

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into on the ____ day of January, 2021, by the **COUNTY OF NEW HANOVER**, a public body, corporate and politic, having its principal office at 230 Government Center Drive, Wilmington, North Carolina (the "County") and **CAPE FEAR FD STONEWATER, LLC**, a North Carolina limited liability company corporation, having its principal place of business at 1051 Military Cutoff, Suite 200 Wilmington, North Carolina, its successors and assigns (the "Developer"), regarding the redevelopment of certain land located at 230 Government Center Drive, Wilmington, North Carolina (the "Project").

W I T N E S S E T H:

WHEREAS, the County owns the land located at 230 Government Center Drive, Wilmington, North Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, in 2019, the County identified an interest to redevelop the Property and the Government Center located thereon to improve the County's facilities, incorporate a new Emergency Operations and 911 Center(as more particularly defined below, the "Government Center Improvements"), and to improve the County's tax base with the private development including residential, commercial, and/or office uses;

WHEREAS, in the fall of 2019, the County issued a Request for Qualifications to solicit potential partners for the development of the Property, and carefully evaluated the private developer candidates who responded to the same;

WHEREAS, on January 21, 2020, the County selected the Developer and its team as its preferred development partner for redevelopment of the Property;

WHEREAS, the Property includes a future parcel or tract of land that the parties intend to develop as a new Government Center and Emergency Operations and 911 Center for the County, identified on Exhibit B attached hereto as "Parcel 1" (referred to herein as "Parcel 1"); and

WHEREAS, the Property also includes a future parcel or tract of land that the parties intend to be conveyed to Developer for future development, identified on Exhibit B attached hereto as "Parcel 2" (referred to herein as "Parcel 2"); and

WHEREAS, the Project will promote economic and cultural development of the area, and will enhance the public welfare and the public use and enjoyment of the area; and

WHEREAS, it is the desire of the County and Developer that construction of the Project be carried out in a coordinated and efficient manner; and

WHEREAS, the consideration to be paid by the County to Developer for assistance with facilitating the entitlement approval, design, and construction of the Government Center Improvements have been found to be reasonable; and

WHEREAS, the consideration to be paid by Developer to the County for the portion of the Property to be conveyed to the Developer has been found to be reasonable.

WHEREAS, on June 15, 2020, the County Commissioners considered a Development Agreement regarding the specific terms for cooperation between the Developer and the County to develop the Property, and, after public hearing regarding the same, voted unanimously to approve the Development Agreement, the same being executed by the Developer and the County on or about July 22, 2020; and

WHEREAS, the parties desire to amend and restate the terms of the Development Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, this Agreement and undertakings hereinafter set forth, the County and Developer hereby agree as follows:

1. Developer Services and Project Management Agreement. Pursuant to an agreement between the Developer and the County for the management of development of the Property (the "Project Management Agreement"), the Developer shall serve as the representative of the County in connection with the entitlement approval for the Property, and the design and construction of the Government Center Improvements. The Manager and staff of the County and Developer shall execute a Project Management Agreement inclusive of the terms herein, promptly following approval and execution of this Agreement.

Pursuant to that Project Management Agreement:

a. Project Budget

i. The anticipated project budget to complete the Government Center Improvements (as defined below, and to include the scope of work described on Exhibit C attached) is \$45,942,827.00, as described in more detail on Exhibit D attached hereto (the "Project Budget"), which Project Budget includes, without limitation, the anticipated construction costs. After full permitting of the Government Center Improvements, including without limitation issuance of a Building Permit, and execution of guaranteed maximum price construction contract with the general contractor (the "GMP Construction Contract"), the Developer will provide a summary of the updated development cost, including, without limitation, the GMP Construction Contract price, which updated summary shall be the "Project Budget".

ii. Promptly after the Date of Completion of Construction, the Developer will provide a summary and accounting of the total actual cost of construction of the Exhibit C work under the GMP Construction Contract (the "Actual Construction Cost") to the County. In the event that the Actual Construction Cost is less than GMP Construction Contract price, then the County shall be entitled to the amount equal to eighty percent (80%) of the difference between the Actual Construction Cost and the GMP Construction Contract price (the "Construction Cost Savings"), with the general contractor and the Developer each receiving a payment equal to ten percent (10%) of savings pursuant to the GMP Construction Contract.

b. Development Fee. In consideration of the Developer's services provided pursuant to the Project Management Agreement, the County shall pay to the Developer a fee of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00).

c. Payment of Costs and Expenses. The County shall be responsible for all of the costs and expenses of development of the Project. To the extent that any such costs or expenses are incurred and paid by the Developer under the Project Budget, the County shall promptly, and, in every event, no more than thirty (30) days following notice of said costs and expenses paid by the Developer, reimburse the Developer for the same.

2. Subdivision of the Property. Developer shall prepare a recombination subdivision plan (the "Subdivision Plat") to divide the Property into Parcel 1 and Parcel 2 in a

manner materially similar to the concept plan attached hereto at Exhibit B, and Developer and County shall cooperate to obtain approval for and record said Subdivision Plat to facilitate the establishment of Parcel 1 and Parcel 2 as independent parcels of land.

3. Construction of the Government Center Improvements. Pursuant to the Project Management Agreement, Developer shall oversee the construction of a new Government Center Complex, including a 911/Emergency Operations Center, consistent with the presentation, plans and specifications attached hereto at Exhibit C (collectively, the "Government Center Improvements"). Said Government Center Improvements shall include adequate, nonexclusive, parking to support the same operations planned thereon, either on or adjacent to the Property. Developer shall coordinate and oversee completion of design details and obtaining all permits and entitlements necessary to complete the same, and the County shall use all reasonable efforts to cooperate to obtain said permits and entitlements.

The provisions of the Project Management Agreement regarding the construction of the Government Center Improvements shall include consideration of the following, applicable to the Developer, general contractor, architect or other providers as appropriate:

- A. Insurance provisions regarding liability, worker's compensation, and builder's risk materially consistent with the following:
 - a. Worker's compensation insurance to cover all persons employed in connection with the construction;
 - b. Builders Risk insurance sufficient to cover the replacement cost of the Government Center Improvements;
 - c. Business automobile liability insurance with a limit of not less than Five Million Dollars (\$5,000,000.00);
 - d. General Liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000.00); and
 - e. Professional Liability Insurance with a limit of not less than Ten Million Dollars (\$10,000,000.00).
- B. Bonding Requirements consistent with the following:
 - a. Performance Bond. Prior to Commencement of Construction, the

general contractor shall furnish, or cause to be furnished, a performance and maintenance bond, executed by a company duly authorized to do business in North Carolina, in an amount equal to at least One Hundred Percent (100%) of the construction costs of the Government Center Improvements to guarantee the faithful performance of the work, subject to adjustment throughout completion of the several phases of the Government Center Improvements.

- b. Payment Bond. Prior to Commencement of Construction, the general contractor shall furnish, or cause to be furnished, a payment bond, executed by a company duly authorized to do business in North Carolina, in an amount equal to at least One Hundred Percent (100%) of the construction costs of the Government Center Improvements, subject to adjustment throughout the completion of the several phases of the Government Center Improvements.

In connection with construction of the Government Center Improvements, Developer shall direct the general contractor to: (i) use its reasonable and good faith efforts to comply with G.S. 143-128.2, G.S.143-128.4, and to recruit and select small business entities, and (ii) to fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors.

4. Initial Reimbursable Expenses. As of the execution of this Agreement, the Developer has paid significant costs and expenses of the Project. The County shall, upon closing on its financing for the Project, reimburse the Developer for all then incurred expenses of the Project under the Project Budget.

5. Purchase and Sale of Parcel 2. The County agrees to sell and convey fee simple title to Parcel 2, free of any unacceptable encumbrances, to the Developer for a price equal to \$8.84 per square foot of land included in Parcel 2, based on the final subdivision plat of the same, after satisfaction of all applicable contingencies, including without limitation: (i) all necessary and desirable permitting and entitlement for Developer's intended use of Parcel 2, and (ii) resolution of any and all interfering title encumbrances necessary to allow Developer's

intended use of Parcel 2. Closing on said purchase and sale shall be contingent upon substantial completion of the Government Center Improvements. The Manager and staff of the County and the Developer shall execute a Purchase and Sale Agreement for the sale of Parcel 2 to the Developer, inclusive of the terms herein, after approval of this Agreement by the Board of Commissioners as described in Section 8.a below.

6. Development of Parcel 2. The Developer will commence construction of a mixed-use development, to include at least 5% of the residential units in said development for workforce housing, with an anticipated value of approximately forty six million dollars (\$46,000,000) on a portion of Parcel 2 within twenty four (24) months of acquisition of title to the same. The Developer will present final plans along with the cost estimate for said improvements to the County and receive input from the County Commissioners on the mixed-use improvements prior to beginning construction. The Developer will commence construction of an office or other commercial use development with an anticipated value of approximately twenty four million dollars (\$24,000,000) on another portion of Parcel 2 to be subdivided from Parcel 2 (the "Office Tract") within eighty four (84) months of acquisition of title to Parcel 2. The Developer will present final plans along with the cost estimate for said improvements on the Office Tract to the County and receive input from the County Commissioners on the office or other commercial use development prior to beginning construction of the same. In the event that the Developer fails to timely commence construction of said developments, subject to force majeure, then: (i) with regard to the initial mixed use development, the County will have the option to repurchase Parcel 2 for ninety percent (90%) of the Developer's purchase price for the same, and, (ii) with regard to the intended development of the Office Tract portion of Parcel 2, the County will have the option to repurchase said Office Tract for a price equal to 90% of the Developer's purchase price for the same, calculated on a price per square foot basis as described above. The right to repurchase will be set forth in the deed of conveyance from County to Developer or similar instrument of record, to run with the land until the conditions that would trigger the same are satisfied. The Developer shall identify the County as a third party beneficiary of any construction completion assurances provided by the Developer to the Developer's lenders and investors with regard to the construction of the mixed-use development

and other office or commercial use improvements described above, as said completion assurances may be adapted from time to time.

7. **Temporary Construction Easement.** The County shall grant and convey to the Developer and its assigns a temporary construction easement over the Property from the date of execution of the Project Management Agreement the completion of the Government Center Improvements.

8. **Contingent upon Approval.** The parties obligations hereunder are expressly conditioned on the following:

a. **Approval by the County Commissioners.** The parties acknowledge and agree that this Agreement has been approved by an affirmative vote of the County Commissioners on January 19, 2021, after publication and notice of the Agreement pursuant to N.C.G.S. § 143-128.1C.

b. **Approval by the Local Government Commission of the State of North Carolina (the "LGC").** This Agreement is contingent upon approval of the County's financing to develop the Government Center Improvements by the LGC. The County shall use best efforts to promptly obtain the approval by the LGC of financing of the obligations described herein, including the construction of the Government Center Improvements.

c. **Project Management Agreement.** This Agreement is contingent upon execution of a Project Management Agreement by the County and the Developer, consistent with the terms and conditions described herein.

d. **Satisfaction of County's Lender's Requirements Regarding Title to Parcel 1.** The County and the Developer will reasonably cooperate to address any requirements regarding title to Parcel 1 imposed by the County's lender, and this Agreement shall be contingent upon the same, provided that the County shall be solely responsible for the costs of such efforts.

e. **Easements and Covenants.** Resolution of any and all existing easements and covenants that interfere with the plan of development of the Government Center Improvements, provided that the County shall be solely responsible for the costs of such efforts.

9. County Authority. The County Manager and staff are expressly authorized to enter and execute any and all necessary, desirable, and ancillary agreements and instruments utilized to facilitate the transactions contemplated hereby, including without limitation the Project Management Agreement, instruments of conveyance, easement agreements and the like.

10. Notices. All notices and other communications required or permitted under the provisions of this Agreement ("Notice") shall, unless otherwise specified, be in writing, sent by hand delivery or by certified first class mail, postage prepaid, with return receipt required, to the following addresses:

As to the County:

County of New Hanover
230 Government Center Drive
Wilmington, NC 28403
Attn: County Manager

With a copy to:

County Attorney
230 Government Center Drive
Wilmington, NC 28403
Attn: Kemp Burpeau

As to Developer:

Cape Fear FD Stonewater, LLC
Attn: Brian Eckel
1051 Military Cutoff
Suite 200
Wilmington, NC, 28405

With a copy to:

Ward and Smith. P.A.
Attn: Sam Franck
127 Racine Drive
Suite 101
Wilmington, NC 28403

or to such other address in the United States as the party to whom the notice is sent shall have designated in writing in accordance with the provisions of this Section 9. Any such Notice shall

be deemed received (a) in the case with a deposit with an overnight courier, on the business day immediately following such deposit, and (b) in the case of deposit in United States mail, on the date appearing on the return receipt therefor. Any party to this Agreement may change its address by giving the other party written Notice of it new address as herein provided.

11. Additional Terms.

a. The County represents and warrants to the Developer, and the Developer represents and warrants to the County that: (i) it knowingly and voluntarily agrees to all the terms set forth in this Agreement, (iii) it knowingly and voluntarily agrees to be legally bound by this Agreement, (iv) the execution of this Agreement has been duly and validly authorized by all necessary and appropriate authority, subject to the contingencies described herein.

b. This Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the parties as to the transaction described herein, and no amendment, modification, or addendum to this Agreement shall be effective unless in writing dated subsequent to the date hereof and executed by the duly authorized officers of the respective parties hereto. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this paragraph and shall be deemed an essential term of this Agreement. This Agreement will be deemed drafted by all parties hereto and shall not be construed against any party as the drafter of this Agreement. This Agreement shall inure to the benefit of the parties hereto and their respective successors, heirs, and assigns.

c. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

d. The validity, construction, interpretation, and administration of this Agreement shall be governed by the substantive laws of the state of North Carolina, and any

action brought in relation to or to enforce or construe the same shall be brought in the Superior Courts of North Carolina, and each party waives any rights or defenses relating to jurisdiction.

e. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all which taken together shall constitute one and the same instrument.

[Signatures to Follow]

IN WITNESS WHEREOF, the parties have set their hands and seals to this Agreement this ____ day of January, 2021.

COUNTY OF NEW HANOVER

By: _____

Name: Chris Coudriet

Title: Manager

CAPE FEAR FD STONEWATER

By: _____

Name: _____

Title: Manager

Exhibits Attached

- A. Legal Description of the Property as it Currently Exists
- B. Planned Subdivision of Parcels 1 and 2
- C. Project Plans for Government Center Improvements
- D. Anticipated Project Budget for construction of Government Center Improvements

EXHIBIT A

Legal Description of Property as it Currently Exists

Includes New Hanover County Tax Parcels: R04916-003-002-000, R04916-003-007-000, and R05013-008-043-002

All of those tracts or parcels of land lying and being in New Hanover County, North Carolina and being more particularly described as follows:

Parcel A- R04916-003-002-000

BEGINNING at a point, said point being located on the northerly right-of-way of Market Place Drive and being the southwesterly corner of the property owned by New Hanover County, and being recorded in Book 3698, Page 527, New Hanover County Register of Deeds, running thence along the northerly right-of-way of Market Place Drive, along curve to the left having a chord distance of 200.01 feet, a radius of 340 feet South 65° 8'24" West to a point; running thence North 5° 32'50" West 70.85 feet to a point; running thence North 89°2'21" West 130.87 feet to a point; running thence North 66° 07'47" West 272.48 feet to a point; running thence North 5° 32'50" West 334.67 feet to a point; running thence North 84° 31'51" East 358.79 feet to a point; running thence North 5° 28'09" West 83.75 feet to a point; running thence North 84°31'51" East 200.23 feet to a point; running thence South 5°32'50" East 25.26 feet to a point; running thence South 84°31'10" West 12.07 feet to a point; running thence South 5°28'50" East 133.19 feet to a point; running thence South 84°32'09" West 102.63 feet to a point; running thence North 5°34'17" East 0.40 feet to a point; running thence South 39°26'33" East 6.10 feet to a point; running thence South 84°26'33" West 2 feet to a point; running thence South 5°33'27" West 22.06 feet to a point; running thence North 82°12'45" East 2.05 feet to a point; running thence South 50°25'51" East 6.05 feet to a point; running thence North 84°37'34" East 102.58 feet to a point; running thence South 5°11'49" East 110.81 feet to

a point; running thence North 84°32'12" East 9.94 feet to a point; running thence South 5°32'41" East 271.77 feet to a point and place of BEGINNING.

BEING part of Lot 5, Wilmington Market Place as recorded in Map Book 28, Page 29, and being a 6.24 acre tract of land as shown on the survey entitled, "Recombination of Existing Parcels for New Market, LLC" prepared by Sherwin D. Cribb, Registered Land Surveyor, dated March 24, 2005.

Parcel B- R04916-003-007-000

BEGINNING at a point being located on the northerly right-of-way of Market Place Drive and being the southwesterly corner of the property owned by New Hanover County, as recorded in Deed Book 3392, Page 655; running thence South 84E 51' 50" West 167 78 feet to a point, running thence along a curve to the left having a chord distance of 15 54 feet South 83E 33' 18"

West to a point, running thence North 05E 32' 40" West 271.77 feet to a point, running thence South 84E 32' 12" West 9 94 feet to a point, running thence North 05E 27' 48" West 9 89 feet to a point, running thence North 05E 27' 48" West 24 40 feet to a point, running thence North 84E 32' 11" East 0 51 feet to a point, running thence North 05E 27' 48" West 76 51 feet to a point, running thence South 84E 37' 34" West 102 58 feet to a point; running thence South 05E 34' 13" East 0 35 feet to a point; running thence North 50E 25' 51" West 6.05 feet to a point, running thence South 82E 12' 45" West 2 05 feet to a point, running thence North 05E 33' 27" West 22 06 feet to a point, running thence North 84E 26' 33" East 2 00 feet to a point; running thence North 39E 26' 33" East 6 10 feet to a point, running thence South 05E 34' 17" East 0 40 feet to a point, running thence North 84E 32' 09" East 102 63 feet to a point, running thence North 05E 28' 50" West 133.19 feet to a point, running thence North 84E 31' 10" East 12 07 feet to a point, running thence North 05E 32' 50" East 91.78 feet to a point, running thence North 18E 16' 20" East 79 57 feet to a point, running thence North 05E 32' 50" West 11 20 feet to a point, running thence North 31E 33' 41" West 182 22 feet to a point, running thence North 36E 43' 09" West 20 35 feet to a point, running thence North 39E 28' 14" East 30.00 feet to a point, running thence South 50E 31' 46" East 30.00 feet to a point, running thence South 43E 05' 25" East 78 81 feet to a point, running thence North 83E 44' 13" East 33 24 feet to a point, running thence North 06E 15' 47" West 143 42 feet to a point located in the southerly boundary of Lot 2 of Fisherville,

recorded in Map Book 67, Page 101, running thence with the southerly boundary of said lot, North 84E 25' 53" East 232 68 feet to a point located at the southeast corner of said Lot 2, running thence South 05E 38' 40" East 185 00 feet to a point, running thence South 84E 25' 53" West 131.88 feet to a point, running thence South 05E 28' 50" East 370 81 feet to a point, running thence South 50E 28' 51" East 20.76 feet to a point; running thence South 05E 28' 50" East 32 96 feet to a point, running thence South 39E 31' 09" West 20.76 feet to a point, running thence South 05E 28' 50" East 84 36 feet to a point, running thence North 84E 31' 10" East 16 54 feet to a point, running thence South 05E 28' 50" East 282 51 feet to a point and place of BEGINNING, as shown on a survey entitled "Map of Reconfiguration of Previously Divided Lot for New Market, LLC" dated January 3, 2003, prepared by Sherwin D Cribb and being recorded in Map Book 43, Page 368, New Hanover County Registry of Deeds

Parcel C- R05013-008-043-002

In the City of Wilmington, New Hanover County, North Carolina, beginning at an iron pipe located North 22 degrees 28 minutes 10 seconds East 986.75 feet, North 84 degrees 27 minutes 10 seconds East 257.4 feet, and North 84 degrees 50 minutes East 257.4 feet from the intersection of the Easterly line of Lot 1, Section 1-A, College Acres, with the Northern line of Oriole Drive (60 foot right-of-way) as shown on the map of Section 1-A, College Acres, recorded in Map Book 8 at Page 79 of the New Hanover County Registry; running thence from said beginning point, so located, North 5 degrees 28 minutes 50 seconds West 342.28 feet to a point; running thence South 84 degrees 31 minutes 10 seconds West 16.54 feet to a point; running thence North 5 degrees 28

minutes 50 seconds West 84.36 feet to a point; running thence North 39 degrees 31 minutes 10 seconds East 20.76 feet to a point; running thence North 5 degrees 28 minutes 50 seconds West 32.96 feet to a point; running thence North 50 degrees 28 minutes 50 seconds West 20.76 feet to a point; running thence North 5 degrees 28 minutes 50 seconds West 370.81 feet to a point; running thence North 84 degrees 25 minutes 53 seconds East 131.88 feet to a point; running thence South 5 degrees 38 minutes 40 seconds East 164.11 feet to a point; running thence North 70 degrees 40 minutes 48 seconds East 146.96 feet to a point, running thence South 6 degrees 17 minutes 47 seconds East 732.55 feet to a point; running thence South 84 degrees 50 minutes West 268.93 feet to the POINT OF BEGINNING, and containing 4.89 acres, more or less. Being all of Lot No. 6 and that portion of Market Place Drive adjacent thereto as shown on Plat recorded in Book 28 at Page 31 of the New Hanover County Registry.

EXHIBIT B

Approximate Planned Subdivision of Parcel 1 and Parcel 2



EXHIBIT C

Project Plans for Government Center Improvements

1. New Hanover County Government Center C+S Architectural Permit Set drawings and Specifications prepared by LS3P; dated 10.16.20
2. New Hanover County Government Center C+S Structural Permit Set drawings prepared by LS3P and Citadel Contractors; dated 10.16.20
3. New Hanover County Government Center civil site design 90% TRC plans prepared by Sepi Engineering & Construction Inc; dated 10.1.20
4. New Hanover County Government Center Tenant Improvement -80% Construction Document drawings prepared by LS3P; dated 11.20.20
5. The above referenced plans and associated work being subject to the New Hanover Government Center Redevelopment Outline Specifications and Clarifications prepared by Thomas Construction Group; dated 11.25.20

EXHIBIT D

Anticipated Project Budget for Government Center Improvements

Project Name: New Hanover County

GSF 136,590

COST SUMMARY	TOTAL COST	COST/ GSF
DESIGN & ENGINEERING	\$3,582,166	\$26.23
CONSTRUCTION	\$39,533,161	\$289.43
ADMINISTRATIVE	\$60,500	\$0.44
MARKETING	\$7,000	\$0.05
PROFESSIONAL FEES	\$260,000	\$1.90
PROJECT MANAGEMENT FEES	\$2,500,000	\$18.30
TOTAL	\$45,942,827	\$336.36