

ORDINANCE NO.: 2014-024

Authorizing the Mayor to execute a First Amendment to Development Agreement between the City of Columbia, South Carolina and Hughes Development Corporation, as equitable owner and developer, of approximately 165 acres of land within the City of Columbia, commonly known as the Department of Mental Health's "Bull Street Campus"

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STAMPED IN RED

WHEREAS, by Ordinance No.: 2013-072 enacted on July 9, 2013, City Council authorized the Mayor to execute a Development Agreement with Hughes Development Corporation for the Bull Street Development Project; and,

WHEREAS, the Development Agreement provides for the amendment thereof; NOW THEREFORE,

BE IT ORDAINED by the Mayor and Council this 8th day of April, 2014, that the Mayor is hereby authorized to execute the attached First Amendment to Development Agreement, or on a form approved by the City Attorney; and,

This ordinance is contingent upon the first reading approval of Ordinance No.: 2014-021 authorizing the execution of a Venue License Agreement between the City of Columbia and Hardball Capital LLC for the planned multi-use entertainment facility in the Bull Street Development.

Requested by:

Assistant City Manager _____



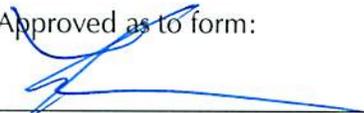
Mayor

Approved by:

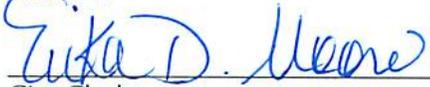


City Manager

Approved as to form:



City Attorney

ATTEST:


City Clerk

Introduced: 3/4/2014

Final Reading: 4/8/2014

STATE OF SOUTH CAROLINA
CITY OF COLUMBIA

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BULL STREET NEIGHBORHOOD**

This First Amendment to Development Agreement ("First Amendment") is made and entered into this _____ day of _____, 2014, by and between **Hughes Development Corporation**, a South Carolina corporation ("Developer"), and the **City of Columbia, South Carolina** ("City").

Recitals

Developer and the City entered into a Development Agreement dated July 31, 2013 (the "Development Agreement") with respect to Property known as the Bull Street Neighborhood. Significant events have occurred since that date, including the commitment by a minor league baseball team to relocate to Columbia if a suitable baseball stadium is provided. Recognizing the importance of this opportunity to the success of the Bull Street Neighborhood Project, and therefore to the City, the parties have agreed to modify the Development Agreement as set forth in this First Amendment.

Agreements

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to the City and Developer by entering this First Amendment, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Developer agree that the Development Agreement is amended as follows:

1. The above Recitals and the Definitions in the Development Agreement are hereby incorporated into this First Amendment.

2. Upon the completion of the design of the multi-use stadium for the minor league baseball team and prior to the commencement of construction, Developer shall convey to the City, at no cost, good marketable fee simple title to so much of the Property as will contain the baseball stadium (the "Stadium Parcel"). The parties acknowledge that the Stadium Parcel will consist of one or more ground parcels and air space parcels that will be defined by a survey provided by Developer, and that Developer will retain adjoining ground and air space parcels (likely including some air space parcels above structural parts of the stadium) for private development. The parties acknowledge that the survey and resulting legal description of the Stadium Parcel may need to be amended upon the completion of construction to reflect actual construction boundaries. Therefore, the parties agree to execute such corrective deeds or other instruments as may be necessary to reflect the final and correct legal description.

3. As a result of the integrated nature of the baseball stadium and the adjoining private development, together with the need for architectural harmony with adjoining neighborhoods within the Project, the parties agree that the City and Developer will both be involved in the design of the stadium.

4. The initial parking for the baseball stadium will be located as shown on Attachment A to this First Amendment. However, Developer necessarily reserves the right in its sole discretion to relocate the parking from time to time as development of adjoining areas occurs, so long as parking remains reasonably convenient to the stadium. The Developer agrees to work with Hardball Capital regarding the details associated with this parking arrangement to ensure compliance with MiLB parking requirements. The City will not be responsible for costs associated with compliance that are offsite of the property being conveyed to the City.

5. Developer agrees that, as a result of the baseball design, the Ensor building will be incorporated into the baseball project, and the bakery will be retained and rehabilitated.

6. Developer agrees to remove Section 14(a)3 from Article XIX, C of the Development Agreement. The impact of this is the elimination of baseball being one of the triggers which results in the City's obligation to build an 800 space garage. The other triggers for the first parking garage remain unchanged.

- a. At such time the City's commitment to build garages are present, the Developer agrees to convey to the City, at no cost, good marketable fee simple title to so much of the Property as will contain the garages. The parties acknowledge that the garage parcels will consist of one or more ground parcels and air space parcels that will be defined by a survey provided by Developer, and that Developer will retain adjoining ground and air space parcels (likely including some air space parcels above the parking structure) for private development. The parties acknowledge that the survey and resulting legal description of the garage parcels may need to be amended upon the completion of construction to reflect actual construction boundaries. Therefore, the parties agree to execute such corrective deeds or other instruments as may be necessary to reflect the final and correct legal description.

General Provisions:

A. Entire Agreement. This First Amendment, together with the Development Agreement, sets forth and incorporates by reference all of the agreements, conditions and understandings between the City and Developer relative to the Property and its Development, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

B. Construction. The parties agree that each party and its counsel have reviewed and revised this First Amendment and 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 this First Amendment or any amendments or exhibits hereto.

C. Severability. The invalidity or unenforceability of any provision of this First Amendment shall not affect the other provisions hereof, and this First Amendment shall be construed in all respects as if such invalid and unenforceable provision were omitted.

D. Counterparts. This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

E. Effective Date. The Effective Date of this First Amendment shall be the date set forth above which shall be the date the First Amendment is signed by all parties, and if the parties do not sign on the same date, the date on which it is signed by the last party.

F. Effect on the Agreement. Except as modified by the terms hereof, the provisions of the Agreement shall be unchanged and shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

WITNESSES:

HUGHES DEVELOPMENT CORPORATION

By: _____
ROBERT HUGHES, Its President

By: _____
JENNIFER GREGORY, Its Secretary

STATE OF SOUTH CAROLINA)

) ACKNOWLEDGMENT

COUNTY OF RICHLAND)

I HEREBY CERTIFY, that on this ____ day of July, 2013, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Robert Hughes, as President of Hughes Development Corporation, and Jennifer Gregory, as Secretary of Hughes Development Corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, in their stated capacity as the appropriate officials of the Hughes Development Corporation, known to me (or satisfactorily proven) to be the person(s) whose name is subscribed to the within document, who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: _____