

DOWNTOWN DEVELOPMENT AGREEMENT

This Downtown Development Agreement ("Agreement") is made and entered into as of the 28th day of March, 2017 (the "Effective Date"), between PCH DEVELOPMENT CO., LLC, a North Carolina limited liability company ("Developer"), PRINCE CHARLES HOLDINGS, LLC, a North Carolina Limited Liability Company ("Prince Charles Holdings"), and the CITY OF FAYETTEVILLE, NORTH CAROLINA, a public body corporate and politic ("City"). Any party to this Agreement may be referred to herein as a "Party" and all the parties to this Agreement may be collectively referred to herein as the "Parties".

RECITALS:

A. City currently owns or will own the following parcels of real property in the City's central business district:

(i) that parcel lying generally north of Hay Street and bounded by rail lines on the east and west, more particularly described in Exhibit A-1 as parcels 0437-45-6122, 0437-55-0075 and 0437-45-9572 (the "City Property");

(ii) that parcel lying to the west of Ray Avenue and to the east of a CSX rail line, immediately adjacent to the eastern boundary of the City Property, more particularly described on Exhibit A-2 (the "Festival Park Plaza Building Parcel");

(iii) that parcel lying to the immediate west of the Festival Park Plaza Building Parcel and to the immediate east of a CSX rail line, more particularly described as Tract 6 in Exhibit A-3 (the Festival Park Plaza Development Parcel");

(iv) that parcel to be platted by City intended to contain a new hotel and parking garage, conceptually shown on Exhibit A-4 (the "Hotel and Parking Garage Parcel"); and

B. Developer owns the real property in the central business district adjacent to or near the City Property and on the north side of Hay Street, more particularly described as Tracts 2 and 3 in Exhibit A-5 (the "Developer Property").

C. Developer's affiliate, Prince Charles Holdings, owns the real property in the central business district on the north side of Hay Street adjacent to the City Property and the historic Prince Charles Hotel, being more particularly described as Tracts 1 and 2 in Exhibit A-6 (the "Prince Charles Property").

D. The City Property, the Developer Property the Prince Charles Property, and the Library Lot (defined below) together comprise the area herein referred to as the "Project Area."

E. The Project Area is in an important location in the City's central business district. In accordance with applicable law, including N.C.G.S. §§ 160A-457 and 160A-458.3, City seeks the redevelopment of the Project Area as a community development project for the purpose of

promoting economic development, providing recreational opportunities, and guiding urban development via the creation of a vibrant mixed used district anchored by a new baseball stadium, and containing a hotel, office space, retail space and parking facilities, all of which will significantly contribute to the revitalization of Downtown Fayetteville (collectively, the "Project").

F. The City entered into a that certain Use and Operating Agreement with Fayetteville Baseball Club, LLC, a North Carolina limited liability company, dated December 13, 2016, (the "Astros Agreement") under which the City agreed to develop a minor league baseball stadium together with related public amenities (the "Stadium").

G. City seeks the development of the rest of the Project Area in a way that is complimentary to its development of the Stadium.

H. Developer and its affiliates have significant experience planning and executing downtown redevelopment projects.

I. City has requested and Developer has agreed to participate with the City in the redevelopment of the Project Area, with each Party having certain responsibilities pertaining to the Project, including:

(i) Developer will enter into a sales contract with City for the sale of the Developer Property to City for City's use in the construction of the Stadium;

(ii) City will enter into a sales contract with Developer for the sale of the Festival Park Plaza Building Parcel to Developer, to contain certain leaseback obligations of the City and a lease by the City to Developer of up to 60 parking spaces at the property known as the "Library Lot" located at the Corner of Ray Avenue and Maiden Lane;

(iii) City will grant Developer an option to purchase the Festival Park Plaza Development Parcel; and

(iv) City will enter into a sales contract with Developer for the sale of the Hotel and Garage Parcel to Developer; and

The foregoing conveyances between the City and Developer will be pursuant to the authority granted to City by applicable law including N.C.G.S. §§160A-457 and 160A-458.3.

J. The general benefits to be received by City from the implementation of the Project include, without limitation:

(i) Facilitation of fulfillment of City's obligations under the Astros Agreement with respect to constructing the Stadium and providing certain retail space for use by the Astros in connection with the operation of the Stadium;

(ii) Establishment of integrated site plans, urban design elements, mixed land uses, uniform engineering, landscapes and architecture that contribute to the revitalization of Downtown Fayetteville, including a first-class recreational facility and related parking; and

(iii) Assurance of working with a Developer experienced in mixed use development in an urban setting.

K. The general benefits to be received by Developer from the implementation of the Project include, without limitation:

(i) Integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the Project Area;

(ii) Use and access of a premier site within the City's central business district, with City's construction of the Stadium as an anchor use in the Project;

(iii) Integration of structured parking facilities for public and private use into a private mixed use development with uniform urban design elements and uniform architectural features;

(iv) Shared costs for joint infrastructure needs while maximizing financial performances and efficiencies; and

(v) Assurance that the Festival Park Plaza Building Parcel will be owned and operated in a way that is harmonious with the development of the rest of the Project.

L. Based on the foregoing considerations, Developer and City desire to enter into this Agreement as the overall framework under which the binding contracts will be entered for the various conveyances outlined above that the Parties agree are necessary for the redevelopment of the Project Area.

M. On the 27th day of March, 2017 at 7:00 p.m. the City held a public hearing to consider approval of this Agreement pursuant to applicable law include N.C.G.S. §§160A-457 and 160A-458.3 regarding the consideration of the Agreement. Prior to the public hearing the City complied with all requirements including publication of: (i) the public hearing; (ii) the terms of all sales, purchases, exchanges, transfers, leases, or other disposition of the Property, including consideration paid; (iii) location where this Agreement could be reviewed, and confirmation that this Agreement would also be reviewed at the public hearing.

N. On March 27, 2017, the City Council voted in favor of entering into this Agreement and authorized City's execution of the same. The approval of this Agreement constitutes a legislative act of the City Council.

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, City, Developer and Prince Charles Holdings do hereby agree as follows:

1. Contracts. Upon the execution of this Agreement, the following parties will execute and deliver to the counterparty the following contracts:

(a) Developer and City will enter into an Offer to Purchase and Contract – Vacant Lot/Land concerning Developer's sale of the Developer Property to the City, the form of which is attached hereto as Exhibit B-1 (the "Developer Property Contract");

(b) City and Developer will enter into an Agreement for the Purchase and Sale of Real Property concerning City's sale of the Festival Park Plaza Building Parcel to Developer, the form of which is attached hereto as Exhibit B-2, which will contain (i) an obligation for the City to lease space back from Developer and, (ii) an obligation for the City to lease Developer at least 60 parking spaces in the Library Lot (the "Festival Park Plaza Building Parcel Contract");

(c) City and Developer will enter into an Option Agreement whereby City will grant Developer an option to purchase the Festival Park Plaza Development Parcel, the form of which is attached hereto as Exhibit B-3 (the "the Festival Park Plaza Development Parcel Option");

(d) City and Developer will enter into that certain Agreement for the Purchase and Sale of Real Property concerning City's sale of the Hotel and Garage Parcel to Developer, the form of which is attached hereto as Exhibit B-4 (the "Hotel and Garage Parcel Contract"); and

The foregoing contracts (a) through (d) are herein collectively referred to as the "Contracts."

2. Amended Agreement. The Parties to this Agreement recognize that there are certain Project matters that must be addressed after this Agreement and the Contracts are executed, including but not limited to, design and development coordination, infrastructure, and various easements. The Parties will continue to work cooperatively with the goal of entering into an amendment of this Agreement to address these Project matters on or before June 30, 2017.

3. Miscellaneous.

(a) Assignment. Developer may, in its role as master developer, with the consent of City which will not be unreasonably withheld, assign its rights and delegate its duties under this Agreement in part or whole to another developer or developers and/or its lender(s) in the form of a collateral assignment.

(b) Disclaimer of Joint Venture, Partnership and Agency. Neither this Agreement nor any agreement entered into pursuant to this Agreement shall be interpreted or construed to create an association, joint venture, or partnership between Developer and City, or to impose any partnership obligation or liability upon the Parties. Neither Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.

(c) *No Third Party Beneficiaries.* The Agreement is not intended to and does not confer any right or benefit on any third party that is not a Party.

(d) *Entire Agreement.* This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Parties relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement. All exhibits attached hereto are incorporated herein by reference.

(e) *Construction.* The Parties agree that each Party and its counsel have reviewed and revised this Agreement 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 Agreement or any amendments or exhibits hereto.

(f) *Governing Law.* This Agreement shall be governed by the laws of the State of North Carolina.

(g) *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

(h) *No Deemed Waiver.* Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

(i) *Severability.* If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Participating Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

(j) *Authority.* Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind City and Developer. Notwithstanding the foregoing, with the approval of this Agreement, City Council hereby delegates to the Mayor the authority to execute any supplemental documents required to effectuate the purposes of this Agreement.

(k) *Representations and Warranties of Developer.* Developer represents and warrants to City that: (i) it is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina; (ii) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder.

(l) *Representations and Warranties of City.* City represents and warrants to Developer that (i) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder, and (ii) it has obtained all necessary final approvals in accordance with all Applicable Law, including but not limited to all approvals required by City Council and the North Carolina Local Government Commission.

(m) *Continuing Obligation.* From time to time after March 28, 2017 (the "Closing Date"), the Parties will execute additional instruments of assignment, lease, license, conveyance and other documents and take such other actions that are reasonably necessary to further the purposes of this Agreement.

(o) *Immunity Not Waived.* City does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the City acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought hereunder.

(p) *Release of Information.* City and Developer acknowledge that (i) approval of this Agreement by the Council is subject to the notice requirements of NCGS § 160A-457 and (ii) this Agreement is subject to disclosure under the North Carolina Public Records Act, NCGS § 132-1 *et seq.* (the "Act"), except for information that is excluded from the disclosure requirements of the Act pursuant to NCGS § 132-1.2. Nothing in this Agreement precludes any Party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public Council meetings in compliance with applicable laws.

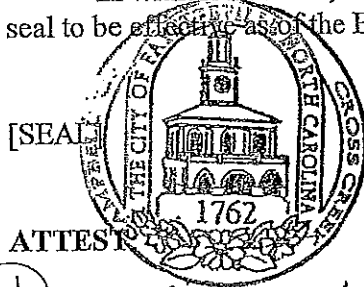
(q) *Representations, Warranties and Indemnity Regarding Brokers.* Each Party represents and warrants to the other Party that it has contracted with no real estate broker with respect to the transactions contemplated by this Agreement. City and Developer covenant and agree, each to the other, to indemnify the other against any claims based upon or arising out of the employment or use by the indemnifying party of any real estate broker, agent or finder in connection with the purchase and sale of any property in the Project Area as it is the subject of this Agreement. This Section shall survive Closing or any earlier termination of this Agreement.

(r) *Amendment.* This Agreement supersedes all prior discussions and agreements between the Parties with respect to the Project and contains the sole and entire understanding between the Parties with respect to the Project. All promises, inducements, offers, solicitations, agreements, commitments, representations and warranties heretofore made between the Parties are merged into this Agreement. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the Parties.

(s) *Term of Agreement.* The term of this Agreement will commence on the above listed Effective Date and expire upon the earlier of (i) the consummation of last closing under the Contracts, or (ii) otherwise upon mutual written agreement of the Parties.

[SIGNATURES ON FOLLOWING PAGES]

In witness whereof, the Parties have caused this Agreement to be duly executed under seal to be effective as of the Effective Date



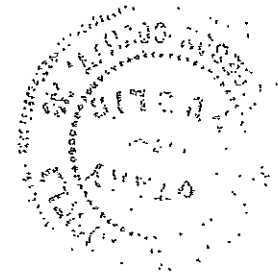
CITY OF FAYETTEVILLE NORTH CAROLINA

Douglas J. Hewitt
Name: Douglas Hewitt
Title: City Manager

ATTEST
Pamela J. Megill
City Clerk

Approved as to form:

Karen M. McDonald
City Attorney



STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Jennifer K. Penfield, a Notary Public of the State and ^{Robeson} County aforesaid, certify that Pamela J. Megill personally came before me this day and acknowledged that (s)he is _____ City Clerk of the City of Fayetteville, and that by authority duly given and as the act of the Council, the foregoing instrument was signed in its name by its Mayor, City Manager, sealed with its corporate seal and attested by himself/herself as its _____ City Clerk.

WITNESS my hand and official seal, this 29th day of March, 2017.

Jennifer K. Penfield
Notary Public
My commission expires: 8/5/2017

CERTIFICATION

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This 29 day of March, 2017.

Cheryl Espino
City Finance Officer

Project Number: _____ (if applicable)
Account Number: _____
Amount of Contract: \$ _____
Federal ID Number: _____

[Prince Charles Holdings Signature Page to Downtown Development Agreement]

Prince Charles Holdings, LLC (seal)

By: Michael Lemanski
 Name: Michael Lemanski
 Title: Manager

STATE OF NORTH CAROLINA, COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Michael Lemanski

Date: 3/28/17

WJ
 Notary Public

Print Name: William A. Byrd

[Official Seal]

My commission expires: 2/2/19

Table of Exhibits:

Exhibit A-1	Description of City Property
Exhibit A-2	Description of Festival Park Plaza Building Parcel
Exhibit A-3	Description of Festival Park Plaza Development Lot
Exhibit A-4	Conceptual Illustration of Hotel and Parking Garage Parcel
Exhibit A-5	Description of Developer Property
Exhibit A-6	Description of Prince Charles Holdings Property
Exhibit B-1	Developer/Prince Charles Property Contract
Exhibit B-2	Festival Park Plaza Building Parcel Contract
Exhibit B-3	Festival Park Plaza Development Parcel Option
Exhibit B-4	Hotel and Garage Parcel Contract

[Developer Signature Page to Downtown Development Agreement]

PCH DEVELOPMENT CO., LLC (seal)

By: Michael Lemanski
 Name: Michael Lemanski
 Title: Manager

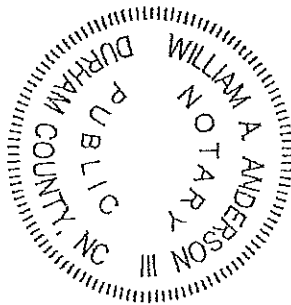
STATE OF NORTH CAROLINA, COUNTY OF Perquimans

I certify that the following person(s) personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Michael Lemanski

Date: 3/28/17
2/2/19

W.A.
 Notary Public

[Official Seal]

Print Name: William A. AndersonMy commission expires: 2/2/19

Exhibits not attached.

**Available upon
request from the City
Clerk's Office.**