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**NON-RELOCATION AGREEMENT**

by and between

**HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**

and

**HOUSTON McLANE COMPANY, INC.,  
d/b/a Houston Astros Baseball Club**

The Ballpark at Union Station  
Houston, Texas

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## NON-RELOCATION AGREEMENT

THIS NON-RELOCATION AGREEMENT (this "Non-Relocation Agreement") is made and entered into effective as of the 17th day of June, 1998 (the "Effective Date") by and between **HARRIS COUNTY-HOUSTON SPORTS AUTHORITY** (the "Sports Authority"), a sports and community venue district created under Chapter 335 of the Texas Local Government Code, and **HOUSTON McLANE COMPANY, INC., d/b/a Houston Astros Baseball Club** ("Houston McLane"), a Texas corporation. Houston McLane and the Sports Authority collectively are referred to herein as the "Parties."

### RECITALS

A. Houston McLane is the holder of the franchise for the City of Houston, Texas issued by the National League and is the owner of the Houston Astros Baseball Club.

B. The project known as "The Ballpark at Union Station" includes the design, development, construction, and furnishing of the Stadium pursuant to the Project Agreement and the lease, use, and operation thereof by Houston McLane pursuant to the terms and conditions of the Stadium Lease and the License Agreement.

C. The Sports Authority, the City, and the County have invested and contemplate continuing to invest a substantial amount of funds for the design, development, construction, and furnishing of the Stadium and such public entities have a significant interest in assuring that Houston McLane shall cause the Astros to play its Baseball Home Games at the Stadium upon completion of construction.

D. As an inducement to the Sports Authority to enter into the Project Agreement, the Stadium Lease, and the License Agreement, Houston McLane has agreed to enter into this Non-Relocation Agreement upon the terms and conditions set forth herein.

### AGREEMENTS

For and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Sports Authority and Houston McLane do hereby agree as follows:

## ARTICLE 1

### DEFINED TERMS

**Section 1.1 Definitions and Usage.** Unless the context shall otherwise require, capitalized terms used in this Non-Relocation Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix A, which also contains rules as to usage that shall be applicable herein.

## ARTICLE 2

### COVENANT TO PLAY

#### **Section 2.1 Commitment to Astrodome Complex.**

**2.1.1 Covenant to Play in Astrodome Complex.** The Astros shall play, and Houston McLane hereby covenants to cause the Astros to play, all of their Baseball Home Games in the Astrodome Complex throughout the period of time (the "Astrodome Non-Relocation Period") that commences upon the Effective Date and ends upon the earlier of the Commencement Date or termination of this Non-Relocation Agreement pursuant to Section 4.5 hereof. Notwithstanding the foregoing, the Astros shall be entitled to play, and the foregoing covenant shall not prevent or prohibit the Astros from playing, up to five (5) of their Baseball Home Games outside the Astrodome Complex during each Major League Baseball Season during the Astrodome Non-Relocation Period; provided that none of such five (5) Baseball Home Games shall include any game in the opening homestand of a Major League Baseball Season (excluding any pre-season play), any game during the final four (4) weeks of the Major League Baseball Season (excluding any post-season play), or any playoff game or game of the World Series. The right to play certain Baseball Home Games outside the Astrodome Complex as provided in the preceding sentence shall be non-cumulative and any unused portion shall expire at the end of each Major League Baseball Season.

**2.1.2 Untenantability of Astrodome Complex.** Notwithstanding the provisions of Section 2.1.1 to the contrary, if an Astrodome Untenantable Condition shall exist at any time during the Astrodome Non-Relocation Period, then Houston McLane shall be entitled to make arrangements for alternate sites and the Astros shall be entitled to play their Baseball Home Games at such alternate sites but only during the period of time that any such Astrodome Untenantable Condition shall exist and provided that Houston McLane uses commercially reasonable and diligent efforts to mitigate and overcome such Astrodome Untenantable Condition.

## **Section 2.2 Commitment to Stadium.**

**2.2.1 Covenant to Play in Stadium.** The Astros shall play, and Houston McLane hereby covenants to cause the Astros to play, all of their Baseball Home Games in the Stadium throughout the Lease Term. Notwithstanding the foregoing, the Astros shall be entitled to play, and the foregoing covenant shall not prevent or prohibit the Astros from playing, up to the lesser of (i) five (5) or (ii) 6.2% of their Scheduled Baseball Home Games outside the Stadium during each Major League Baseball Season; provided that none of such exempt Baseball Home Games shall include any game in the opening homestand of a Major League Baseball Season (excluding any pre-season play), any game during the final four (4) weeks of a Major League Baseball Season (excluding any post-season play), or any playoff game or game of the World Series. The right to play certain Baseball Home Games outside the Stadium as provided in the preceding sentence shall be non-cumulative and any unused portion shall expire at the end of each Major League Baseball Season. Additionally, the obligation contained in the initial sentence of this Section 2.2.1 shall not apply during the initial thirty (30) days after the Commencement Date provided that (i) during such thirty (30) days the Astros play all of their Baseball Home Games in the Astrodome Complex (subject to Section 2.1.2) and (ii) the Commencement Date does not occur as a result of Houston McLane exercising the "Mid-Season Option" or the "Pre-Season Option" under, and as defined in, the Stadium Lease.

**2.2.2 Untenantability of Stadium.** Notwithstanding the provisions of Section 2.2.1 to the contrary, if, during the Lease Term, a Stadium Untenantable Condition shall exist, then Houston McLane shall be entitled to make arrangements for alternate sites and the Astros shall be entitled to play their Baseball Home Games at such alternate sites but only during the period of time that any such Stadium Untenantable Condition shall exist and provided that Houston McLane uses commercially reasonable and diligent efforts to mitigate and overcome such Stadium Untenantable Condition. Additionally, Houston McLane shall use reasonable efforts to locate and use alternate sites which are located within the boundaries of the Sports Authority or the City and the County.

## **ARTICLE 3**

### **NON-RELOCATION**

#### **Section 3.1 Relocation of Astros.**

(a) Houston McLane shall not relocate the Astros or the home territory of the Astros outside the boundaries of the City and the County.

(b) Without limiting or impairing the obligations of Article 2 hereof, in the event the Astros play more than the lesser of (i) five (5) or (ii) 6.2% of their Baseball Home Games during any Major League Baseball Season outside the Stadium or the Astrodome Complex in violation of Article 2 then such action shall be deemed to be a relocation of the home territory of the Astros which shall constitute a default under Section 3.1(a). The preceding limitation on Baseball Home Games shall not include Baseball Home Games played outside the Stadium or the Astrodome Complex due to a good faith dispute over the existence of a Stadium Untenantable Condition or an Astrodome Untenantable Condition.

**Section 3.2 Prohibited Actions.** Houston McLane shall not apply for or seek approval from Major League Baseball or the National League for (i) the relocation of the Astros or the home territory of the Astros outside the boundaries of the City and County or (ii) the reduction of the Astros' territorial or circuit rights, as defined under Major League Rule 1(a), for the playing of Baseball Home Games through the exclusion of any of the following counties: Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery or Waller counties.

**Section 3.3 Third Party Negotiations.** Notwithstanding Section 3.2 to the contrary, during (y) the period of time that is five (5) years prior to the expiration of the "Primary Term" (as defined in the Stadium Lease) or any "Renewal Term" (as defined in the Stadium Lease) or (z) the existence of a "Landlord Default" (as defined in the Stadium Lease), a "Licensor Default" (as defined in the License Agreement) or a "Sports Authority Default" (as defined in the Project Agreement), then and only then Houston McLane may, after giving prior written notice to the Sports Authority, enter into negotiations or agreements with third parties concerning the relocation of the Astros or the home territory of the Astros outside the boundaries of the City and the County, but Houston McLane shall remain, and any such third party agreements shall be, subject to all other provisions of this Non-Relocation Agreement including, without limitation, Section 2.2.1 above.

## ARTICLE 4

### DEFAULTS AND REMEDIES

**Section 4.1 Houston McLane Default.** The occurrence of any of the following shall be an "Event of Default" by Houston McLane or a "Houston McLane Default":

(a) Failure of Houston McLane to keep, observe, or perform any of the terms, covenants, or agreements contained in Article 2 or Article 3 of this Non-Relocation Agreement notwithstanding the existence of any "Houston McLane Default" under the

Project Agreement, a "Tenant Default" under the Stadium Lease, or a "Licensee Default" under the License Agreement;

(b) Any representation or warranty confirmed or made in this Non-Relocation Agreement by Houston McLane shall be found to have been incorrect in any material respect when made or deemed to have been made; or

(c) The (i) filing by Houston McLane of a voluntary petition in bankruptcy; or (ii) adjudication of Houston McLane as a bankrupt; or (iii) the filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of Houston McLane under the United States Bankruptcy Code or any other similar state or federal law dealing with creditor's rights generally unless within sixty (60) days after such filing Houston McLane causes such proceeding or appointment to be stayed or discharged; or (iv) appointment of receiver, trustee or other similar official for Houston McLane or its property.

**Section 4.2 Sports Authority Remedies.** Upon the occurrence of any Houston McLane Default, the Sports Authority may, in its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided for in this Non-Relocation Agreement:

(a) The Sports Authority may seek and obtain injunctive or declaratory relief pursuant to Section 4.3 hereof including, without limitation, specific performance;

(b) The Sports Authority may recover liquidated damages pursuant to Section 4.4 hereof but only in the event of a violation of Section 3.1 hereof;

(c) The Sports Authority may terminate this Non-Relocation Agreement pursuant to Section 4.6 hereof; and

(d) The Sports Authority may exercise any and all other remedies available to the Sports Authority at law or in equity.

**Section 4.3 Declaratory or Injunctive Relief.** Any Party or express beneficiary of this Non-Relocation Agreement shall be entitled to seek injunctive relief prohibiting or mandating action by any other Party in accordance with this Non-Relocation Agreement, or declaratory relief with respect to any matter under this Non-Relocation Agreement. In addition, Houston McLane (a)

recognizes that the Stadium is being constructed, certain taxes are being imposed by the Sports Authority, and certain debt is being incurred in order to permit the Baseball Home Games in the Astrodome Complex during the Astrodome Non-Relocation Period and in the Stadium during the Lease Term, all as provided in Article 2, and (b) acknowledges and agrees that monetary damages could not be calculated to compensate the Sports Authority for any breach by Houston McLane of the covenants and agreements contained in this Non-Relocation Agreement. Accordingly, Houston McLane agrees that (i) the covenants and agreements contained in this Non-Relocation Agreement shall constitute an agreement described by Subsection (a)(2) of Section 335.004 of Chapter 335 of the Texas Local Government Code, (ii) the Sports Authority may restrain or enjoin any breach or threatened breach of any covenant, duty, or obligation of Houston McLane contained in this Non-Relocation Agreement without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (iii) the administration of an order for injunctive relief would not be impractical and, in the event of any breach of any covenant, duty or obligation contained in this Non-Relocation Agreement, the balance of hardships would weigh in favor of entry of injunctive relief, (iv) the Sports Authority may enforce any such covenant, duty or obligation of Houston McLane contained in this Non-Relocation Agreement through specific performance if so awarded pursuant to the Arbitration Procedures, and (v) the Sports Authority may seek injunctive or other form of ancillary relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Non-Relocation Agreement on an interim basis pending the outcome of arbitration of the applicable Dispute or Controversy pursuant to the Arbitration Procedures. The Parties hereby agree and irrevocably stipulate that the rights of the Sports Authority to injunctive relief pursuant to this Non-Relocation Agreement shall not constitute a "claim" pursuant to section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Houston McLane.

**Section 4.4 Liquidated Damages.** The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to the Sports Authority, the City, and the County from the presence of the Astros and the playing of its Baseball Home Games in the City and County are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of the Astros in the City and County. Accordingly, the magnitude of the damages that would result from a violation of Section 3.1 hereof would be very significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the Sports Authority, the City, and the County. Therefore, the Parties agree that in the event of a violation of Section 3.1 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the Sports Authority will be entitled to recover from

Houston McLane the following sums, which are stipulated to be reasonable estimated damages in the event of a violation of Section 3.1 hereof, as reasonable liquidated damages and not as a penalty:

<u>Date of Breach</u>	<u>Liquidated Damages</u>
7/1/98-6/30/2003	\$250,000,000
7/1/03-6/30/2008	\$200,000,000
7/1/08-6/30/2013	\$150,000,000
7/1/13-6/30/2018	\$125,000,000
7/1/18-6/30/2023	\$100,000,000
After 7/1/2023	\$ 75,000,000

The Parties hereby acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort in quantifying the amount of damages due to a violation of Section 3.1 hereof despite the difficulty in making such determination. Accordingly, in the event the Sports Authority collects the above referenced liquidated damages then the Sports Authority hereby waives any right to collect additional monetary damages (other than as provided pursuant to Section 6.18 hereof) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary, or punitive damages.

**Section 4.5 Houston McLane's Termination Rights.** The occurrence of any of the following shall be an "Event of Default" by the Sports Authority or a "Sports Authority Default":

- (a) Termination of the Project Agreement by Houston McLane due solely to a "Sports Authority Default" as defined therein;
- (b) Termination of the License Agreement by Houston McLane due solely to a "Licensor Default" as defined therein; or
- (c) Termination of the Stadium Lease by Houston McLane due solely to a "Landlord Default" as defined therein.

**Section 4.6 Termination.**

**4.6.1 Upon an Event of Default.** Upon the occurrence of Event of Default, the non-defaulting Party shall have the right but not the obligation to give to the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Non-Relocation Agreement after the expiration of a period of thirty (30) days from the date such Final Notice is

given unless the default is cured, and upon expiration of such thirty (30) day period, if the default is not cured, this Non-Relocation Agreement shall terminate without liability to the non-defaulting Party. If however, within such thirty (30) day period the defaulting Party cures such Event of Default, then this Non-Relocation Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding. In the event of a termination of this Non-Relocation Agreement by either Party under this Section 4.6.1 or 4.6.2, then (except for the provisions herein that expressly are to survive termination hereof), all obligations of the Parties under this Non-Relocation Agreement automatically shall terminate also. Termination of this Non-Relocation Agreement shall not alter any existing claim of either Party for breaches of this Non-Relocation Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

**4.6.2 Other Circumstances.** Additionally, Houston McLane shall have the right to terminate this Non-Relocation Agreement in the event of:

(a) Termination of the Stadium Lease by Houston McLane pursuant to Section 12.3 or Section 13.1.1 of the Stadium Lease; or

(b) Termination of the Project Agreement by Houston McLane pursuant to Section 8.3 of the Project Agreement in the event "Substantial Completion" does not occur on or before the deadline specified therein.

**Section 4.7 Cumulative Remedies.** Each right or remedy of Houston McLane and the Sports Authority provided for in this Non-Relocation Agreement shall be cumulative of and shall be in addition to every other right or remedy of Houston McLane or the Sports Authority provided for in this Non-Relocation Agreement, and the exercise or the beginning of the exercise by Houston McLane or the Sports Authority of any one or more of the rights or remedies provided for in this Non-Relocation Agreement shall not preclude the simultaneous or later exercise by Houston McLane or the Sports Authority of any or all other rights or remedies provided for in this Non-Relocation Agreement or any other Project Document or hereafter existing at law or in equity, by statute or otherwise.

**Section 4.8 Waiver of Consumer Rights.** THE SPORTS AUTHORITY AND HOUSTON MCLANE HAVE ASSESSED THEIR RESPECTIVE RIGHTS, LIABILITIES AND OBLIGATIONS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER

PROTECTION ACT, SECTION 17.41 *ET SEQ.*, BUSINESS & COMMERCE CODE (THE "DTPA"). THE PARTIES AGREE THAT THE DTPA DOES NOT APPLY TO EITHER THE SPORTS AUTHORITY OR HOUSTON MCLANE SINCE NEITHER QUALIFY AS A "CONSUMER" UNDER SECTION 17.45(4) OF THE DTPA. HOWEVER, IN THE EVENT THE DTPA IS DEEMED TO BE APPLICABLE BY A COURT OF COMPETENT JURISDICTION OR ARBITRAL TRIBUNAL, THE SPORTS AUTHORITY AND HOUSTON MCLANE HEREBY WAIVE THEIR RIGHTS UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH ATTORNEYS OF THEIR OWN SELECTION, THE SPORTS AUTHORITY AND HOUSTON MCLANE CONSENT TO THIS WAIVER. THE PARTIES AGREE THAT THIS SECTION 4.8 CONSTITUTES A CONSPICUOUS LEGEND.

## ARTICLE 5

### DISPUTE RESOLUTION

**Section 5.1 Settlement By Mutual Agreement.** In the event any dispute, controversy or claim between or among the Parties arises under this Non-Relocation Agreement or is connected with or related in any way to this Non-Relocation Agreement or any right, duty or obligation arising therefrom or the relationship of the Parties thereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Non-Relocation Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 5.1. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Section 5.1. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Sports Authority Representative and Houston McLane Representative shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Sports Authority Representative and Houston McLane Representative for such purpose or should no such meeting take place within such fifteen (15) day period, then either Party may by notice to the other Party submit the Dispute or Controversy to arbitration in accordance with the provisions of Section 5.2 and Appendix C. Upon the receipt of notice of referral to arbitration hereunder, the receiving Party shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Article 5 and Appendix C without regard to the justiciable character or executory nature of such Dispute or Controversy.

**Section 5.2 Arbitration.** Each Party hereby agrees that any Dispute or Controversy which is not resolved pursuant to the provisions of Section 5.1 may be submitted to binding arbitration hereunder and if submitted shall be resolved exclusively and finally through such binding arbitration. This Article 5 and Appendix C constitute a written agreement by the Parties to submit to arbitration any Dispute or Controversy arising after the Effective Date within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code.

**Section 5.3 Emergency Relief.** Notwithstanding any provisions of this Non-Relocation Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Harris County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the Parties expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

## ARTICLE 6

### ASSIGNMENT

**Section 6.1 Sale of Franchise.** Houston McLane shall have the right and power to sell, transfer, and assign (but not mortgage, encumber, or pledge) the Franchise without the consent of the Sports Authority. Houston McLane agrees, however, that an essential part of the consideration to the Sports Authority under this Non-Relocation Agreement is the obligation to cause the Astros to play in the Astrodome Complex, as provided in Section 2.1, the obligation to cause the Astros to play in the Stadium, as provided in Section 2.2, the prohibition of relocating the Astros, as provided in Section 3.1(a), and the requirement that the Person who from time to time holds the Franchise comply, in all other respects, with the applicable terms and provisions of this Non-Relocation Agreement. Accordingly, Houston McLane covenants and agrees that Houston McLane shall not transfer, sell, or assign the Franchise in any manner except upon compliance with each of the following conditions precedent:

(a) The transfer of the Franchise is approved in accordance with the applicable Major League Baseball Rules and Regulations;

(b) Such assignee of the Franchise executes and delivers to the Sports Authority an instrument whereby such assignee assumes full responsibility for the performance of all of the obligations of Houston McLane under this Non-Relocation

Agreement arising on and after the date of such assignment. The form of the instrument of assumption shall be subject to the prior written approval of the Sports Authority, which approval shall not be unreasonably withheld, delayed or conditioned, and shall be limited to the question of whether such instrument, when duly executed, will accomplish its intended purpose under this Non-Relocation Agreement; and

(c) In all instances the assignee of the Franchise must also be the successor tenant under the Stadium Lease and the successor licensee under the License Agreement.

The provisions of this Non-Relocation Agreement shall be deemed to be a restrictive covenant that attaches to and is binding upon the Franchise.

**Section 6.2 Astros Financings.** Notwithstanding anything to the contrary set forth in this Non-Relocation Agreement, it is expressly understood and agreed that Houston McLane shall have the right (other than as to the Franchise) to grant a mortgage, pledge, assign or other security interest or Lien in or on any of Houston McLane's trade fixtures, equipment, personal property, receivables, accounts, contract rights, general intangibles, tangible and intangible assets, any of Houston McLane's revenue streams derived from any source whatsoever to obtain financing or secure a loan or loans from one or more lenders.

**Section 6.3 Assignments of Houston McLane's Interest.** Except as otherwise permitted by this Article 6, Houston McLane may not (and Houston McLane agrees that it will not) voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation), sell, assign, transfer, pledge, mortgage or encumber this Non-Relocation Agreement (each, a "Transfer"), without first obtaining the consent of the Sports Authority pursuant to this Article 6, which consent shall not be unreasonably withheld, delayed or conditioned. For purposes of this Non-Relocation Agreement, the term "Transfer" shall also include any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Houston McLane or any transfer of an equity or beneficial interest in Houston McLane that results in either (x) a change of the Controlling Person, if any, of Houston McLane, or (y) the creation of a Controlling Person of Houston McLane, where none existed before. The Sports Authority and Houston McLane agree that notwithstanding the foregoing, the term "Transfer" shall not include, and the Sports Authority's consent shall not be required for any grant of a mortgage, pledge, assignment and/or other security interest or Lien in or on any of Houston McLane's trade fixtures, equipment, personal property or general intangibles, but excluding any Lien on the Franchise.

**Section 6.4 Permitted Transfers.** Although the following shall constitute a Transfer under this Non-Relocation Agreement (each, a "Permitted Transfer"), the Sports Authority's consent to such Permitted Transfer shall be deemed to have been obtained provided no uncured Houston McLane Default or Potential Houston McLane Default for which the Sports Authority has delivered notice to Houston McLane shall then exist:

(a) Any Transfer that contemporaneously or simultaneously includes (i) an assignment or transfer of the Franchise in accordance with the terms of this Non-Relocation Agreement to the same Person who is Houston McLane's successor by assignment under this Non-Relocation Agreement (the "Houston McLane Transferee"), (ii) an assignment or transfer of Houston McLane's rights under the Stadium Lease, Project Agreement and the License Agreement to the Houston McLane Transferee, and (iii) the full and unqualified assumption (by operation of law or otherwise) by the Houston McLane Transferee of responsibility for performance of all of the obligations of Houston McLane under the Principal Project Documents arising on and after the date of the Transfer;

(b) Any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Houston McLane that results in there being no Controlling Person of Houston McLane;

(c) Any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Houston McLane that results in either a change of the Controlling Person of Houston McLane or the creation of a Controlling Person of Houston McLane, where none existed before, if during the seven (7) years preceding the date of such Transfer, none of the following events have occurred with respect to the Person who is the new Controlling Person of Houston McLane unless the same shall have been subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect under applicable Governmental Rule:

(1) The initiation of any federal or state bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, physical agent or similar officer for the business or assets of any such Person;  
or

(2) The conviction of such Person in a federal or state felony criminal proceeding (including a conviction entered on a plea of nolo contendere) or such Person is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offences) that is pending on the date of such Transfer.

**Section 6.5 Release of Houston McLane.** No Transfer shall relieve Houston McLane from any of its obligations under this Non-Relocation Agreement except that Houston McLane shall be relieved from any obligations arising under this Non-Relocation Agreement after the date of a Permitted Transfer if, and only if, all of the following occur:

(a) Houston McLane has notified the Sports Authority of the name and address of the Houston McLane Transferee and the Controlling Person, if any, of such Houston McLane Transferee by the time of the Permitted Transfer;

(b) The Houston McLane Transferee must also be the successor by assignment of Houston McLane's rights under the Principal Project Documents;

(c) Such Transfer is a Permitted Transfer described in Subparagraph (a) of Section 6.4;

(d) The Houston McLane Transferee shall have assumed responsibility for performance of all of the obligations of Houston McLane under the Principal Project Documents arising on and after the date of the Transfer pursuant to an instrument of assignment and assumption substantially in the form of the Assignment and Assumption Agreement attached as Exhibit D to the Stadium Lease or if not substantially in such form, then in a form approved by the Sports Authority, which approval shall not be unreasonably withheld, delayed or conditioned and shall be limited to the question of whether such instrument, when duly executed, will accomplish its intended purposes under this Non-Relocation Agreement (the "Assignment and Assumption Agreement");

(e) During the seven (7) years preceding the date of the Permitted Transfer, none of the following events have occurred with respect to the Houston McLane Transferee or any Person who is a Controlling Person of the Houston McLane Transferee as of the date of the Transfer, unless the same shall have been subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect under applicable Governmental Rule:

(i) The initiation of any federal or state bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, physical agent or similar officer for the business or assets of any such Person; or

(ii) The conviction of such Person in a federal or state felony criminal proceeding (including a conviction entered on a plea of nolo contendere) or such Person is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offenses) that is pending on the date of such Permitted Transfer;

(all of the requirements specified in this Subparagraph (e) being herein referred to as the "Controlling Person Requirements");

(f) As of the date of the Permitted Transfer (after giving effect to the Transfer), (i) the Net Worth of the Houston McLane Transferee shall be no less than an amount equal to Fifty Million and No/100 Dollars (\$50,000,000.00) multiplied by the then CPI Fraction and (ii) the Debt to Equity Ratio of the Houston McLane Transferee shall not be greater than 3.25 to 2 (the "Financial Tests"); and

(g) The Houston McLane Transferee's satisfaction of the Financial Tests as of the date of the Transfer (after giving effect to the Transfer) shall be evidenced by, and be deemed satisfied by, (i) representations to that effect by the Houston McLane Transferee in the Assignment and Assumption Agreement and (ii) a letter addressed and delivered to the Sports Authority and Houston McLane (at Houston McLane's or the Houston McLane Transferee's expense) from a firm of independent certified public accountants of recognized national standing and stating that, based upon an audit of the Houston McLane Transferee up to and including the date of the Transfer (after giving actual or proforma effect to the Transfer) made in accordance with generally accepted auditing standards, in such firm's opinion the Financial Tests are/were met as of the date of the Transfer, such letter to be subject to such qualifications and assumptions as are usual and customary at such time for opinions of auditing firms.

In the event within the thirty (30) days after the date the transferring Party or the Houston McLane Transferee delivers to the Sports Authority the accountant's letter described in Subparagraph (g) above, the Sports Authority delivers to the transferring Party and the Houston McLane Transferee a request that the Sports Authority be provided an opportunity to inspect and review the work papers used by such accounting firm in the preparation of such letter, the transferring Party and the Houston McLane Transferee shall cause such accounting firm to make such work papers available for inspection and review (but not retention or copying) by an individual designated by the Sports

Authority who is reasonably acceptable to the transferring Party. Such inspection and review by the individual designated by the Sports Authority shall take place during the thirty (30) day period following the latter of the delivery of such request by the Sports Authority or the approval by the transferring Party of the individual designated by the Sports Authority and shall be at a reasonable location designated by such accounting firm. The Sports Authority and the individual so designated by the Sports Authority for the inspection and review of such work papers shall agree to maintain the confidentiality of such work papers, except as required by applicable Governmental Rule, and shall enter into such confidentiality agreement with respect to the same as the transferring Party, the Houston McLane Transferee or such accounting firm shall reasonably request consistent with the foregoing.

**Section 6.6 Transfers by the Sports Authority.** Except with respect to Facility Mortgages permitted pursuant to the terms of the Stadium Lease, the Sports Authority shall not (and the Sports Authority agrees that it will not) voluntarily, involuntarily, by operation of law or otherwise, sell, assign or otherwise transfer this Non-Relocation Agreement (a "Sports Authority Transfer") to any Person who is not a permitted Landlord Transferee under the Stadium Lease and without first obtaining the consent of Houston McLane pursuant to this Article 6, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that Houston McLane's consent shall not be required in the event prior to, or simultaneously with, any such Sports Authority Transfer, (i) the Sports Authority notifies Houston McLane of the name and address of the Person who will succeed to the rights and obligations of the Sports Authority under this License Agreement (a "Sports Authority Transferee"), (ii) the Sports Authority Transferee is a permitted Landlord Transferee who has satisfied all the conditions and requirements under the Stadium Lease for the same and has succeeded to all of the rights, titles and interest of the Landlord under the Stadium Lease, and (iii) the Sports Authority Transferee shall have assumed all of the obligations of the Sports Authority under this Non-Relocation Agreement arising on and after such Sports Authority Transfer and agreed to be bound by all of the terms, conditions and provisions of this Non-Relocation Agreement, all pursuant to an instrument in form and substance approved by Houston McLane, which approval shall not be unreasonably withheld, delayed or conditioned and shall be limited to the question of whether such instrument, when duly executed, will be legally adequate to accomplish its intended purpose under this Non-Relocation Agreement.

**Section 6.7 Release of the Sports Authority.** No Sports Authority Transfer shall relieve the Sports Authority from any of its obligations under this Non-Relocation Agreement except that the Sports Authority shall be relieved from any obligations arising under this Non-Relocation Agreement on and after the date of a the Sports Authority Transfer if, and only if (i) Houston McLane consents to such the Sports Authority Transfer or (ii) Houston McLane's consent to such Sports Authority Transfer is not required pursuant to Section 6.6.

**Section 6.8 Estoppel Certificate.** In connection with any Permitted Transfer, Sports Authority Transfer or financing by Houston McLane, the Sports Authority and Houston McLane agree to execute and deliver to each other an estoppel certificate intended to be relied upon by Houston McLane, the Sports Authority and any transferee or assignee pursuant to a Permitted Transfer or Sports Authority Transfer or any third party lender stating:

(a) Whether this Non-Relocation Agreement is unmodified and is in full force and effect (or, if there have been modifications, that this Non-Relocation Agreement is in full force and effect as modified and stating the modifications);

(b) To the knowledge of the Sports Authority or Houston McLane, as the case may be, whether there are any Houston McLane Defaults or Potential Houston McLane Defaults or any Sports Authority Defaults (and specifying each such default or potential default as to which the Sports Authority or Houston McLane, as the case may be, has knowledge); and

(c) The Sports Authority's and Houston McLane's, as the case may be, current address for purposes of giving notice.

## ARTICLE 7

### GENERAL PROVISIONS

#### **Section 7.1 Representations Regarding Individual Capacity.**

**7.1.1 Power and Authority.** Each individual executing and delivering this Non-Relocation Agreement on behalf of a Party hereto hereby represents to the other Party hereto that such individual has all requisite power and authority to execute and deliver the same and to bind such Party hereunder.

**7.1.2 Houston McLane's Representations.** As an inducement to the Sports Authority to enter into this Non-Relocation Agreement, Houston McLane hereby represents and warrants to the Sports Authority, as of the Effective Date, as follows:

(a) Houston McLane is a corporation duly formed, validly existing, and in good standing under the laws of the State of Texas, with all necessary corporate power and authority to carry on its present business, to enter into this Non-Relocation Agreement and to consummate the transactions herein contemplated.

(b) Neither the execution and delivery of this Non-Relocation Agreement by Houston McLane nor the performance by Houston McLane of its obligations hereunder will (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any Governmental Authority, or court to which Houston McLane is subject or any provision of the charter or bylaws of Houston McLane or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest, or other agreement to which Houston McLane is a party or by which Houston McLane or its assets are bound.

(c) All proceedings required to be taken by or on behalf of Houston McLane to authorize Houston McLane to execute and deliver this Non-Relocation Agreement and to perform the covenants, obligations and agreements of Houston McLane hereunder have been duly taken. No consent to the execution and delivery of this Non-Relocation Agreement by Houston McLane or the performance by Houston McLane of its covenants, obligations, and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been unconditionally given.

(d) This Non-Relocation Agreement constitutes the valid and legally binding obligation of Houston McLane, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(e) Houston McLane does not control, directly or indirectly, any corporation, partnership, or limited liability company.

(f) Mr. Drayton McLane is the sole record and beneficial owner of all of the issued and outstanding capital stock of Houston McLane and all such shares have been duly authorized, are validly issued, fully paid, and non-assessable. Additionally, such shares are owned by Mr. McLane free and clear of any Lien, claim, or encumbrance.

(g) To the best knowledge of Houston McLane, there is no action, suit, claim, proceeding or investigation pending or currently threatened against Houston McLane that questions the validity of this Non-Relocation Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of Houston McLane, financially or otherwise, or any change in the current equity ownership of Houston McLane, nor is Houston McLane aware that there is any basis for any of the foregoing.

(h) Houston McLane is the record and beneficial owner of the Franchise and owns the Franchise free and clear of any Lien, claim, or encumbrance. Houston McLane is a member in good standing of the National League and is in compliance with all applicable Major League Baseball Rules and Regulations which are relevant to the transactions contemplated herein.

(i) Houston McLane has delivered to the Sports Authority a true, complete, and accurate copy of such portion of the Major League Baseball Rules and Regulations which are relevant to the transactions contemplated herein, the Stadium Lease, and the License Agreement.

**7.1.3 Sports Authority's Representations.** As an inducement to Houston McLane to enter into this Non-Relocation Agreement, Sports Authority represents and warrants to Houston McLane, as of the Effective Date, as follows:

(a) Sports Authority is a sports and community venue district duly formed and validly existing under Chapter 335 of the Texas Local Government Code, with all necessary power and authority to enter into this Non-Relocation Agreement and to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by Sports Authority of its obligations hereunder will not violate or constitute an event of default under any material terms or material provisions of any agreement, document, instrument, judgment, order or decree to which Sports Authority is a party or by which Sports Authority or its assets are bound.

(b) Sports Authority has caused all governmental proceedings required to be taken by or on behalf of Sports Authority to authorize Sports Authority to make and deliver this Non-Relocation Agreement and to perform the covenants, obligations and agreements of Sports Authority hereunder. No consent to the execution or delivery of this Non-Relocation Agreement by Sports Authority or the performance by Sports Authority of its covenants, obligations and agreements hereunder is required from any board of directors,

shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been unconditionally given.

(c) This Non-Relocation Agreement constitutes the valid and legally binding obligation of the Sports Authority, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(d) To the best knowledge of the Sports Authority, there is no action, suit, claim, proceeding or investigation pending or currently threatened against the Sports Authority that questions the validity of this Non-Relocation Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of the Sports Authority, financially or otherwise.

**Section 7.2 Waiver of Immunity.** Each of the Parties unconditionally and irrevocably:

(a) Agrees that the execution, delivery and performance by it of this Non-Relocation Agreement constitute private, proprietary and commercial acts rather than public or governmental acts;

(b) Agrees that should any Actions or Proceedings be brought by a Party against it or its assets in relation to this Non-Relocation Agreement or any transaction contemplated hereunder, no immunity (sovereign or otherwise) from such Actions or Proceedings (which shall be deemed to include, without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself or with respect to its assets;

(c) Waives any such right of immunity (sovereign or otherwise) which it or its assets now has or may acquire in the future; and

(d) Consents to the enforcement of any arbitral award or judgment against it in any such proceedings and to the giving of any relief or the issue of any process in connection with any such proceedings.

**Section 7.3 Consent of Major League Baseball.** Any amendment to this Non-Relocation Agreement shall be subject to and made in accordance with Major League Baseball Rules and Regulations, to the extent applicable, all as the same now exist or may be amended or adopted in the future. Any such amendment to this Non-Relocation Agreement that requires the consent of the Office of the Commissioner of Baseball, the Commissioner, the National League, the National League President, the Ownership Committee or the Member Team is prohibited and shall be null and void unless all applicable consents are obtained in advance, and any such consent may be withheld at the sole and absolute discretion of the Office of the Commissioner of Baseball, the Commissioner, the National League, the National League President, the Ownership Committee or the Member Team, as applicable.

**Section 7.4 Incorporation of Appendices and Schedules.** All Appendices attached to this Non-Relocation Agreement are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

**Section 7.5 Third Party Beneficiary.** The provisions of this Non-Relocation Agreement shall inure to the benefit of, and be enforceable by, and only by, the Sports Authority, the City, and the County. No other Person shall be a third party beneficiary of this Non-Relocation Agreement or have the right to enforce this Non-Relocation Agreement.

**Section 7.6 Notices.** Subject to Section 7.13 below, all notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Non-Relocation Agreement shall be given in writing to such Party at the address set forth in Appendix B to this Non-Relocation Agreement or at such other address as such Party shall designate by written notice to the other Party to this Non-Relocation Agreement and may be (i) sent by registered or certified U.S. mail with return receipt requested; (ii) delivered personally (including delivery by private courier services) or (iii) sent by telecopy (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of telecopy (with confirmation of such notice), when sent, so long as it is received during normal Business Hours of the receiving Party on a Business Day otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional Parties ("Additional Addressees") to whom notice thereunder must be given, by delivering to the other Party five (5) days notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party hereto shall have the right to designate more than two (2) such Additional Addressees.

**Section 7.7 Severability.** If any term or provision of this Non-Relocation Agreement, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Non-Relocation Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Non-Relocation Agreement shall be valid and enforceable to the fullest extent permitted by applicable law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 7.8 Entire Agreement; Amendment and Waiver.** This Non-Relocation Agreement constitutes the entire agreement of the Parties thereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter, including, but not limited to, the Existing LOIs & MOU. There are no unwritten or oral agreements among the Parties. Neither this Non-Relocation Agreement nor any of the terms hereof including, without limitation, this Section 7.8, may be terminated, amended, supplemented, waived or modified orally or by conduct of the Parties, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. No failure or delay of any Party, in any one or more instances, (i) in exercising any power, right or remedy under this Non-Relocation Agreement, or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Non-Relocation Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence upon strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or instance thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

**Section 7.9 Table of Contents Headings.** The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Non-Relocation Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

**Section 7.10 Parties in Interest; Limitation on Rights of Others.** The terms of this Non-Relocation Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Non-Relocation Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors

and assigns and the City and County as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of such instrument.

**Section 7.11 Counterparts.** This Non-Relocation Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Non-Relocation Agreement. All signatures need not be on the same counterpart.

**Section 7.12 Governing Law.** THIS NON-RELOCATION AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).

**Section 7.13 Court Proceedings.** Any suit, action or proceeding against any Party to such instrument arising out of or relating to this Non-Relocation Agreement, any transaction contemplated thereby or any judgment entered by any court in respect of any thereof may be brought in any federal or state court located in the City of Houston, Texas, and each Party hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by applicable law, each Party irrevocably consents to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for above. Each Party irrevocably agrees not to assert any objection that it may ever have to the laying of venue of any such suit, action or proceeding in any federal or state court located in the City of Houston, Texas, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Non-Relocation Agreement or any transaction contemplated hereby except in a federal or state court located in the City of Houston, Texas.

**Section 7.14 Payment on Business Days.** If any payment under this Non-Relocation Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

**Section 7.15 Time.** Times set forth in this Non-Relocation Agreement for the performance of obligations shall be strictly construed, time being of the essence. In the event the date specified or computed under this Non-Relocation Agreement for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party hereto or for the occurrence of any event provided for herein, shall be a Saturday, Sunday or legal holiday, then the date for such

performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

**Section 7.16 Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Non-Relocation Agreement or in the resolution of any ambiguity of any provision thereof.

**Section 7.17 No Assignment.** Neither this Non-Relocation Agreement nor any of its rights, responsibilities, or obligations can be transferred or assigned, whether by operation of law or otherwise, without the prior written consent of the non-assigning Party except as expressly provided in this Non-Relocation Agreement.

**Section 7.18 Attorneys' Fees.** If a Party defaults in the performance of any covenants, obligations or agreements of such Party contained herein and the other Party places the enforcement of such instrument, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit or institutes an action or proceeding upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Non-Relocation Agreement into any judgment on such instrument.

**Section 7.19 Houston McLane Covenants.** Houston McLane hereby covenants to (i) provide the Sports Authority with copies of any amendments or modifications to the Major League Baseball Rules and Regulations enacted subsequent to the Effective Date which are relevant to the transactions contemplated herein, the Stadium Lease, or the License Agreement and (ii) to remain a member in good standing with the National League or Major League Baseball.

**Section 7.20 Other Venues.** As a matter of public policy, the Sports Authority will endeavor to use its reasonable, good faith efforts (without additional cost or expense) to include appropriate non-relocation provisions with any Person on whose behalf the Sports Authority funds a Venue Project subsequent to the Effective Date. Such efforts shall be dependent upon all facts and circumstances involved with each Venue Project. Noncompliance with the preceding sentences by the Sports Authority shall not be deemed to be a default by the Sports Authority under this Non-Relocation Agreement, the Project Agreement, the License Agreement, or the Stadium Lease nor entitle Houston McLane to exercise any remedies for such noncompliance or assert such

noncompliance as a defense to any claim made by the Sports Authority or its permitted successors or assigns.

**Section 7.21 Pledge of ARR Fund.** Houston McLane hereby grants and conveys to the Sports Authority a security interest in and to the ARR Fund and the ARR Account to secure the payment and performance of any and all of Houston McLane's obligations under this Non-Relocation Agreement. The Sports Authority shall not be entitled to enforce such security interest or exercise any remedies in connection therewith or otherwise offset against the ARR Fund or the ARR Account unless and until an uncured Houston McLane Default shall exist. Houston McLane shall execute and deliver any security agreements, financing statements, continuation statements, collateral assignments, or other documents as may be reasonably requested by the Sports Authority for the purpose of perfecting, continuing, and confirming the foregoing security interest in and to the ARR Fund and the ARR Account.

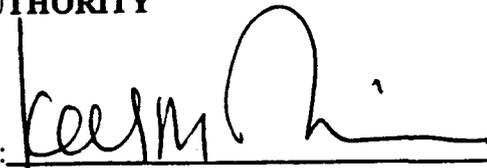
**Section 7.22 Independent Consideration.** The Parties hereby acknowledge and agree that the rights and obligations contained in this Non-Relocation Agreement are independent obligations for which separate consideration was received. Houston McLane acknowledges that notwithstanding the cross default provisions of Section 4.5 hereof, the obligations of Houston McLane pursuant to this Non-Relocation Agreement are independent of its rights and obligations pursuant to the Project Agreement, the Stadium Lease, and the License Agreement.

**Section 7.23 Interest on Overdue Obligations and Post-Judgment Interest.** If any sum due hereunder is not paid by the due date thereof, the Party hereto owing such obligation to the other Party shall pay to the other Party interest thereon at the Default Rate concurrently with the payment of the amount, such interest to begin to accrue as of the date such amount was due. Any payment of such interest at the Default Rate pursuant to this Non-Relocation Agreement shall not excuse or cure any default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest. The amount of any judgment or arbitration award obtained by one Party against the other Party in any Action or Proceeding arising out of a default by such other Party under this Non-Relocation Agreement shall bear interest thereafter until paid at the Default Rate.

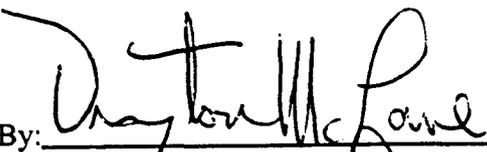
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IN WITNESS WHEREOF, this Non-Relocation Agreement has been executed by the Parties as of the day and year first written above.

**HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**

By:   
Jack M. Rains, Chairman 

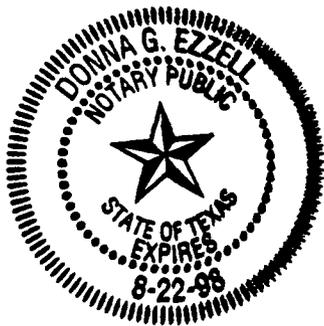
**HOUSTON McLANE COMPANY, INC.,  
d/b/a Houston Astros Baseball Club**

By:   
Drayton McLane, President

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF HARRIS    §

BEFORE ME, the undersigned authority, on this day personally appeared Jack M. Rains, known to me to be the person whose name is subscribed to the foregoing instrument as Chairman of the Harris County-Houston Sports Authority, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 17th day of June, 1998.

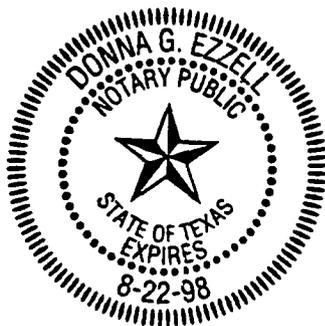


  
Notary Public in and for The State of Texas

THE STATE OF TEXAS       §  
  §  
COUNTY OF HARRIS       §

BEFORE ME, the undersigned authority, on this day personally appeared Drayton McLane, known to me to be the person whose name is subscribed to the foregoing instrument as President of Houston McLane Company, Inc., and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 17th day of June, 1998.



Donna G. Ezzell  
Notary Public in and for The State of Texas

**APPENDIX A  
TO  
NON-RELOCATION AGREEMENT**

**GLOSSARY OF DEFINED TERMS AND RULES AS TO USAGE**

**Glossary of Defined Terms**

"Actions or Proceedings" means any lawsuit, proceeding, arbitration or other alternative dispute resolution process, Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"Additional Addressees" shall have the meaning given to it in Section 7.6 of the Non-Relocation Agreement.

"American League" shall mean The American League of Professional Baseball Clubs, a not-for-profit association having its chief executive office currently located at 350 Park Avenue, New York, New York, and any successor thereto.

"Arbitration Procedures" means the arbitration procedures set forth in Appendix C of the Non-Relocation Agreement.

"ARR Account" shall have the meaning given to it as defined in the Stadium Lease.

"ARR Fund" shall have the meaning given to it as defined in the Stadium Lease.

"Assignment and Assumption Agreement" shall have the meaning given to it in Section 6.5 of the Non-Relocation Agreement.

"Astrodome Complex" means the domed stadium located in Houston, Texas known as the Astrodome, and all other buildings, structures, improvements and other real property leased, let and demised pursuant to the Astrodome Lease.

"Astrodome Lease" means the Restated Lease and Amendments dated January 20, 1983 by and between Houston McLane and the County, as amended including, without limitation, as amended by that certain Leasehold Purchase Agreement dated October 28, 1997 by and between Houston McLane and the County.

"Astrodome Non-Relocation Period" shall have the meaning given to it in Section 2.1.1 of the Non-Relocation Agreement.

"Astrodome Untenantable Condition" shall mean the existence of any one of the following conditions:

- (a) The Astrodome Complex is not in compliance with Major League Baseball Rules and Regulations as a result solely of actions of the Sports Authority, the City or the County;
- (b) The Astros are unable to play any Baseball Home Game in the Astrodome Complex on the date originally scheduled as a result of an event of Force Majeure, a Casualty, or a Condemnation Action; or
- (c) The use or occupancy of the Astrodome Complex for Major League Baseball Games is prohibited under applicable Government Rules enacted by the Sports Authority, the City, or the County provided such prohibition is not the result of Houston McLane's failure to perform its obligations under the Astrodome Lease.

"Astros" shall mean the Major League Baseball team owned by Houston McLane pursuant to the rights granted to it as a member of the National League franchisee under the Franchise, currently named the Houston Astros Baseball Club.

"Baseball Home Games" shall mean any Major League Baseball Game in which the Astros have the right to designate the location at which the game will be played or in which the Astros act as the host for its opponent (e.g., the Astros take the baseball field in the first half of each inning and bat in the last half of each inning of such baseball game), but excluding any such pre-season games played outside the boundaries of the Sports Authority.

"Business Day" shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Houston, Texas.

**"Business Hours"** means 9:00 a.m. through 5:00 p.m. Houston, Texas time on Business Days.

**"Casualty"** means the occurrence of any of the following for the period of time, if any, that the performance of a Party's material obligations under the Non-Relocation Agreement are actually, materially, and reasonable delayed or prevented thereby: any fire, civil disturbance, vandalism, or criminal act provided such event is not the result of the intentional act, gross negligence, or willful misconduct of the Party or its agents or contractors claiming the right to delay or excuse performance on account of such occurrence.

**"Chilled Water Service Agreement"** shall mean the Chilled Water Service Agreement executed June 9, 1998, by and between the Sports Authority and Northwind Houston, L.P.

**"City"** shall mean the City of Houston, Texas, a Texas municipal corporation and Home Rule City.

**"Commencement Date"** means the "Commencement Date", as such term is defined in the Stadium Lease.

**"Condemnation Action"** means the occurrence of any of the following for the period of time, if any, that the performance of a Party's material obligations under the Non-Relocation Agreement are actually, materially, and reasonably delayed or prevented thereby: any temporary or permanent taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain or by appropriation and an acquisition by any Governmental Authority (or other Person with power of eminent domain) through private purchase in lieu thereof.

**"Controlling Person"** shall have the meaning given to it in Appendix A of the Stadium Lease.

**"County"** means Harris County, Texas, a body corporate and politic under the laws of the State of Texas.

**"CPI Fraction"** shall have the meaning given to it in the Stadium Lease.

**"Debt to Equity Ratio"** means, for any Person on any date of its determination, the ratio of (a) such Person's consolidated total liabilities on such date determined in accordance with GAAP after giving effect to the Transfer to such Person to (b) such Person's Net Worth on such date. Notwithstanding the foregoing, for purposes of determining the Debt to Equity Ratio of any Person, such Person's consolidated total liabilities shall be reduced by an amount equal to the outstanding

principal balance of all unsecured loans to such Person by the individual, if any, owning all of the record and beneficial equity interests of such Person.

"Default Rate" shall have the meaning given to it in Appendix A of the Stadium Lease.

"Dispute or Controversy" shall have the meaning given to it in Section 5.1 of the Non-Relocation Agreement.

"Effective Date" shall have the meaning given to it in the initial paragraph of the Non-Relocation Agreement.

"Event of Default" shall have the meaning given to it in Section 4.1 or Section 4.5 of the Non-Relocation Agreement.

"Existing LOIs & MOU" shall mean the letter agreement between the City, the County, Houston McLane and Sports Facilities, L.P. dated September 14, 1996, as modified and restated in part by that certain letter agreement dated January 7, 1997, and as further amended by certain of the affected parties pursuant to a letter agreement dated July 15, 1997, and as assumed by the Sports Authority, and the Memorandum of Agreement dated November 5, 1997, between Houston McLane and the Sports Authority.

"Facility Mortgage" means a "Facility Mortgage" as such term is defined in Appendix A of the Stadium Lease.

"Final Notice" shall have the meaning given to it in Section 4.6 of the Non-Relocation Agreement.

"Financial Tests" shall have the meaning given to it in Section 6.5 of the Non-Relocation Agreement.

"Force Majeure" means the occurrence of any of the following for the period of time, if any, that the performance of a Party's material obligations under the Non-Relocation Agreement are actually, materially, and reasonably delayed or prevented thereby: acts of God, lock-outs, acts of the public enemy, confiscation or seizure by any government or public authority (excluding the Sports Authority), insurrections, wars or war-like action (whether actual and pending or expected), arrests or other restraints of government (civil or military) blockades, embargoes, strikes, labor unrest or disputes, unavailability of labor or materials, epidemics, civil disturbance or disobedience, riot,

sabotage, terrorism, threats of sabotage or terrorism, or any other sudden or unusual occurrence (other than a Casualty or Condemnation Action) that is not within the reasonable control of the Party claiming the right to delay or excuse performance on account of such occurrence and which, in any event, is not a result of the intentional act, gross negligence, or willful misconduct of the Party or its agents or contractors claiming the right to delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure" shall not include (i) any player or umpire strikes or lock-outs or other labor disputes related to Major League Baseball or (ii) economic hardship.

"Franchise" shall mean the franchise for the Astros issued by the National League.

"GAAP" shall have the meaning assigned to it in the Stadium Lease.

"Governmental Authority" means any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under Governmental Rule or by agreement of the Parties with an interest in such dispute. For purposes of the use of this term, the Sports Authority shall not be considered a Governmental Authority.

"Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

"Houston McLane" means Houston McLane Company, Inc., d/b/a Houston Astros Baseball Club, a Texas corporation, which entity currently owns the Franchise.

"Houston McLane Default" shall have the meaning given to it in Section 4.1 of the Non-Relocation Agreement.

"Houston McLane Representative" shall mean the "Tenant Representative," as such term is defined in Appendix A of the Stadium Lease.

"Houston McLane Transferee" shall have the meaning given to it in Section 6.4 of the Non-Relocation Agreement.

"Lease Term" shall have the meaning given to it under Section 3.1 of the Stadium Lease.

"License Agreement" means that certain License Agreement dated as of the Effective Date (as defined therein) by and between Sports Authority and Houston McLane, as the same may be amended, supplemented, modified, renewed or extended from time to time.

"Lien" means, with respect to any Property, any mortgage, lien, pledge, charge or security interest.

"Major League Team" shall have the meaning given to it in Appendix A of the Stadium Lease.

"Major League Baseball" shall mean collectively, the National League, the American League and each Member Team.

"Major League Baseball Game" shall mean any pre-season, regular season, post-season, World Series or other professional baseball game played under Major League Baseball Rules and Regulations in which any Member Team is a participant.

"Major League Baseball Rules and Regulations" shall mean the constitution, bylaws, rules, regulations and practices of Major League Baseball and the National League in effect at the time in question including, without limitation, that certain Major League Agreement, Major League Rules, Professional Baseball Agreement, National League Constitution, American League Constitution, National Association Agreement, Official Playing Rules, and Relocation Guidelines.

"Major League Baseball Season" shall commence on the day of the Astros' first Baseball Home Game (including pre-season play, if any; other than those pre-season home games played outside the boundaries of the Sports Authority) in any calendar year and shall end on the day of the Astros' last Baseball Home Game (including post-season play, if any) in such calendar year.

"Member Team" shall mean any existing or future member team of the National League or the American League or any other future league which is not characterized as a minor league.

"National League" shall mean The National League of Professional Baseball Clubs, a not-for-profit association having its chief executive office currently located at 350 Park Avenue, New York, New York (of which the Astros is now a member) and any successor thereto.

"Net Worth" means, for any Person on any date of its determination, (a) such Person's consolidated total assets on such date minus (b) such Person's consolidated total liabilities on such date, all determined in accordance with GAAP after giving effect to the Transfer to such Person.

Notwithstanding the foregoing, for purposes for determining the Net Worth of any Person (i) the consolidated total assets of such Person shall be increased by the accumulated amortization of the original cost of any Major League Team owned by such Person and (ii) in the event all of the record and beneficial equity interests of such Person are owned by an individual, such Person's consolidated total liabilities shall be reduced by the amount of the outstanding principal balance of all unsecured loans by such individual to such Person.

**"Non-Relocation Agreement"** means the Non-Relocation Agreement dated as of the Effective Date by and between the Sports Authority and Houston McLane, as the same may be amended, supplemented, modified, renewed or extended, from time to time.

**"Parties"** shall have the meaning given to it in the initial paragraph of the Non-Relocation Agreement.

**"Permitted Transfer"** shall have the meaning given to it in Section 6.4 of the Non-Relocation Agreement.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

**"Potential Houston McLane Default"** means either (i) any then existing uncured breach by Houston McLane which, but for the passage of time (with or without notice thereof from Licensor, if applicable), would constitute a Houston McLane Default under the Non-Relocation Agreement, a Tenant Default under the Stadium Lease, a Houston McLane Default under the Project Agreement or a Licensee Default under the License Agreement or (ii) the then existence of any of the following: the making by Houston McLane of any general assignment for the benefit of creditors until such assignment is rescinded; the filing by Houston McLane or against Houston McLane of a petition or proceeding to have Houston McLane adjudged a bankrupt or of a petition or proceeding for reorganization or arrangement under any law relating to bankruptcy until the same is dismissed.

**"Principal Project Documents"** mean the Project Agreement, the Stadium Lease, the License Agreement, and the Non-Relocation Agreement, as the same may be amended, supplemented, modified, renewed or extended from time to time with the consent of the Parties.

**"Project Agreement"** means that certain Project Agreement dated as of the Effective Date (as defined therein) by and between Sports Authority and Houston McLane, as the same may be amended, supplemented, modified, renewed or extended from time to time.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Regular Arbitration" shall have the meaning given to it in Section 1.1 of Appendix C to the Non-Relocation Agreement.

"Scheduled Baseball Home Game" means each of the Baseball Home Games for such Major League Baseball Season that is scheduled to occur pursuant to the official schedule for such Major League Baseball Season promulgated by Major League Baseball.

"Sports Authority" means Harris County - Houston Sports Authority, a sports and community venue district created under Chapter 335 of the Texas Local Government Code.

"Sports Authority Default" shall have the meaning given to it in Section 4.5 of the Non-Relocation Agreement.

"Sports Authority Representative" means the "Landlord Representative", as such term is defined in Section 1.2 of the Stadium Lease.

"Sports Authority Transfer" shall have the meaning given to in Section 6.6 of the Non-Relocation Agreement.

"Sports Authority Transferee" shall have the meaning given to in Section 6.6 of the Non-Relocation Agreement.

"Stadium" means the 42,000-seat, convertible roof, natural grass baseball park currently known as "The Ballpark at Union Station" which is being constructed by the Sports Authority in downtown Houston, Texas in accordance with the Project Agreement.

"Stadium Lease" means that certain Stadium Lease Agreement dated as of the Effective Date (as dated therein) by and between the Sports Authority, as landlord, and Houston McLane, as tenant as the same may be amended, supplemented, modified, renewed or extended from time to time.

"Stadium Untenantable Condition" shall mean the existence of any one of the following conditions:

- (a) A condition permitting Houston McLane, as tenant, the right to abate rent under Section 13.3 of the Stadium Lease;

- (b) The Astros are unable to play any Baseball Home Game in the Stadium on the day originally scheduled as a result of an event of Force Majeure, a Casualty, or a Condemnation Action;
- (c) The use or occupancy of the Stadium for Major League Baseball Games is prohibited under applicable Governmental Rules enacted by the Sports Authority, the City, or the County provided such prohibition is not the result of Houston McLane's failure to perform its obligations under the Stadium Lease; or
- (d) There occurs a "Seller Default" under Section 4.03(a)(1), as defined in, and as provided under, the Chilled Water Service Agreement.

"Texas General Arbitration Act" shall have the meaning given to it in Section 1.1(b) of Appendix C to the Non-Relocation Agreement.

"Transfer" shall have the meaning given to it in Section 6.3 of the Non-Relocation Agreement.

"Venue Project" shall mean any "approved venue project," "sports and community venue project," or "venue project" under Chapters 334 or 335 of the Texas Local Government Code.

### **Rules as to Usage**

1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
2. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.
3. "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.
4. Any agreement, instrument or Governmental Rule defined or referred to above means such agreement or instrument or Governmental Rule as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Governmental Rules) by succession of comparable successor Governmental Rules and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.
5. References to a Person are also to its permitted successors and assigns.
6. Any term defined above by reference to any agreement, instrument or Governmental Rule has such meaning whether or not such agreement, instrument or Governmental Rule is in effect.
7. "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to schedules, exhibits or appendices in any agreement or instrument that is governed by this Appendix are to schedules, exhibits or appendices attached to such instrument or agreement.
8. Pronouns, whenever used in any agreement or instrument that is governed by this Appendix and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.
9. References to any gender include, unless the context otherwise requires, references to all genders.

10. The word "or" will have the inclusive meaning represented by the phrase "and/or."
11. "Shall" and "will" have equal force and effect.
12. Unless otherwise specified, all references to a specific time of day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Houston, Texas.
13. References to "\$" or to "dollars" shall mean the lawful currency of the United States of America.

**APPENDIX B**  
**TO**  
**NON-RELOCATION AGREEMENT**

**A. SPORTS AUTHORITY: HARRIS COUNTY-HOUSTON SPORTS AUTHORITY**

**Notices:** All notices to the Sports Authority shall be sent to:

Harris County-Houston Sports Authority  
1200 Post Oak Blvd., Suite 416  
Houston, Texas 77056  
Attn: Chairman  
Facsimile Number: (713) 355-2427

with copies of all notices to the Sports Authority being sent to:

City of Houston, Texas  
Office of City Attorney  
900 Bagby, 4th Floor  
Houston, Texas 77002  
Attn: City Attorney  
Facsimile Number: (713) 247-1017

and

Harris County, Texas  
Office of County Attorney  
1019 Congress, 15th Floor  
Houston, Texas 77002  
Attn: County Attorney  
Facsimile Number: (713) 755-8924

**B. Houston McLane: HOUSTON McLANE COMPANY, INC.**

**Notices**: All notices to Houston McLane shall be sent to:

Houston McLane Company, Inc.  
c/o McLane Group, L.P.  
4001 Industrial Blvd.  
Temple, Texas 76503  
Attn: Drayton McLane  
Facsimile Number: (254) 770-6101

with copies of all notices to Houston McLane being sent to:

Houston McLane Company, Inc.  
8400 Kirby, Gate 5  
Houston, Texas 77054  
Attn: Robert S. McClaren  
Facsimile Number: (713) 799-9794

and

Bracewell & Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana, Suite 2900  
Houston, Texas 77002-2781  
Attn: John L. Keffer  
Facsimile Number: (713) 221-1212

**APPENDIX C**  
**TO**  
**NON-RELOCATION AGREEMENT**  
  
**ARBITRATION PROCEDURES**

Section 1. Arbitration.

1.1. Regular Arbitration. Binding arbitration shall be conducted in accordance with the following procedures ("Regular Arbitration"):

(a) The Party seeking arbitration hereunder shall request such arbitration in writing, which writing shall be delivered to the opposing Party and include a clear statement of the matter(s) in dispute. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction (other than a proceeding for injunctive or ancillary relief) then such notice of election under this paragraph shall be delivered within ninety (90) days of the date the electing Party receives service of process in such legal proceeding. Except to the extent provided in this Appendix C, the arbitration shall be conducted in accordance with the commercial rules of the American Arbitration Association by a single arbitrator to be appointed upon the mutual agreement of the Parties within twenty (20) days of the date the written request for arbitration was delivered to the opposing Party. In order to facilitate any such appointment, the Party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Dispute or Controversy to the opposing Party. In the event the Parties are unable to agree on a single arbitrator within the twenty (20) day period, then the arbitrator shall be appointed by the then-serving administrative judge of the civil trial division of Harris County, Texas or any successor thereto within the next ten (10) day period. The Party seeking arbitration shall make the Parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Dispute or Controversy to said judge. Each Party may, but shall not be required to, submit to said judge a list of up to three (3) qualified individuals as candidates for appointment as the arbitrator whose schedules permit their service as arbitrator within the time periods set forth herein. The arbitrator appointed by the judge need not be from such lists.

(b) Within thirty (30) days of the date the arbitrator is appointed, the arbitrator shall notify the Parties in writing of the date of the arbitration hearing, which hearing date shall be not less than one-hundred twenty (120) days from the date of the arbitrator's appointment. The arbitration hearing shall be held in Houston, Texas. Except

as otherwise provided herein, the proceedings shall be conducted in accordance with the procedures of the Texas General Arbitration Act, TEX. CIV. PRAC. & REMEDIES CODE §§ 171.001 *et seq.* (the "Texas General Arbitration Act"). Depositions may be taken and other discovery may be made in accordance with the Texas Rules of Civil Procedure, provided that (i) depositions and other discovery shall be completed within ninety (90) days of the appointment of the arbitrator, (ii) there shall be no evidence by affidavit allowed, and (iii) each Party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the Party in the arbitration hearing at least twenty (20) days prior to the arbitration hearing. The arbitrator shall issue a final ruling within thirty (30) days after the arbitration hearing. Any decision of the arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and nonappealable by, the Parties and judgment thereon may be entered or enforcement thereof sought by either Party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with this Appendix C.

(c) Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of the Non-Relocation Agreement.

Section 2. Further Qualifications of Arbitrators; Conduct. All arbitrators shall be and remain at all times wholly impartial and, upon written request by either Party, shall provide the Parties with a statement that they can and shall decide any Dispute or Controversy, referred to them impartially. No arbitrator shall be employed by either Party, the City or the County, or have any material financial dependence upon a Party, the City or the County, nor shall any arbitrator have any material financial interest in the Dispute or Controversy.

Section 3. Applicable Law and Arbitration Act. The agreement to arbitrate set forth in this Appendix shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act. In deciding the substance of any such Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. The arbitrator shall have authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the

laws of the State of Texas, except that the arbitrator shall have no authority to award incidental or punitive damages under any circumstances (whether they be exemplary damages, treble damages or any other penalty or punitive type of damages) regardless of whether such damages may be available under the laws of the State of Texas. The Parties hereby waive their right, if any, to recover punitive damages in connection with any arbitrated Dispute or Controversy.

Section 4. Consolidation.

If the Parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the Parties hereby agree that all such proceedings may be consolidated into a single arbitral proceeding.

Section 5. Pendency of Dispute: Interim Measures. The existence of any Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under the Non-Relocation Agreement or any right, duty or obligation arising therefrom; provided, however, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a Party, the arbitrator may issue interim measures for preservation or protection of the status quo.

Section 6. Complete Defense. The Parties agree that compliance by a Party with the provisions of this Appendix shall be a complete defense to any suit, action or proceeding instituted in any federal or state court, or before any administrative tribunal by the other Party with respect to any Dispute or Controversy which is subject to arbitration as set forth herein, other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder.