

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2020 Legislative Session

Legislative Day No. 25

RESOLUTION NO. 123-2020

Introduced by: The President of the Council at the request of the Acting County Executive

A RESOLUTION APPROVING A THIRD CONCESSION AGREEMENT AMENDMENT BETWEEN WICOMICO COUNTY, MARYLAND AND 7th INNING STRETCH, LP FOR THE ARTHUR W. PERDUE STADIUM.

WHEREAS, pursuant to Section 22-1 of Chapter 22 entitled "County-Owned Property" Paragraph E, the Acting County Executive is authorized and empowered to lease County property in furtherance of public purposes; and

WHEREAS, approval of the County Council is required for any lease of County property for a lease term of more than one year; and

WHEREAS, Wicomico County and 7th Inning Stretch, LP entered into a Concession Agreement dated June 25, 2015, as amended on January 21, 2017 and August 22, 2018, and the parties intend to amend the term and payment requirements due to the cancellation of the 2020 Class A Professional Baseball Season, and to amend certain maintenance responsibilities for the Arthur W. Perdue Stadium; and

WHEREAS, the County Council has determined that an amendment of the term and payment requirements due to the cancellation of the 2020 Class A Professional Baseball Season as set forth in the Third Concession Agreement Amendment attached hereto as Exhibit "A" is appropriate under the circumstances.

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland, that the Acting County Executive, is hereby, authorized to execute, on behalf of the County, a Third Concession Agreement Amendment, in substantially the same form as attached hereto as Exhibit A.

DONE at Salisbury, Maryland this 17th day of November, 2020.

ATTEST:

Laura Hurley, Council Administrator

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

Larry W. Dodd, Council President

CERTIFICATION

THIS RESOLUTION was Adopted [checked], Adopted with Amendments _____, Failed _____, Withdrawn _____ by the County Council on November 17, 2020.

Certified by Laura Hurley, Council Administrator

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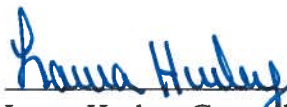
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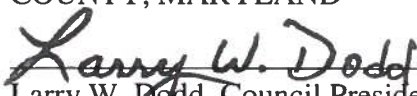
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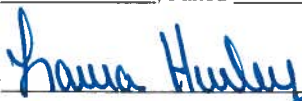
ATTEST:


Laura Hurley, Council Administrator

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND
 (SEAL)
Larry W. Dodd, Council President

CERTIFICATION

THIS RESOLUTION was Adopted , Adopted with Amendments _____, Failed _____, Withdrawn _____ by the County Council on November 17, 2020.

Certified by 
Laura Hurley, Council Administrator

THIRD CONCESSION AGREEMENT AMENDMENT

THIS THIRD CONCESSION AGREEMENT AMENDMENT made this ___ day of _____, 2020, by and between WICOMICO COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, hereinafter referred to as "County," and 7th Inning Stretch, LP, a limited partnership duly existing under and by virtue of the laws of the State of Maryland and duly authorized and qualified to do business within the State of Maryland, hereinafter referred to as "Franchisor"; and

WHEREAS, the County originally entered into a "Concession Agreement" with Maryland Baseball Limited Partnership on May 22, 1995, on January 3, 2001, the "Concession Agreement" was assigned from the Maryland Baseball Limited Partnership to CSLP Shorebirds LLC, on May 6, 2007, the "Concession Agreement" was again assigned and assumed by 7th Inning Stretch, LP and subsequently amended on January 21, 2017 and August 22, 2018; and

WHEREAS, the County and the Franchisor desire to restore, modernize, operate and maintain a baseball stadium and all improvements and appurtenances in Wicomico County that will meet all requirements for play at the Class A professional level (hereinafter referred to as "Stadium") and which also will be available for use by the community to the greatest extent practical; and

WHEREAS, the Franchisor is the owner and holder of a Class A professional baseball team (the "Team"), which is a member of the National Association of Professional Baseball Leagues (the "National Association"); and

WHEREAS, the County owns the land upon which the Stadium is built and does have title to the Stadium; and

WHEREAS, the Franchisor desires to maintain and use the Stadium such that the Team shall play all home games, exhibition games and post-season games under the control of the Franchisor; and

WHEREAS, the County, in its capacity as the provider of public park land and recreation facilities for the citizens of Wicomico County has deemed it in the best interest of the public and citizenry to promote professional baseball and to enter into this Third Concession Agreement Amendment with the Franchisor; and

WHEREAS, the County and Franchisor understand the cancellation of the 2020 Class A Professional Baseball Season has resulted in financial losses to Franchisor, and County has agreed to amend the Concession Agreement in certain respects; and

WHEREAS, the parties hereto desire to enter into this Amendment and warrant unto the other that they have the authority to do so and covenant and agree as follows: (Amendments are underlined)

1. Section 3.01 – Term is amended to read “The term of this Agreement shall be from July 1, 2015, and shall terminate on December 31, 2038 (“Termination Date”).

2. Section 5.01-Maintenance. The second paragraph of Section 5.01 shall be amended to read:

(a) If the County’s rates for utilities are lower than Franchisor’s rates, the Franchisor shall calculate the difference in electric costs based on KW/h usage from October 1 – September 30 and receive credit or payment for said difference from the County. At the discretion of the County, the credit may be deducted from the annual payment made by the Franchisor to the County set forth in Section 9.04 (if Amusement and Admission taxes are less than \$100,000) or paid directly to the Franchisor by December 1 of each year.

(b) The Franchisor shall submit electric bill statements to the County showing usage and rates on or before November 1 of each year.

(c) The County and the Franchisor shall disclose electric rates for the coming year by December 1 of each year.

(d) The Franchisor waives the electricity savings payment due from the County to Franchisor for the period of October, 2019 through September, 2020.

3. Exhibit C is amended and restated as Perdue Stadium Capital Depreciation Schedule attached hereto. Referenced in Section 5.02.

4. Section 5.02 – Capital Improvements and Major Maintenance is amended to read:

“Section 5.02 CAPITAL IMPROVEMENTS AND MAJOR MAINTENANCE. The Site is equipped with various pieces of capital equipment or capital structures needing capital maintenance. See Exhibit C. This capital equipment or structure has various life cycles. Franchisor shall be responsible for the capital maintenance of the Site including the repair and replacement of all major equipment, structures and systems including but not limited to HVAC, water, sewer, gas, mechanical, elevators, roofs, hot water boilers and heaters, interior and exterior lighting systems (including above-ground wiring/fixtures), wet and dry fire systems, plumbing, water pumps, field irrigation and drainage, masonry, windows, doors, the field and electrical for the remaining life cycles as listed on Exhibit C. Subsequent to the expiration of the life cycles, the County shall assume responsibility for the service contracts, repair and capital replacement of the Stadium and Site including, the replacement of HVAC, water, sewer, gas, mechanical, elevators, roofs, hot water boilers and heaters, interior and exterior lighting systems, wet and dry fire systems, plumbing, water pumps, field irrigation and drainage, masonry, windows, doors, the field and electrical, when these items have surpassed the expected life cycles listed on Exhibit C. Franchisor will re-assume responsibility for the service contracts, repair and maintenance after the replacement of each, again, in accordance with the agreed to life cycle. The County will be responsible for capital improvements when required to keep the Site, including the Stadium, in compliance with the Major League Baseball Regulations. The County shall be responsible for capital maintenance of underground wiring. The County shall not be responsible for the repair or replacement of the scoreboard, video boards public address sound system, concession equipment, field equipment, batting cages, field maintenance equipment, carousel or the furniture and furnishings of the skyboxes. The County shall inspect the facility on an annual basis to determine the timing and extent of such work required. The County shall coordinate its capital improvements with the Franchisor. In the event of an emergency involving actions that would ordinarily be the responsibility of the County, County shall respond and rectify the problem promptly.”

5. Section 9.04 – Amusement Taxes, Admission and Sales Taxes. In accordance with State law and the Wicomico County Code, the Franchisor shall be responsible for the collection and remittance of all amusement and admission and sales taxes and any other taxes (not included within the definition of Applicable Taxes) resulting from Franchisor Events as may be required by applicable law. The Franchisor shall remit to the County on an annual basis, the ten percent (10%) admissions and amusement tax collected in a given year, but no less than One Hundred Thousand Dollars (\$100,000.00) a year. The Franchisor shall make this payment no later than August 14th each year.

The County shall waive the One Hundred Thousand Dollars (\$100,000.00) per year admission and amusement tax collection from Franchisor for calendar year 2020. For the 2021 calendar year, the Franchisor shall remit to the County, no later than August 14, 2021, admission and amusement tax in an amount no less than \$55,239.10.

5. Legal Effect: All terms and conditions of the Concession Agreement and amendments dated January 21, 2017 and August 22, 2018, shall remain in full force and effect, subject to the amendments set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written and do hereby warrant each unto the other that the person affixing his signature hereto was duly authorized as a corporate officer to execute same on behalf of each party.

WITNESS AND ATTEST

7th INNING STRETCH, LP

Witness

_____(SEAL)
By: Pat Phillipone, President

WITNESS AND ATTEST

WICOMICO COUNTY, MARYLAND

Witness

_____(SEAL)
By: John D. Psota, Acting Executive

Perdue Stadium Captial Depreciation Schedule

*Amended
Exhibit "C"*

Nov/2020

Equipment	Unit #	Replace Date	Life Expect.	Expiration
HVAC				
Customer Service	GAC #10	2016	18	2034
Press Box	GAC #12	2016	18	2034
Umpires' Room	GAC #4	2016	18	2034
1st Level Concession	GAC #6	2016	18	2034
Security Room	GAC #9	Removed 2018	0	N/A
1st Base Restrooms	GUH #1	Removed 2018	0	N/A
Middle Restrooms	GUH #2	Removed 2018	0	N/A
3rd Base Restrooms	GUH #3	Removed 2018	0	N/A
3rd Level Restrooms	GUH #9	2018	18	2036
3rd Level Concession	GAC #13	2014	18	2032
Hall of Fame	GAC #2	2013	18	2031
Gift Shop	GAC #11	2013	18	2031
Home Clubhouse	GAC #1	2012	18	2030
Visitors' Clubhouse	GAC #3	2012	18	2030
Administrative Office	GAC #5	2012	18	2030
1st Base Concession	GAC #7	2012	18	2030
3rd Base Concession	GAC #8	2012	18	2030
Executive Club	Trane Unit	2012	18	2030
BOILERS & HOT WATER HEATERS	Provide written back up documents from vendor			
Pump Room Boiler	CWN0645PM-M9	1996	22	2019
Visitors' Clubhouse Boiler	CWN0645PM-M9	1996	22	2019
Grounds Shop Boiler	CWN0645PM-M9	1996	22	2019
Pump Room Tank	RNA432	1996	28	2025
Visitors' Clubhouse Tank	RNA432	1996	28	2025
Grounds Shop Tank	RNA432	1996	28	2025
Pizza Stand - Hot Water Heater	DRE-120	2012	16	2029
Sweet Shop - Hot Water Heater	CSB17618SFEB6	1996	25	2022
1st Base Restroom - Hot Water Heater	DRE-52	2012	16	2029
1st Base Concession - Hot Water Heater	BTC-200	2012	16	2029
3rd Base Restroom - Hot Water Heater	DRE-52	2012	16	2029
3rd Base Concession- Hot Water Heater	BTC-200	2012	16	2029
3rd Floor Kitchen- Hot Water Heater	EGS 12-50G	1996	25	2022
3rd Floor Janitors Closet- Hot Water Heater	P6302ORS	1996	25	2022
OTHER				
Asphalt roof system		2012	40	2052
Rolled roof system		2018	25	2043
Public elevator		1996	25-30	2024
Service elevator		1996	25-30	2024
Fire pump and controllers		1996	25	2021
Wet sprinkler system and valves		1996	50	2046
Dry sprinkler branch lines and valves		1996	20	2015
Dry sprinkler main lines and valves		2018	20	2038