

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT

This Amendment No. 1 to Development Agreement (this "*Amendment*") is entered into as of the Amendment Effective Date by and among The Metropolitan Government of Nashville and Davidson County (the "*Metropolitan Government*"), The Sports Authority of The Metropolitan Government of Nashville and Davidson County, a Tennessee public, nonprofit corporation created pursuant to the Tennessee Sports Authority Act of 1993 (the "*Sports Authority*"), Houston Oilers, Inc., a Texas corporation (the "*NFL Team Entity*"), and Cumberland Stadium, L.P., a Tennessee limited partnership ("*Cumberland*").

RECITALS

WHEREAS, the Parties have heretofore entered into that certain Development Agreement (the "*Development Agreement*"), dated effective as of March 7, 1996, by and among the Metropolitan Government, the Sports Authority, the NFL Team Entity and Cumberland; and

WHEREAS, the Parties desire to amend and reach agreement with respect to certain aspects of the Development Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties contained herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **Certain Definitions.** The following terms shall have the indicated meanings for the purposes of this Amendment:

"Amendment" – Introductory paragraph.

"Amendment Effective Date" – Section 3.1.

"Cumberland" – Introductory paragraph.

"Development Agreement" – Recitals.

"Extended Scheduled Completion Date" – Section 2.1(p).

"Metropolitan Government" – Introductory paragraph.

"NFL Team Entity" – Introductory paragraph.

"Special Extension Period" shall mean the number of days equal to the number of days in the period from May 21, 1996 to the date on which the Sports Authority and the Metropolitan Government are notified by Cumberland or the NFL that the NFL's approval of the relocation of the Team to Nashville, Tennessee is no longer subject to being withdrawn, voided or otherwise made of no force or effect by the NFL as a result of the enactment of legislation adopted by the 104th Congress of the United States of America, plus 10 additional days.

"Sports Authority" – Introductory paragraph.

1.2 Other Definitions. Capitalized terms that are used but not defined in this Amendment shall have the meanings set forth in the Development Agreement.

ARTICLE 2. AMENDMENTS AND AGREEMENTS

2.1 Certain Amendments. The Development Agreement is hereby amended in the following respects:

(a) The first sentence of Section 9.9(b) of the Development Agreement is hereby amended to read as follows:

The "*Execution Date*" shall be May 14, 1996.

(b) Sections 9.3(a)(ii), (iii), (iv) and (v) of the Development Agreement are hereby deleted and replaced with the following:

(ii) an amount equal to \$7.0 million on August 1, 1996; and

(iii) an amount equal to \$14.0 million on March 31, 1997.

(c) A new Section 9.3(c) of the Development Agreement is hereby added as follows:

(c)(i) Notwithstanding any other provision of this Agreement, the Lease, or any other document or agreement, and notwithstanding any course of performance, course of dealing, breach of contract, tort claim or any other matter whatsoever that may at any time exist between or involve the Parties, if this Agreement is terminated pursuant to Section 7.3(f) (upon the occurrence of a Team Party Termination Event described in Section 7.1(n)) or 7.3(h) (upon the occurrence of a Government Termination Event described in Section 7.2(j)), the NFL Team Entity shall within 30 days after such termination, without demand, repay to the Sports Authority in immediately available funds the amount, if any, paid under Section

9.3(a). This repayment shall be made in exactly the amount theretofore paid or advanced pursuant to Section 9.3(a) and not theretofore repaid to the Sports Authority pursuant to this Agreement, the Lease or otherwise, together with interest thereon beginning after the end of such 30 day period at the lesser of the highest lawful rate or the rate of 18% per annum, and together with any costs of collection as provided below in this Section 9.3(c) (collectively, the "*Obligations*"), without claim of setoff, counterclaim, recoupment, defense, deduction, deferment or reduction of any character whatsoever. The intent of the NFL Team Entity and the Sports Authority and the essence of this Section 9.3(c) is that the obligation of the NFL Team Entity to repay the Obligations is absolute, unconditional and independent of all other terms, conditions and provisions of this Agreement and the Lease and of all other matters whatsoever, and that the remedy of the NFL Team Entity for any actionable conduct on the part of the Sports Authority or the Metropolitan Government, whether arising under contract, tort or otherwise, shall be available to the NFL Team Entity as a separate action but shall not be permitted as a setoff, counterclaim, recoupment, defense, deduction, deferment or reduction with respect to payment of the Obligations. The NFL Team Entity hereby warrants to the Sports Authority that the performance of this Section 9.3(c) will not violate any credit agreement, lease or other material document to which it is a party or by which its properties may be bound. The NFL Team Entity hereby agrees to pay all costs of collection that the Sports Authority may incur in enforcing its rights under this Section 9.3(c), including, but not limited to, court costs and the reasonable fees and expenses of the Sports Authority's attorneys. The NFL Team Entity hereby (I) irrevocably consents to the jurisdiction of the United States District Court for the Middle District of Tennessee and of all Tennessee state courts sitting in Davidson County, Tennessee, for the purpose of any litigation arising from the Obligations and (II) irrevocably agrees that venue for any such litigation shall lie exclusively with courts sitting in Davidson County, Tennessee.

(ii) The NFL Team Entity agrees to indemnify and hold harmless the Sports Authority, each member of the Board of Directors of the Sports Authority and each officer and employee, agent, consultant and attorney of the Sports Authority (collectively, the "*Indemnified Parties*") from and against any and all Damages that any such Indemnified Party incurs or suffers as a result of, or with respect to, any breach by the NFL Team Entity of its agreement under Section 9.3(c)(i), including any Damages that any Indemnified Party incurs or suffers as a result of Claims relating to or arising out

of any such breach. The obligations and liabilities of the NFL Team Entity under this Section 9.3(c)(ii) with respect to Claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

(I) Within 15 days after receipt of notice of commencement or assertion of any Claim by a third party, any Indemnified Party claiming a right to indemnification under this Section 9.3(c)(ii) shall give the NFL Team Entity notice thereof, together with a copy of any then existing demand, process or other legal pleading; provided, however, that a failure to so notify the NFL Team Entity within such 15 day period shall not affect the Indemnified Party's rights hereunder except to the extent the NFL Team Entity is materially prejudiced by such failure.

(II) The NFL Team Entity shall defend, and shall have the right to settle (subject to the consent of the Indemnified Parties, which consent shall not be unreasonably withheld), Claims by third parties that are payable or that are to be indemnified by the NFL Team Entity under this Section 9.3(c)(ii). The Indemnified Parties shall reasonably cooperate with the NFL Team Entity in the defense of Claims that the NFL Team Entity defends, and the NFL Team Entity shall reimburse the Indemnified Parties for out-of-pocket expenses incurred in cooperating at the NFL Team Entity's request. The Indemnified Parties shall not settle such Claims defended by the NFL Team Entity without the NFL Team Entity's prior consent, which consent shall not be unreasonably withheld. The Indemnified Parties shall have the right to approve defense counsel selected by the NFL Team Entity, which approval shall not be unreasonably withheld, and the right to participate fully in the defense of such Claims defended by the NFL Team Entity at the Indemnified Parties' sole cost and expense. The Indemnified Parties shall have the right to defend and settle Claims without prejudice to any of their rights against the NFL Team Entity under this Agreement if the NFL Team Entity declines or is unable to undertake the defense of a Claim within a reasonable time after the NFL Team Entity's receipt of notice thereof.

(ii) Notwithstanding the provisions of Section 7.4 of this Agreement to the contrary, the NFL Team Entity's obligations under this Section 9.3(c) shall survive the expiration or termination of this Agreement.

(d) The word "and" is hereby deleted from the end of Sections 7.1(l) and 7.2(h) of the Development Agreement, the period at the end of Sections 7.1(m) and 7.2(i) of the Development Agreement is hereby deleted and replaced with a semicolon and the word "and", and the following is hereby added to serve as both a new Section 7.1(n) and a new Section 7.2(j) of the Development Agreement:

if the NFL's approval of the relocation of the Team to Nashville, Tennessee is withdrawn, voided or otherwise made of no force or effect by the NFL as a result of the enactment of legislation adopted by the 104th Congress of the United States of America.

(e) Each of Annex VI (Guaranty), Annex VII (Stadium Lease) and Annex IX (Team Contract) is hereby amended to be the form of such document as was executed and delivered between the Parties thereto on May 14, 1996.

(f) Section 9.10 of the Development Agreement is hereby deleted and replaced with the following:

9.10 NFL Franchise Relocation Fee.

(a) The Parties acknowledge that the NFL has conditioned its approval of the relocation of the Team to Nashville, Tennessee upon the payment of a franchise relocation fee of \$20,000,000. Such approval was also conditioned upon the furnishing by the Metropolitan Government, the Sports Authority and the Team Parties of general litigation releases in form satisfactory to the NFL, and each of the Parties agrees to execute and deliver such releases when requested by the NFL, provided that at such time the NFL's approval of such relocation of the Team to Nashville, Tennessee is no longer subject to being withdrawn, voided or otherwise made of no force or effect by the NFL as a result of the enactment of legislation adopted by the 104th Congress of the United States of America.

(b) If the NFL permits said \$20,000,000 fee to be paid by the Sports Authority rather than by the NFL Team Entity, the Sports Authority will make the payment of such \$20,000,000 to the NFL by the deadline established by the NFL for such payment, provided that such payment is not required to be paid earlier than October 1, 1998.

(c) If the NFL does not permit said \$20,000,000 fee to be paid by the Sports Authority, but rather requires that such payment be made by the NFL Team Entity, then the Sports Authority will pay \$20,000,000 to the NFL Team Entity at least three business days prior to the deadline established by the NFL for such payment, and

the NFL Team Entity will hold such amount in trust and will pay such \$20,000,000 to the NFL by such deadline.

(d) From and after May 21, 1996, and until the payment of the \$20,000,000 franchise relocation fee, the Sports Authority will pay to the NFL Team Entity the following: (i) from and after May 21, 1996 but prior to March 31, 1998, an amount equal to the amount earned by the Sports Authority as interest on such funds as the Sports Authority from time to time has on hand and that it determines are not then required to pay any obligations of the Sports Authority (but not in excess of \$20,000,000); and (ii) from and after March 31, 1998 until the payment of the \$20,000,00 franchise relocation fee, an amount equal to the amount earned by the Sports Authority as interest on \$20,000,000, provided that, if the franchise relocation fee is payable in installments during such time, then such principal amount shall be reduced by the amount so paid as installments on such franchise relocation fee. The Sports Authority shall pay the NFL Team Entity on the first day of each calendar quarter the amount that has accrued as above provided as of such date (except that the last such payment shall be made on the date on which the final franchise relocation fee is paid to the NFL) and shall deliver to the NFL Team Entity a certificate setting forth the rate of interest earned on such funds during such period.

(g) The Development Agreement is hereby amended by adding the Special Extension Period to the time periods represented by each of the following dates found in the Development Agreement and thereby extending the following dates by the number of days in the Special Extension Period: (i) June 15, 1996 in Sections 2.2(a)(i) and (ii), (ii) January 15, 2000, February 15, 2000, June 1, 2000 and September 1, 2000 in Section 4.1(c), (iii) June 1, 2000 and September 1, 2000 in Section 7.1(d), (iv) March 15, 2000 in Section 7.1(e), (v) October 1, 2000 in Section 7.1(f), (vi) March 1, 2000 in Section 7.3(c), (vii) April 1, 2000 in Section 7.3(d) and (viii) October 15, 2000 in Section 7.3(e).

(h) Sections 3.3(f) and 3.3(g) of the Development Agreement are hereby amended by changing April 15, 1996 to August 15, 1996, and in connection therewith, the Metropolitan Government agrees to cause the draft of the Final Schematic Drawings to be prepared reasonably in advance of August 15, 1996 and then promptly furnished to Cumberland.

(i) Clause (c) in the definition of "Substantial Completion" in Annex I to the Development Agreement is hereby amended by changing April 1, 1996 to June 15, 1996.

(j) Section 9.13 of the Development Agreement is hereby amended by changing June 1, 1996 to June 15, 1996.

(k) In paragraph 2 of Annex III to the Development Agreement, the phrase "the 2000 NFL season but prior to October 15, 2000" is hereby deleted and "the 2000 and 2001 NFL seasons" is hereby inserted in lieu thereof.

(l) In Section 9.12 of the Development Agreement, (i) June 1, 1998 is hereby changed to be the earlier of (I) June 1, 1998 plus the Special Extension Period and (II) the date that Net PSL Funds (as defined in the Lease) equal \$71.5 million, and (ii) June 5, 1998 is hereby changed to be the earlier of (I) four days after the date provided for in clause (i)(I) above or (II) the date provided for in clause (i)(II) above.

(m) In paragraph 4 of Annex III to the Development Agreement, the phrase "the 1999 and 2000 NFL seasons, but prior to October 15, 2000" is hereby deleted and "the 1999, 2000 and 2001 NFL seasons" is hereby inserted in lieu thereof.

(n) In Section 7.3(f) of the Development Agreement, "7.1(k) or 7.1(l)" is hereby deleted and "7.1(k), 7.1(l) or 7.1(n)" is hereby inserted in lieu thereof.

(o) In Section 7.3(h) of the Development Agreement, "7.2(g) or 7.2(h)" is hereby deleted and "7.2(g), 7.2(h) or 7.2(j)" is hereby inserted in lieu thereof.

(p) The defined term "Scheduled Completion Date" in Annex I to the Development Agreement is hereby amended to be August 1, 1998, plus the Special Extension Period (the "*Extended Scheduled Completion Date*"). Therefore, notwithstanding anything contained herein to the contrary, no liquidated damages shall be payable under Annex III to the Development Agreement with respect to Possible Stadium Games during the 1998 NFL season that are scheduled prior to the Extended Scheduled Completion Date, and for purposes of paragraph 3 of said Annex III, the first Possible Stadium Games during the 1998 NFL season for which liquidated damages shall be payable shall be the first Possible Stadium Game occurring after the Extended Scheduled Completion Date (thus having liquidated damages of \$280,000). This Section 2.1(p) is not intended to affect any liquidated damages that might be payable under said Annex III with respect to Possible Stadium Games during the 1999 or later NFL seasons.

(q) Annex I to the Development Agreement is hereby amended so as to give effect to the provisions of this Amendment relating to definitions.

(r) In Section 9.3(a) of the Development Agreement, the references to the NFL Team Entity are hereby changed to be references to Tennessee Football, L.P.

(s) In Section 9.3(b) of the Development Agreement, the phrase "to it" is hereby deleted and "to Tennessee Football, L.P." is hereby inserted in lieu thereof.

(t) In Section 12.1 of the Development Agreement, the address of Cumberland is hereby amended to be as follows:

Cumberland Stadium, L.P.
414 Union Street, 10th Floor
Nashville, TN 37289
Attention: Michael D. McClure
Telecopy No.: (615) 880-1035

With a copy to:

Steve Underwood
Houston Oilers, Inc.
4400 Post Oak Parkway, Suite 2800
P. O. Box 1516
Houston, TX 77251-1516
Telecopy No.: (713) 881-3471

and the address of the NFL Team Entity is hereby amended to be as follows:

Houston Oilers, Inc.
4400 Post Oak Parkway, Suite 2800
P. O. Box 1516
Houston, TX 77251-1516
Attention: Michael D. McClure
Telecopy No.: (713) 881-3471

With a copy to:

Steve Underwood
Houston Oilers, Inc.
4400 Post Oak Parkway, Suite 2800
P. O. Box 1516
Houston, TX 77251-1516
Telecopy No.: (713) 881-3471

2.2 Certain Agreements. The Parties hereby agree as follows with respect to the Development Agreement:

(a) The Phase I Environmental Report referred to in Section 9.11(c) shall be furnished as soon as commercially practicable following the Amendment Effective Date.

(b) The draft of the Master Program Schedule referred to in the first sentence of Section 3.1(c) shall be delivered when commercially practicable under the circumstances.

(c) The matters referred to in Sections 7.1(j), (k), (l) and (m) and 7.2(e), (f), (g), (h) and (i) have been satisfied and may not be the basis for a Team Party Termination Event or Government Termination Event.

**ARTICLE 3.
AMENDMENT EFFECTIVE DATE**

3.1 Delivery of Amendment. The Metropolitan Government shall execute and deliver fully executed copies of this Amendment to the Sports Authority and each of the Team Parties not later than the second business day after the Metropolitan County Council has given its final approval to this Amendment by the adoption of an appropriate resolution. The date on which the Metropolitan Government executes and delivers this Amendment and files a copy of the same with the Metropolitan Clerk of the Metropolitan Government shall be the effective date of this Amendment (the "*Amendment Effective Date*"), and notwithstanding anything to the contrary in this Amendment, (a) this Amendment shall not be binding on the Parties until the Amendment Effective Date and (b) the Amendment Effective Date shall not be deemed to have occurred unless the legal opinions required by Section 3.2 are then delivered. The Metropolitan Government hereby acknowledges its prior receipt of copies of this Amendment that have been fully executed by all Parties other than the Metropolitan Government. The Metropolitan Government shall fill in the Amendment Effective Date in the space opposite its name on the signature page hereof. If the Amendment Effective Date does not occur on or before June 5, 1996, this Amendment shall never become effective and the offers of Cumberland, the NFL Team Entity and the Sports Authority to enter into this Amendment with the Metropolitan Government shall be withdrawn automatically with no further act or notice by any of such Parties.

3.2 Legal Opinions. On the Amendment Effective Date, the Metropolitan Government, the Sports Authority and the Team Parties, respectively, will cause their respective legal counsel to deliver to the other Parties legal opinions addressing the issues set forth in Schedule 5.5(a)(ii) to the Stadium Lease (as the Stadium Lease has been amended as provided in Section 2.1(e) of this Amendment), which opinions shall be reasonably acceptable to each recipient thereof. Such opinions will be dated as of the Amendment Effective Date.

**ARTICLE 4.
STATUS OF DEVELOPMENT AGREEMENT**

4.1 Full Force and Effect. Except as otherwise specifically set forth in this Amendment, the Development Agreement remains in full force and effect, without modification, amendment or change.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date, but have actually executed this Amendment on respective dates set forth opposite their names below.

Date: May 14, 1996.

ATTEST: *Kitty Moon*
Kitty Moon
Vice Chair

THE SPORTS AUTHORITY OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

By: *Richard Lodge*
Richard Lodge
Chair

Date: May 14, 1996.

CUMBERLAND STADIUM, L.P.

By: Cumberland Stadium Management, Inc.,
General Partner

By: *K. S. Adams, Jr.*
K. S. Adams, Jr.
President

Date: May 14, 1996.

HOUSTON OILERS, INC.

By: *K. S. Adams, Jr.*
K. S. Adams, Jr.
President

Date: May 22, 1996
(this being the Amendment Effective
Date)

APPROVED AS TO
AVAILABILITY OF FUNDS:

Philip N. Bredeesen
Director of Finance

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

By: *Philip N. Bredeesen*
Philip N. Bredeesen
Mayor

APPROVED AS TO
FORM AND LEGALITY:

[Signature]
Metropolitan Attorney

ATTEST: *Marilyn S. Swing*
Marilyn Swing *By: Brenda P. Kirk*
Metropolitan Clerk *Asst. Metropolitan Clerk*