

1 **2021-23 (1ST READING): AN ORDINANCE TO AMEND A LEASE**
2 **DENOMINATED AS THE AGREEMENT OF LEASE BETWEEN THE CITY**
3 **OF MYRTLE BEACH AND COUNTY OF HORRY AS LANDLORDS AND**
4 **THE DURHAM BULLS BASEBALL CLUB, INC. AS TENANT DATED AS**
5 **OF SEPTEMBER 1, 1998, DELETING UNNECESSARY TERMS,**
6 **REFLECTING THE TRUE PARTIES IN INTEREST AND PROVIDING FOR**
7 **THE EXTENSION OF LEASE FOR TWO (2) YEARS.**

8 **Applicant/Purpose:** MB Pelicans & Staff / to amend the lease agreement b/w the
9 City, County & the Myrtle Beach Pelicans

10
11 **Brief:**

- 12 • The original 20-yr. lease agreement expired after the 2018 baseball season.
- 13 • The City & the team entered into a 3 yr. extension scheduled to expire at the
- 14 end of the 2021.
- 15 • In 2020, MLB and MiLB entered into a new contractual agreement.
- 16 • The new agreement requires significant improvements to Pelican Stadium, in
- 17 excess of \$15 million dollars.
- 18 • This ordinance is a 2-year extension, and allows the community, the City, and
- 19 the Pelicans time to analyze how to move forward.
- 20 • There are no significant changes to the term of the agreement.
- 21 • All outstanding debt was satisfied in 2018. There is currently no outstanding
- 22 debt associated with Pelican Stadium.

23
24 **Issues:**

- 25 • During the 2-year extension period, all parties will work collaboratively on
- 26 determining the future of Pelican Stadium.
- 27 • This could be a new stadium at another location or modernization of the
- 28 current stadium.

29
30 **Public Notification:** Normal meeting notification.

31
32 **Alternatives:**

- 33 • To modify the agreement.
- 34 • To not approve the agreement.

35
36 **Financial Impact:**

- 37 • The maintenance agreement pertaining to the stadium b/w the City & the
- 38 County is unchanged (70% City/30% County).
- 39 • Per the lease, the team pays the City & County rent equal to 4% of Adjusted
- 40 Gross Revenues (defined as revenues arising from professional baseball games,
- 41 the souvenir store, concessions, & broadcasting revenues) in excess of \$3.25
- 42 million.

43
44 **Manager's Recommendation:**

- 45 • I recommend 1ST reading (5/11/21).

46
47 **Attachment(s):** Proposed ordinance, 1998 Agreement, 2018 1st Amendment.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE TO AMEND A LEASE DENOMINATED AS THE AGREEMENT OF LEASE BETWEEN THE CITY OF MYRTLE BEACH AND COUNTY OF HORRY AS LANDLORDS AND THE DURHAM BULLS BASEBALL CLUB, INC. AS TENANT DATED AS OF SEPTEMBER 1, 1998, DELETING UNNECESSARY TERMS, REFLECTING THE TRUE PARTIES IN INTEREST AND PROVIDING FOR THE EXTENTION OF LEASE FOR TWO (2) YEARS.

NOW THEREFORE, IT IS HEREBY ORDAINED that attached amended lease is approved, and direction is made for the City Manager to execute same, and do all things necessary to accomplish the purposes as set forth therein.

This ordinance shall become effective upon adoption.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1st Reading: 5-11-2021
2nd Reading:

1 **FIRST AMENDMENT TO AGREEMENT OF LEASE**

2
3 THIS FIRST AMENDMENT TO AGREEMENT OF LEASE (this "First Amendment") is
4 dated as of September __, 2018 between the CITY OF MYRTLE BEACH and the COUNTY OF
5 HORRY (collectively, the "Landlord") and MRYTLE BEACH PELICANS LP, a Pennsylvania
6 limited partnership (the "Tenant").

7
8 **RECITALS**

9
10 A. The Landlord and the Durham Bulls Baseball Club, Inc. ("DBBC") entered into that
11 certain Agreement of Lease dated as of September 1, 1998, a copy of which is attached hereto as
12 Exhibit A (the "Initial Lease"). The Initial Lease, as amended by this First Amendment, is hereinafter
13 referred to as the "Lease". Capitalized terms used but not expressly defined in this First Amendment
14 shall have the respective meanings ascribed thereto in the Initial Lease.

15
16 B. DBBC assigned the Initial Lease to Myrtle Beach Baseball Club, Inc. ("MBBC")
17 pursuant to an Assignment of Lease Agreement dated July 31, 2001, and MBBC assigned the Initial
18 Lease to the Tenant pursuant to an Assignment of Lease Agreement dated May 31, 2006.

19
20 C. The Landlord and the Tenant now desire to modify certain provisions of the Initial
21 Lease upon the terms and conditions hereinafter set forth.

22
23 NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth
24 herein and in the Initial Lease, the parties agree as follows, with the intent to be legally bound:

25
26 **AGREEMENT**

27
28 **1. Amendment to Article 1.** Article 1 of the Initial Lease is hereby amended as follows:

29 (a) The following definitions are hereby deleted from the Initial Lease:

30 "Architect"

31 "Construction Contract"

32 "Construction Fund"

33 "Construction Manager"

34 "Construction Period"

35 "COPs"

36 "Costs of the Project"

37 "Indenture"

38 "Letter of Credit"

1
2 “Plans and Specifications”

3
4 “Project”

5
6 “Trustee”

7
8 (b) The definition of Completion Date is hereby amended in its entirety to read as follows:

9
10 “Completion Date” means April 8, 1999.

11
12 **2. Amendment to Article 2.** Section 2.2 of the Initial Lease is hereby amended in its
13 entirety to read as follows:

14
15 Section 2.2. Term. This Lease shall become effective upon execution and
16 delivery by the Landlord and Tenant. The Term shall commence upon the
17 execution and delivery hereof by the parties hereto, and shall continue until
18 the date which is 30 days after the end of the 2021 Baseball Season (the
19 “Lease Termination Date”).

20
21 **3. Amendment to Article 3.** Article 3 of the Initial Lease is hereby deleted
22 in its entirety.

23
24 **4. Amendment to Article 4.** The last sentence of Section 4.5 of the Initial Lease is
25 hereby amended to read as follows:

26
27 “The County and City shall not resell any Skybox tickets.”

28
29 **5. Amendment to Article 23.** Article 23 of the Initial Lease is hereby deleted in its
30 entirety.

31
32 **6. Amendment to Article 24.** Section 24.19 of the Initial Lease is hereby amended to
33 delete the notice address for the Guarantor, and to change the notice address for the Tenant to:

34
35 Myrtle Beach Pelicans LP
36 1251 21st Avenue, N
37 Myrtle Beach, SC 29577
38 Attn: Chuck Greenberg

39
40 **7. Amendment to Exhibit C.** Exhibit C of the Initial Lease is hereby deleted in its
41 entirety.

42
43 **8. Effect Of Amendment.** The terms and provisions of this First Amendment shall
44 modify and supersede all inconsistent terms and provisions of the Initial Lease and shall not be
45 deemed to be a consent to the modification or waiver of any other term or condition of the Initial
46 Lease. Except as expressly modified and superseded by this First Amendment, the terms and
47 provisions of the Initial Lease are ratified and confirmed without condition and shall continue in full

1 force and effect. All rights and remedies of the Landlord and the Tenant under the Initial Lease shall
2 continue and survive execution and delivery of this First Amendment.

3
4 **9. Miscellaneous.** This First Amendment: (a) may be executed in several counterparts,
5 each of which shall be deemed an original but all of which shall constitute one and the same
6 instrument; (b) contains the entire agreement of the parties with respect to the matters contemplated
7 hereby and supersedes all prior written and oral agreements, and all contemporaneous oral
8 agreements, relating to such matters; (c) shall be governed by, and construed and enforced in
9 accordance with, the laws of the State of South Carolina, without giving effect to any conflict of laws
10 rules; and (d) shall be binding upon, and inure to the benefit of, the parties and their respective
11 successors and assigns.

12
13 [SIGNATURE PAGE FOLLOWS]

1 IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to
2 Agreement of Lease to be duly executed and delivered as of the date first written above, with the
3 intent to be legally bound.
4
5

6 **LANDLORD:**

7
8 CITY OF MYRTLE BEACH
9

10
11 By: _____

12 _____
13 Witness

14 Name: _____

15 _____
16 Witness

17 Title: _____

18 COUNTY OF HORRY
19

20
21 By: _____

22 _____
23 Witness

24 Name: _____

25 _____
26 Witness

27 Title: _____

28
29 **TENANT:**

30 MYRTLE BEACH PELICANS LP
31 By: Greensons Baseball II Inc., its
32 General Partner
33

34
35 By: _____

36 _____
37 Witness

38 Chuck Greenberg, President

39 _____
Witness

SECOND AMENDMENT TO AGREEMENT OF LEASE

THIS SECOND AMENDMENT TO AGREEMENT OF LEASE (this "Second Amendment") is dated as of May __, 2021 between the CITY OF MYRTLE BEACH and the COUNTY OF HORRY (collectively, the "Landlord") and MYRTLE BEACH PELICANS LP, a Pennsylvania limited partnership (the "Tenant").

RECITALS

A. The Landlord and the Durham Bulls Baseball Club, Inc. ("DBBC") entered into that certain Agreement of Lease dated as of September 1, 1998, a copy of which is attached hereto as Exhibit A (the "Initial Lease").

B. DBBC assigned the Initial Lease to Myrtle Beach Baseball Club, Inc. ("MBBC") pursuant to an Assignment of Lease Agreement dated July 31, 2001, and MBBC assigned the Initial Lease to the Tenant pursuant to an Assignment of Lease Agreement dated May 31, 2006.

C. Landlord and Tenant amended the Initial Lease pursuant to the First Amendment to Agreement of Lease dated September __, 2018 (the "First Amendment", and together with the Initial Lease, the "Current Lease").

D. The Landlord and the Tenant now desire to modify certain provisions of the Current Lease upon the terms and conditions hereinafter set forth. The Current Lease, as amended by this Second Amendment, is hereinafter referred to as the "Lease". Capitalized terms used but not expressly defined in this Second Amendment shall have the respective meanings ascribed thereto in the Current Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Current Lease, the parties agree as follows, with the intent to be legally bound:

AGREEMENT

1. **Amendment to Article 1.** Article 1 of the Current Lease is hereby amended as follows:

- (a) The definition of "National Association" is hereby deleted from the Current Lease.
- (b) The following definition of PDL is hereby added to the Current Lease:

"PDL" means MLB Professional Development Leagues, LLC.

2. **General Amendment to Current Lease.** The Current Lease is hereby amended by replacing each reference to "National Association" with "PDL".

3. **Amendment to Article 2.** Section 2.2 of the Current Lease is hereby amended in its entirety to read as follows:

Section 2.2. Term. This Lease shall become effective upon execution and delivery by the Landlord and Tenant. The Term shall commence upon the execution and delivery hereof by the parties hereto, and shall continue until the date which is 30 days after the end of the 2023 Baseball Season (the "Lease Termination Date").

4. **Effect Of Amendment.** The terms and provisions of this Second Amendment shall modify and supersede all inconsistent terms and provisions of the Current Lease and shall not be deemed to be a consent to the modification or waiver of any other term or condition of the Current Lease. Except as expressly modified and superseded by this Second Amendment, the terms and provisions of the Current Lease are ratified and confirmed without condition and shall continue in full force and effect. All rights and remedies of the Landlord and the Tenant under the Current Lease shall continue and survive execution and delivery of this Second Amendment.

5. **Miscellaneous.** This Second Amendment: (a) may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument; (b) contains the entire agreement of the parties with respect to the matters contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such matters; (c) shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina, without giving effect to any conflict of laws rules; and (d) shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to Agreement of Lease to be duly executed and delivered as of the date first written above, with the intent to be legally bound.

LANDLORD:

CITY OF MYRTLE BEACH

Witness

By: _____

Name: _____

Witness

Title: _____

COUNTY OF HORRY

Witness

By: _____

Name _____

Witness

Title: _____

TENANT:

MYRTLE BEACH PELICANS LP
By: Greensons Baseball II Inc., its
General Partner

Witness

By: _____
Chuck Greenberg, President

Witness