee where such Bonds are to be presented, with the name and telephone number of a contact person, if available; (vii) the issue date of the Bonds; and (viii) the maturity date of the Bonds being redeemed. Notice shall be given by the Trustee by first class mail, postage prepaid, at least 30 days, but not more than 60 days, prior to the date fixed for redemption to the Holder of each Bond subject to redemption at the Holder's address shown on the Register on the 15th day preceding that mailing; provided such notice shall be given by facsimile or by certified or registered mail, return receipt requested to each person who holds Bonds in the aggregate principal amount of not less than $100,000; and provided further such notice shall be given by certified or registered mail, return receipt requested, or (at the expense of the recipient thereof) by overnight delivery service deposited in the mail or with such delivery service not later than 35 days prior to the date fixed for such redemption and repurchase to appropriate financial information services and securities depositories (including the Securities Depository) and any other securities depository that has requested such notification in all such cases with expense of such notice to be borne by the Corporation.

Failure to receive any notice by mailing or otherwise or any defect in such notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

SECTION 4.3. PAYMENT OF REDEEMED BONDS.

Notice having been given in accordance with Section 4.2 hereof, the Bonds called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price plus interest accrued to the redemption date; provided, however, that in the event of any conditional provision in the notice, the Bonds will not become due and payable as provided in this section until such condition has been satisfied.

If money for the redemption of all of the Bonds to be redeemed is held by the Trustee on the redemption date so as to be available therefor on that date, and if notice of redemption has been given as provided in Section 4.2 hereof, then from and after the redemption date those Bonds called for redemption shall no longer be entitled to payment of any sum other than the redemption price.

In the event Bonds which have been called for redemption are not presented to the Trustee for redemption on or prior to the 30th day following the redemption date, the Trustee shall notify the registered Holder thereof by facsimile or by certified or registered mail, return receipt requested, that such Bonds have been called and that the Trustee is holding funds for the payment of the redemption price thereof pending presentation by such Holder.

All moneys deposited in the Bond Fund and held by the Trustee for the redemption of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

SECTION 4.4. PURCHASE OF BONDS.

At the written direction of the City, the Trustee shall, if and to the extent practicable, attempt to purchase Bonds at such time, in such manner and at such price, not to exceed the then applicable redemption price (or if no redemption is then permitted, not to exceed the price at which such Bonds may first be redeemed or paid at maturity) for such Bonds, as may be specified by the City. The Trustee shall make such purchase of Bonds with any amounts provided to it by the City pursuant to Section 4.3 of the Purchase and Use Agreement or otherwise deposited to the applicable Facilities Purchase Account of the Bond Fund, provided that all regularly scheduled payments on the Bonds then due and payable have first been satisfied. Any accrued interest due to the Holder of any Bond so purchased may be paid from funds held by the Trustee for the payment of interest due on such Bonds on the next ensuing Bond Payment Date. Unless directed otherwise by the City in writing, the Trustee shall cancel any such Bonds so purchased. Prior to effecting any purchase hereunder, the Trustee shall be entitled to receive, upon request, a Favorable Opinion of Bond Counsel.

[End of Article IV]

ARTICLE V - PROVISIONS AS TO FUNDS AND PAYMENTS

SECTION 5.1. DEPOSIT OF MONEY.

The proceeds of the Series 2024 Bonds, less Underwriter's discount, equal to the sum of $____________ shall be deposited upon the execution and delivery of this Trust Agreement with the Trustee as follows:

(a) $[_______________] shall be deposited to the Project Fund to pay the costs of designing, acquiring, constructing and equipping the 2024 Project;

(b) $[____________] shall be deposited to the Project Fund to pay Base Lease Rent;

(c) $[___________] shall be deposited to the Cost of Issuance Account of the Project Fund for the payment of issuance costs of the Series 2024 Bonds; and

(d) $[____________] shall be deposited to the subaccount of the Facilities Purchase Account of the Bond Fund created with respect to the Series 2024 Bonds, and such funds shall be used to pay the interest coming due on the Series 2024 Bonds through November 1, 2024.

SECTION 5.2. CREATION OF PROJECT FUND AND COST OF ISSUANCE ACCOUNT.

There is hereby created as a separate account in the custody of the Trustee a trust fund designated as the "Project Fund" and a separate account therein designated as the "Cost of Issuance Account." Pending disbursement pursuant to this Trust Agreement, the proceeds of the sale of the Series 2024 Bonds deposited in the Project Fund and the Cost of Issuance Account pursuant to Section 5.1 hereof, together with any other moneys and Permitted Investments held to the credit thereof, shall be held as security for the payment of the Series 2024 Bonds.

SECTION 5.3. DISBURSEMENTS FROM AND RECORDS OF PROJECT FUND AND COST OF ISSUANCE ACCOUNT.

(a) Moneys in (1) the Project Fund shall be disbursed for the costs of the 2024 Project and the payment of Base Lease Rent, and (2) the Cost of Issuance Account of the Project Fund shall be disbursed for the payment of issuance costs of the Series 2024 Bonds, all in accordance with the provisions of this Section 5.3. The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and the Cost of Issuance Account and all investments and disbursements of moneys in the Project Fund and the Cost of Issuance Account. After the 2024 Project has been substantially completed and a final requisition is filed with the Trustee in accordance with Section 3.4 of the Purchase and Use Agreement, the Trustee shall retain copies of the records pertaining to the Project Fund and disbursements therefrom for inspection upon request of the Corporation or the City.

(b) All disbursements from the Project Fund (except those pertaining to (i) the payment from the Cost of Issuance Account as provided in subsection (d) below, and (ii) the payment of the Base Lease Rent as provided in subsection (e) below) shall be made by the Trustee upon the receipt of a requisition in substantially the form set forth in Exhibit B hereto signed by a Corporation Representative and a City Representative. The Trustee shall be entitled to rely on each requisition as conclusive evidence of the City's compliance with the procedure described herein. The Trustee shall have no duty to review or investigate the accuracy of the requisition for other than the form and format.

(c) Upon the substantial completion of the 2024 Project, the Corporation shall submit to the Trustee a final requisition in substantially the form set forth in Exhibit C hereto signed by a Corporation Representative and a City Representative in the total amount remaining owing for costs of the 2024 Project, including all applicable retainages. Upon the receipt of the final requisition, the Trustee shall promptly disburse the amounts requested therein.

(d) The Trustee is hereby authorized to pay from the Cost of Issuance Account of the Project Fund from time to time, upon written direction of the City, together with an invoice or other evidence of the amounts payable thereunder, costs of issuance of the Series 2024 Bonds. Upon written direction of the City, any amounts remaining in the Cost of Issuance Account of the Project Fund, after payment of all costs of issuance of the Series 2024 Bonds, shall be transferred to the Project Fund generally.

(e) The Trustee is authorized to pay from the Project Fund to or at the direction of the City from time to time the amount set forth in Section 5.1(b) hereof for Base Lease Rent under the Base Lease at such times as it receives a written request therefor from a City Representative in order to pay Base Lease Rent. The only source of payment of such portion of Base Lease Rent shall be amounts in the Project Fund.

SECTION 5.4. COMPLETION OF 2024 PROJECT

As soon as practicable after the filing with the Trustee of the final requisition referred to in Section 5.3(c) hereof, the Trustee shall transfer any balance then remaining in the Project Fund (other than the amounts required to be retained by the Trustee, as applicable, as described in the said requisition) to the Bond Fund, and the Project Fund shall be closed.

SECTION 5.5. CREATION OF BOND FUND, FACILITIES PURCHASE ACCOUNT AND RESERVE ACCOUNT.

(a) There is hereby created in the custody of the Trustee a separate trust fund to be designated the "Bond Fund." Within the Bond Fund there shall be established a Facilities Purchase Account and a Reserve Account. There shall be deposited in the Bond Fund (and credited, as required by this Trust Agreement or the Purchase and Use Agreement, to appropriate Accounts and subaccounts therein), amounts sufficient to pay the principal and premium, if any, of and interest on the Series 2024 Bonds from the Base Payments to be made by the City to the Trustee, as assignee of the Corporation, under the terms of the Purchase and Use Agreement. From funds deposited to the subaccount of the Facilities Purchase Account of the Bond Fund created with respect to the Series 2024 Bonds pursuant to Section 5.1(d) hereof, the Trustee is hereby directed to apply the following amounts on the following dates to pay interest on the Series 2024 Bonds: $__________ on November 1, 2024.

There is no Reserve Requirement with respect to the Series 2024 Bonds, and there shall be no subaccount created in the Reserve Account, if any, of the Bond Fund with respect to the Series 2024 Bonds. Upon the issuance of any series of Additional Bonds hereunder, (i) one or more separate subaccounts shall be created in the Reserve Account of the Bond Fund to provide for any Reserve Requirement with respect to such Additional Bonds with the intent being that such Additional Bonds shall only be payable from the subaccounts of the Reserve Account established with respect to such series of Bonds upon the issuance thereof and (ii) a separate subaccount shall be created in the Facilities Purchase Account for purposes of making payment on each series of Bonds with the intent being that the Series 2024 Bonds and any Additional Bonds shall only be payable from the subaccounts of the Facilities Purchase Account established with respect to such series of Bonds upon the issuance thereof.

(b) The Bond Fund (and the Accounts and subaccounts therein) and the moneys and Permitted Investments therein shall be used solely and exclusively for the payment of principal of, premium, if any, and interest on the Bonds as the same become due, except as otherwise provided in this Trust Agreement.

(c) The Trustee shall set aside from moneys in the Bond Fund amounts sufficient to make timely payments of the principal of, premium, if any, and interest on the Bonds.

(d) Amounts due with respect to a particular series of Bonds, except as provided in the remainder of this Section 5.5, shall be payable as they become due in the following order, (i) first, from amounts in the applicable subaccount of the Facilities Purchase Account; (ii) second, from the moneys available from the applicable subaccounts of the Reserve Account; (iii) third, from other Revenues to the extent available; and (iv) fourth, from any other source lawfully available to the Trustee, including without limitation, proceeds from the leasing of the Facilities or the Real Property in accordance with the terms of the Purchase and Use Agreement and the Base Lease.

(e) If, at the close of business on the third Business Day prior to any Bond Payment Date with respect to a particular series of Bonds, the amount in the applicable subaccount of the Facilities Purchase Account is less than the amount due and payable with respect to such series of Bonds on such Bond Payment Date, the Trustee shall promptly transfer from the applicable subaccount of the Reserve Account to the applicable subaccount of the Facilities Purchase Account an amount sufficient to make up such deficiency, provided that if there is a Reserve Surety in effect, then to the extent the money, if any, in the applicable subaccount of the Reserve Account is not sufficient to make up such deficiency, then the Trustee shall make a claim against the Reserve Surety. In the event of any such transfer, the Trustee shall, within ten days after making the transfer, provide written notice to the City and the Corporation of the amount and date of that transfer. Upon receipt of such notice, the City shall be obligated to pay to the Trustee, for deposit into the applicable subaccount of the Reserve Account, from any source of legally available and appropriated funds as an Additional Payment, an amount equal to such transfer in 12 equal monthly installments in the Fiscal Year immediately following the Fiscal Year in which such transfer is made; provided, that if the Reserve Requirement for one or more particular series of Bonds is met in whole or in part by a Reserve Surety, payments required hereby shall be applied first to the reinstatement of the Reserve Surety and then for deposit into the applicable subaccount of the Reserve Account.

(f) Monies in a subaccount of the Reserve Account established for one or more particular series of Bonds shall be used solely: (i) to the extent necessary to make up deficiencies in the applicable subaccounts of the Facilities Purchase Account, as provided in subsection (e) above; (ii) as provided in Section 5.7 hereof; and (iii) if all Base Payments with respect to such series of Bonds are then current, to be credited against the last remaining required installments of Base Payments for that series and for that purpose any remaining amounts in such subaccount of the Reserve Account shall be transferred as Base Payments to the applicable subaccount of the Facilities Purchase Account by the Trustee on or before the final corresponding Bond Payment Dates.

(g) In lieu of the required deposits into a subaccount of the Reserve Account established for a particular series of Bonds, the Corporation may cause to be deposited therein a surety bond, an insurance policy, a letter of credit or other credit facility (each, a "Reserve Surety"), payable to the Trustee that in each case shall be in an amount equal to the difference between the Reserve Requirement applicable to such series of Bonds and the sums, if any, then on deposit to the credit of the applicable subaccount of the Reserve Account; provided, however, that (1) any Reserve Surety (other than a letter of credit) shall have a term of no less than five years or the maturity date of such series of Bonds (whichever is less), (2) any Reserve Surety in the form of a letter of credit shall have a term of no less than one year or the maturity date of such series of Bonds (whichever is less), and (3) as a condition to the substitution of such surety bond, insurance policy, letter of credit or other credit facility in lieu of the required deposits to the applicable subaccount of the Reserve Account, there shall be delivered to the Trustee (i) a Favorable Opinion of Bond Counsel, and (ii) an executed original of such surety bond, insurance policy, letter of credit or other credit facility in lieu of the required deposit prior to the acceptance thereof by the Trustee.

On or prior to the expiration of a Reserve Surety delivered pursuant to (g) above which expires prior to the maturity date of the Bonds of such series, the Corporation must cause to be delivered a replacement Reserve Surety, or the applicable subaccount of the Reserve Account must be fully funded by a claim against such expiring Reserve Surety, or the applicable subaccount of the Reserve Account must be fully funded by cash. In no event may the issuer of the insurance policy, letter of credit or other credit facility have pledged or assigned to it any interest in the Trust Estate granted hereunder unless subordinate to the interest of the Trustee. Any such letter of credit, surety bond or insurance policy shall be issued in the name of or for the benefit of the Trustee and shall contain no restrictions on the ability of the Trustee to receive payment thereunder other than a certification by the Trustee that the funds drawn thereunder are to be used for the purposes set forth in the preceding paragraph. The Trustee shall receive payment thereunder prior to any expiration or termination thereof and whenever moneys are required for the purposes for which such fund's moneys may be applied. If the Corporation elects to deposit a surety bond, insurance policy, letter of credit or other credit facility in the applicable subaccount of the Reserve Account in lieu of moneys on deposit therein, upon any such deposit, the Trustee shall release to the Corporation from the applicable subaccount of the Reserve Account cash in an amount equal to, or Permitted Investments held therein having a market value equal to, the face amount of the surety bond, insurance policy, letter of credit or other credit facility then being deposited.

(h) Notwithstanding anything herein to the contrary, the Trustee shall be entitled to create such other funds and accounts as may be necessary or desirable in connection with the administration of its duties hereunder.

SECTION 5.6. [RESERVED]

SECTION 5.7. INVESTMENTS.

(a) Moneys in the Project Fund and the Bond Fund shall be invested and reinvested by the Trustee in Permitted Investments at the written direction of the Authorized Financial Representative. Any investments of moneys held to the credit of the Project Fund (and the accounts therein) and the Bond Fund shall mature, be available or redeemable at the option of the owner or holder, or, in the case of a forward delivery agreement, repurchase agreement or similar contract, be available thereunder, not later than the respective dates when the money held to the credit of those Funds and Accounts will be required for the purpose intended. The Trustee may rely upon any such written direction of the Authorized Financial Representative as to legality and suitability of any directed investment, the qualification of any directed investment as a Permitted Investment hereunder, and as to the satisfaction of the requirements of the preceding sentence. In the absence of written direction from the Authorized Financial Representative, the Trustee shall hold funds as cash, uninvested.

(b) Subject to any written direction from the Authorized Financial Representative, from time to time, the Trustee may sell investments and reinvest the proceeds therefrom in Permitted Investments maturing or redeemable or available as required hereunder. The Trustee may enter into transactions for the purchase or sale of Permitted Investments with itself or any bank, trust company or savings and loan association affiliated with the Trustee. The Trustee shall sell or redeem Permitted Investments credited to the Bond Fund at the times required for the purpose of paying amounts due with respect to the Bonds payable therefrom when due as aforesaid, and shall do so without necessity for any order. An investment made from moneys credited to the Project Fund (and the accounts therein) or any Account in the Bond Fund shall constitute part of that Account and Fund, and each Account and Fund shall be credited with all proceeds of sale and income from investment of moneys credited thereto.

(c) Investment income from investment of amounts on deposit in the Project Fund shall be retained therein and applied as other moneys in the Project Fund.

(d) Investment income from investment of a particular subaccount of the Facilities Purchase Account shall be retained in such subaccount and credited against the amount of the applicable Base Payments to be paid by the City on the next succeeding Bond Payment Date.

(e) Investment income from investment of a particular subaccount of the Reserve Account shall be retained in such subaccount to the extent that the Value (as determined in the manner prescribed in paragraph (h) below) of amounts on deposit in such subaccount therein is less than the Reserve Requirement with respect to the applicable series of Bonds, and any excess over such Reserve Requirement shall be transferred from such subaccount on or prior to each Bond Payment Date for credit against the applicable Base Payments to be paid by the City, in the manner directed by the City.

(f) The Trustee shall report to the City at least five days prior to each date on which a Base Payment is due and payable the amount of investment income credited or transferred to the particular subaccount of the Facilities Purchase Account of the Bond Fund and available to make payments due on the next Bond Payment Date, and the amount of the applicable Base Payment by the City on that date shall be reduced by such amount. So long as it provides periodic reports as to the investment of monies in the Funds and Accounts hereunder, the Trustee shall not be required to deliver brokerage confirmations as to any investment hereunder.

(g) The Trustee shall not be liable for any loss resulting from the making or disposition of any investment in Permitted Investments pursuant to the provisions of this Section provided it acts in good faith and without gross negligence in making such investment, and any such losses shall be charged to the Fund and Account with respect to which such investment is made.

(h) For purpose of this Section, ***"Value"*** shall mean, with respect to any investment, the value calculated as follows:

(i) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to the time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at the time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its sole discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(iii) as to guaranteed investment contracts, certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(iv) as to any investment not specified above: the value thereof established by prior agreement between the Corporation and the Trustee;

provided, however, that unless there has been a withdrawal from such Reserve Account to prevent a deficiency in any related Bond Fund, all investments in the Reserve Account shall be valued at their original cost. The Trustee shall value the investments in the Reserve Account and each subaccount therein on each April 1 and October 1 during the term of the Purchase and Use Agreement.

(i) In the event, as of a date of valuation, investments in the Reserve Account or any subaccount therein plus the value of any Reserve Surety credited thereto are determined to be less than the Reserve Requirement applicable thereto, the Trustee shall notify the Corporation, and the Corporation shall notify the City with a demand that it restore such Account or subaccount from any source of legally available and appropriated funds as an Additional Payment to the Reserve Requirement in 12 equal monthly installments in the Fiscal Year immediately following the Fiscal Year in which such valuation is made.

SECTION 5.8. MONEYS TO BE HELD IN TRUST.

All moneys required or permitted to be deposited with or paid to the Trustee under any provisions of this Trust Agreement or the Purchase and Use Agreement, and any investments thereof, shall be held by the Trustee in trust. Except for moneys held by the Trustee pursuant to

Section 5.9 hereof, all moneys described in the preceding sentence held by the Trustee shall be subject to the lien of this Trust Agreement while so held.

SECTION 5.9. NONPRESENTMENT OF BONDS.

If any Bond is not presented for payment when its principal becomes due in whole or in part, or a check or draft for interest is uncashed, if moneys sufficient to pay the principal then due on that Bond or such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Corporation or the City to that Holder for the payment of the principal then due or of the check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold those moneys, without liability for interest thereon, for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to those moneys for any claim of whatever nature on its part under this Trust Agreement or on, or with respect to, that principal then due or of such check or draft.

Subject to applicable law, any such moneys which shall be so held by the Trustee, and which remain unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period of five years after the due date thereof, shall be paid to the City free of any trust or lien. Thereafter, the Holder of such Bond shall look only to the City for payment and then only to the amounts so received by the City without any interest thereon, and the Trustee shall not have any responsibility with respect to those moneys.

SECTION 5.10. REPAYMENT TO CITY FROM BOND FUND.

Except as provided in Section 5.9 hereof, any amounts remaining in the Bond Fund in excess of the amounts necessary to effect the payment and discharge of the Bonds (i) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Trust Agreement, and (ii) after payment of all fees, charges and expenses of the Trustee and of all other amounts required to be paid under this Trust Agreement and the Purchase and Use Agreement, shall be paid to the City.

[End of Article V]

ARTICLE VI - TRUSTEE

SECTION 6.1. TRUSTEE'S ACCEPTANCE AND RESPONSIBILITIES.

(a) The Trustee accepts the trusts imposed upon it by this Trust Agreement, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article VI, to all of which the parties hereto and the Holders agree.

(b) It is expressly understood and agreed that this Trust Agreement is being executed by the Trustee not in its corporate and individual capacity but solely as trustee hereunder in the exercise of the power and authority conferred and vested in it as such Trustee. It is further understood and agreed that neither the Trustee nor any past, present or future director, officer, employee, agent, controlling person or nominee of the Trustee shall be personally liable for any breach of any representation or warranty of the trust incorporated herein or in any other agreement or obligation contemplated hereby and nothing herein or therein contained shall be construed as creating any liability of the Trustee in its corporate and individual capacity or as creating any liability of any past, present or future director, officer, employee, agent, controlling person or nominee of the Trustee to make any payment or to perform any agreement or undertaking contained herein or therein.

(c) Prior to the occurrence of an Event of Default of which the Trustee has been notified or deemed to have been notified as provided in paragraph (f) of Section 6.2 hereof, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Trust Agreement, and no duties or obligations shall be implied to the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the procedural requirements of this Trust Agreement; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the procedural requirements of this Trust Agreement.

(d) After the occurrence of an Event of Default of which the Trustee has knowledge or is deemed to have knowledge, the Trustee shall exercise those rights and powers vested in it by this Trust Agreement and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(e) No provision of this Trust Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that

(i) this subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subsection (c)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subsection (c)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement;

(iv) no provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; and

(v) the Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Corporation or the City) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(f) Every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VI. Whenever the Trustee acts in its capacity as Trustee with respect to any document or agreement relating the Bonds, the provisions of this Article VI shall apply to all such action.

<u>SECTION 6.2. CERTAIN RIGHTS AND OBLIGATIONS OF THE TRUSTEE.</u>

Except as otherwise provided in Section 6.1 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable therefor only in accordance with the standard specified in Section 6.1 above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts or powers hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof.

(b) Except as may be required of it in its capacity as assignee of the Corporation under the Purchase and Use Agreement or as specifically provided for elsewhere herein, the Trustee shall not be responsible for:

(i) any recital in this Trust Agreement or the Bonds or any information in any offering memorandum of other disclosure material,

(ii) the validity, priority, perfection, recording, rerecording, filing or refiling of this Trust Agreement or any Supplemental Agreement (or any assignment agreement related hereto or thereto), the Purchase and Use Agreement or the Base Lease or any financing statement with respect to the Trust Estate, or filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Trust Agreement. The Trustee shall file continuation statements with respect to each U.C.C. financing statement relating to the trust estate filed by the Corporation at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Corporation that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Corporation shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees.

(iii) any instrument or document of further assurance or collateral assignment,

(iv) the initial filing of financing statements,

(v) insurance of any of the Facilities or the Real Property or collection of insurance moneys,

(vi) the validity of the execution by the Corporation of this Trust Agreement, any Supplemental Agreement or instruments or documents of further assurance,

(vii) the sufficiency of the security for the Bonds executed and delivered hereunder or intended to be secured hereby,

(viii) the value of or title to the Facilities or the Real Property, or

(ix) the maintenance of the security hereof, except that, in the event that the Trustee enters into possession of a part or all of the Facilities or the Real Property pursuant to any provision of the Purchase and Use Agreement or any other instrument or document collateral thereto, the Trustee shall use due diligence in preserving that property.

Pursuant to Section 10.1(b) hereof, the Trustee shall enforce all covenants, agreements and obligations of the City under and pursuant to the Base Lease and the Purchase and Use Agreement. The Trustee may require of the Corporation or the City full information and advice as to the observance or performance of those covenants, agreements and obligations.

(c) Except with respect to the disbursement of amounts deposited with or received by it under the provisions of this Trust Agreement, the Trustee shall not be accountable for the application by the City or any other Person of the proceeds of the Bonds.

(d) The Trustee shall be protected and shall incur no liability, in the absence of bad faith on its part, in acting or proceeding, or in not acting or not proceeding upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instruments. Any action taken by the Trustee pursuant to this Trust Agreement upon the request or authority or consent of any Person who is the Holder of any Bond at the time of making, the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds executed and delivered in exchange therefor or in place therefor.

(e) As to the existence or nonexistence of any fact for which the Corporation or the City may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Corporation by a Corporation Representative or the City by a City Representative as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default of which the Trustee has been notified or is deemed to have notice as provided in paragraph (f) of this Section, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default with respect to the Bonds, except Events of Default described in Section 7.1(a) hereof, unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the City or the Holders of at least 10% of the aggregate principal amount of Outstanding Bonds. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above. The Trustee shall have no duty to monitor compliance by the City or the Corporation with the provisions of the Base Lease or the Purchase and Use Agreement.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may inspect and copy fully all books, papers and records of the Corporation pertaining to the Facilities or any Additional Facilities and the Real Property or any Additional Real Property, and may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any bond or surety with respect to execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in this Trust Agreement, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and corporate action and evidence thereof, in addition to those required by the terms hereof, as a condition to the authentication and delivery of any Bonds or the taking of any action whatsoever within the purview of this Trust Agreement, if the Trustee deems it to be desirable for the purpose of establishing the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(j) Before taking action hereunder pursuant to Section 6.4 or Article VII hereof (with the exception of any action required to be taken under Section 7.2 hereof), the Trustee may require that an indemnity bond satisfactory to it be furnished to the Trustee by the Holders for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful default. The Trustee may take action without such indemnity, and in that case, all of the Trustee's expenses pursuant to Section 6.3 hereof with respect to the Bonds will be reimbursable as provided in the Purchase and Use Agreement.

(k) Unless otherwise provided herein, all moneys received by the Trustee under this Trust Agreement shall be held in trust for the purposes for which such moneys were received, until such moneys are used, applied or invested as provided herein; provided, that those moneys need not be segregated from other moneys, except to the extent required by this Trust Agreement or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein or agreed with the Corporation.

(l) Any opinions, certificates and other instruments and documents for which provision is made in this Trust Agreement, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its action taken hereunder.

(m) The permissive right of the Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own gross negligence or willful misconduct.

SECTION 6.3. FEES, CHARGES AND EXPENSES OF TRUSTEE.

The Trustee acknowledges receipt of payment in full from the proceeds of the Bonds for its fees for its Ordinary Services rendered hereunder and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred, or to be paid or incurred, by it in connection with the provision of Ordinary Services to the date hereof. The Trustee shall be entitled to the payment of its annual charges upon invoice to the Corporation (which pursuant to the Purchase and Use Agreement shall be payable by the City). In the event that it should become necessary to perform Extraordinary Services including any such Extraordinary Services relating to a default or post-default situation, with respect to the Bonds, the Trustee shall be entitled to reasonable extra compensation therefor, determined in accordance with the Trustee's then-current fee schedule, and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith.

Without creating a default or an Event of Default, however, the City may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the reasonableness of any fee, charge or expense.

The Trustee, in that or its other capacities, shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by its gross negligence or willful misconduct, as determined in a final non-appealable judgement by a court of competent jurisdiction.

Any amounts payable under this Section 6.3 are payable upon demand and shall bear interest from the date of demand therefor at the prime rate quoted from time to time by the banking association serving as Trustee.

The obligation to pay any such fees and expenses shall survive the payment in full or defeasance of the securities or the removal or resignation of the Trustee.

SECTION 6.4. INTERVENTION BY TRUSTEE.

The Trustee may and shall, at the written direction of the Holders of at least 25% of the aggregate principal amount of the Outstanding Bonds, intervene in any judicial proceeding to which the Corporation or the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it by the Holders in accordance with Sections 6.1 and 6.2 hereof before it takes action hereunder.

SECTION 6.5. SUCCESSOR TRUSTEE.

Anything herein to the contrary notwithstanding:

(a) Any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or Trust Estate hereunder.

(b) Any such corporation or association that becomes a successor Trustee by virtue of the foregoing shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Trust Agreement to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

(c) Any successor Trustee, or its parent corporation, however, shall (i) be a trust company or a bank having the powers of a trust company, (ii) be duly authorized to exercise trust powers and in good standing under the laws of the State and, if applicable, the United States, (iii) be subject to examination by federal or State authorities, and (iv) have a reported capital and surplus of not less than $75,000,000.

SECTION 6.6. RESIGNATION BY TRUSTEE.

The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the City, the Bond Insurer, and the Corporation and by mailing written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business 15 days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee and its acceptance of its duties as set forth in Section 6.8 hereof.

SECTION 6.7. REMOVAL OF TRUSTEE.

(a) The Trustee may be removed for cause at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the City and the Corporation, and signed by or on behalf of the Holders of not less than a majority of the aggregate principal amount of the Outstanding Bonds.

(b) For so long as no Event of Default has occurred and is continuing hereunder or under the Purchase and Use Agreement, the Corporation at the written direction of the City may remove the Trustee without cause or for no cause upon 30 days written notice.

(c) The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Trust Agreement with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Corporation, the City or the Holders of not less than 25% in aggregate principal amount of the Outstanding Bonds.

(d) At the request of the City, so long as no default exists under the Purchase and Use Agreement and no Event of Nonappropriation has occurred, the Corporation may appoint a successor Trustee as provided in Section 6.8 hereof.

SECTION 6.8. APPOINTMENT OF SUCCESSOR TRUSTEE.

(a) If (i) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (ii) the Trustee shall be taken under the control of any public officer or officers, or (iii) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Corporation (with the agreement of the City if there is no Event of Default and no Event of Nonappropriation under the Purchase and Use Agreement); provided, that if a successor Trustee is not so appointed within ten days after (x) a notice of resignation or any instrument or document of removal is received by the Corporation as provided in Sections 6.6 and 6.7 hereof, respectively, or (y) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Corporation shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of the Outstanding Bonds not paid or provided for may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 50 days of the occurrence of any event listed in Section 6.8(a)(i)-(iii) hereof, the Holder of any Outstanding Bond hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee. Notwithstanding any other provision of this Trust Agreement to the contrary, no resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee hereunder.

(b) Every successor Trustee appointed pursuant to this Section shall (i) be a trust company or bank having the powers of a trust company, (ii) be in good standing within the State and, if applicable, the United States, (iii) be duly authorized to exercise trust powers within the State and, if applicable, the United States, (iv) have a reported capital and surplus of not less than $75,000,000, and (v) be willing to accept the trusteeship under the terms and conditions of this Trust Agreement.

(c) Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor and to the Corporation and the City an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretion, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Corporation or the City, the predecessor Trustee (i) shall execute and deliver any instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests, and liens of the predecessor Trustee hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Corporation be requested by any successor Trustee for vesting and the conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed hereby in or to the predecessor Trustee, the Corporation shall execute, acknowledge and deliver that instrument or document.

(d) In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Trust Agreement and shall cease to act as Paying Agent for the Bonds, the successor Trustee shall become custodian of such moneys and the Paying Agent.

(e) Upon the appointment of a successor Trustee and completion by the predecessor Trustee of the actions required of it under (c) above, the predecessor Trustee shall not be liable for any acts of its successor.

SECTION 6.9. DEALING IN BONDS.

The Trustee and its affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owner of any Bond or Bonds with the same rights which they would have hereunder if the Trustee did not serve in that capacity.

SECTION 6.10. REPRESENTATIONS, AGREEMENTS AND COVENANTS OF TRUSTEE.

The Trustee hereby represents that it is a banking association duly organized, validly existing and in good standing under the laws of the United States and duly authorized to exercise corporate trust powers in the State, it has an unimpaired reported capital and surplus of not less than $75,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain in good standing and duly authorized to exercise corporate trust powers in the State, and that it will maintain unimpaired reported capital and surplus of not less than $75,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee hereunder and under any other instrument or document providing security for the Bonds.

SECTION 6.11. RIGHT OF TRUSTEE TO PAY TAXES AND OTHER CHARGES.

Reference is made to the Purchase and Use Agreement whereby the Corporation is authorized to advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the Facilities and the Real Property, (ii) for the discharge of mechanic's and other liens relating to the Facilities or the Real Property, (iii) to obtain and maintain insurance for the Facilities and the Real Property and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the City fails to do so as required by such Purchase and Use Agreement or the Base Lease. The Trustee may make those advances but shall not be required to do so (and may require indemnification) pursuant to Sections 6.1(e)(iv) hereof, but without prejudice to any rights of the Trustee as assignee of the Corporation against the City for failure of the City to do so.

[End of Article VI]

ARTICLE VII - DEFAULT PROVISIONS; REMEDIES OF TRUSTEE AND HOLDERS

SECTION 7.1. DEFAULTS; EVENTS OF DEFAULT.

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(a) Payment of the principal or interest due on any Bond shall not be made when and as such payment shall become due and payable; or

(b) The occurrence and continuance of an Event of Default as defined in Section 8.1 of the Purchase and Use Agreement; or

(c) Any material breach by the Corporation of any representation or warranty made in this Trust Agreement or default in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Corporation in this Trust Agreement or in the Bonds contained; or

(d) The issuance of an order of relief by the Bankruptcy Court of the United States District Court having valid jurisdiction, granting the Corporation relief under federal bankruptcy law, or the issuance by any other court having valid jurisdiction of an order or decree under applicable federal or state law providing for the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Corporation or any substantial part of its property, affairs, or assets, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(e) The consent by the Corporation to the institution of proceedings in bankruptcy against it, or to the institution of any proceeding against it under any federal or state insolvency laws, or to the filing of any petition, application, or complaint seeking the appointment of a receiver, liquidator, assignee, trustee, or sequestrator (or other similar official) of the Corporation or of any substantial part of its property, affairs, or assets.

SECTION 7.2. NOTICE OF DEFAULT.

In the event the Trustee becomes aware of the occurrence of any of the events described in Section 7.1 above with respect to the Purchase and Use Agreement, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the City and the Corporation, within 10 days after the Trustee has knowledge of the Event of Default as provided in Section 6.2(f). If an Event of Default occurs of which the Trustee has notice pursuant to this Trust Agreement, the Trustee shall give written notice thereof, within 30 days after the Trustee's receipt of notice of its occurrence, to the Holders of all Outstanding Bonds as shown by the Register at the close of business 15 days prior to the mailing of that notice.

SECTION 7.3. REMEDIES; RIGHTS OF HOLDERS.

(a) General. Upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy to enforce the payment of any amounts due with respect to the Bonds or the observance and performance of any other covenant, agreement or obligation under this Trust Agreement, the Purchase and Use Agreement (including but not limited to the right to relet the Corporation Facilities as provided in Section 8.2 of the Purchase and Use Agreement) pertaining thereto or any other instrument providing security, directly or indirectly, for the Bonds. If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of at least 25% of the aggregate of the principal amount of the Outstanding Bonds, the Trustee (subject to the provisions of Sections 6.1 and 6.2 hereof) shall exercise one or more rights and powers conferred by this Section as the Trustee, upon advice of counsel, deems most expedient in the interests of the Holders of such Bonds.

(b) Acceleration. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then, and in each and every case, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Outstanding Bonds, shall proceed, to declare the principal of all Outstanding Bonds, except as noted below, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, anything contained in this Trust Agreement or any Supplemental Agreement or in any of the Bonds to the contrary notwithstanding. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Outstanding Bonds, by notice in writing delivered to the Trustee and the Corporation, may waive such Event of Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent default.

(c) Other Remedies. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions of Section 7.7 hereof, the Holder of any Outstanding Bond or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated:

(i) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the Corporation and require and compel the Corporation to perform and carry out its duties and obligations under this Trust Agreement or enforce any such remedies against the City pursuant to the Purchase and Use Agreement, and require and compel the Corporation to perform and carry out its covenants and agreements with the Bondholders;

(ii) by action or suit in equity require the Corporation to account as if such Corporation were the trustee of an express trust;

(iii) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders;

(iv) bring suit upon the Bonds;

(v) take such other action with respect to the Trust Estate, including obtaining the appointment of a receiver, as it may deem appropriate and apply any funds resulting therefrom as if such funds were Revenues; or

(vi) avail itself of any other remedy, whether at law or in equity, as it may determine to be appropriate.

(d) Remedies Under UCC. Subject to the terms of the Base Lease, the Trustee may exercise any rights, powers, or remedies it may have as a secured party under the UCC of the State, or other similar laws in effect.

(e) No Remedy Exclusive, Effect of Delay and Waiver. No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Trust Agreement is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing. No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be deemed to be expedient. No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

(f) Remedies Under Purchase and Use Agreement and Base Lease. As the assignee of all right, title and interest of the Corporation in and to the Purchase and Use Agreement and the Base Lease, the Trustee is empowered to enforce each remedy, right and power granted to the Corporation under the Purchase and Use Agreement (except for the Reserved Rights and any other rights specifically reserved to the Corporation) and the Base Lease. In exercising any remedy, right or power under the Purchase and Use Agreement, the Base Lease or this Trust Agreement, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in Sections 6.1 and 6.2 hereof.

SECTION 7.4. RIGHT OF HOLDERS TO DIRECT PROCEEDINGS.

Anything to the contrary in this Trust Agreement notwithstanding, the Holders of at least a majority in aggregate principal amount of the Outstanding Bonds shall have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Trust Agreement or any other proceedings hereunder; provided, that (i) any direction shall not be other than in accordance with the provisions of law and of this Trust Agreement, (ii) the Trustee shall be indemnified as provided in Sections 6.1 and 6.2 hereof, and (iii) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

SECTION 7.5. APPLICATION OF MONEYS.

(a) Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable any funds received by the Trustee hereunder, after payment of costs and expenses of collection of such funds, shall be applied as follows (provided, however, that amounts on deposit in a subaccount of the Facilities Purchase Account or the Reserve Account established for the benefit of a particular series of Bonds shall be available solely with respect to such Bonds):

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference;

Second: To the payment to the Persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the Persons entitled thereto, without any discrimination or preference; and

Third: If, when there is not an Event of Default, the Trustee is required to expend funds to defend itself in a lawsuit which arises under a cause of action attacking the legality of the Bonds, or the status of the Corporation as issuer, then, in such event the Trustee shall be entitled to a call on the funds for the same kinds of expenses as are described as costs and expenses of collection as described in (b) below.

(b) If the principal of all Outstanding Bonds shall have become or have been declared due and payable, any funds received by the Trustee hereunder, after payment of costs and expenses of collection, shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference; provided, however, that amounts on deposit in a subaccount of the Facilities Purchase Account or the Reserve Account established for the benefit of a particular series of Bonds shall be available solely with respect to such Bonds. For purposes hereof, "costs and expenses of collection" shall include such expenses as are necessary for the Trustee to fulfill its obligation of due diligence to protect the interests of the Bondholders in the Trust Estate which may include the Trustee's reasonable expenses and fees for its duties administering this Trust Agreement while the Bonds are in default to include its normal fees, additional expenses resulting from managing any of the property forming part of the Trust Estate, expenses of counsel to represent the Trustee, expenses of any and all consultants employed by the Trustee and direct expenses of the Trustee to include the costs of preparing and mailing notices to Bondholders and other parties.

(c) If the principal of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all Outstanding Bonds shall later become due or be declared due and payable, moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

(d) Whenever moneys are to be applied pursuant to the provisions of this Section, those moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the moneys are available therefor. The Trustee shall give notice of the deposit with it of any moneys and of the fixing of that date, all consistent with the requirements of Section 3.5 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

(e) Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee and all amounts (if any) owed to the Bond Insurer have been paid, any balance remaining shall be paid to the Person entitled to receive the same; if no other Person shall be entitled thereto, then the balance shall be paid to the City or as a court of competent jurisdiction may direct.

SECTION 7.6. REMEDIES VESTED IN TRUSTEE.

All rights of action (including without limitation, the right to file proofs of claims) under this Trust Agreement or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the Outstanding Bonds subject to the provisions of this Trust Agreement.

SECTION 7.7. RIGHTS AND REMEDIES OF HOLDERS.

A Holder of a Bond shall not have any right to institute any suit, action or proceeding for the enforcement of this Trust Agreement, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless there has occurred and is continuing an Event of Default of which the Trustee has been notified or is deemed to have notice as provided in Section 6.2(f) hereof; the Holders of at least 25% in aggregate principal amount of the Outstanding Bonds shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 6.1 and 6.2 hereof; and the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name. At the option of the Trustee, such notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Trust Agreement by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceeding shall be instituted, had and maintained in the manner provided herein for the benefit of the Holders of all Outstanding Bonds. Nothing in this Trust Agreement shall affect or impair, however, the right of any Holder to enforce the payment of the principal and interest due on any Bond owned by that Holder at and after the due date thereof, at the place, from the sources and in the manner expressed in the Bond.

SECTION 7.8. TERMINATION OF PROCEEDINGS.

In case the Trustee shall have proceeded to enforce any remedy, right or power under this Trust Agreement in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Corporation and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

SECTION 7.9. WAIVERS OF EVENTS OF DEFAULT.

Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences and shall do so upon the written request of the Holders of Bonds of least a majority in aggregate principal amount of Bonds Outstanding. There shall not be so waived, however, any Event of Default described in Section 7.1(a) hereof unless at the time of such waiver payments of all amounts then due and payable with respect to the Bonds have been made or provision has been made therefor. In the case of such waiver, or in case any suit, action or proceeding taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

[End of Article VII]

ARTICLE VIII - SUPPLEMENTAL AGREEMENTS SECTION

SECTION 8.1. SUPPLEMENTAL AGREEMENTS GENERALLY.

The Corporation and the Trustee may enter into Supplemental Agreements, as provided in this Article and pursuant to the other provisions therefor in this Trust Agreement.

SECTION 8.2. SUPPLEMENTAL AGREEMENTS NOT REQUIRING CONSENT OF HOLDERS.

Without the consent of, or notice to, any of the Holders, the Corporation and the Trustee may enter into Supplemental Agreements which be for any one or more of the following purposes:

(a) To cure any ambiguity, inconsistency or formal defect or omission in this Trust Agreement;

(b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;

(c) To assign additional revenues under this Trust Agreement;

(d) To accept additional security and instruments and documents of further assurance with respect to the Facilities and the Real Property;

(e) To add to the covenants, agreements and obligations under this Trust Agreement, other covenants, agreements and obligations to be observed for the protection of the Holders;

(f) To evidence any succession to the Trustee and the assumption by its successor of the covenants, agreements and obligations of the Trustee under this Trust Agreement and the Bonds;

(g) To permit the use of a Book Entry System to identify the owner of a proportionate interest in the payments under the Purchase and Use Agreement, whether that proportionate interest was formerly, or could be, evidenced by a tangible security;

(h) To permit the Trustee to comply with any obligations imposed upon it by law;

(i) To specify further the duties and responsibilities of the Trustee;

(j) To achieve compliance of this Trust Agreement with any applicable federal securities or tax law;

(k) To make provision of the issuance of Additional Bonds as provided for herein;

(l) To permit any other amendment which is not to the prejudice of the Trustee (in the judgment of the Trustee) or the Holders; or

(m) To reflect a change in law.

The provisions of paragraphs (h), (j) and (m) above shall not be deemed to constitute a waiver by the Trustee or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Trust Agreement or the Bonds.

SECTION 8.3. SUPPLEMENTAL AGREEMENTS REQUIRING CONSENT OF HOLDERS.

Exclusive of Supplemental Agreements to which reference is made in Section 8.2 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Bonds at such time, evidenced as provided in this Trust Agreement, the Corporation and the Trustee may execute and deliver Supplemental Agreements adding any provisions to, changing in any manner or eliminating any of the provisions of this Trust Agreement or any Supplemental Agreement or restricting in any manner the rights of the Holders. Nothing in this Section or Section 8.2 hereof shall, however, be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Outstanding Bonds, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Agreement; provided, however, that the establishment of an escrow for the defeasance of a portion of the Bonds shall not be deemed to constitute the creation of a privilege or priority for the benefit of the Bonds to be defeased.

If the Corporation shall request that the Trustee execute and deliver any Supplemental Agreement for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses and liability in connection therewith, and (ii) if required by Section 8.4 hereof, receipt of the City's consent to the proposed execution and delivery of the Supplemental Agreement, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Agreement to be mailed by first class mail, postage prepaid, to all Holders of Outstanding Bonds at their addresses as they appear on the Register at the close of business on the 15th day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Agreement when there has been consent thereto as provided in this Section. The notice shall set forth briefly the nature of the proposed Supplemental Agreement and shall state that copies thereof are on file at the principal trust office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period described by the Trustee of not less than 60 days but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents (which instrument or document or instruments or documents shall refer to the proposed Supplemental Agreement in the form described in the notice), by which the Holders of not less than a majority in aggregate principal amount of the Outstanding Bonds consent to the execution of such Supplemental Agreement, the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Agreement in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond executed and delivered in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Agreement). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Agreement. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the Trustee shall make and file with the City a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Outstanding Bonds shall have consented to the Supplemental Agreement, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Agreement, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee from that execution or delivery or from taking any action pursuant to the provisions thereof.

SECTION 8.4. CONSENT OF CITY.

Anything contained herein to the contrary notwithstanding, a Supplemental Agreement executed and delivered in accordance with this Article VIII which affects any rights or obligations of the City shall not become effective unless and until the City shall have consented in writing to the execution and delivery of that Supplemental Agreement. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Agreement and a copy of the proposed Supplemental Agreement to be mailed to the City, as provided in Section 12.3 hereof, (i) at least 30 days (unless waived by the City) before the date of the proposed execution and delivery in the case of a Supplemental Agreement to which reference is made in Section 8.2 hereof, and (ii) at least 30 days (unless waived by the City) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Agreement for which provision is made in Section 8.3 hereof.

SECTION 8.5. AUTHORIZATION TO TRUSTEE; EFFECT OF SUPPLEMENTAL AGREEMENT.

The Trustee is authorized to join with the Corporation in the execution and delivery of any Supplemental Agreement in accordance with this Article and to make the further agreements and stipulations which may be contained therein with the following effect:

(a) That Supplemental Agreement shall form a part of this Trust Agreement;

(b) All terms and conditions contained in that Supplemental Agreement as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Trust Agreement for any and all purposes;

(c) This Trust Agreement shall be deemed to be modified and amended in accordance with the Supplemental Agreement; and

(d) The respective rights, duties and obligations under this Trust Agreement of the Corporation, the Trustee and all Holders of Outstanding Bonds shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Agreement.

Express reference to any executed and delivered Supplemental Agreement may be made in the text of any Bonds executed and delivered thereafter, if that reference is deemed necessary or desirable by the Trustee or the Corporation. The Trustee shall not be required to execute a Supplemental Agreement containing provisions adverse to the Trustee.

SECTION 8.6. FAVORABLE OPINION OF BOND COUNSEL.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, a Favorable Opinion of Bond Counsel in connection with any proposed Supplemental Agreement. Prior to taking any action hereunder, the Trustee shall be entitled to assurance as to the payment of the fees and expenses of any counsel providing such opinion.

SECTION 8.7. MODIFICATION BY UNANIMOUS CONSENT.

Notwithstanding anything contained elsewhere in this Trust Agreement, the rights and obligations of the Trustee and of the Holders of the Bonds, and the terms and provisions of the Bonds and this Trust Agreement or any Supplemental Agreement, may be modified or altered in any respect with the consent of (i) the Trustee, (ii) the Holders of all of the Outstanding Bonds, and (iii) if required by Section 8.4 hereof, the City.

[End of Article VIII]

ARTICLE IX - DEFEASANCE

SECTION 9.1. DEFEASANCE.

(a) When the principal or redemption price (as the case may be) of, and interest on, any of the Bonds issued hereunder has been paid, or provision shall have been made for payment of the same, together with the compensation of the Trustee and all other sums payable hereunder by the Corporation and the City (including but not limited to amounts (if any) owed to the Bond Insurer), the right, title and interest of the Trustee with respect to such Bonds shall thereupon cease and the Trustee shall release this Trust Agreement and shall execute such documents to evidence such releases as may be reasonably required by the Corporation and shall turn over to the Corporation or to such person, body or authority as may be entitled to receive the same all balances then held by it hereunder; provided, however, that the City shall in all events remain liable under the Purchase and Use Agreement (subject to Section 4.7 thereof) until all amounts due and owing thereunder have been paid.

(b) Provision for the payment of the Bonds shall be deemed to have been made when the Trustee holds, in an irrevocable deposit, under the provisions hereof (i) cash in an amount sufficient to make all payments specified above with respect to all of such Bonds, (ii) Defeasance Obligations maturing on or before the date or dates when the payments specified above shall become due, the principal amount of which and the interest thereon, when due, is or will be, in the aggregate, sufficient without reinvestment to make all payments specified above with respect to such Bonds, or (iii) any combination of such cash and such Defeasance Obligations the amounts of which and interest thereon, when due, are or will be, in the aggregate, sufficient without reinvestment to make all payments specified above on such Bonds; provided that, to the extent such deposit does not consist of cash, the Trustee shall have received a report of an independent accountant or firm of accountants verifying that the computations of the amount available from Defeasance Obligations when added to any cash available shall be sufficient to meet the requirements hereof.

(c) Neither the obligations nor the moneys deposited with the Trustee pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal or redemption price of, and interest on, said Bonds.

(d) Whenever moneys or obligations shall be deposited with the Trustee for the payment or redemption of Bonds more than 60 days prior to the date that such Bonds are to mature or be redeemed, the Trustee shall mail a notice stating that such moneys or obligations have been deposited and identifying the Bonds for the payment of which such moneys or obligations are being held, to the Holders of such Bonds.

SECTION 9.2. SURVIVAL OF CERTAIN PROVISIONS.

Notwithstanding the foregoing, any provisions of this Trust Agreement which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust, and payments to the City from the Bond Fund pertaining to the Purchase and Use Agreement and the duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders, notwithstanding, the release and discharge of this Trust Agreement. The provisions of this Article shall survive the release, discharge and satisfaction of this Trust Agreement.

[End of Article IX]

ARTICLE X - ADDITIONAL COVENANTS AND AGREEMENTS OF THE TRUSTEE

SECTION 10.1. ADDITIONAL COVENANTS AND AGREEMENTS OF THE TRUSTEE.

In addition to any other covenants and agreements of the Trustee in this Trust Agreement, the Trustee further covenants and agrees for the benefit of the Holders as follows:

(a) Register. At reasonable times and under reasonable regulations established by the Trustee, the Register for the Bonds may be inspected and copied by the Corporation, the City or Holders of 25% or more in principal amount of the Outstanding Bonds, or a designated representative therefor.

(b) Rights and Enforcement of Base Lease and Purchase and Use Agreement. The Trustee may and shall enforce, in its name, all rights of the Corporation under the Base Lease and the Purchase and Use Agreement for and on behalf of the Holders. The Trustee covenants and agrees to perform all obligations and duties imposed on it by assignment hereunder, and to enforce all covenants, agreements and obligations of the City under and pursuant to the Base Lease and the Purchase and Use Agreement. The Trustee will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Base Lease and the Purchase and Use Agreement, and will take all actions within its authority to keep the Base Lease and the Purchase and Use Agreement in effect in accordance with the terms thereof. The Trustee's obligations under this paragraph are subject to the provisions of Section 7.3(f) hereof.

SECTION 10.2. OBSERVANCE AND PERFORMANCE OF COVENANTS, AGREEMENTS, AUTHORITY AND ACTIONS.

The Trustee will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under this Trust Agreement and the Bonds.

The Trustee represents and warrants that (a) it is duly authorized to execute and deliver this Trust Agreement and to perform its obligations hereunder in the manner and to the extent set forth in this Trust Agreement and, (b) all actions required on its part to be performed for the execution and delivery of the Bonds and this Trust Agreement have been or will be taken duly and effectively.

[End of Article X]

ARTICLE XI - AMENDMENTS TO BASE LEASE AND PURCHASE AND USE AGREEMENT

SECTION 11.1. AMENDMENTS NOT REQUIRING CONSENT OF HOLDERS.

Without the consent of or notice to the Holders, the Trustee, as trustee and as lessee by assignment, may consent and, at the written direction of the Corporation, shall consent to any amendment, change or modification of the Base Lease and the Purchase and Use Agreement as may be required (i) by the provisions of the Base Lease, the Purchase and Use Agreement or this Trust Agreement, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Base Lease or the Purchase and Use Agreement, (iii) in connection with an amendment or to effect any purpose for which there could be an amendment of this Trust Agreement pursuant to Section 8.2 hereof, (iv) in connection with the issuance of Additional Bonds as provided for herein, or (v) in connection with any other change therein which is not to the prejudice of the Trustee (in the judgment of the Trustee) or the Holders. No such consent or notice to the Holders shall be required with respect to any amendment to add to the description of the Real Property any Additional Real Property or to delete property from the description thereof consistent with the provisions of the Purchase and Use Agreement and the Base Lease.

SECTION 11.2. AMENDMENTS REQUIRING CONSENT OF HOLDERS.

Except for the amendments, changes or modification contemplated in Section 11.1 hereof, the Trustee shall not consent to:

(a) Any amendment, change or modification of the Purchase and Use Agreement which would change the amount or time as of which Base Payments are required to be paid without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the Outstanding Bonds; provided that this requirement shall not apply to amendments that modify Installment Payments under the Purchase and Use Agreement to provide for Additional Bonds hereunder; or

(b) Any amendment, change or modification of the Purchase and Use Agreement without the giving of notice as provided in this section of the proposed amendment, change or modification and the receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Outstanding Bonds.

The consent of the Holders shall be obtained as provided in Section 8.3 hereof with respect to Supplemental Agreements. If the City shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Purchase and Use Agreement contemplated in subsections (a) or (b), upon being indemnified satisfactorily with respect to expenses and liability, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 8.3 hereof with respect to notice of Supplemental Agreements. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that the copies of the instrument or document embodying it are on file at the designated corporate trust office of the Trustee for inspection by all Holders.

[End of Article XI]

ARTICLE XII - MISCELLANEOUS

SECTION 12.1. LIMITATION OF RIGHTS.

With the exception of rights conferred expressly in this Trust Agreement, nothing expressed or mentioned in or to be implied from the Base Lease, the Purchase and Use Agreement or the Bonds is intended or shall be construed to give to any Person and the parties hereto and the Holders of the Bonds and the Bond Insurer any legal or equitable right, remedy, power or claim under or with respect to this Trust Agreement or any covenants, agreements, conditions and provisions contained herein. This Trust Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto and the Holders of the Bonds and the Bond Insurer as provided herein.

SECTION 12.2. SEVERABILITY.

In case any section or provision of this Trust Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Trust Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Trust Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Trust Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein and shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 12.3. NOTICES.

Except as provided in Section 7.2 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is mailed by first class mail, postage prepaid. Notices to the Corporation, the City and the Trustee shall be addressed as follows:

If to the City:

City of Spartanburg, South Carolina
Attn: City Manager
187 W. Broad Street
Spartanburg, SC 29306

If to the Corporation:

Spartanburg Stadium Facilities Corporation
Attn: President
187 W. Broad Street
Spartanburg, SC 29306
(with copy to the City as described above)

If to the Trustee:

U.S. Bank Trust Company, National Association
[1441 Main Street, Suite 775
Columbia, SC 29201]

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, the Trustee or the City to one or more of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

In connection with any notice mailed pursuant to the provisions of this Trust Agreement, a certificate of the Trustee, the Corporation, the City or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

Notwithstanding the foregoing, the Corporation may send notices by electronic mail to the Trustee. The Corporation agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that instructions that purport to have been sent by an authorized officer of the City or Corporation (an "Authorized Officer"), as applicable, have been sent by such Authorized Officer. The City and the Corporation shall each be responsible for ensuring that only Authorized Officers transmit such instructions to the Trustee, and the City, the Corporation and such Authorized Officers are responsible for safeguarding the use and confidentiality of applicable user and authorization codes, passwords and authentication keys provided by the Trustee. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City and the Corporation agree (i) to assume all risks arising out of the use of electronic mail to submit instructions and direction to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk or interception and misuse by third parties; (ii) that each of them are fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the City or the Corporation, as applicable; (iii) that the security procedures (if any) to be followed in connection with their respective transmission of instructions provide to them a commercially reasonable degree of protection in light of their particular needs and circumstances; and (iv) that they will notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 12.4. SUSPENSION OF MAIL.

If because of the suspension of delivery of first class mail or, for any other reason, the Trustee shall be unable to mail by the required class of mail any notice required to be mailed by the provisions of this Trust Agreement, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of the Purchase and Use Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

SECTION 12.5. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS.

If any Bond Payment Date, redemption date or date of maturity of the principal of any Bonds is not a Business Day, then payment of interest, redemption premium (if any) or principal need not be made by the Trustee on that date, and that payment may be made on the next succeeding Business Day on which the Trustee is open for business with the same force and effect as if that payment were made on the Bond Payment Date, redemption date or date of maturity and no interest shall accrue for the period after that date.

SECTION 12.6. INSTRUMENTS OF HOLDERS.

Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Trust Agreement to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (i) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (ii) the execution of any writing appointing any agent or attorney, and (iii) the ownership of Bonds, shall be sufficient for any of the purposes of this Trust Agreement, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(a) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(b) The fact of ownership of Bonds shall be proved by the Register.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Corporation or the Trustee pursuant to that writing.

SECTION 12.7. PRIORITY OF THIS TRUST AGREEMENT.

This Trust Agreement and the lien created hereby shall be superior to any other liens which may be placed upon the Revenues or any Funds (or Accounts therein) created pursuant hereto, except such liens as may be required or mandated by applicable law.

SECTION 12.8. EXTENT OF COVENANTS; NO PERSONAL LIABILITY.

All covenants, stipulations, obligations and agreements of the Trustee contained in this Trust Agreement are and shall be deemed to be covenants, stipulations, obligations and agreements of the Trustee as such to the full extent authorized by law. No covenant, stipulation, obligation or agreement of the Trustee contained in this Trust Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any past, present or future member, officer, director, attorney, agent or employee of the Trustee or the Corporation in other than that person's official capacity. No official executing the Bonds, this Trust Agreement or any amendment or supplement hereto or thereto, shall be liable personally on the Bonds or be subject to any personal liability or accountability by reasons of the issuance or execution hereof or thereof.

SECTION 12.9. CONTINUING DISCLOSURE.

The City has covenanted in the Purchase and Use Agreement to provide information under Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“15c2-12”), as an Obligated Person (as defined in 15c2-12).

SECTION 12.10. BINDING EFFECT.

This Trust Agreement shall inure to the benefit of and shall be binding upon the Corporation and upon the Trustee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 12.11. COUNTERPARTS.

This Trust Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 12.12. GOVERNING LAW.

This Trust Agreement and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

SECTION 12.13. LIMITATION OF LIABILITY OF CORPORATION.

All payments to be made by the Corporation or obligations of the Corporation hereunder are payable solely from the Trust Estate and Revenues derived therefrom.

[End of Article XII]

IN WITNESS WHEREOF, the Corporation has caused this Trust Agreement to be executed and delivered for it and in its name and on its behalf by its duly authorized officers, and the Trustee has caused this Trust Agreement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer, on the dates of the respective acknowledgments but all as of the day and year first above written.

SPARTANBURG STADIUM FACILITIES CORPORATION

By: ________________________________
Its: President

Attest:

____
Secretary

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: ________________________________
Its: _______________________________

[Signature page to Trust Agreement]

EXHIBIT A

[FORM OF SERIES 2024 BONDS]

Unless this bond is presented by an authorized representative of The Depository Trust Company, New York, New York ("DTC") to Spartanburg Stadium Facilities Corporation or its agent for registration of transfer, exchange, or payment and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Interest is payable to the person in whose name this bond is registered at the close of business on the 15th day next preceding each Bond Payment Date, except that interest not duly paid or provided for when due shall be payable to the person in whose name this bond is registered at the close of business on a special record date to be fixed for the payment of defaulted interest. Such defaulted interest shall be payable to the Holder in whose name such Bond is registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed to the Holders of the Bonds not less than five days prior to such special record date to Holder thereof at the address as it appears on the bond register not less than 10 days preceding such special record date. If the Trustee registers the transfer of this bond subsequent to the mailing of such notice and on or before the special record date, any such notice of payment of defaulted interest shall be binding upon the transferee and a copy of the notice of payment of defaulted interest shall be delivered by the Trustee to the transferee along with the bond or bonds.

Registered

No. R-1

$

SPARTANBURG STADIUM FACILITIES CORPORATION

INSTALLMENT PURCHASE REVENUE BONDS

(CITY OF SPARTANBURG PROJECT)

TAXABLE SERIES 2024

Interest Rate	Maturity Date	Dated Date	CUSIP

Holder: CEDE & CO.

Principal Amount: __________ DOLLARS

Spartanburg Stadium Facilities Corporation (the "Corporation"), a nonprofit corporation organized and existing under the laws of the State of South Carolina (the "State"), for value received hereby acknowledges itself obligated to, and promises to pay the Holder identified above, or registered assigns, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, on the Maturity Date set forth above, and to pay interest on the unpaid balance of said sum from the most recent May 1 or November 1 to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the Dated Date set forth above, at the rate of interest per annum set forth above (calculated on the basis of a 360-day year of twelve 30-day months) payable on May 1 and November 1 (each a "Bond Payment Date") of each year commencing November 1, 2024, until the Corporation's obligation with respect to payment of the principal amount is discharged. Principal of and interest on this bond are payable in lawful money of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts. Payments of interest will be made by check or draft drawn upon U.S. Bank National Association as trustee (the "Trustee"), and mailed to the person entitled thereto. Principal, when due, shall be paid upon surrender of this bond at the designated corporate trust office of the Trustee in Columbia, South Carolina. At the written request addressed to the Trustee or the Holder of the Bonds in the aggregate principal amount of at least $1,000,000, interest and redemptions of principal shall be paid by wire transfer or other means acceptable to the Trustee to an account within the continental United States by prior written instructions filed with the Trustee not later than the Record Date for such purpose.

This bond is one of a series of Bonds of the Corporation limited in aggregate original face amount to $[_________] and designated as "Spartanburg Stadium Facilities Corporation, Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024 (the "Bonds"), issued under a Trust Agreement, dated _________ __, 2024 (the "Trust Agreement"), between the Corporation and the Trustee, to provide funds, together with other available amounts, to finance the design, acquisition, construction and equipping of a multi-use municipal stadium intended for use principally as a minor league baseball stadium (the "2024 Project"). The City Council of the City has enacted an ordinance approving the Corporation and the issuance of the Bonds by the Corporation. The City owns and holds fee simple title to the land on which the Existing Facilities (as such term is defined in hereafter defined Base Lease) are located (the "Existing Real Property"), and has leased the land on which the 2024 Project is or will be located (the "2024 Real Property") from Morgan & Henry JOF ESA II, LLC, and has leased the Existing Real Property, subleased the 2024 Real Property and conveyed the Existing Facilities (as such term is defined in the hereafter defined Base Lease) to the Corporation under the terms of a Base Lease and Conveyance Agreement dated _________ __, 2024 (the "Base Lease").

The Bonds and the interest thereon and redemption premium, if any, shall be an obligation of the Corporation, and shall be secured by and payable from the Trust Estate (as defined in the hereafter defined Trust Agreement). The Bonds do not and shall not be deemed to constitute or create an indebtedness, liability or obligation of City of Spartanburg, South Carolina (the "City") within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit of the City. The Bonds and the interest thereon are payable from and secured by the Trust Estate as described in and subject to limitations set forth in the Trust Agreement for the equal and ratable benefit of the Holder, from time to time, of the Bonds.

Pursuant to the Trust Agreement, the Corporation has granted to the Trustee for the benefit of the owners of the Bonds, a security interest in the Trust Estate which includes the Revenues (as defined in the Trust Agreement) consisting of the Installment Payments (as defined in the Trust Agreement) payable by the City under the Installment Purchase and Use Agreement dated __________ __, 2024 (the "Purchase and Use Agreement"), between the Corporation and the City, any other sums arising under the Purchase and Use Agreement, amounts on deposit from time to time in the funds and accounts created pursuant to the Trust Agreement and the investment income therefrom. The Trust Agreement further provides that the Corporation may issue additional bonds secured on a parity with the Bonds by the Trust Estate under the terms and conditions and to the extent described in the Trust Agreement. The City's obligation to pay Installment Payments under the Purchase and Use Agreement is subject to annual appropriations and the obligation may be terminated at the end of any fiscal year of the City by an Event of Nonappropriation (as defined in the Purchase and Use Agreement). UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION, THE CITY MAY TERMINATE THE PURCHASE AND USE AGREEMENT AS OF THE END OF THE FISCAL YEAR DURING WHICH SUCH EVENT OF NONAPPROPRIATION OCCURS, AND THE CITY SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF THE INSTALLMENT PAYMENTS BEYOND THE END OF SUCH FISCAL YEAR.

Counterparts or copies of the Trust Agreement, the Purchase and Use Agreement, the Base Lease and the other documents referred to herein are on file at the corporate trust office of the Trustee in Atlanta, Georgia, and reference is hereby made thereto and to the documents referred to therein for the provisions thereof, including the provisions with respect to the rights, obligations, duties and immunities of the Corporation, the City, the Trustee and the Holder of the Bonds under such documents, the security for the Bonds and the conditions under which additional bonds may be issued thereunder to all of which the Holder hereof, by acceptance of this bond, assents. The Bonds are subject to redemption prior to maturity as provided in the Trust Agreement, and as described in the following lettered paragraphs:

(a) In the event the City exercises its option pursuant to the Purchase and Use Agreement to prepay Base Payments, the Bonds maturing on and after November 1, 20[__], will be redeemed in whole on any date or in part on any date, on or after November 1, 20[__], at a redemption price equal to the principal amount to be redeemed plus accrued interest to the redemption date.

(b) The Bonds maturing on November 1, 20[__], are subject to mandatory sinking fund redemption, at a redemption price equal to the principal amount to be redeemed plus accrued interest, if any, to the redemption date, without premium on November 1 of the years and in the amounts as follows:

Year	Principal Amount
*	

*Final maturity

Notice of redemption shall be given by the Trustee by first class mail, postage prepaid, to the Holders of the Bonds to be redeemed at their addresses appearing on the Register maintained by the Trustee, said mailing to be not less than 30 days, but not more than 60 days, prior to the redemption date. Failure of the Trustee to give any notice of redemption or any defects in such notice shall not affect the validity of the redemption of any other Bonds.

The Holder of this bond shall have no right to enforce the provisions of the Trust Agreement or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

Upon the occurrence of certain Events of Default (as defined in the Trust Agreement), all Bonds may be declared immediately due and payable and thereupon shall become and be immediately due and payable as provided in the Trust Agreement.

The Bonds are issuable only in fully registered form. Subject to the limitations provided for in the Trust Agreement, this bond may be exchanged for a like aggregate principal amount payable at maturity of Bonds of the same maturity, principal amount and interest rate in authorized denominations.

The Bonds are transferable by the Holder thereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided for in the Trust Agreement and upon surrender and cancellation of this bond. Upon such transfer a new Bond or Bonds of the same maturity and interest rate and in authorized denominations for the same aggregate principal amount and interest rate payable at maturity will be issued to the transferee in exchange. The Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Trust Agreement in connection with the exchange or transfer. The Trustee need not exchange or register the transfer of a Bond which has been selected for redemption and need not exchange or register the transfer of any Bond for a period of 15 days before a selection of Bonds to be redeemed or before any May 1 or November l. The Corporation, the City, the Trustee and any paying agent may treat the Holder of this bond as the absolute owner for the purpose of receiving payment as herein provided and for all other purposes and none of them shall be affected by any notice to the contrary.

Under the laws of the State, this Bond and the income herefrom are exempt from all State, City, municipal, school district and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this bond have existed, have happened and have been performed in due form, time and manner as required by law.

IN WITNESS WHEREOF, the Corporation has caused this bond to be executed and attested by the manual signatures of its duly authorized officers, and this bond to be authenticated by the manual signature of an authorized representative of the Trustee, without which authentication this bond shall not be valid nor entitled to the benefits of the Trust Agreement.

SPARTANBURG STADIUM FACILITIES CORPORATION

(SEAL)
Attest:

By:_____________________
Its: President

By:_____________________
Its: Secretary

TRUSTEE'S AUTHENTICATION CERTIFICATE

The undersigned Trustee hereby certifies that this is one of the Bonds described in the within mentioned Trust Agreement.

Date of Authentication:

By:_____________________
Its: Vice President

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto ____

____

(please print or type name and address of Transferee and Social Security Number or other identifying number of Transferee)

the within Bond and all rights and title thereunder, and does hereby irrevocably constitute and appoint attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:____________________ ____________________________

By:
(Authorized Officer)

Signature Guaranteed:

____

____

Notice: Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agents Medallion Program (“STAMP”) or similar program.

Notice: The signature to the assignment must correspond with the name of the registered holder as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM – as tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT - ________Custodian _______ under Uniform Gifts to Minors Act
_________ (CUST) (Minor)
(State)

Additional abbreviations may also be used though not in above list.

EXHIBIT B

[FORM OF REQUISITION]

DIRECTION TO MAKE DISBURSEMENT

Requisition No. ______
U.S. Bank Trust Company, National Association
1441 Main Street, Suite 775
Columbia, SC 29201
Attention: Corporate Trust Services

Re: $[__________] Spartanburg Stadium Facilities Corporation, Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024

As Trustee under the Trust Agreement dated _________ __, 2024 (the "Trust Agreement"), between U.S. Bank Trust Company, National Association ("Trustee") and Spartanburg Stadium Facilities Corporation (the "Corporation") and in accordance with the provisions of Section 5.3 of the Trust Agreement, the Trustee is hereby directed to disburse from the Project Fund the sum of $[_____________], payable to the persons and in the amounts and at the addresses set forth in Schedule I attached hereto, said sum being the total of amounts due for or attributable to the items described in said Schedule I. Included herewith is documentation supporting the payments requested herein.

In this connection, we further certify to you as follows:

A. The amounts to be paid hereunder (i) are due and payable, (ii) are for costs of the 2024 Project that are properly capitalizable into the cost of acquiring tangible real or tangible personal property, and (iii) have not been the subject of any previous requisition from the Project Fund.

B. All representations and warranties of City of Spartanburg, South Carolina (the "City") and the Corporation, as the case may be, in the Purchase and Use Agreement are true and correct in all material respects as of the date hereof.

C. Neither the City nor the Corporation, as the case may be, is in default in any material respects under any provisions of the Purchase and Use Agreement.

D. The requirements of Section 5.3 of the Trust Agreement have been satisfied with respect to this Direction to Make Disbursement.

Dated this __ day of __________, 20__.

CITY OF SPARTANBURG, SOUTH CAROLINA

____
By: City Representative

SPARTANBURG STADIUM FACILITIES CORPORATION

____
By: Corporation Representative

EXHIBIT C

[FORM OF FINAL REQUISITION]

DIRECTION TO MAKE FINAL DISBURSEMENT

Requisition No. _____

U.S. Bank Trust Company, National Association
1441 Main Street, Suite 775
Columbia, SC 29201
Attention: Corporate Trust Services

Re: $[__________] Spartanburg Stadium Facilities Corporation, Installment Purchase Revenue Bonds (City of Spartanburg Project), Taxable Series 2024

As Trustee under the Trust Agreement dated __________ __, 2024 (the "Trust Agreement"), between U.S. Bank Trust Company, National Association (the "Trustee") and Spartanburg Stadium Facilities Corporation (and the "Corporation") and in accordance with the provisions of Section 5.3 of the Trust Agreement, the Trustee is hereby directed to disburse from the Project Fund as the case may be, the total sum of $[____________], payable to the persons and in the amounts and at the addresses set forth in Schedule I attached hereto, said sum being the total of amounts due for or attributable to the items described in said Schedule I. Said sum represents the final requisition from said Project Fund. Included herewith is documentation supporting the payments requested herein.

In this connection, we further certify to you as follows:

A. The amounts to be paid hereunder (i) are due and payable, (ii) are for costs of the 2024 Project that are properly capitalizable into the cost of acquiring tangible real and tangible personal property, and (iii) have not been the subject of any previous requisition from the Project Fund.

B. All representations and warranties of City of Spartanburg, South Carolina (the "City") and the Corporation, as the case may be, in the Purchase and Use Agreement are true and correct in all material respects as of the date hereof.

C. Neither the City nor the Corporation, as the case may be, is in default in any material respects under any provisions of the Purchase and Use Agreement.

D. The 2024 Project is free and clear of all liens and encumbrances for labor or materials furnished by the Corporation and all contractors, subcontractors and materialmen retained by the City and all contractors, subcontractors and materialmen performing work on the 2024 Project has been, or upon receipt by the City of the payment of the final requisition request will be, paid in full, except for those the Corporation is contesting in good faith and with due diligence as permitted under the Purchase and Use Agreement.

We further certify to you that the 2024 Project has been substantially completed in accordance with all Acquisition or Construction Contracts (as defined in the Purchase and Use Agreement) and the terms and conditions of the Purchase and Use Agreement, that the 2024 Project as completed complies in all material respects with all applicable governmental regulations and that the requirements of Section 5.3 of the Trust Agreement have been satisfied with respect to this Direction to Make Final Disbursement.

As used in this certificate, "substantial completion" of the 2024 Project shall mean completion such that a certificate of occupancy has been, or could be, issued notwithstanding the fact that certain minor items of work remain to be done.

Dated this ________ day of ___________, 20__.

CITY OF SPARTANBURG, SOUTH CAROLINA

____

By: City Representative

SPARTANBURG STADIUM FACILITIES CORPORATION

____

By: Corporation Representative