

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into on the 16<sup>th</sup> day of May, 2023, 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 DEVELOPMENT PARTNERS, LLC**, a North Carolina limited liability company corporation, having its principal place of business at 102 Autumn Hall Drive, Suite 210, Wilmington, North Carolina, its successors and assigns (the "Developer"), regarding the redevelopment of the County's land located in the Wilmington City Block bounded by Chestnut Street, Grace Street, Second Street and North Third Street, more particularly described on Exhibit A (the "Land").

### WITNESSETH:

WHEREAS, the County's Land includes: (i) a "Civic and Arts Facilities Parcel"; (ii) a "Parking Facilities Parcel"; and (iii) a "South Parcel," which South Parcel is intended for private development, all three said parcels being generally depicted on Exhibit A.1 attached hereto; and

WHEREAS, the County identified an interest to redevelop the Civic Arts Facilities Parcel and the Parking Facilities Parcel for an improved public Civic and Arts Facility, and an improved parking facility to be utilized by both the County and the owner and occupants of the South Parcel Land, and to see the South Parcel developed by a private developer;

WHEREAS, pursuant to the County's authority under the North Carolina Session Law 2017-86, and N.C.G.S. § 160D-1315 (the "Downtown Development Act"), the County has selected the Developer as its development partner, pursuant to the terms described herein;

WHEREAS, the redevelopment and development of the Land contemplated herein 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, the consideration to be paid by Developer to the County for the South Parcel to be conveyed to the Developer has been found to be reasonable.

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 Civic and Arts Facilities Parcel and the Parking Parcel (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 improvements to the Civic and Arts Facilities Parcel and the Parking Parcel. 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 Scope of Construction.** The scope of construction of improvements for the Civic and Arts Facilities Parcel and the Parking parcel are generally described on the construction plans referenced and described on Exhibit B attached hereto and incorporated herein. Notwithstanding the foregoing, the Developer shall assist the County to value engineer and revise the plans and the scope of work, such value engineering to generally include the concepts described on Exhibit B.1 attached hereto and incorporated herein.

b. **Project Budget**

i. The anticipated project budget to develop and complete the improvements to the Civic and Arts Facilities Parcel and the Parking Parcel, pursuant to the plans to be revised as described above (the "County's Improvements") is estimated to be Sixty Million, Five Hundred Twenty Four Thousand Eight Hundred Sixty and 00/100 Dollars (\$60,524,860.00), consistent with the estimated budget attached hereto as Exhibit C (the "Project Budget"), which Project Budget includes, without limitation, the anticipated construction costs. After revision to the plans consistent with Section 1.a. above, full permitting of the County's 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". The Project Budget shall be no greater than the estimated budget described above and on Exhibit C.

**ii.** Promptly after the Date of Completion of Construction of the County's Improvements, the Developer will provide a summary and accounting of the total actual cost of construction of the 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.

**c.** 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 equal to 3.5% of the actual costs and expenses of the design, construction and development of the Civic and Arts Facilities Parcel and the Parking Facilities Parcel, excluding the approximately \$2,500,000 of costs and expenses incurred by the County in connection with design related work prior to this Agreement. The development fee will be established as a fixed number as of completion of the final budget.

**d.** Payment of Costs and Expenses. The County shall be responsible for all of the costs and expenses of development of the Civic and Arts Facilities Parcel and the Parking Facilities Parcel, including the County's Improvements. 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. Notwithstanding the foregoing, the Developer is at risk and the County shall not owe any reimbursement of project costs and expenses unless and until commencement of construction of the County Improvements.

**2.** Subdivision of the Land. Developer shall prepare a recombination subdivision plan (the "Subdivision Plat") to divide the Land into the: (i) "Civic and Arts

Facilities Parcel"; (ii) "Parking Facilities Parcel"; and (iii) "South Parcel," in a manner materially similar to the concept plan attached hereto at Exhibit A.1, and Developer and County shall cooperate to obtain approval for and record said Subdivision Plat to facilitate the establishment of the three parcels as independent parcels of land.

**3. Construction of the Civic and Arts Facilities and the Parking Facilities.** Pursuant to the Project Management Agreement, Developer shall serve as the representative of the County in connection with the entitlement approval for the development of the Civic and Arts Facilities Parcel and the Parking Facilities Parcel, and the design and construction of the County's Improvements. Developer shall be responsible for completing design details, 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 County's Improvements shall include consideration of the following, applicable to the Developer, general contractor and its subcontractors, architect or other providers as appropriate:

- a. Insurance provisions regarding liability, worker's compensation, and builder's risk materially consistent with the following:
  - i. Worker's compensation insurance to cover all persons employed in connection with the construction as required by the general statutes of the State of North Carolina and Employer's Liability Insurance;
  - ii. Builders Risk insurance sufficient to cover the replacement cost of the County Improvements;
  - iii. Business automobile liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000.00);
  - iv. General Liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000.00); and
  - v. Professional Liability Insurance with a limit of not less than Ten Million Dollars (\$10,000,000.00).
- b. Bonding Requirements consistent with the following:
  - i. 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 County's Improvements to guarantee the faithful performance of the work, subject to adjustment throughout completion of the several phases of the County's Improvements.

- ii. 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 County's Improvements, subject to adjustment throughout the completion of the several phases of the County's Improvements.

In connection with construction of the County's Improvements, Developer shall direct its 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. Approval of Final Project Plans and Budget.** After completion and approval of the final design and plans for the County's Improvements, and submission of the proposed GMP Construction Contract by the general contractor to the Developer and the County:

- a. The County will retain a third party cost management consultant to review the general contractor's bid and pricing for the GMP Construction Contract to verify compliance with all applicable processes and procedures and to verify that the pricing reflected therein is fair and reasonable.

- b. County staff will then cooperate with the Developer to propose an amendment to this Agreement to incorporate the finalized plans and Project Budget for consideration by the Board of Commissioners after all appropriate notice and hearing.

c. Then, subject to the Board of Commissioners' approval of debt financing to fund the construction of the County Improvements, the County shall submit a request for approval of said financing by the LGC (as defined below).

5. **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 facilitate continuity of library services to the community, the Project Management Agreement the South Parcel Purchase and Sale Agreement described below will provide that the development of the Land shall be staged such that: (i) the Civic and Arts Facilities will be developed prior to the sale and development of the South Parcel; and (ii) the sale of the South Parcel shall not be completed until after the 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 improvements on the Civic and Arts Facilities Parcel.

6. **Purchase and Sale of South Parcel.** The County agrees to sell and convey fee simple title to the South Parcel, free of any unacceptable encumbrances, to the Developer, and the Developer agrees to purchase the same, for a price equal to the greater of: (a) Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00), or (b) the agreed upon appraised value, as described below; said sale being subject to satisfaction of all applicable contingencies, said contingencies including without limitation: (i) all necessary and desirable permitting and entitlement for Developer's intended use of the South Parcel, and (ii) resolution of any and all interfering title encumbrances necessary to allow Developer's intended use of South Parcel. Closing on said purchase and sale shall be contingent upon substantial completion of the County's Improvements, and shall occur thirty (30) days after completion of the County's Improvements and satisfaction of all conditions to closing.

To establish the agreed upon appraised value (the "Appraised Value") for the purchase and sale of the South Parcel, the parties shall:

a. Approximately twelve (12) months prior to the certificate of occupancy for the Civic and Arts Facilities Parcel, each party will obtain an appraisal of the South Parcel, each of which appraisal shall take into account the

South Parcel Development Obligations described below.

b. If the higher of the two appraisals is within 5% of the lower of the two appraisals, then the parties agree that the Appraised Value shall be the higher of the two appraisals.

c. If the difference between the two appraisals is greater than 5%, then the two appraisers shall select a third appraiser, which third appraiser shall be retained equally by both the County and the Developer to review the two appraisals and deliver an opinion of value, and said third appraiser's valuation shall be the Appraised Value for the South Parcel.

The Manager and staff of the County and the Developer shall execute a Purchase and Sale Agreement for the sale of South Parcel to the Developer, inclusive of the terms herein, upon approval of this Agreement by the Board of Commissioners as described in Section 10.a below.

7. **Development of the South Parcel.** The Developer will develop and improve the South Parcel Developer to provide a private Mixed Use development, consistent with all of the following (collectively, the "South Parcel Development Obligations"):

a. The cost of improvements to the South Parcel shall be no less than the greater of i) \$30,125,838 or ii) the amount equal to 25% of the cost of construction and renovation of all three parcels, consistent with the Downtown Development Act;

b. The Developer will commence construction on the South Parcel within twenty four (24) months of acquisition of title to the same. In the event that the Developer fails to timely commence construction of said development, subject to force majeure, then the County will have the option to repurchase the South Parcel for ninety percent (90%) of the Developer's purchase price for the same;

c. 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 "South Parcel Improvements" prior to beginning construction; and

d. To the extent that the Developer's improvements to the South Parcel include multifamily housing, Developer shall make at least 5% of the multifamily units on the South Parcel available for workforce housing purposes for at least 10 years.

8. **Parking Parcel.** The County and the Developer shall share the use of the improved Parking Parcel to support the improvements on both the Civic and Arts Facilities Parcel and the South Parcel. During the design phase of this partnership, and prior to submittal of the proposed financing of the County's Improvements to the Local Government Commission, the parties will reasonably agree to specific terms for mutual use of the parking facilities on the Parking Parcel pursuant to a "Parking Agreement" regarding the allocation of usage, management, maintenance and repair of the Parking Parcel.

9. **Temporary Construction Easement.** The County shall grant and convey to the Developer a temporary construction easement over the Land from the date of execution of the Project Management Agreement until the completion of the improvements to the Land contemplated herein.

10. **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 May 15, 2023, after publication and notice of the Agreement.

b. **Required Approvals.** This Agreement is contingent on obtaining all required regulatory approvals associated with financing the costs associated with this Agreement. The County shall use best efforts to promptly obtain the required approvals.

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.

11. **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 instruments of conveyance, leases, easement agreements and the like.

12. **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 Development Partners, LLC  
Attn: Brian Eckel  
102 Autumn Hall Drive  
Suite 210  
Wilmington, NC, 28403

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.

**13. 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 16th day of May, 2023.

COUNTY OF NEW HANOVER

By: 

Name: Chris Coudriet

Title: Manager

**THIS INSTRUMENT HAS BEEN PRE-AUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT AND FISCAL CONTROL ACT.**

*Eric Cudde 5/16/23*

<sup>D.</sup>  
Approved as to form/County Attorney

*Kemp Pompean*

CAPE FEAR DEVELOPMENT PARTNERS, LLC

By: 

Name: Brian C. Eckel

Title: Manager

**Exhibits Attached**

- A. Legal Description of the Land
  - A.1 Planned Subdivision of the Land
- B. Current Plans for County Improvements
  - B.1 Planned Value Engineering
- C. Estimated Budget

## EXHIBIT A

### Legal Description of Property

#### Legal Description of Property

Those certain parcels of land comprising approximately one city block bounded by Chestnut Street, Grace Street, Second Street and North Third Street in historic downtown Wilmington, North Carolina and identified as:

1. 201 Chestnut Street- NHC PID# R04817-016-005-000
2. 201 Chestnut Street- NHC PID# R04817-016-008-000
3. 209 Chestnut Street- NHC PID# R04817-016-009-000
4. 201 Chestnut Street - NHC PID# R04817-016-004-000
5. 218 North 2<sup>nd</sup> Street - NHC PID# R04817-016-002-000
6. 201 Chestnut - NHC PID# R04817-016-014-000
7. 201 Chestnut - NHC PID# R04817-016-015-000
8. 218 North 2<sup>nd</sup> Street – NHC PID# R04817-016-016-000
9. 230 North 2<sup>nd</sup> Street – NHC PID# R04817-016-001-000

The above referenced parcels being more particularly described on “Composite Boundary ALTA/NSPS Land Survey of the Project Grace Properties” prepared by Bateman Civil Survey Company and sealed by surveyor Dovelte Outlaw, PLS, with Surveyor’s Certificate, dated 8.28.2018.

EXHIBIT A.1

Approximate Planned Subdivision of the Land



## EXHIBIT B

### Current Plans for County Improvements

1. Project Grace Architectural Permit Set drawings prepared by LS3P; dated 07.15.2022
2. Project Grace Structural Permit Set drawings prepared by LS3P and Wood Engineering; dated 07.15.2022
3. Project Grace Civil Permit Set drawings prepared by LS3P and Paramounte Engineering; dated 07.15.2022
4. Project Grace MEP Permit Set drawings prepared by LS3P and Newcomb & Boyd; dated 07.15.2022
5. Project Grace Landscape Permit Set drawings prepared by LS3P and Stewart; dated 07.15.2022
6. Project Grace Specifications Vol. 1 and Vol. 2; dated 07.15.2022
7. The above referenced plans and associated work being subject to Project Grace outlined value engineered document attached as Exhibit B.1; prepared by Monteith Construction dated 3.15.2023

## EXHIBIT B.1

### Planned Value Engineering

No.	Item	Comments
1		
2	Ramps in parking deck	1.a Remove two doors and ramp into museum and Library from parking deck
3	Brick	2.a Choose a Utility size brick from a regional manufacturer. Standard brick sizes. Select from Oldecastle
		2.b Revise all exterior stone walls to Utility brick. Delete timber benches - Revise to alternate material \$ 10 sf Use stone tile applied to CMU use Oldecastle.
		2.c Delete precast seat wall and precast stair treads to exterior Already complete
3	Reading Terrace	3.a Remove first floor reading terrace (move glass walls to outer walls & enclose terraces) CFD to review with Library
		3.b Remove second floor reading terrace (move glass walls to outer walls & enclose terraces)
4	Equipment Screen	4.a Change to less expensive screen material - revise size- Will carry 200k allowance for this screen wall Reduce footprint raise bottom
		4.b Revise size of concrete isolation pad at roof equipment location
4		
5	Aluminum	5.b Change all interior aluminum storefront to drywall with 3 x 7 wood door in hollow metal frame with 2' sidelight Delete sidelight add full glass in door. Only back of house areas.
6	Reducing ACM	6.a Replace ACM around punched window openings with brick masonry, inset 1' from typical exterior face of brick
7	Glass Railings	7.a Change Panel Railing on south side of children's ramp and Railing around Museum to 42" gwb wall with oak wood cap. Keep single stainless steel handrail on both sides of ramp. Delete LED lightening. Pre-Exhibit stair railing on 2nd floor to remain glass. Revise stairs to provide intermediate structural supports. Need high quality finish on gyp board to prevent scuffing. Change 2nd floor railing from perforated metal to glass. Library initially wanted glass changed to perforated metal. Perforated metal base bid. Glass rail is alternate.
8	Staff Terrace	8.a Remove staff terrace altogether including canopy and paver system. Leave door for roof access.
9	Acoustic Ceilings	9.a Replace all ACT 4 to ACT 1 - acoustic Ceiling - Carry allowance of \$ 20/sf
		9.b Remove Rulon Ceiling and replace with GWB - Revise to mid level pricing for this ceiling \$ 30/sf to be established as an allowance.
10	Movable Partitions	10.a Remove all operable wall room L236/L235. Provide glass wall. Delete door L218A.
11	Plumbing	11.a Change plumbing pipes to be PVC under slab only (keep cast iron risers)
12	Structural	12.a Reduce required floor loading from 175psf to 125psf
12	Structural	12.b Delete vapor lock add mixture to concrete mix
13	Uni-strut	13.a Reduce interior Ceiling uni-strut system at museum side by 1/3.
14	Terrace Wall Tie Downs	14.a Completely remove vertical wall tie-downs from terrace (steel post in wall, section 3-3, A-A, and B-B on S-404) and uni-strut posts at terrace
15	Mechanical	15.a Provide scroll compressor chillers in lieu of variable speed screw - County to Confirm
		15.b Provide ECM arrays in lieu of AC fans with VFDs on ERU-R-1 - County to Confirm.
16	Electrical	16.a Cost for all track lighting and grid system at Museum - reduce by 1/3.
		16.b Reduce track lighting on exterior terraces & power outlets to code requirements
		16.c Reduce for all floor boxes for power and data in museum side. Reduce to 50 floor boxes.
		16.d VE savings of light fixture package
		16.e Reduce IT drops to one per office.
17	3rd Street Display Wall	17.a Provide alternate design for 3rd St display Wall (Nano wall, canopy, structure, false wall behind door, HVAC, data/power, etc.)

EXHIBIT C

Estimated Budget

<b>COST SUMMARY</b>	<b>TOTAL COST</b>	<b>COST/ GSF</b>
<b>DESIGN &amp; ENGINEERING</b>	<b>\$2,118,000</b>	<b>\$22.49</b>
<b>CONSTRUCTION</b>	<b>\$54,065,437</b>	<b>\$574.11</b>
<b>ADMINISTRATIVE</b>	<b>\$45,000</b>	<b>\$0.48</b>
<b>MARKETING</b>	<b>\$25,000</b>	<b>\$0.27</b>
<b>PROFESSIONAL FEES</b>	<b>\$180,000</b>	<b>\$1.91</b>
<b>PROJECT MANAGEMENT FEES</b>	<b>\$1,975,170</b>	<b>\$20.97</b>
<b>CONTINGENCY</b>	<b>\$2,116,254</b>	<b>\$22.47</b>
<b>TOTAL</b>	<b>\$60,524,860</b>	<b>\$643</b>