

MEMORANDUM OF UNDERSTANDING

(Chestnut Civic and Cultural Arts District)

THIS MEMORANDUM OF UNDERSTANDING (the “Memorandum”), is made as of this the ____ day of _____, 202_ (the “Effective Date”), by and between **NEW HANOVER COUNTY, NORTH CAROLINA** (“County”), and **ZAC, LLC**, a North Carolina limited liability company or an affiliate thereof (“Developer” and together with the County, each a “Party” and together the “Parties”).

WITNESSETH

WHEREAS, County is the owner of certain parcels of land comprising approximately one city block bounded by Chestnut Street, Grace Street, Second Street and North Third Street in the historic downtown of City of Wilmington, North Carolina (the “Land”), which Land shall be more particularly described and defined in the Definitive Agreements (as defined herein), within an area generally contemplated for civic redevelopment, which area is presently contemplated to be known as the Chestnut Civic and Cultural Arts District (the “Civic and Arts District”);

WHEREAS, the Land is subject to the provisions of North Carolina Session Law 2017-86 (the “Downtown Development Partnership Statute”), which provides County the right to enter into a downtown development project on the Land;

WHEREAS, Developer desires to acquire certain interests in the Land for, among other things, the purposes of constructing certain mixed-use facilities (the “Civic and Arts Facilities”), to house the City Office Component, the Library Component, the Museum Component and certain portions of the Community Elements (as each of such terms are defined herein), to be more particularly reflected and described in the project plans and specifications (“Project Plans”), for the Project Condominium (as defined below) approved by the Parties in accordance with this Memorandum;

WHEREAS, the Developer will develop a multifamily use on the North Parcel (as defined herein)(the “Multifamily Use”), and set aside a portion of the Multifamily Use for workforce housing;

WHEREAS, based on preliminary plans and data, the Parties anticipate that the Project will revitalize and reinvigorate a portion of historic downtown of the City of Wilmington and through the creation of the Civic and Arts District, generate significant ad valorem tax revenues, and result in the creation of jobs in the County that will pay at or above the median average wage in the County;

WHEREAS, the Project timeframe contemplates a long-term, multi-year development process, as the Parties anticipate that the process of designing the Project, obtaining all necessary permits, and constructing the Civic and Arts Facilities will span a thirty-six (36) month timeline from the Effective Date of Memorandum of Understanding;

WHEREAS, the County and Developer desire to coordinate and provide the necessary mechanisms and timelines for the evaluation, development and necessary approvals for the creation of the Civic and Arts District, the Project Plans, and Definitive Agreements; and

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

ARTICLE 1. PROJECT

1.1 Project Description and Certain Related Items.

(a) The “Land” as defined above, is contemplated to be comprised of the following parcels, each of which shall be more particularly described and defined in the Definitive Agreements:

- (i) The “Civic and Arts Facilities Parcel” to be leased by County to Developer pursuant to the Ground Lease (as defined below) for purposes of, *inter alia*, developing the Project and establishing the Project Condominium;
- (ii) The “Parking Facility Parcel” upon which the Parking Component is and shall be located; and
- (iii) The Developer shall construct Multifamily Use on the parcel of Land (the “North Parcel”) north of the Parking Facility Parcel. The Developer will make available not less than five percent (5%) of the multifamily units for workforce housing purposes for a period of not less than ten (10) years.

(b) The “Project” that is the subject of this Memorandum, and which shall be more particularly defined and described in the Definitive Agreements, includes the Ground Lease to Developer by County and the development of the Project Condominium thereon, to house the Library & Arts Component, Museum Component, City Office Component, Retail Component and certain Community Elements, among other things. The Project shall comply with the Downtown Development Partnership Statute, specifically Section 2(a.)(2) therein.

(c) “Library Component” means a +/- 38,000 sq.ft. portion of the Civic and Arts Facilities, to be utilized by the County as a public library, in accordance with the Library and Museum Lease and the Project Plans.

(d) “Museum Component” means a +/- 35,000 sq.ft. portion of the Civic and Arts Facilities, to be utilized by the County as a museum, in accordance with the Project Plans.

(e) “City Office Component” means a +/- 75,000 sq. ft. portion of the Civic and Arts Facilities, to be used for office purposes in accordance with a lease for the City Office Component and the Project Plans.

(f) “Parking Component” means (although it is not contemplated to be part of the Project Condominium), parking for the Project which will require agreement as to the relative allocation between the Parties of usage of parking spaces located within existing parking deck located adjacent to the Civic and Arts Facilities Parcel.

(g) “Retail Component” means a +/- 10,000 sq. ft. portion of the Civic and Arts Facilities, to be utilized for retail purposes and to be owned by the Developer as a separate unit in the Project Condominium.

(h) “Community Elements” means common elements or limited common elements of the Project Condominium within or adjacent to the Civic and Arts Facilities – such as community terrace and overlook roof terrace on the top of the Library Component and the outdoor community gathering area/park adjacent to the Civic and Arts Facilities facing North 3rd Street, with the Community Elements to be identified with more particularity in the Project Plans.

(i) “Improvements” means any offsite improvements, including, without limitation, any roadway and/or sidewalk improvements, together with some on site improvements (e.g., potential screening of Parking Component, streetscape improvements adjacent to the Project, etc.), in connection with the Project.

1.2 **Definitive Agreements.** The “Definitive Agreements” pursuant to which the Project shall be conveyed, developed and occupied, shall include without limitation:

(a) “Ground Lease” means a ground lease by and between the County, as lessor, and Developer, as lessee, with respect to the Civic and Arts Facilities Parcel, contemplated to be entered into by County and Developer following any approval of the leasehold conveyance as required by law. It is the intent of the Parties that upon the expiration of the Ground Lease, the Library Component and the Museum Component shall revert to the County in fee simple for no additional cost or expense.

(b) “Library and Museum Lease” means a twenty (20)-year turnkey sublease in form agreed upon by the County and Developer of the Library Component and the Museum Component inclusive of upfit, furniture, fixtures, etc. (i.e., other than books, library materials and art/museum display items, etc.), prior to County obtaining ownership of the Library Component and the Museum Component. Landlord’s obligations of maintenance and repair under the Library and Museum Lease shall be limited to structural and exterior elements (roof, exterior walls, foundations, etc.) repairs of the building in which the Library Component and Museum Component is located. The County shall be responsible, either directly or through the Project Condominium, for all other obligations of taxes (if assessed), maintenance, repair, replacement and insurance under the Library and Museum Lease, and, through the Project Condominium, for the County’s portion of for the costs repair, maintenance and replacement of the Community Elements.

(c) “City Office Lease” means an office sublease in form agreed upon by the City of Wilmington and Developer of the City Office Component. Landlord’s obligations of maintenance

and repair under the City Lease shall be limited to structural and exterior elements (roof, exterior walls, foundations, etc.) repairs of the building in which the City Office Component is located. The City shall be responsible, either directly or through the Project Condominium, for all other obligations of taxes (if assessed), maintenance, repair, replacement and insurance under the City Lease, and, through the Project Condominium, for the City's portion of for the costs repair, maintenance and replacement of the Community Elements.

(d) "Parking Agreement" means an agreement regarding the allocation of usage, management, maintenance and repair of the Parking Component for the benefit of the entirety of the Land, by and among the Parties and the tenant of the City Office Component, which may include a parking lease agreement and provide for certain to-be-determined improvements, if necessary, by Developer to the parking facility.

(e) "Project Condominium" means a leasehold plan of condominium to be established by Developer as declarant with respect to all or a portion of the Civic and Arts Facilities and Community Elements, and consented to by County as ground lessor in accordance with the provisions of the North Carolina Condominium Act, Chapter 47C of the N.C. General Statutes (the "Condominium Act").

(f) "Ancillary Agreements" means any declarations of covenants, conditions or restrictions, an agreement with respect to the Improvements, and/or other agreements Developer deems necessary or desirable to satisfy applicable statutory requirements and evidence the obligations of the Parties and/or third parties.

ARTICLE 2. TERM; DUE DILIGENCE PERIOD.

2.1 **Term.** This Memorandum shall commence on the Effective Date and continue through and including the date that is the earlier to occur of (i) the Closing Date (as defined below), or (ii) the second (2nd) anniversary of the Effective Date (the "Outside Date"), unless earlier terminated in accordance with the provisions hereof.

2.2 Due Diligence Period.

(a) The Parties acknowledge and agree that Developer has not had the opportunity to review the condition and suitability of the Land upon which the Project will be constructed. Within **ten (10) business days** after the Effective Date, County shall deliver to Developer copies of any surveys, title insurance or title reports, inspections, property condition reports, soil studies or reports, engineering reports or studies and/or other third-party provided inspections and reports with respect to the Land in County's possession.

(b) For a period (the "Due Diligence Period"), commencing on the Effective Date of this Memorandum and continuing through the date (the "Closing Date") of entry into the Ground Lease by the Developer and County, Developer may enter upon the Land and perform all inspections, examinations, investigations, tests and undertakings with respect to the Land that Developer deems appropriate to confirm the suitability of the Land for the construction and

operation of the Project. During such period, Developer and its agents, contractors and employees shall have the right to enter upon the Land to perform such inspections, examinations, investigations, tests (including subsurface tests) and undertakings. Developer agrees that upon completion of its inspections, it shall repair and restore the Land to substantially the same condition as the Land existed prior to commencement of such inspections. Developer's repair and restoration obligations arising under this subsection shall survive the expiration or earlier termination of this Memorandum.

(c) In the event that Developer determines during the Due Diligence Period, in its sole discretion, that the proposed Project is not feasible, then Developer shall have the right to terminate this Memorandum and the Ground Lease, if then in effect, by providing written notice of termination to County prior to the expiration of the Due Diligence Period, in which event neither County nor Developer shall have any further rights or obligations hereunder. The cost of the inspections, tests, investigations and interviews undertaken by Developer shall be borne solely by Developer, and Developer shall indemnify, defend and hold County harmless from any claims, losses, damages and liabilities resulting from Developer's entry onto the Land. Notwithstanding the foregoing, Developer shall not be liable for (i) any liabilities, claims, costs, expenses, damages or obligations arising from the discovery of any condition existing on or under the Land at the time of such entry by Developer, except to the extent that such condition is exacerbated by the willful act or negligence of Developer, its agents or contractors, or (ii) any liabilities, claims, costs, expenses, damages or obligations caused by the negligence or willful misconduct of County, or County's agents or contractors. Developer's indemnification obligations arising under this subsection shall survive the expiration or earlier termination of this Memorandum.

2.3 County's Early Termination Rights.

(a) Subject to County's obligations under subsection (b) below, County shall have the right to terminate this Memorandum at any time and for any reason (or none), prior to the parties' entry into the Ground Lease, upon not less than ten (10) business days' prior written notice of such termination to Developer, in which event neither County nor Developer shall have any further rights or obligations hereunder, except those obligations which expressly survive termination hereof.

(b) The Parties acknowledge that Developer has and will continue to incur considerable third-party costs and expense in connection with the planning, preparation and negotiation of the Project Plans and Definitive Agreements ("Planning Costs"), and agree that if (i) County terminates this Memorandum prior the receipt of Necessary Approval (as defined in Section 3.1), of the Project and the Definitive Agreements to which County is a Party, at public hearing before the County Board of Commissioners (the "County Hearing Approval"), or (ii) the County Hearing Approval shall not be received on or by the Outside Date, the County will reimburse Developer its Planning Costs incurred from the effective date of this Memorandum within thirty (30) business days of Developer's written request therefor (which request shall include copies of invoices or other evidence of the costs and expenses incurred), in an amount up to but not to exceed \$800,000. Any County obligation to reimburse Developer for Planning Costs incurred from the effective date of this Memorandum under this subsection (b) shall survive the expiration or earlier termination of this Memorandum.

(c) Developer estimates a Civic and Arts Facilities investment of \$83,888,466, including an estimated investment of the Library Component of \$26,356,673, and an estimated investment of the Museum Component of \$30,343,794 (with the City Office Component comprising the remaining \$27,187,999 of the Civic and Arts Facilities costs). The initial lease year's turnkey net base rent cost of the Library Component and Museum Component under the Library and Museum Lease is estimated at \$4,508,000, based on these costs. Any construction costs savings Developer achieves will reduce the Library and Museum Lease payment accordingly; **however**, County can terminate this Memorandum without obligation to reimburse Developer for any Planning Costs if it is determined the initial Library and Museum Lease net base rent payment exceeds \$4,508,000.

The Developer will provide a private apartment component investment on the North Parcel, with a value of approximately \$23,140,697, with not less than 5% of the units therein to be made available for workforce housing for a period of not less than ten (10) years.

The Developer will provide the private Retail Component investment.

County may also terminate this Memorandum without obligation to reimburse Developer for Planning Costs, if the Local Government Commission does not approve the Library and Museum Lease.

ARTICLE 3. PROJECT PLAN DESIGN PROCESS.

3.1. **Project Plan Review Phases.** The "Project Plans" will be developed for the Civic and Arts Facilities in a three-phase review and approval process:

- (i) first, Schematic Plans will be developed (Section 3.2);
- (ii) then, more detailed Design Development Documents will be developed (Section 3.5), based on the approved Schematic Plans, and
- (iii) finally, fully detailed Construction Documents will be developed (Section 3.6), based on the approved Design Development Documents.

3.2 Schematic Plan Review.

(a) Within **forty-five (45) business days** following the Effective Date, Developer shall submit initial design concepts (the "Schematic Plans") of the Project, to County for its review and comment. During the development of the Schematic Plans prior to submittal pursuant to this subsection (a), Developer will consider input from County, and County may make suggestions regarding elements, scope item, materials, construction, layout and other matters; provided, that only those objections by County that are raised in the context of subsection (b), shall require any formal response by Developer.

(b) County shall provide any objections to the Schematic Plans in writing to Developer within **twenty (20) business days** after receipt thereof together with a reasonably detailed

explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) In the event that County provides any objection that is based on objective and reasonable grounds, Developer may amend the Schematic Plans to address some or all of such objections and deliver a copy of the revised Schematic Plans to County for additional review. Developer may proceed as if the Schematic Plans are approved unless County delivers written notice to Developer within **twenty (20) business days** that the Schematic Plans do not address the objections raised on County's first review and provide an explanation of County's continued objection sufficient in detail to permit an architect to understand and address the continued objection.

3.3 Notice and Approval Process.

(a) Any notice of official submittal for review under Section 3.2, 3.5 or 3.6 given by Developer shall set forth in bolded text, delivery language to the effect that: **"This correspondence constitutes notice of submittal and request for approval of Project Plans of the Memorandum of Understanding. County's review and response, including any objections, is due within twenty (20) business days of the date of this notice."**

(b) Any correspondence or delivery of Project Plans by Developer that does not contain submittal language to the effect set forth in subsection (a) above shall be deemed an unofficial, draft submittal of Project Plans pursuant to Section 3.4 below.

(c) In the event County shall fail to respond in writing to any submission within the time period provided herein, Developer may submit a second notice to County providing language substantially to the effect that: **"This correspondence constitutes SECOND AND FINAL NOTICE and request for approval of Project Plans under the Memorandum of Understanding. County's failure to respond with objections within five (5) business days of the date of this second notice shall be conclusively deemed to constitute County's approval."**

(d) In the event County is unable to complete its review and provide comment within the response period provided above, then, within such response period the County may provide Developer notice ("Review Extension Notice"), of such inability to respond, whereupon Developer and County shall reasonably agree upon an extended response period.

(e) Notwithstanding any other notice provisions of this Memorandum notice provided under Article 3 shall be provided to each Party's **"Plan Review Team"** set forth on **Schedule I**, attached hereto and incorporated herein by reference.

3.4 **Project Plans Progress Review.** Developer may submit draft versions of the Project Plans for the Project or any portion thereof to County for its preliminary review and comment. In developing the Project Plans for the Project or any portion thereof, Developer will consider input from and reasonably cooperate with County and meet with County representatives from time to time as reasonably requested to facilitate County's review of the Project Plans. During the review process, County may make suggestions regarding elements, scope item, materials,

construction, layout and other matters; provided, that only those objections by County that are raised in the context of Section 3.2, 3.5 and 3.6 shall require any formal response by Developer.

3.5 **Design Development Documents Approval.**

(a) Within **sixty (60) business days** following approval of the Schematic Plans by County, Developer shall provide more detailed drawings and other documents, including plans, sections, elevations, typical construction details, and diagrammatic layouts of systems to fix and describe the size and character of architectural, structural, mechanical, electrical, landscaping, signage, and such other elements, as appropriate (the “Design Development Documents”), to County for its review and approval, which approval shall be based solely upon conformance with the Schematic Plans.

(b) County shall provide any objections to the Design Development Documents in writing to the appropriate Developer within **twenty (20) business days** after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) To the extent necessary and provided that County’s objection is based on objective and reasonable grounds and does not constitute a Material Change pursuant to Section 3.8(b), Developer will amend the Design Development Documents to address the objections and deliver a copy of the Design Development Documents to County. Developer may proceed as if the Design Development Documents are approved unless County delivers written notice to Developer within **twenty (20) business days** that the Design Development Documents do not address the objections raised on County’s first review and provide a detailed explanation of County’s continued objection sufficient to permit an architect to understand and address the continued objection.

3.6 **Construction Documents.**

(a) Within **seventy-five (75) business days** after approval of the Design Development Documents by County, Developer shall deliver to County for its review and approval the final construction drawings, detailed specifications, and related documents (the “Construction Documents”) required for construction of the Project or any portion thereof. The Construction Documents shall conform to and be consistent with in all material respects the approved Project Plans.

(b) County shall provide any objections to the Construction Documents in writing to the appropriate Developer within **twenty (20) business days** after receipt thereof together with an explanation for the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) To the extent necessary and provided that County’s objection is based on objective and reasonable grounds and does not constitute a Material Change pursuant to Section 3.8(b), Developer will either (1) modify the Construction Documents to conform to the Project Plans as previously approved by County, or (2) modify the Construction Documents to address County’s

objections thereto and deliver a copy of the revised Construction Documents to County to confirm that the changes remedy the grounds for County's objection. Developer may proceed as if the Construction Documents are approved unless County delivers written notice to Developer within **twenty (20) business days** that the Construction Documents do not address the objections raised on County's first review and provide a detailed explanation of County's continued objection sufficient to permit an architect to understand and address the continued objection.

(d) Developer shall, upon County's reasonable request, provide County with any information reasonably requested in connection with the Construction Documents and shall confer with County as reasonably required to facilitate its understanding of the Construction Documents. Developer shall also, upon County's request, provide County access to and information concerning any Construction Documents that relate to the Project or any portion thereof to the extent such access and information is reasonably necessary to understand, interpret, or utilize the Construction Documents.

3.7 Failure to Make Timely Response is Deemed Approval. In the event County (i) shall have failed to respond in writing to any submission within the time periods permitted herein, and (ii) shall have failed to timely provide Review Extension Notice to Developer within such time period, such failure shall be conclusively deemed to constitute County's approval.

3.8 Change Orders.

(a) County acknowledges and agrees that the initial Project budgets will be developed assuming that the Project shall be developed and construction in material conformity with the Schematic Plans applicable to the Project (the "Project Parameters"). Following approval of each of the Project Plans and Construction Documents by the Parties, such approved documents shall be deemed to be included in the Project Parameters thereafter.

(b) In the event that during the Project Plan approval process, the Construction Documents approval process, or the construction of the Project in accordance with the Project Parameters, Developer reasonably determines that (1) any objection, request for revision and/or Project change order requested in writing by County (a "Proposed Change") (i) is not in substantial conformity with the requirements of the Project Parameters, (ii) would more likely than not increase the cost of completion of the Project, and/or (iii) would more likely than not delay the completion of the Project (a "Material Change"), but that (2) Developer is willing to undertake the proposed Material Change at County's cost and expense, then, Developer will provide written notice to County that it considers the applicable Proposed Change to be a Material Change, and, to the extent reasonably practicable under the circumstances, Developer shall provide an anticipated estimate of the cost of such Material Change (a "Change Order Notice"). Examples of Material Changes include, without limitation Proposed Changes, (i) that increase the overall square footage of an Project, or (ii) that alter the interior and/or exterior materials and/or finishes contemplated in the Project Parameters, or any other turnkey elements and items, so as to increase the cost thereof (such as by way of example, changes in flooring materials, requests to install granite countertops where laminate countertops are contemplated, changes in selected furnishings, etc.).

(c) In the event the Parties agree to the undertaking of a Material Change following County's receipt of a Change Order Notice, County shall reimburse Developer for the reasonable costs and expenses incurred by Developer in connection with the completion of the work contemplated with respect to such Material Change, within **thirty (30) business days** following submittal by Developer of a written request therefor, unless (and solely to the extent that) Developer shall elect in its sole discretion to adjust County's rent under the Library and Museum Lease to reflect all or any portion of such costs and expenses.

(d) The provisions of this Section 3.8 shall survive the Closing Date, and shall be deemed incorporated into the Library and Museum Lease by reference; **provided, that**, in the event of a conflict between the terms of this Section 3.8, and the terms of the Library and Museum Lease, the terms of the Library and Museum Lease shall control.

ARTICLE 4. OTHER PROJECT APPROVALS.

4.1 **Necessary Approvals.** Developer and County acknowledge and agree that the Library Component and the Museum Component will be developed as an integrated part of the Project, and that certain approvals by the City Office Component may be necessary for Developer to undertake the Project as contemplated by this Memorandum. In connection therewith, Developer and County will need to jointly undertake good faith and commercially reasonable efforts to coordinate and obtain certain Necessary Approvals from Applicable Authorities with respect to the Project, in accordance with this Section. "Necessary Approval" means, with respect to any one or more of the Applicable Authorities, receipt of final and unappealable approval on an unqualified and unconditioned basis from the required Applicable Authorities (except for such qualifications and/or conditions that are acceptable to Developer in its reasonable discretion). "Applicable Authorities" means County and any other governmental authorities having jurisdiction over the Project.

4.2 **Statutory Requirements; Timeline.** The Downtown Development Partnership Statute and the applicable statutes referenced therein, set forth the statutory process and requirements of obtaining Necessary Approvals for the transactions contemplated for the Definitive Agreements (collectively, the "Statutory Requirements"). Upon execution of this Memorandum, Developer shall promptly proceed to prepare for the Parties' approval, a proposed timeline schedule for satisfaction the Statutory Requirements, and, upon approval thereof, the Parties shall use good faith efforts to undertake and complete the actions and items set forth therein, in accordance with such schedule.

4.3 **Negotiation of Definitive Agreements.** Developer shall provide County initial drafts of the Definitive Agreements to which County is a party during the Due Diligence Period. The Parties shall use good faith efforts to negotiate and agree upon the forms of Definitive Agreements to which County is a party, in a manner, and within a timeframe, reasonably consistent with the review and approval timelines for the Project Plans and satisfaction of the Statutory Requirements.

4.4 **Negotiation of North Parcel Acquisition Agreement.** During the Due Diligence Period:

(i) the parties shall negotiate a leasehold or purchase acquisition agreement (the “North Parcel Acquisition Agreement”), such North Parcel separate from the Ground Lease, with such acquisition cost to be subject to determination in accordance with the Statutory Requirements;

(ii) the North Parcel Acquisition Agreement shall provide that Developer shall construct the Multifamily Use on the North Parcel in accordance with the requirements of Section 2.(a.)(2) of the Downtown Development Partnership Statute; and

(iii) the North Parcel Acquisition Agreement shall require Developer to make available not less than five percent (5%) of the multifamily units to be located on the North Parcel, for workforce housing purposes for a period of not less than ten (10) years.

**ARTICLE 5.
MISCELLANEOUS.**

5.1 Effectiveness. This Memorandum shall become effective on and only on its execution and delivery by each Party hereto.

5.2 Notices. Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

For notice purposes *other than* submittals and responses under Article 3 above:

TO COUNTY: NEW HANOVER COUNTY
230 Government Center Drive, Suite 195
Wilmington, NC. 28403
Attention: Christopher Coudriet
E-mail: ccoudriet@nhcgov.com

WITH A COPY TO: NEW HANOVER COUNTY ATTORNEY
230 Government Center Drive, Suite ____
Wilmington, NC. 28403
Attention: Wanda Copley
E-mail: wcopley@nhcgov.com

TO DEVELOPER: ZAC, LLC
111 Princess Street
Wilmington, NC 28401
Attention: Jeffrey L. Zimmer
Email: jeffreyzimmer@zdc.com

WITH A COPY TO: Robbie B. Parker, Esq.
Lee Kaess, PLLC
Post Office Box 4548 (28406)
3414 Wrightsville Avenue
Wilmington, NC 28403
Email: Robbie@LeeKaess.com

As provided in Section 3.3(e), for notice of submittals and responses under Article 3 above, notices to another Party will be delivered to such Party's Plan Review Team.

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by email. Notice deposited in the United States mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice provided by overnight delivery shall be effective the next Business Day after deposit. Notice by email shall be effective the next Business Day after such email is sent (unless the sending party shall receive notice that such email is undeliverable). Notice provided by personal delivery shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

5.3 **Amendment.** This Memorandum may be amended by and only by an instrument executed and delivered by each Party hereto.

5.4 **Waiver.** No Party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any Party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right.

5.5 **Applicable Law.** This Memorandum shall be given effect and construed by the law of the State of North Carolina without regard to its conflict of law provision.

5.6 **No Partnership; No Joint Venture.** Nothing in this Memorandum shall be deemed in any way to create between the Parties hereto any relationship of partnership, joint venture or association, and the Parties hereto hereby disclaim the existence of any such relationship.

5.7 **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Memorandum or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

5.8 **Authority.** The person executing this Memorandum on behalf of a Party on has been authorized to execute this Memorandum, and this Memorandum is binding upon and enforceable against Developer in accordance with its term.

5.9 **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the day and year first above written.

DEVELOPER:

ZAC, LLC

By: _____
Jeffrey L. Zimmer, Manager

COUNTY:

NEW HANOVER COUNTY, NC

By: _____
Chris Coudriet, County Manager

ATTEST:

_____, _____ Clerk
(SEAL)

Schedule I – Plan Review Teams

SCHEDULE I TO MEMORANDUM OF UNDERSTANDING

PLAN REVIEW TEAMS

[Most Recent Update: _____ ____, 202_]]

Notices and submittals under Article 3 of the Memorandum will be delivered to the following addresses:

Notice Type	County's Plan Review Team	Developer's Plan Review Team
Notice/Submittal (Email)	Name: Email: Name: Email:	Name: Email: Name: Email:
Notice/Submittal (Other Methods)	To the individuals/addresses set forth in Section 5.2	To the individuals/addresses set forth in Section 5.2

Notice may be delivered by any means authorized in Section 5.2 of the Memorandum.

A Party's Plan Review Team address(es) may be changed by written notice to the other Party, which written notice shall include an updated version of this **Schedule I** information for such Party, setting forth the applicable substitute address/addressee and confirming all other Plan Review Team members and their addresses. No change of address under this **Schedule I** shall be effective until actual receipt of such notice.