

**STATE OF NORTH CAROLINA
COUNTY OF ORANGE**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT REGARDING
SOUTH GREENSBORO STREET PROPERTY
BY AND BETWEEN
THE TOWN OF CARRBORO, NORTH CAROLINA
AND
THE COUNTY OF ORANGE, NORTH CAROLINA**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “*First Amendment* ”), amends the original DEVELOPMENT AGREEMENT REGARDING SOUTH GREENSBORO STREET PROPERTY BY AND THE TOWN OF CARRBORO, NORTH CAROLINA AND THE COUNTY OF ORANGE, NORTH CAROLINA dated December 4, 2017, is made and entered into as of the _____ day of _____, 2020, by and between the **TOWN OF CARRBORO**, a North Carolina municipal corporation, hereafter referred to as the “*Town*”, and **THE COUNTY OF ORANGE**, a North Carolina county, hereafter referred to as the “*County*”. Collectively, the Town and the County are sometimes referred to in this Agreement as the “Parties”.

W I T N E S E T H:

WHEREAS, the County and the Town entered into the original Agreement dated as of December 4, 2017; and

WHEREAS, pursuant to the original Agreement, the Town has entered into contracts for the design and construction of the proposed improvements for the Project on the Property; and

WHEREAS, significant changes have been made to the plan for development of the Property which is the subject of the Agreement; and

WHEREAS, the Parties wish to amend the Agreement as set forth herein to reflect the change in circumstances which have occurred since the execution of the Agreement; and

WHEREAS, it is the intent of the Parties that except as amended by this First Amendment, the terms of the original Agreement shall remain in full force and effect; and

WHEREAS, the Town is authorized to enter into this contract pursuant to, *inter alia*, the North Carolina General Statutes (“**N.C.G.S.**”) 160A-16, and the County is authorized to enter into this contract pursuant to, *inter alia*, North Carolina General Statutes 153A-11, *et seq.*, and the Town’s Board of Aldermen and the County’s Board of County Commissioners have each determined that it is in the best interests of their citizens to do so.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the County intending to be legally bound do hereby agree as follows:

ARTICLE I
Definitions

The definitions contained in the Agreement are amended as follows, and except as amended herein shall remain unchanged:

“Development” means the planning, design and construction of the Facilities on the Property located at 203 South Greensboro Street in Carrboro .

“Facility” or “Facilities” means the improvements to be made at the Property pursuant to this Agreement.

“Governing Body” means, with respect to the Town, the Town Council, and with respect to the County, the Board of County Commissioners.

“Gross floor area” as used in this Agreement means the area of space within the building to be constructed on the Property occupied by each party to this Agreement, plus the proportional share of Common Areas attributable to each party (i.e., Common Areas shall be apportioned between the parties in proportion to the amount of “gross floor area” each occupies in the building or as otherwise determined and agreed to in writing by the Parties). The proportion of “gross floor area” occupied by each party shall be finally calculated upon completion of the construction plans for the Facilities to be constructed on the Property, and a written schedule (following in principle the Elements of Value Exhibit C) signed by each party shall be attached to this Agreement as an Addendum at that time.

“Project” means the planning, design and construction of an approximately 50,000 gross square foot building, site improvements, and associated parking spaces and/or structure with adequate capacity for the Project. Project characteristics will include sustainable design and operation elements consistent with the adopted facility development principles of the Board of Orange County Commissioners attached as Exhibit B. The Parties also agree to incorporate the principles of value engineering during the design and construction process, thereby ensuring efficient design and use of both the initial construction capital and ongoing operations capital. Upon completion of the Project, the parties will convert the Facilities to a condominium form of ownership to be governed by covenants adopted by mutual agreement of the Parties.

“Shared Areas” are designated areas owned by one Party that may be reasonably offered for use by other Parties according to a mutual agreement.

ARTICLE II
Description Of Development Agreement

No Changes

ARTICLE III
Parties' Responsibilities

- A. The Parties' agree to negotiate and enter into such other agreements as may be necessary or appropriate to facilitate the financing and construction of the Project. The Parties intend that upon substantial completion of construction, they will convert ownership of the Facilities to a condominium form of ownership to be governed by mutually agreed upon covenants.
- B. The County and the Town, in accordance with applicable laws pertaining to public construction projects, have selected a designer for the Project. The Town and the County will work together with the selected designer to prepare the necessary local government permit application(s) for the Project. The design of the Facilities shall be mutually agreed upon by the Parties. The County and Town will bear the costs for the preparation of schematic design drawings in accordance with Article IV.A of this agreement. The Town will be responsible for contracting for the designer and related professional services providing preliminary information that contributes to the design of the Project
- C. The Town, as current owner of the Property, will be primarily responsible for procuring all necessary development approvals for the Project to include the Orange County Southern Branch Library on the lowest floor of the Building to be constructed on the Property, for such other uses as the Parties may agree to on the upper floors of such Building, and for such parking facilities as may be required for the uses of the Building. The County will support the Town's efforts to secure the necessary permits.
- D. Provided the Town approves and issues all necessary development permits for the Project, the Parties will coordinate to complete final construction documents, including but not limited to drawings, specifications, bid documents, contract(s) for construction, and other documents typically associated with similar construction projects, for the Project.
- E. The Town, in accordance with applicable laws pertaining to public construction projects, has entered into contract(s) for development of the construction documents for the Project.
- F. Upon approval of the construction documents and issuance of the necessary permits (the "Building Permit(s)"), the Town will at a time reasonably agreed between the Parties begin construction of the Project.
- G. The Parties will finance their respective shares of the Project costs according to

Exhibit C – Elements of Value. The Town will arrange for construction financing of its proportional share of the Project costs (based on Exhibit C), subject to Local Government Commission approval of the financing plan. The County shall finance its proportionate share of the Project costs (based on Exhibit C) in such manner as may be determined by the County. The County shall reimburse the Town for the County's share of the construction costs for the Project within thirty (30) days or presentation by the Town to the Count of a written request for payment pursuant to a schedule of progress payments to be established by the respective Finance Officers for the Town and the County.

- H. The Town will contract with all necessary design, engineering and construction firms for any environmental remediation work related to the Property as required by NCDEQ. The Town is solely responsible for the cost of such environmental remediation work for remediation of any conditions existing on the Property prior to December 4, 2017.
- I. The Town will contract with professionals for the construction of the Project, using a legally permitted construction delivery method. Upon completion, the Facilities, including the Building and associated structured parking, may be subject to a new condominium declaration with terms mutually agreed upon by the Town and the County, pursuant to which the County will acquire a fee simple condominium interest in (i) the portion of the Building to be used as the Orange County Southern Branch Library and any other uses to which the County may put its portion of the Building and (ii) parking spaces required for such uses.
- J. The Town will enter into a construction contract for the work.
- K. No Changes.
- L. The Parties agree that the Town shall have the right in its sole discretion to lease, or subdivide and convey title to, those portions of the Property and any improvements thereon which are not conveyed to the County.
- M. As contemplated by this Agreement, upon completion of construction the building and parking facilities will be converted to condominium ownership, with the Town and the County each owning condominium interests in Building space and associated parking spaces (whether located in a parking structure or on the ground). As part of the condominium arrangement, the parties will also have an undivided interest in the Common Areas designated on the final plans, and which Common Areas will be subject to the rules, rights and responsibilities established in the condominium documents. The parties agree that the conversion of parking spaces in any parking improvement made as part of this Project to condominium ownership will include in the condominium documents language establishing appropriate easements for ingress, egress and access to and between the public right-of-way and all parking spaces and establishing rules and regulations concerning use, management and maintenance of parking spaces. The parties agree that in the event on-site parking spaces are constructed as part of the Project an

adequate number of on-site parking spaces owned and paid for by the County shall be available for use by Library and Skills Development Center patrons during their normal operating hours. This number of spaces will be determined during the permitting and design of the project. These spaces will be made available to the Town while the Library and Skills Development Center are closed. All parking spaces will be considered flexible in use by both the Town and County so as to not cause unreasonable restrictions supporting Facility use by either the Town or County. The parties understand and agree that the Town will police and enforce all parking rules and regulations for the Facility. Moreover, if either party decides in the future to consider converting their parking spaces to paid parking, they will, prior to making a final decision to convert their spaces to paid parking spaces, discuss the issue with the other party. Each party shall be responsible for managing their condominium units unless the parties mutually agree otherwise in writing. Each party has the right to protect and isolate its parking (e.g. gated parking for continued free parking during library hours should paid parking be otherwise established) for the Parties' sole use and interest.

ARTICLE IV Allocation Of Project Costs

The Parties shall share in the costs of the Project as follows:

- A. Pre-development costs, site improvement costs, building design and construction costs, construction administration costs, financing costs, and contingency costs shall be shared by the Parties in accordance with the Elements of Value attached as Exhibit C to this Agreement. The Parties recognize and agree that some of these Values and the corresponding level of proportionality may not be finally established until after the majority of the design work is completed (and after this Agreement is executed). The parties acknowledge that Exhibit C represents their general understanding of the cost sharing arrangement for the Project. The Parties further agree that as soon as possible after the Schematic Design for the Project is delivered to the Parties (the "Schematic Design Delivery Date), they will review Exhibit C to ascertain whether any change in cost sharing is appropriate based on the schematic design. If the Parties are unable to come to an agreement regarding any changes to Exhibit C within forty five (45) days after the Schematic Design Delivery Date then either Party may terminate this agreement by providing ten (10) days advance written notice to the other Party of its intention to terminate this agreement. Upon such termination, each Party shall be responsible for (i) its proportionate share of costs as set forth in Exhibit C, and (ii) all costs it has otherwise incurred in connection with this Project through the date of termination.

- B. The County shall pay the cost of planning, design and construction of parking improvements required to support the County's use(s) on the Property. The Town shall be responsible for the balance of the cost of constructing the parking for the Project. The intent is for the County to pay the cost for the parking spaces reasonably expected and determined to be associated with the Orange County

Southern Branch Library use and any other use to which the County may choose to put its portion of the Building to be constructed on the Property. Upon completion of the work and when the Facilities become operational, the parking spaces allocated for the County's use of the Property shall be available for public parking during hours when the County's facilities is closed.

- C. The parties will each be responsible for their own legal and financing expenses incurred in relation to the Project.

**ARTICLE V
Term And Termination**

No Changes

**ARTICLE VI
Conditions Precedent And Contingencies**

The Parties understand and agree that there are a number of conditions precedent and contingencies that will impact their ability to enter into the Contracts for the Project. At a minimum, the Parties understand and agree that the following must be resolved to the County's and the Town's satisfaction before the execution of construction contract(s) for the Project:

- A. No Change.
- B. No Change
- C. No Change.
- D. No Change.
- E. No Change.
- F. No Change.
- G. No Change.
- H. No Change.
- I. No Change.
- J. No Change.
- K. No Change.
- L. No Change.

M. No Change.

N. No Change.

ARTICLE VII
Representations And Warranties

No Changes.

ARTICLE VIII
Remedies And Dispute Resolution

No Changes.

ARTICLE IX
Miscellaneous

No Changes.

[signatures contained on next page]

IN WITNESS WHEREOF, the parties have executed this First Amendment the day and year first above written.

TOWN OF CARRBORO

(Town Seal)

BY: _____
David Andrews, Town Manager

ATTEST:

Catherine Dorando, Town Clerk

This document is sufficient as to form.

Town Attorney

This instrument has been pre-audited in the manner proscribed by the Local Government Finance Act.

Finance Director

COUNTY OF ORANGE

(County Seal)

BY: _____
Bonnie Hammersley, County Manager

ATTEST:

_____, County Clerk

_____ County, North Carolina

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she is the Town Clerk/Deputy Town Clerk of the Town of Carrboro, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said Town, and that said writing was signed and sealed by her in behalf of said corporation by its authority duly given and the said person acknowledged this writing to be the act a deed of said corporation.

WITNESS my hand and official stamp (or seal), this the ___ day of _____, 2020.

(S E A L)

Notary Public
My Commission Expires: _____

_____ County, North Carolina

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she is the Clerk of the County of Orange, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said County, and that said writing was signed and sealed by her in behalf of said corporation by its authority duly given and the said person acknowledged this writing to be the act a deed of said corporation.

WITNESS my hand and official stamp (or seal), this the ___ day of _____, 2020.

(S E A L)

Notary Public
My Commission Expires: _____