

**SECOND AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING**

(Chestnut Civic and Cultural Arts District)

**THIS SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING** (the “Amendment”), is made as of this the \_\_\_\_ day of September, 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”), as previously amended by that certain Amendment to Memorandum of Understanding dated June 2022 (the “First Amendment”), and capitalized terms not otherwise defined herein will have the meaning set forth in the Memorandum.

**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. Necessary Approvals. Section 2 of the First Amendment is hereby deleted and replaced in its entirety with the following replacement Section 2:

2. Definitive Agreements; Approval.

a. Definitive Agreements. Developer has or will provide drafts of certain “Definitive Agreements,” including the Ground Lease, the Civic Component 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 Developer fail to secure a building permit for the multifamily units within two years of conveyance of the subject parcel by County to Developer, 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. Intentionally Deleted.

c. Right to Acquire of Project Plans Upon Termination. In the event the Parties are unable to obtain the Necessary Approvals, then either Party may terminate the Memorandum, and in such event 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.

2. Change Orders. Section 3.8 of the Memorandum is amended by adding the following new subsection (e) at the end of the existing section:

“(e) Notwithstanding the provisions of subsection (c) above, if (i) Developer and County determine that the cost of a Material Change should be reimbursed by an increase to the rent amount payable under the Civics and Arts Facilities Lease beyond the rent amount previously approved by the Local Government Commission, and (ii) the Developer and County do not identify a corresponding Proposed Change in the scope of the Project Plans that would offset such rent increase, then the parties shall not undertake such Material Change unless and until the County shall have sought and obtained the approval of the Local Government Commission for the increase in rent associated with such Material Change.”

3. Mixed Use Component. The definition of “Mixed Use Component” set forth in Section 1.1(f) of the Memorandum is amended by inserting the following new sentence at the end of the existing subsection:

“Without limitation of the foregoing, the Mixed-Use Component will include a hotel of at least 151 bedroom capacity.”

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

5. 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 Second Amendment to Memorandum of Understanding 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:

\_\_\_\_\_  
(SEAL), \_\_\_\_\_ Clerk