

**AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING**

(Chestnut Civic and Cultural Arts District)

**THIS AMENDMENT TO MEMORANDUM OF UNDERSTANDING** (the “Amendment”), is made as of this the \_\_\_\_ day of \_\_\_\_\_, 2022, 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”). This Amendment supplements and amends that certain Memorandum of Understanding dated April 9, 2021 (the “Memorandum”), and capitalized terms not otherwise defined herein will have the meaning set forth in the Memorandum.

**RECITALS**

A. Over the course of the past twelve (12) months, the Parties have undertaken development of the Project Plans in accordance with Article 3 of the Memorandum, solicited public comment, and revised the Project Plans accordingly.

B. The County and Developer desire to update the Project description, negotiate the Definitive Agreements, and submit the Project Plans and Definitive Agreements for approval by the Local Government Commission (the “LGC”).

**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 amend the Memorandum as follows:

1. Scope and Description of Project. The Parties acknowledge and agree to the following amendments to the description of the Project:

- a. Swap of Parcel Locations. The Civic and Arts Facilities now will be constructed on the parcel north of the Parking Facility (which parcel was formerly referenced as the “North Parcel”). The Mixed Use Facility originally contemplated to be constructed on the so-called “North Parcel” will now be situated on the parcel south of the Parking Facility. Therefore, the defined term “North Parcel” previously used in the original Memorandum is hereby amended and replaced with the new phrase “South Parcel” to refer to the new location of the Mixed Use Facility, on the parcel south of the Parking Facility. (Further, the term “North Parcel Acquisition Agreement” is hereby replaced with the phrase “South Parcel Acquisition Agreement”).
- b. Civic and Arts Facilities. The Project Plans have been amended to relocate the Retail Component out of the Civic and Arts Facilities building -- such that the entirety of the Civic and Arts Facilities building will be comprised of the Library Component, Museum Component and related shared space and common areas. The Civic and Arts Facilities will be 100% occupied by the County.

- c. Mixed Use Facilities. Developer's Retail Component will now be located in the Mixed Use Facility on the South Parcel.
- d. Ground Lease/Conveyance from County. The Civic and Arts Facilities parcel will be subject to a Ground Lease from the County to Developer, for purposes of developing the Library Component and Museum Component. In order to develop the private mixed use components of the Mixed Use Facility, the South Parcel will be acquired in fee simple at fair market value by Developer pursuant to the South Parcel Acquisition Agreement.
- e. Mixed Use Condominium. No portion of the Civic and Arts Facilities will be retained for private use by Developer following construction.
- f. Civic and Arts Facilities Lease. The sublease back to the County of the civic facilities to be constructed by Developer in the Civic and Arts Facilities, which was previously referred to as the "Library, Museum and Shared Space Lease," now will be referred to as the "Civic and Arts Facilities Lease," and will apply to the entirety of the Civic and Arts Facilities, including the Library Component and Museum Component, the shared space and common areas, and inclusive of certain upfit, basic furniture and fixtures, etc. (other than books, exhibits, library materials and art/museum display items, etc.). The Ground Lease will run continuous with the Civic and Arts Facilities Lease, and upon expiration of the Civic and Arts Facilities Lease and the Ground Lease, all ownership of the Civic and Arts Facilities will be vested in/revert to the County, free and clear of the Ground Lease and Civic and Arts Facilities Lease. The term of the Civic and Arts Facilities Lease will commence on the earlier of (i) the date any portion of the Civic and Arts Facilities opens to the public, or (ii) the date that is ninety (90) days following Developer's notice of substantial completion of the Civic and Arts Facilities, and will expire twenty (20) years following the rent commencement date. Developer's obligations of maintenance and repair as landlord under the Civic and Arts Facilities Lease shall be limited to structural and exterior elements (roof, exterior walls, foundations, etc.) of the Civic and Arts Facilities.
- g. Development Timeline to Ensure Continuity of Library Services. The New Hanover County Library is currently operating within facilities existing on the South Parcel. In order to ensure continuity of library services to the community, the Definitive Agreements will provide that development of the Project will be staged, such that (i) the Civic and Arts Facilities will be developed first, then (ii) the South Parcel will be redeveloped, and the Mixed Use Component will be constructed, only after issuance of a certificate of occupancy for the Civic and Arts Facilities, to allow for the relocation (and uninterrupted operation) of the existing library services to the new Library Component.

- h. Modification of Amounts/Figures. Square footage and leasehold rent obligations of the revised Project will be as contemplated in the Project Plans, and the applicable references to square footages and amounts in the Memorandum, are hereby amended as provided in the following table:

<b>Description</b>	<b>Per Memorandum</b>	<b>Amended Amounts</b>
<b>I. Civic and Arts Facilities (Square Footage)</b>		
Library Component	+/- 38,000 sq.ft.	+/- 36,827sq.ft.
Museum Component	+/- 35,000 sq.ft.	+/- 42,086 sq.ft.
Shared Space	+/- 8,000 sq.ft.	+/- 5,992 sq.ft.
Total Square Footage	+/- 81,000 sq.ft.	+/- 84,905 sq.ft.
<b>II. Parking Facility (Replacement Stair Tower)</b>		
Replacement Component	--	Developer to install replacement stair tower to Parking Facility, at an estimated cost to Developer of \$1,100,000
<b>III. Civic and Arts Facilities Lease Rate</b>		
Base Rent Amount (Estimated)	\$4,508,000	\$4,003,000 (based on Project costs excluding \$7,500,000 estimated cost of exhibits)
<b>IV. Total Private Investment by Developer</b>		
Total Amount (Estimated)	\$23,140,697	\$30,125,838

2. Definitive Agreement; LGC Approval.

a. Definitive Agreements. Developer has or will provide drafts of certain “Definitive Agreements,” including the Ground Lease, and the South Parcel Acquisition Agreement, for County review, and the parties have approved or will use commercially reasonable efforts to negotiate and substantially agree upon the forms of such Definitive Agreements, as soon as practicable following the effective date of this Amendment.

- i. Should the developer fail to secure a building permit for the multifamily units within two years of conveyance of the subject parcel by County to

Developer, the County shall have a subsequent period of ninety days to elect to repurchase the subject parcel at the original sales price established in the prior closing between the parties.

b. LGC Approval. Following approval of the Definitive Agreements, the Parties will submit the approved forms of Project Plans and Definitive Agreements for all Necessary Approvals of the Project that may be required to be obtained from the LGC. In the event the LGC declines to provide any Necessary Approvals, either Party may terminate the Memorandum as modified by this Amendment.

c. Right to Acquire of Project Plans Upon Termination. In the event the Parties are unable to obtain Necessary Approval from the LGC and/or in the event either of the Parties terminate the Memorandum in accordance any right of termination provided under the Memorandum, then, notwithstanding the provisions of Section 2.4(b) of the Memorandum, or any other provision thereof, Developer shall bargain, sell, transfer and convey to County, and County shall purchase, accept and acquire, any and all of Developer's interest in the Project Plans, for a purchase price equal to Developer's Planning Costs, not to exceed \$2,500,000, within ten (10) days after Developer's submittal of invoices and/or other evidence reflecting the Planning Costs, in form and substance reasonably acceptable to both of the Parties.

3. Effect of Amendment. In the event of a conflict between this Amendment and the Memorandum, the terms of this Amendment shall control. Except as amended hereby, the Memorandum remains in full force and effect.

4. Miscellaneous. 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. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Amendment, the Memorandum as amended hereby, 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. The person executing this Amendment on behalf of a Party on has been authorized to execute this Amendment, and this Amendment is binding upon and enforceable against Developer in accordance with its term. 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. This Amendment may be executed in any number of counterparts (including by means of DocuSign or a similar electronic signature system, or facsimile and electronically transmitted portable document format (pdf) signature pages), each of which shall be an original but all of which together shall constitute one and the same instrument.

[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)