

## FIRST AMENDMENT TO DOWNTOWN DEVELOPMENT AGREEMENT

This First Amendment to Downtown Development Agreement (the "Amendment") is made and entered into as of the 14th day of July, 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 Amendment may be referred to herein as a "Party" and all the parties to this Amendment may be collectively referred to herein as the "Parties".

### RECITALS:

A. The Parties entered into that certain Downtown Development Agreement (the "Agreement") dated as of March 28, 2017 concerning the development of the Project within the Project Area as therein described.

B. The Agreement provides that a baseball stadium, hotel, office space, retail space and parking facilities will be located at the Project Area and that the Prince Charles Holdings would undertake the redevelopment of the Prince Charles Hotel;

C. Paragraph numbered 2 of the Agreement required the Parties to work on an amendment(s) to provide for the design and development coordination, infrastructure and various easements related to the Project Area and to work toward such an Amendment on or before June 30, 2017.

D. The Parties further acknowledge that additional amendments will be necessary to address design and development coordination, easements and other matters.

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

1. Recitals; Defined Terms. The foregoing recitals are incorporated in this Amendment by reference. Capitalized terms used herein have the meanings given to them in the Agreement or in this Amendment unless specifically set forth herein.

2. Identification of Downtown Development Projects.

(a) *Downtown Development Project I.* The City has entered into the Astros Agreement by the terms of which the City agreed to construct a minor league baseball stadium together with related amenities (the "Stadium"). The City has or will enter into contract(s) necessary for the completion of the Stadium including all infrastructure within the footprint of the stadium (the "Stadium Infrastructure"). The City will be solely responsible for all costs for the design and construction of the Stadium, including the Stadium Infrastructure. The design and construction of the Stadium is referred to as the Downtown Development Project I or "DDPI."



(b) *Downtown Development Project II.* Developer has entered into contracts/options to purchase real property and improvements from the City upon which the Developer plans, upon purchase, to construct and/or operate a hotel, parking garage, retail space, office space, and residential space, and to redevelop the Prince Charles Hotel. The Developer also agrees to be responsible for the completion of the design and construction of the infrastructure, necessary for the construction of both DDP I and DDP II, other than the Stadium Infrastructure in DDP I (the "Developer Infrastructure") as more fully described hereafter. The design and construction of all of the above constitute Downtown Development Project II or "DDP II."

The Developer will be solely responsible for all costs of the DDP II, except as otherwise provided in the Agreement, as amended by this Amendment or the Contracts.

3. Infrastructure Design and Construction.

(a) *Design and Construction Responsibility.* Developer will be responsible for the design and construction of the Developer Infrastructure. The Developer Infrastructure design and budget must be approved and accepted by the City. The Developer Infrastructure will include, but is not limited to, utility improvements supporting the Stadium (excluding the Stadium Infrastructure) and the private development of the Project Area, the public plaza along Hay Street and leading to the South entrance to the Stadium, portions of Maiden Lane to be developed for public use in connection with the Project Area, connections to the East entrance of the Stadium, intersection improvements at Hay Street and Pittsboro Street, and utility work in the area to the immediate West of the Hotel and Garage Parcel. The Developer Infrastructure is depicted on a conceptual plan marked as Exhibit "A" attached hereto and incorporated herein by reference.

(b) *City Financial Responsibility for Developer Infrastructure.* Provided the City has approved the budget referenced in Section 3(d) below, the City will be responsible for the payment of the costs attributable to the design and construction of the portions of the Developer Infrastructure that support only the public areas of the Project, including infrastructure outside the Stadium that supports the Stadium (the "City Share of Developer Infrastructure Expense"). In addition the City will pay the Developer a construction management fee in an amount equal to 5% of the City's Share of Developer Infrastructure Expense (the "Management Fee"). The City will make progress payments directly to Developer within thirty (30) days after receiving a pay application from Developer containing evidence that the work billed is completed with invoices substantiating the charges billed.

(c) *Developer Financial Responsibility for Developer Infrastructure.* Developer will be responsible for the costs of the Developer Infrastructure that supports only the private development in DDP II.

(d) *Coordination.* The Developer and City will cooperate in the design of the Developer Infrastructure, to accommodate the needs of DDP I. The City will provide Developer with the design specifications necessary for the connection of the Developer Infrastructure to the Stadium Infrastructure, and such specifications will be incorporated into the Developer's plans



for the Developer Infrastructure. Developer will present for the City's review and approval prior to the commencement of work on DDP II a budget for the City's Share of Developer Infrastructure Expense and the Management Fee. It is the City's expectation that the total amount of both the City's Share of the Developer Infrastructure Expense and the Management Fee will not exceed \$1,200,000 unless the budget is supplemented by the City.

(e) *Local Labor.* Developer will make good faith, commercially reasonable efforts to use local workforce in the construction of that portion of the Developer Infrastructure identified as the City Share of Developer Infrastructure Expense.

(f) *Good Faith Effort to Comply with G.S. 143-128.2, G.S. 143-128.4.* The Developer and its contractors shall make a good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities in the design and construction of DDP II.

4. The Downtown Development Agreement remains in Full Force and Effect Except as Amended. Except as amended herein the Agreement remains in full force and effect and binding upon all parties.

5. Further Amendment. The Parties recognize and agree there are certain other Project matters that must be addressed in future amendment(s). The Parties will continue to work cooperatively towards the goal of entering into any such amendment(s) to the Agreement as amended to address such other Project matters on or before August 31, 2017.

6. Miscellaneous.

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

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

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

(d) *Authority.* Each Party represents that it has undertaken all actions necessary for approval of this Amendment, and that the person signing this Amendment has the authority to bind City and Developer.

(e) *Representations and Warranties of Developer.* Developer incorporates herein by reference all warranties as set forth in the Agreement.

(f) *Representations and Warranties of City.* City incorporates herein by reference all warranties as set forth in the Agreement.

(g) *Release of Information.* City and Developer acknowledge that this Amendment 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 Amendment precludes any Party from discussing the terms of this Amendment 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.

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

[SEAL]



CITY OF FAYETTEVILLE NORTH CAROLINA

Name: Douglas J. Hewlett  
Title: City Manager

ATTEST:

Pamela J. McGill  
Pamela J. McGill, City Clerk  
Approved as to form:

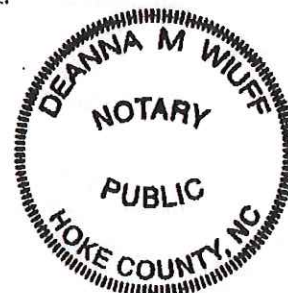
STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, Deanna Wiuff, a Notary Public of the State and County aforesaid, certify that Pamela McGill 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, <sup>du:</sup> City Manager, sealed with its corporate seal and attested by himself/herself as its \_\_\_\_\_ City Clerk.

WITNESS my hand and official seal, this 13<sup>th</sup> day of July, 2017.

Deanna M Wiuff  
Notary Public

My commission expires: 10/06/18



CERTIFICATION

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

This 13<sup>TH</sup> day of July, 2017.

Cheryl J. Spivey  
CHERYL J. SPIVEY, City Finance Officer

[Developer Signature Page to First Amendment to Downtown Development Agreement]

PCH DEVELOPMENT CO., LLC (seal)

By:

Name:

Title:

STATE OF NORTH CAROLINA, COUNTY OF Orange

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:

Debra R Nestor  
Notary Public

[Official Seal]



Print Name: Debra R Nestor

My commission expires: 4/10/2021



[Prince Charles Holdings Signature Page to First Amendment to Downtown Development Agreement]

PRINCE CHARLES HOLDINGS, LLC (seal)

By: [Signature]  
Name: Michael Leminski  
Title: Manager

STATE OF NORTH CAROLINA, COUNTY OF Orange

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 Leminski

Date: 7/10/17

[Signature]  
Notary Public

[Official Seal]



Print Name: Debra R Nestor

My commission expires: 4/10/2021

### Conceptual Illustration of Locations of Project Area Infrastructure



