

THIS AGREEMENT is made and entered into and is effective the ____ day of _____, 2021 by and between the Cape Fear 3 Chapter of the United Daughters of the Confederacy (“CF3”) and the City of Wilmington (“City”).

W I T N E S S E T H:

WHEREAS, there are two (2) significant statues and their supporting pedestals located within the 3rd street public right of way at or near its intersections with Dock Street and Market Street, respectively, in Wilmington, North Carolina (the “Statues”); and

WHEREAS, a survey of the records of the City of Wilmington show that the Statues are not the property of the City of Wilmington as there is no record of any offer of gift or dedication to the City, nor is there any record of acceptance on the part of the City; and

WHEREAS, City records do indicate that circa 1909 to 1922, CF3 obtained the permission the City to place the Statues in the above indicated locations – nothing more; and

WHEREAS, the Statue at the Market Street location, (hereinafter the Davis Statue), was commissioned and placed via CF3 fundraising efforts over 100 years ago; and

WHEREAS, the Statue at the Dock Street location, (hereinafter the Boney Statue), was commissioned and placed via a willed bequest in which CF3 is the only remaining trustee that the will tasked with custody and the authority to place said Statue, over 100 years ago; and

WHEREAS, multiple changes over the course of the past century, including but not limited to the traffic character and volume of 3rd Street, vandalism and civil unrest, and the need to contextualize the historical nature of the Statues at a proper location, has caused CF3 to confer with the City and to make a custodial claim to the Statues; and

WHEREAS, it appears, without resort to the courts, that CF3’s claim as custodian, if not a greater right, is superior to any right the City would have, and that the City supports the relocation and historical contextualization of the Statues; and

WHEREAS, NCGS 100-2.1, by its terms, does not apply to privately owned objects of remembrance; and

WHEREAS, the Parties desire to resolve this matter without unnecessary litigation and the risks, costs, and expenses associated therewith;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. The above recitals provide a good and accurate statement of the background context of the facts that have given rise to this agreement and they are hereby incorporated into and made a part of this agreement for reference and otherwise.
2. When the terms of the 'City' or 'CF3' are used in this agreement, those terms shall be presumed to include the respective officers, employees, agents, or assigns of each.
3. The City hereby releases CF3 from any and all liabilities of any nature and any claim that the City may have against CF3 in any way related to the Statues including but not limited to costs, fees, or expenses for storage, placement, removal, or security.
4. CF3 hereby releases the City from any and all liabilities of any nature and any claim that CF3 may have against the City in any way related to the Statues including but not limited to damage, costs, fees, or expenses for storage, placement, removal, or security. CF3 agrees to accept the Statues in their 'As Is' condition.
5. In moving the Statues, the City agrees to exercise reasonable prudence and caution. However, as the City also agrees CF3 will not be liable to the City for any cost, fee, or expense stemming from any relocation of the Statues, CF3 agrees to accept the Statues without regard to any unintentional damage caused by the relocation of the Statues by the City or its agents and that neither the City nor its employees or agents shall be liable to CF3 in any way for any such unintentional damage.
6. Upon the full execution of the settlement agreement, the City will cause the two (2) pedestals to be removed from their current location and to be held by the City in a non-public area until CF3 makes arrangements to take possession of the statues and pedestals.
7. When CF3 comes forth to take physical possession of the statues and pedestals, City staff will reasonably cooperate with CF3 to facilitate the loading of the statues and pedestals. In the discretion of the City Manager, if the Manager so deems it to be safer or more efficient for City staff, property, or resources, the City may choose to load the statues and pedestals on the means of transportation provided by CF3 in lieu of CF3 providing the loading equipment or service.

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