REQUEST FOR COUNCIL ACTION
City of Greenville, South Carolina
To: Honorable Mayor and Members of City Council
From: John F. Castile, City Manager

Agenda Item No. 11g

☐ Ordinance/First Reading  ✔ Ordinance/Second & Final Reading  ☐ Resolution/First & Final Reading  ☐ Information Only

AGENDA DATE REQUESTED: August 27, 2018

ORDINANCE/RESOLUTION CAPTION:
TO APPROVE A TERRACE USE AGREEMENT BETWEEN OOBE APPAREL DESIGN GROUP, INC. AND THE CITY OF GREENVILLE FOR TERRACE LOCATED AT RIVERPLACE DEVELOPMENT

SUMMARY BACKGROUND:
OOBE Apparel and Design Group, Inc. has office space which abuts a terrace overlooking the Reedy River located in the River Place Development. This Ordinance approves a terrace lease for public space that OOBE has leased previously.

IMPACT IF DENIED OR APPROVED:
If denied, the Lease Agreement will not be approved.

FINANCIAL IMPACT:
The City will receive $350 per year for five years.

REQUIRED SIGNATURES

Department Director
Angela Frazier

City Attorney
Michael S. Pitts

OMB Director

City Manager
John Castile

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AN ORDINANCE

TO APPROVE A TERRACE USE AGREEMENT BETWEEN OOBE APPAREL DESIGN GROUP, INC. AND THE CITY OF GREENVILLE FOR TERRACE LOCATED AT RIVERPLACE DEVELOPMENT

WHEREAS, OOBE Apparel Design Group, Inc. operates a business in office space having an area of approximately thirteen thousand eight hundred eighty (13,880) square feet in the River Place Development, (“Office Space”); and

WHEREAS, the Office Space abuts, a terrace overlooking the Reedy River and having a view of downtown Greenville (the “Terrace”); and

WHEREAS, OOBE has requested that it be allowed on occasion to use the Terrace for the limited purposes of entertaining business clients, patrons, and their guests as well as those owning an interest in OOBE or managing its activities, inclusive of OOBE employees; and

WHEREAS, the city of Greenville is willing to consent to such uses in recognition of OOBE’s unique location, its type of business activity, and the limited access the public at large has to the Terrace, simply as a matter of its configuration and location; and

WHEREAS, the City nonetheless desires to preserve reasonable access by the public at large to the Terrace for passive uses on a day to day basis, and also wishes to preserve the City’s right to make the Terrace available to small groups for special events in accordance with the City’s standard practices;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, City Council approves entering into a Terrace Use Agreement in substantially the same form as that Terrace Use Agreement, which is attached hereto as “Attachment” and incorporated herein by reference. The City Manager is authorized to execute the document on behalf of the City. Minor changes and modifications to the Terrace Use Agreement as provided in the Attachment is authorized as may be necessary or appropriate to allow for a final version mutually acceptable to the parties, provided the minor changes do not alter the material purposes of the Agreement. Should the City Manager or City Attorney, or both, determine that any proposed modification of terms is significant and warrants further action by City Council, then the matter shall be presented to Council for further review before the final execution.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF ______________, 2018.

_____________________________________
MAYOR

ATTEST:

_____________________________________
CITY CLERK

APPROVED AS TO FORM:

_____________________________________
CITY ATTORNEY

REVIEWED:

_____________________________________
CITY MANAGER
ATTACHMENT

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )

TERRACE USE AGREEMENT

This Terrace Use Agreement (the “Agreement”) is made and entered into this _____ day of __________, 2018, by and between the City of Greenville, South Carolina, a municipality under the laws of the State of South Carolina (the “City”) and OOBE Apparel Design Group, Inc., a South Carolina corporation, doing business at 201 RiverPlace, Suite 301, and Greenville, South Carolina 29601, (“OOBE”).

WHEREAS, OOBE operates a business in office space having an area of approximately thirteen thousand eight hundred eighty (13,880) square feet in the River Place Development, (“Office Space”); and

WHEREAS, the Office Space abuts, a terrace overlooking the Reedy River and having a view of downtown Greenville (the “Terrace”); and

WHEREAS, OOBE has requested that it be allowed on occasion to use the Terrace for the limited purposes of entertaining business clients, patrons, and their guests as well as those owning an interest in OOBE or managing its activities, inclusive of OOBE employees; and

WHEREAS, the City is willing to consent to such uses in recognition of OOBE’s unique location, its type of business activity, and the limited access the public at large has to the Terrace, simply as a matter of its configuration and location; and

WHEREAS, The City nonetheless desires to preserve reasonable access by the public at large to the Terrace for passive uses on a day to day basis, and also wishes to preserve the City’s right to make the Terrace available to small groups for special events in accordance with the City’s standard practices;

NOW, THEREFORE, for and in consideration of the use payments recited herein and in reliance upon the mutual promises exchanged in the Agreement:

1. TERRACE IDENTIFIED. The Terrace is that space of improvements located immediately to the west of the large stairway at the water wall along the pedestrian promenade above the southern bank of the Reedy River at RiverPlace Development. It is shown with greater specificity in a hardscape plan prepared by Cooper Cary Architects of Atlanta Georgia and dated October 10, 2007, being the area outlined in dark lining in the attached exhibit, which is incorporated here by reference.

2. TERM. The Agreement has an initial term of five years, commencing on June 1, 2018 and terminating on May 31, 2023. OOBE may extend the initial term for one additional five-year term by delivering to the City prior to the end of the initial term a written notice to the City.

3. AUTHORIZED USE.
   a. OOBE may use the Terrace for outside entertaining in association with OOBE’s business operation in the Office Space.
   b. To accomplish its purpose of outside entertaining, OOBE may place tables and chairs, low level lights and other similar furnishings, on the Terrace. Tables and chairs must be matching and must be made of safe, sturdy and durable material, such as wood, steel, and wrought iron. All furniture shall be commercial grade and manufactured for outdoor commercial use. Breakable plastics, unfinished lumber, and furniture which structurally or by its finish are inappropriate for a public terrace are prohibited. OOBE will maintain all furnishings good repair at all times and will clean the furnishings regularly. OOBE assumes the sole risk of costs and damages incurred as a consequence of vandalism or theft.
   c. Recognizing that the Terrace is public space, the furniture which OOBE places on it shall be available for use by the public when not in use for OOBE’s business and entertainment purposes as authorized...
herein. OOBE shall not interfere with or discourage the public’s use of the Terrace or the furnishings so long as the public’s use does not otherwise disturb the peace or the peaceable enjoyment of the Office Space. OOBE may have live entertainment, “piped in” or amplified music on the Terrace. Notwithstanding the foregoing, the Terrace shall not be used for any offensive, noisy or dangerous trade or business activity, as determined by the sole and reasonable judgment of City, or in violation of any law, ordinance, or regulation of any governmental body or authority having jurisdiction of the Terrace.

d. The sale, transfer, service, and possession of liquor or beverages containing liquor are all prohibited. Beer and wine are permitted. Any person who is intoxicated shall not remain on the Terrace. OOBE is responsible for securing compliance with this provision even if the persons violating the section are not OOBE employees. Other than for private functions, OOBE shall keep the Plaza open to members of the public having free movement in the space, free of obstructions other than furniture for dining.

4. TERMINATION OF AGREEMENT.
   a. OOBE shall have the right to terminate this Agreement upon thirty (30) days written notice to the City and upon termination be relieved of all obligations not incurred prior to the date of such termination.
   b. The City shall have the right to terminate the Agreement upon fifteen (15) days written notice to OOBE of OOBE’s breach and/or default of OOBE’s obligations hereunder, unless OOBE cures such breach and/or default within the fifteen day period; or upon thirty (30) days written notice to OOBE if the City reasonably determines that the needs of the public require such termination.

5. USE PAYMENT. During the first year of the Agreement, OOBE hereby covenants and agrees to pay the City as use payment, the sum of Three Hundred Fifty dollars ($350.00) per year on or before June 1st of each year, by delivering payment to the City of Greenville, Attention OMB Director, Post Office Box 2207, Greenville, South Carolina 29602.

6. OOBE ALTERATIONS. OOBE shall not make, or suffer to be made, any alterations to the Terrace, other than as set out herein, without the express, written consent of the City.

7. OOBE’S MAINTENANCE OF PLAZA. 
   OOBE shall maintain the Terrace in a clean and presentable condition at all times, free of any accumulated dirt, trash, including but not limited to food, paper or other waste materials associated with OOBE’s usage.

8. PAYMENT OF TAXES AND OTHER ASSESSMENTS. OOBE shall reimburse the City for payment of all current real estate taxes and assessments of any type which may become due and payable, if at all, upon and after the date of the commencement of this Agreement, and that may hereafter become due and payable during the term of this Agreement, whether now known or anticipated or not.

9. ASSIGNMENT. Neither this Agreement nor any duty or benefit under it shall be assigned by OOBE without the express written consent of the City. Should the Agreement, or any interest in it, be transferred involuntarily by operation of law, then the Agreement shall terminate automatically, and the City may be relieved of all obligations hereunder.

10. WAIVER OF COVENANTS. It is agreed that the waiver of the breach of any of the covenants of the Agreement by either party, shall be limited to the particular breach and shall not be deemed to be a waiver of any other breaches of such covenant or any other provision herein contained. No forbearance by either party to seek a remedy for any breach of the Agreement shall be deemed a waiver by such party of its rights or remedies with respect to such breach.

11. DEFAULT BY OOBE. The Agreement is made upon the condition that OOBE shall punctually and faithfully preform all of its covenants and obligations as herein set forth. OOBE shall be in default of its obligations, herein, in the event that any of the following shall occur, to wit: (a) any use payment, taxes, or other sums required to be paid by OOBE hereunder, or any part thereof, shall at any time be in arrears and unpaid for a period of ten (10) days after the City sends written demand therefore; or (b) OOBE shall file a petition for bankruptcy or be adjudicated as bankrupt, or file a petition or answer seeking any reorganization,
arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other governmental statute, law or regulation, or make an assignment for the benefit of creditors; or (c) any trustee, receiver or liquidator shall be appointed for OOBE for all or any substantial portion of its properties in any action, suit or proceeding by or against OOBE and such proceeding or action shall not have been dismissed within sixty (60) days after such appointment; or (d) the Terrace shall be taken on execution or by process of law; or (e) OOBE shall admit in writing its inability to pay its obligations generally as they become due; (f) there be any default on the part of OOBE in the observance or performance of any of the other covenants, obligations, or conditions of the Agreement on the part of OOBE to be kept and performed, and the default shall continue for a period of fifteen (15) days after written notice thereof from the City to OOBE; or the Terrace is destroyed beyond repair in the reasonable opinion of the City. Notwithstanding anything herein to the contrary, OOBE shall remain liable for all damages attributable to OOBE prior to the termination of the Agreement, for any cause, and it is specifically understood and agreed by the parties hereto that the indemnification set out in Section 17, herein, shall survive beyond the term of the Agreement to cover all such damages.

12. NOTICES. Any notice, demand or other instrument or written communication required or permitted to be given, served, made, or delivered hereunder may be given, served, made, or delivered by hand delivering same, or by mailing same in the United States Mail, postage prepaid, addressed to the following:

City: City of Greenville
      Attention: City Manager
      Post Office Box 2207
      Greenville, SC 29602

OOBE: OOBE Apparel Design Group, Inc.
       Attention: Tom Merritt
       201 RiverPlace,
       Suite 301,
       Greenville, South Carolina 29601

13. SIGNS. No signs of any type shall be installed or otherwise placed on or near the Terrace without prior written approval and consent of City, which consent shall be given, or withheld, as City, in its sole discretion, determines most advisable.

14. RIGHTS OF SUCCESSORS AND ASSIGNS. The rights and obligations herein contained shall inure to, and are binding upon, the successors and assigns of the parties hereto, provided such assignment has occurred in accordance with the Agreement.

15. TERRACE IMPROVEMENT REQUIRED TO BE MADE BY LESSOR. None.

16. INSURANCE. All of OOBE’s property kept or maintained on the Terrace shall be so kept or maintained at the sole risk of OOBE. OOBE agrees to maintain a general liability policy or policies of insurance, including but not limited to liquor liability insurance, at the sole cost and expense of the Lessee, with Lessor named as additional insured, to cover all claims, demands or actions for injury to or death of person(s) in an amount of not less than $1,000,000 per occurrence, and to cover damage to property arising from, related to, or in any way connected with the conduct of and operation of OOBE’s use of the Terrace, in an amount of $1,000,000 per occurrence. Further, OOBE shall maintain Worker’s Compensation Insurance at statutory limits for all of OOBE’s employees and such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the City, its officers, officials, agents and employees. The policy or policies, or duly executed certificate(s) for same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with the City at the time of OOBE’s execution of the Agreement and shall contain, in addition to the matters customarily set forth in such certificate(s) under standard insurance industry practices, an agreement by the insurer to give the City not less than thirty (30) days’ prior written notice of any cancellation, nonrenewal, or change in scope or amount of coverage of such policy.
17. INDEMNIFICATION. Notwithstanding anything herein to the contrary, OOBE shall indemnify and hold the City free and harmless from and against any and all liabilities, losses, claims, judgments, suits, causes of action and/or expenses of any kind or nature, resulting from personal injury and/or death to persons, or property damage, resulting from or in any way arising out of use of the Terrace by OOBE or its employees, contractors and/or agents, or licensees, including the payment of reasonable attorneys’ fees, except where such injury or damage is caused by the gross negligence or willful misconduct of the City. Should the City be named in any suit, action or claim under the terms hereof, then OOBE shall appear and defend the City at its sole cost and expense; provided that the City shall always have the option to appear and defend such action or claim on its own behalf, and all reasonable costs for same shall be borne by OOBE. The foregoing indemnity shall survive the expiration or termination of this Lease.

18. TIME. It is understood and agreed by and between the parties hereto that time is of the essence as to the performance of all terms and conditions of this Lease.

19. GOVERNING LAW. The Agreement and the rights, obligations and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolinas.

20. MISCELLANEOUS. The heading, captions and numbers in this Lease are solely for convenience and shall not be considered in construing or interpreting any provision of the Agreement. The Agreement contains all agreements promises and understandings between the City and OOBE, and no verbal or oral agreements, promises, statements, assertions or representations by the City or OOBE or any employees, agents’ contractors or other representations of either, shall be binding upon the City or OOBE. It is further specifically understood and agreed by and between the parties hereto that the entering into the Agreement in no way relieves OOBE of the responsibility to obtain any necessary licenses, authorizations or permits of any federal, state, or local government body having jurisdiction hereof, nor does it create any rights in favor of any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESSES:

CITY OF GREENVILLE, SOUTH CAROLINA

By: ______________________________
John F. Castile
City Manager

OOBE Apparel Design Group, Inc.

By: ______________________________

Title: ______________________________
Approved as to Form:

________________________
Legal Department

Reviewed:

________________________
Public Information Director

Reviewed:

________________________
OMB Director

Reviewed:

________________________
Risk Manager

Reviewed:

________________________
Economic Development Director