

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

DESIGN ACCEPTANCE

This Notification of Design Acceptance ("Notification"), made and entered into this 13th day of March, 2018, by and between the **CITY OF FAYETTEVILLE, NORTH CAROLINA** ("City"), a municipal corporation organized and existing under the laws of the State of North Carolina, and **FAYETTEVILLE BASEBALL CLUB LLC** ("Operator"), a limited liability company organized and existing under the laws of the State of North Carolina;

WHEREAS, the Parties have entered a Use and Operating Agreement dated December 13, 2016 (the "Agreement"), which Agreement in Section 3.2 requires approval by the Operator of the Minimum Project Requirements for the Baseball Stadium; and

WHEREAS, the City committed to funding \$33 million to construct the Baseball Stadium consistent with the Minimum Stadium Requirements; and

WHEREAS, unexpected construction cost increases and design requests have resulted in an expected funding requirement of approximately \$37 million; and

WHEREAS, the Parties wish to commemorate the Operator's formal approval of the design as depicted in final Construction Drawings and Specifications that form the basis of the final Guaranteed Maximum Price amendment to the construction contract with Barton Malow to be considered by the City Council on March 19, 2018.

NOW THEREFORE, in consideration for the City agreeing to increase its capital funding commitment to the Baseball Stadium, the Operator, hereby, agrees that the Minimum Project Requirements for the Baseball Stadium, including those items specifically in Exhibits B, C and D to the Agreement, as well as any and all other minimum requirements specifically mentioned or inferred in that Agreement are satisfied by the execution of the final Guaranteed Maximum Price amendment before the City. The City agrees that the final Guaranteed Maximum Price amendment approved March 19, 2018, shall in no event be less than \$30 million. The Operator agrees that the design and specifications included in that Guaranteed Maximum Price amendment and the City's dedication of \$3.9 million for identified "Owners Preference Items" fully satisfies the City's obligations to develop the Baseball Stadium under the Agreement; provided, however, that in the event of further unexpected construction cost increases, the City agrees to make additional funding available to the Baseball Stadium project so long as such construction cost increases are not the result of additional design requests by Operator after the date of this Notification. The Operator further agrees that they, hereby, waive any right they may have had to require the City to make additional funding available to the Baseball Stadium project in connection with additional design requests made by Operator after the date of this Notification.

NOW THEREFORE, the Operator formally approves the design and funding for the Baseball Stadium project as proposed for consideration by the Council on March 19, 2018.

[SIGNATURES ON NEXT PAGE]

FAYETTEVILLE BASEBALL CLUB LLC

By: Reid Ryan
Reid Ryan
President, Business Operations

Date: March 13, 2018

ACKNOWLEDGED:
By: Douglas J. Hewett
Douglas J. Hewett

Title: _____

City Manager
Date: March 14, 2018