

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FAYETTEVILLE, NORTH CAROLINA
AND HOUSTON BASEBALL PARTNERS, LLC**

THIS MEMORANDUM OF UNDERSTANDING (“MOU or “Memorandum”) is entered into this ____ day of August, 2016, by and between the **CITY OF FAYETTEVILLE, NORTH CAROLINA** (“City”) and Houston Baseball Partners, LLC (“HBP”). City and Astros are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

A. The City desires to provide for the development of a tract of land in downtown Fayetteville, North Carolina, between the Prince Charles Hotel and the Fayetteville Depot and bounded on the north side by Cross Creek and on the south side by Hay Street, for a mixed-use commercial, residential and recreational project referred to as the Scotch Springs Redevelopment (the “Project”).

B. The catalyst for the Project will be a multi-use outdoor sports and entertainment venue (the “Venue”) whose anchor tenant will be an affiliated Minor League Baseball team. The Project is planned to include the redevelopment of the historic Prince Charles Hotel into modern urban residences, and the development of additional retail, hotel, convention and residential space.

C. A feasibility study commissioned by the City of Fayetteville and performed by Barrett Sports Group, Populous and Hunt Construction (the “Feasibility Study”) concluded that “[o]ngoing operations of the [Venue] will generate considerable new spending and resulting economic impacts on an annual basis” amounting to \$7.2 million in annual economic output, \$1.7 million in annual labor income and \$365,000 in additional new taxes. The Feasibility Study also concluded that the proposed venue would have additional benefits such as catalyzing economic development, attracting and retaining businesses, national exposure, civic and community pride and improved quality of life for local residents.

D. Astros are the owner of a Major League Baseball team that is a member of the American League of Professional Baseball Clubs. Astros and its leadership also have experience owning and operating successful Minor League Baseball clubs in Round Rock, Texas, Corpus Christi, Texas, and Greeneville, Tennessee.

E. Based on the recommendation in the Feasibility Study and further due diligence by the City, the City desires to construct the Venue as part of the Project. The Venue will be designed to host outdoor concerts; other sporting events, including high school and college baseball tournaments, high school and college football and soccer as well as the Iron Mike Marathon; festivals (such as the International Folk Festival, Dogwood Festival, etc.); community events (such as the Special Olympics Torch Run and other community walks and runs, Reading Rocks and Martin Luther King Day and Veterans' Day parades); and family-friendly events (such as the Dickens' Holiday celebration), in addition to Minor League baseball.

F. In accordance with Recital G, the terms of this Memorandum may be memorialized and supplemented in certain final definitive agreements (the "Definitive Agreements") by and between the HBP or an entity directly or indirectly controlled by or under direct or indirect common control with HBP ("Astros"), the City and other appropriate parties. The City will construct, in consultation with the Astros, the Venue as a first-class, urbanistic sensitive multi-use outdoor entertainment venue consistent with Major League Baseball and Minor League Baseball standards for Minor League playing fields, including, without limitation, the Professional Baseball Agreement Minimum Facility Standards for Class A baseball stadiums and Major League Rule 58 (the "Venue Standards"). Pursuant to the Definitive Agreements, the Astros would have the right and obligation to provide a full-season, affiliated Minor League team that is a member of the National Association of Professional Baseball Leagues, Inc. ("Team"), to play its Championship Season Home Games at the Venue and manage and pay for the operations and maintenance of the Venue for the City as hereinafter set forth. "Championship Season"

shall mean the period commencing at the beginning of the first game of the Team's regular season and ending at the conclusion of the Team's last regular season game, as scheduled by Minor League Baseball. "Championship Season" does not include preseason games, exhibition games, postseason games, or any all-star games. "Home Games" shall refer to games in which the Team is a participant that are scheduled by Minor League Baseball to be held at the Team's home venue.

G. This Memorandum is intended to memorialize the current understanding between the parties regarding the basic scope and structure of a potential partnership to construct, operate and maintain the Venue. It is not intended as, and shall not be considered, a binding obligation of either party, but rather a commitment to continue to work diligently and in good faith toward the objectives outlined herein. For the avoidance of doubt, except as explicitly set forth in this Recital G, the terms and conditions set forth herein shall have no force or effect unless and until the parties mutually agree to and fully execute the Definitive Agreements.

H. Assuming the parties are successful in reaching agreement on all material issues regarding the construction, operation and maintenance of the Venue, it is the expectation of the parties that the terms outlined in this Memorandum (or any mutually agreed modification thereof) will be memorialized in the Definitive Agreements. Issues not contained in this Memorandum, but arising during the negotiation of Definitive Agreements shall be resolved through good faith negotiation.

Terms and Conditions

1) *Venue Development*

a) The City, directly or through a related entity, will finance and construct the Venue, which will be designed for multiple uses and in compliance with the Venue Standards. The design and features of the Venue shall be determined by the City in consultation with the Astros.

b) The Venue will be owned by the City or a related entity and managed by the Astros or a related entity under the terms of a lease, license and/or management agreement as hereinafter described.

c) The City will work with the Astros to coordinate design and construction of the Venue and will, subject to applicable statutes and other legal requirements, consult with the Astros in the selection of architects, engineers, contractors and/or construction supervisors for the Venue. The City agrees to, where feasible, utilize local firms and suppliers and to encourage the participation of minority and woman-owned businesses.

2) Venue Financing. The Astros and the City agree that the aggregate costs of the Venue (the "Venue Budget") shall not exceed Thirty-Three Million Dollars (\$33,000,000.00). The parties shall cooperate in the design and construction to keep the costs within the Venue Budget. Deviations which could result in the Venue costs exceeding the Venue Budget must be approved by the City, unless paid for by the Astros. The Venue Budget shall include costs directly related to the design, construction and furnishing of the Venue, including, without limitation: (a) hard construction costs, (b) architectural fees, and all related design, engineering costs and expenses, and (c) certain personal property (including concessions equipment, videoboard, scoreboard, tarp, Venue and Operating Maintenance (as hereinafter defined) equipment, field maintenance equipment and furniture and fixtures for the public areas of the Venue) as more particularly set forth in the Definitive Agreements. Personal property used for Astros Areas (as hereinafter defined) and baseball-specific equipment (including training and weight room equipment, batting practice turtle and screens, etc.), will be the responsibility of the Astros and will not be included within the Venue Budget. Costs not directly related to the construction and furnishing of the Venue, such as the costs of land acquisition and infrastructure improvements outside the Venue itself, shall not be taken from the Venue Budget, but shall be paid separately by the City or a third party. In addition, the City

shall be responsible for the payment of all financing costs, which shall not be taken from the Venue Budget, but shall be paid separately by the City or a third party.

3) Venue Timing. The Venue will be scheduled for completion prior to opening day of the 2019 Minor League Baseball season.

4) Venue Term. The lease, license or management agreement (the "Use Agreement"), by and between City and Astros, shall provide the Astros the right to use the Venue for both professional baseball events and other events which may be promoted or sponsored by the Astros (collectively "Astros Events") as described herein. The initial term of the Use Agreement shall be thirty (30) years (the "Term"). The Term shall commence upon the Astros' initial occupancy of the Venue, currently anticipated to be the spring of 2019.

5) Venue Occupancy Costs. Under the Use Agreement, Astros shall pay, as the cost of occupying the Venue during the Term, the amounts shown in Attachment A and the charges and expenses described in paragraphs 8(b)(i), 8(b)(iii), 8(e)(iii) and 9(b).

6) Venue Use. Astros shall have the right and obligation to use the Venue throughout the Term for all of its Championship Season Home Games as well as any playoff games in which the Team is a participant that are scheduled by Minor League Baseball to be held at the Team's home venue ("Home Playoff Game(s)") and All Star Games awarded to the Astros by the league in which team is a participant ("All-Star Game(s)"). Astros commits to cause Team to play all of its Championship Season Home Games, Home Playoff Games and All Star Games at the Venue throughout the Term.

a) Astros shall have exclusive use of certain office, clubhouse and other areas necessary for the operation of the baseball team ("Astros Areas") to include designated office areas, the team merchandise store and designated storage areas. Astros shall also have exclusive use of the "home" locker room each year of the Term, commencing at least two (2)

weeks prior to the beginning of the first Team Game (as defined below) scheduled to be held at the Venue and ending at the conclusion of the last Team Game (as defined below).

b) Except for Astros Areas, the City shall have the right to use the Venue subject to the rights granted Astros under the Use Agreement.

c) Astros will have first priority use of the Venue for all professional baseball games, including, without limitation, preseason games, exhibition games, Championship Season games, postseason games and any all-star game (“Team Game(s)”).

d) Astros shall also be granted the right to conduct and/or promote alternate use of the Venue for Astros Events, which may include concerts, festivals, charitable events and other appropriate uses. A significant goal of the City in constructing the Venue is to have it serve as a community amenity and development catalyst. In order to maximize the Venue’s impact, the City desires to have the Venue utilized for a broad range and a large number of events throughout the year. The City believes Astros, as the primary operator of the Venue, will be best positioned to maximize the quality and quantity of additional events. Thus, the Astros shall have the right to program the Venue, year-round, subject to City Events as described herein.

e) The City, as the owner of the Venue shall likewise have the right to schedule events at the Venue (the “City Events”). Throughout the Term, Astros shall provide its schedule of all Team Games (including potential playoff dates) for each baseball season as soon as that schedule is finalized and approved by Minor League Baseball. The City shall have an agreed-to period, after receipt of the schedule, to reserve up to fifteen (15) priority dates for City Events during the upcoming year, provided such dates do not interfere with or otherwise disrupt Astros’ use, operation, or maintenance of the Venue, including, without limitation, the baseball playing surface, for Team Games.

f) To assure full, equitable usage of the Venue and to provide community access, the Astros and the City will establish a mutually acceptable method of sharing all remaining dates at the Venue in the Definitive Agreements. This will include allowing either party to schedule an event on a date reserved by the other party if the reserving party does not have an actual event scheduled on the date in question, and the parties agreeing to, wherever possible, reschedule smaller or movable events to accommodate larger and/or less movable events.

g) Due to the importance of additional events (beyond Team Games) to the success of the Venue and Project, if, at any point after the fifth year of Venue operation the average attendance at Astros Events (excluding Team Games) over the preceding three year period is less than 50,000 attendees, the City shall have the right to replace Astros (either itself or with a third-party operator) as programmer of non-Team Game events at the Venue (the rights described in paragraph 6(d) above).

h) Astros shall agree to keep certain mutually agreed areas of the Venue open during non-event times for use by the public as a public park, provided Astros shall have no such obligation if, (i) in Astros reasonable discretion, doing so will pose a safety or security risk to the Venue or any persons or property or (ii) doing so will impose material costs upon Astros. Such public use shall be from dawn to dusk and only extend to certain outdoor fan areas of the Venue that and not to the playing field or interior areas. The Astros may close the Venue a reasonable time in advance of any scheduled game or event in order to properly prepare for that game or event.

7) Venue Oversight. Although the Venue will be owned by the City, a related entity or designee, and operated by Astros, a Board of Advisors (the “Board of Advisors”) shall, *inter alia*, advise the City Council on the use of the Capital Maintenance Fund (as described in sections 8(c)-(e) herein) and generally serve as the community’s connection to and “eyes and ears” over the Venue.

The Board of Advisors shall meet at least annually. It is anticipated that the Board of Advisors will have nine members, including one appointed by the Astros, one by the Master Developer of the Project, one by the Venue Naming Rights Partner. The remaining members will be appointed by public bodies and/or significant community organizations (such as the Chamber of Commerce, Convention and Visitors Bureau, Economic Development Authority, City Councils, County Commission local neighborhood associations, etc.). The precise composition, scope of responsibilities, etc. of the Board of Advisors will be established in and subject to the Definitive Agreements.

8) Venue Operations.

a) For purposes of this Memorandum, the parties agree on the following definitions:

i. “Capital Maintenance” shall mean certain repairs, long-term maintenance, or other capital expenditures identified in a Capital Maintenance Schedule developed by the City and Astros and attached as an Exhibit to the Definitive Agreement.

ii. “Capital Maintenance and Improvement Fund” shall mean the fund established by the City, funded with Venue-generated revenues, to cover Capital (as opposed to Operating) Maintenance, as described in sections 8(c)-(e).

iii. “Event Day Maintenance” shall mean all event day maintenance, Venue preparation, field preparation (if required), trash removal, repairs (if required), related supplies, and similar such event related costs.

iv. “Event Day Costs” shall mean all ticket-takers, ushers, in-stadium security personnel, scoreboard/sound personnel and other costs related to a given event to be held at the Venue.

v. "Operating Maintenance" shall mean the costs and expenses associated with maintenance and repairs. This includes inspecting and routine maintenance and repairs of all Venue systems, replacement of venue supplies, painting and other routine Venue repairs.

b) The Definitive Agreements shall provide that the parties shall be responsible for maintenance and capital repairs as follows:

i. Astros shall pay all Astros Event Day Maintenance and all Astros Event Day Costs.

ii. The City shall pay for all City Events and all City Event Day Maintenance and City Event Day Costs.

iii. Astros shall perform and pay for all Operating Maintenance.

iv. All Capital Maintenance shall be approved by the Board of Advisors and paid out of the Capital Maintenance Fund in a timely manner.

c) The Definitive Agreements shall include a Capital Maintenance Schedule. The schedule will serve as a guideline for the capital maintenance of the Venue over the years, indicating when certain maintenance is expected to be needed/performed. The Board of Advisors shall review and offer a recommendation or recommendations regarding an annual maintenance budget covering Capital Maintenance (the "Annual Maintenance Budget") to be proposed by Astros each year. The timing and procedures shall be mutually agreed upon in the Definitive Agreements. The Annual Maintenance Budget shall be developed using the Capital Maintenance Schedule but may be altered with the consent of the Board of Advisors and Astros.

d) The City shall establish the Capital Maintenance and Improvement Fund to cover Capital Maintenance and other capital expenditures required during the Term to maintain the Venue in proper repair and condition. The Capital Maintenance and Improvement Fund

shall be a City account whose use is restricted to approved expenditures at the Venue. The Capital Maintenance and Improvement Fund shall be managed by the City in consultation with the Board of Advisors and Astros as set forth in the Definitive Agreements. The Capital Maintenance and Improvement Fund shall target an average annual deposit of 1% of hard construction costs of the Venue (as established as of the opening of the Venue).

e) The Capital Maintenance and Improvement Fund shall be funded from:

i. The City's share of Naming Rights Revenues (net of costs and inventory, if any), described in paragraph 9(b)(i) herein;

ii. Any revenues generated from the Attendance payment described in paragraph 9(b)(ii) herein;

iii. Should the amounts in paragraphs 8(e)(i) and 8(e)(ii), in any given year, be insufficient to keep the average annual deposit into the Capital Maintenance Fund at or above the target amount of 1% of hard construction costs, the City and Astros shall each deposit 50% of the shortfall into the account to bring the average annual deposit up to its target amount.

9) *Venue Related Revenues*

a) Astros shall retain ticket, sponsorship, merchandising and other sales or revenue generated from all Team Games and Astros Events and will be responsible for all costs and expenses relating to the same, including Event Day Maintenance and Event Day Costs.

b) The City shall receive:

i. Fifty percent (50%) of naming rights revenue for the Venue, net of costs and signage inventory, if any. The City and the Astros will jointly market the naming rights to the Venue.

ii. One dollar (\$1.00) for all official attendance (as announced and reported to Minor League Baseball) at all Team Games and Astros Events (“Official Attendance”) where admission is charged (any paid or ticketed event). Such one dollar (\$1.00) payment shall only be owed for Official Attendance in excess of 50,000 patrons per calendar year. For example, if Official Attendance is 50,001 in a calendar year, the Astros shall pay One Dollar (\$1.00) to the City as required by this Section.

c) The City or its designee shall retain ticket, sponsorship, merchandising and other sales or revenue generated from City Events and will be responsible for all costs and expenses relating to the same, including Event Day Maintenance and Event Day Costs.

d) Astros will be granted the license to operate all food and beverage concessions at the Venue for all events, including City Events. For City Events, in addition to the revenues set forth in paragraph 9(c), the City, or its designee, will receive 25% of all gross revenues (after taxes) generated by the concessions operations at the event, with Astros retaining the remaining 75%.

10) Security. Astros, at its expense, shall be responsible for providing all security officers for the Venue for all events other than City Events. Security required for all City Events shall be the responsibility of the City. The City, at all times, retains the right to eject objectionable persons from the Venue, or to otherwise control objectionable or illegal behavior or activities in or around the Venue.

11) Parking.

a) City shall provide the Astros with 100 parking spaces as follows (and as more particularly defined in the Definitive Agreements):

i. Thirty (30) spaces for Team players and coaches. These spaces shall be in a lot or deck proximate to the Venue and available during hours that the Team will be at

the Venue for Team Games, practices and preparation therefore. The City will also provide spaces for players and coaches to park their cars during road trips, though those spaces may be different from and less proximate than the spaces provided players and coaches for Team Games.

ii. Twenty (20) spaces for full-time employees. These spaces will be available during regular working hours as well as during Team Games and Astros Events. These spaces will be within a short walk of the Venue.

iii. Fifty spaces for game day employees and other Astros usage. These spaces shall be available during Team Games (including hours of pre-game preparation and post-game clean-up) and shall be within walking distance of the Venue.

b) The City shall assist Astros in creating a parking study to demonstrate adequate parking within one-half (1/2) mile of the stadium in compliance with the requirements of Major League Rule 58, Section 7.1.

12) Insurance. Astros shall, at its expense, through the Term, maintain comprehensive liability insurance on all aspects of Astros' use, management and operation of the Venue upon terms and in an amount reasonably satisfactory to the City. Astros shall be responsible for insurance on all personal property of Astros. The City shall be responsible for all casualty insurance on the Project, including the Venue structure, and other insurance reasonably required by Astros.

13) Preconditions to Effectiveness of Binding Agreements. The obligations in any binding agreements will be conditioned on the following:

a) Approval by the Fayetteville City Council as well as any other necessary government approvals;

b) Acquisition, by the City or its designee, of the subject property on commercially reasonable terms;

- c) The ability of the City to secure bond financing, on commercially reasonable terms (as determined by the City, in its sole discretion), for the development of the Venue;
- d) The Astros acquisition (or proof of a contractual right to acquire, in a form acceptable to City) an affiliated, full-season Minor League Baseball team to play at the Venue;
- e) Evidence that the Astros have acquired all necessary baseball approvals (that of (i) any league or leagues involved in the transaction; (ii) the National Association of Professional Baseball Leagues, Inc.; and (iii) the Office of the Commissioner of Major League Baseball to relocate a team to the to-be-constructed Venue in Fayetteville.

14) Other Considerations.

- a) Affiliated Baseball. Astros agrees to provide a full-season, affiliated Minor League Baseball team to play in the Venue. It agrees that it will, throughout the Term, maintain its membership in its league and in the National Association of Professional Baseball Leagues, in good standing. Astros, for itself and its successors and assigns, commits to conduct all of Team's Championship Season Home Games, Home Playoff Games and All-Star Games at the Venue.
- b) Financial Capacity. Payment of the amounts shown in Attachment A, whether such obligation is assigned to Team, a sub-entity or a separate entity, shall be guaranteed by HBP pursuant to a written guaranty agreement to be negotiated by the parties and included in the Definitive Agreements.
- c) City Access. The City shall be entitled to use of a suite at the Venue at up to ten (10) Team Games or Astros Events at the Venue each year (in addition to City's control of the Venue for City Events) for official City business and/or economic development purposes. The City shall also be entitled to up to twelve (12) tickets to any Team Game or other Astros Event at the Venue, with such tickets being requested and used only for official City business and/or economic development purposes.

d) Fast Tracking. It is understood that, for the Project to open as scheduled in April of 2019, time will be of the essence. The City will assist in “fast-tracking” permitting and clearances, etc. to assist in the timely completion of the Venue.

e) Liquor License. The City will assist, as appropriate, Astros’ acquisition of a liquor license applicable to appropriate areas within the Venue.

f) Fireworks. The City will assist Astros with the necessary permits, clearances and in other appropriate ways to enable team to hold an acceptable number of fireworks nights per season, consistent with industry practices.

g) Signage. The City will work with the United States and North Carolina Departments of Transportation and other appropriate authorities to alter or construct new directional signage on freeways and other major thoroughfares (including a Venue marquee), directing vehicles to the Venue. The City will assist Astros in obtaining permission and approval to hang banners within the City limits (subject to reasonable restrictions) to generate interest in the Venue and in major events to be held at the Venue.

h) Transferability. The City will be entering into this relationship in reliance upon the experience, expertise and credit-worthiness of the Astros. The Definitive Agreements shall include provisions that, during the first seven (7) years of the Term, the Astros may not transfer or assign, by change of control or otherwise, its rights to the Minor League Baseball team playing at the Venue without the prior approval of the City, in its sole discretion. After the conclusion of the seventh year of the Term, Astros may transfer or assign its rights and duties under the Definitive Agreements to a Permitted Entity, with the approval of the City, such approval not to be unreasonably withheld. “Permitted Entity” shall mean any entity fully assuming all of the obligations of the Astros (or an affiliate of such entity), as set forth in the Definitive Documents, that is approved by (a) Major League Baseball (b) Minor League Baseball

and (c) the League in which Team is a participant, as an assignee of the Team. Nothing in this section shall provide the City with any approval rights relating to any transfer or assignment of Houston Baseball Partners LLC or the Houston Astros Major League Baseball Franchise, even if such transfer or assignment shall result in the transfer or assignment of the Minor League Baseball team playing at the Venue. Further, nothing in this section shall provide the City with any approval rights relating to the Astros transferring or assigning a non-controlling interest (less than 50%) of the Minor League Baseball team playing at the Venue.

i) Compliance with Laws. Astros and Team agree that they presently are and will continue to be an equal opportunity employer and at all times shall comply with laws and regulations that prohibit discrimination and all contractors and subcontractors will likewise be required to comply herewith.

j) Indemnification. The City and Astros will agree on reasonable cross-indemnification relating to using and operating the Venue, consistent with North Carolina law.

k) Continuing Control of Venue by City. In leasing or licensing the use of the Venue and portions therein as set forth herein, the City does not relinquish, and does herein retain, the right to enforce all necessary and proper rules for the management and operation of the same. Duly authorized representatives of the City shall have access to all areas of the Venue at reasonable times, upon reasonable requests, to assure the same.

l) Baseball Approvals. Astros and the City acknowledge that Astros' agreement to supply an affiliated Minor League Team to play at the Venue will constitute a relocation under the rules of Major League Baseball and, as such, will be subject to the approval of the particular league in which the subject team is to play and the President of Minor League Baseball and will also be subject to review by the Baseball Office of the Commissioner ("Baseball Approvals").

The obligations of all parties under the Definitive Agreements will be subject to the receipt of any necessary Baseball Approvals.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date hereinafter set forth.

CITY OF FAYETTEVILLE, NORTH CAROLINA

By: _____

Its: _____

Date: _____

HOUSTON BASEBALL PARTNERS, LLC

By: _____

Its: _____

Date: _____

ATTACHMENT A: RENT SCHEDULE

Rent shall be paid by the Astros to the City on or before April 1 of each year of occupancy during the Term. The amount of the rent, by year, shall be as follows:

Year 1	\$250,000
Year 2	\$250,000
Year 3	\$250,000
Year 4	\$250,000
Year 5	\$250,000
Year 6	\$275,000
Year 7	\$275,000
Year 8	\$275,000
Year 9	\$275,000
Year 10	\$275,000
Year 11	\$300,000
Year 12	\$300,000
Year 13	\$300,000
Year 14	\$300,000
Year 15	\$300,000
Year 16	\$325,000
Year 17	\$325,000
Year 18	\$325,000
Year 19	\$325,000
Year 20	\$325,000
Year 21	\$350,000
Year 22	\$350,000
Year 23	\$350,000
Year 24	\$350,000
Year 25	\$350,000
Year 26	\$375,000
Year 27	\$375,000
Year 28	\$375,000
Year 29	\$375,000
Year 30	\$375,000