

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: January 6, 2025

Agenda Item: 7C	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: December 31, 2024
Subject: Regarding a Separate and Independent Amendment to the Parkway Group PDD Master Development Agreement for The Preserve	Division: Legal

**Background:**

The Developer for The Preserve area of the Parkway Group PDD is requesting an amendment to the Separate and Independent Amendment for The Preserve as follows:

- A. An increase in the total residential development units (RDUs) from 826 to 848 in 3 separate phases/segments of the development:
  - 1. 370 Multi-Family RDUs
  - 2. 251 Build-to-Rent RDUs (*from the original 229*)
  - 3. 227 Paired Villa RDUs

B. Triggers for the completion of the amenity areas are as follows:

Regarding the Multi-Family RDUs *and* the Build-to-Rent RDUs, the amenity areas for these segments will be completed at or before the issuance of Certificates of Occupancy for 50% of the RDUs in these segments. (185 Multi-Family RDUs and 125 Build-to-Rent RDUs)

Regarding the Paired Villa RDUs, the amenity area will be completed on or before the issuance of a Certificate of Occupancy for 85% of the RDUs in this segment. (193 Paired Villa RDUs)

**Recommended Action:**

Approve or deny the proposed ordinance on first reading

Reviewed by Department Head	Reviewed by Interim City Manager	Reviewed by City Attorney
-----------------------------	----------------------------------	---------------------------

Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE**

**AN ORDINANCE TO APPROVE THE FIRST AMENDMENT TO THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT REGARDING THE PRESERVE WITHIN THE PARKWAY PDD AND TO AUTHORIZE THE INTERIM CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH**

**WHEREAS**, the Developer for the Preserve within the Parkway PDD has proposed the First Amendment to the Separate and Independent Amendment to the Parkway PDD regarding the Preserve; and

**WHEREAS**, the proposed amendment to the above referenced document sets forth the amendments to the Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1:** The document identified as the First Amendment to the Separate and Independent Amendment to the Master Development Agreement for the Parkway PDD Development Agreement regarding the Preserve is hereby approved.

**Section 2:** The Interim City Manager is authorized to sign the above referenced document on behalf of the City.

**Section 3:** This ordinance shall be effective upon the date of passage.

**DONE, RATIFIED AND PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2025.**

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 1.6.2025  
SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
Interim City Manager

ORDINANCE: \_\_\_\_\_



**WHEREAS**, the Development Agreement, unless deemed extended by executive order of the Governor of South Carolina, was executed on January 9, 2009, and expires on January 9, 2029;

**WHEREAS**, as a result of a scrivener's error, LL Chestnut, which was never organized as a South Carolina limited liability company, and did not appear in the chain of title for any of the properties subject to the Master Development Agreement, should have instead been referred to as J.B. Chestnut Limited Liability Company, a South Carolina limited liability company ("**JB Chestnut**"), which was the owner of record of the tract referred to in the Master Development Agreement as the "**LL Chestnut Tract**";

**WHEREAS**, the real property owned by Apache at the time of the Master Development Agreement and the First Master Amendment is herein referred to as the "**Apache Tract**";

**WHEREAS**, Apache, acting together with Apartment Asset Advisors, LLC, a Florida limited liability company (the then Developer) ("**Apartment Asset Advisors**"), proposed an amendment to the Master Site Plan and the PDD (collectively the "**PDD Amendment**"), for a portion of the real property then owned by Apache, within the PDD, consisting of approximately 100 acres as shown on the Amended Site Plan Parcel (as defined herein) which PDD Amendment was approved by the City simultaneously with the approval of that certain Separate and Independent Amendment to the Master Development Agreement by and between the City, Apache, and Apartment Asset Advisors, effective October 25, 2023, and recorded November 20, 2023 in Deed Book 4747 at Page 3080 to include all signature pages, in the public records of Horry County, South Carolina (the "**Separate and Independent Amendment**");

**WHEREAS**, any portion of the Apache Tract which is not included in the Amended Site Plan Parcel, as such term is defined in the Separate and Independent Amendment, shall remain subject to the terms and provisions set forth in the Master Development Agreement, as amended by the First Master Amendment, shall not be subject to this Agreement, without further amendment except by one or more separate and independent amendments for the portions of the Apache Tract which are not included in the Amended Site Plan Parcel;

**WHEREAS**, the Developer purchased the Apache Tract from Apache by way of a Purchase and Sale Agreement dated April 7, 2021, and such purchase closed on April 19, 2024; and

**WHEREAS**, the Parties now desire to enter into an amendment to this First Amendment to the Separate and Independent Amendment to the Development Agreement to reflect the current ownership interests of the Apache Tract.

**NOW, THEREFORE**, for and in consideration of the covenants and conditions herein, and the sum of Five and No/100 (\$5.00) Dollars, to each party by the other paid, the parties agree as follows:

1. **Incorporation**. The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

2. **Continuing Encumbrance.** Despite any change in ownership and/or the configuration and boundaries of the various tracts subject to the Development Agreement, as amended, and the Exhibits to the Development Agreement, previously subjected to the Development Agreement, as amended, by the Separate and Independent Amendment and this Agreement, except as hereby expressly amended or supplemented, shall remain in full force and effect. Notwithstanding any change in ownership and/or the configuration or boundaries of the Apache Tract subjected to the Development Agreement, as amended, and the boundaries of the Exhibits attached to the Development Agreement, whether previously and currently encumbered by the Development Agreement, as amended by the Separate and Independent Amendment and this Agreement, except as hereby expressly amended or supplemented, all terms and provision of the Development Agreement relating to the Apache Tract, including any portion of the Apache Tract which is included in the Amended Site Plan Parcel, shall remain in full force and effect (the “**Continuing Encumbrance**”).

3. **Recording.** Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this Agreement shall be recorded in the public records of Horry County, South Carolina, on or before the date which is Fourteen (14) days following the date on which the City enters into this Agreement.

4. **Amendment to Section 6.** Section 6 of the Separate and Independent Amendment to the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current Section 6 in its entirety and replacing it with the following Section 6.

**6. Development Schedule/Completion Triggers.** The Amended Site Plan Parcel shall be developed in accordance with **Exhibit “H”** and the development schedule set forth in **Exhibit “N”** below (the “**Development Schedule**”). Developer shall keep the City informed of its progress with respect to the Development Schedule as a part of the required Compliance Review process set forth in **Section 23** below. Pursuant to the Act, the failure of the Developer to meet the Development Schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the Development Schedule shall be judged by the totality of circumstances, including but not limited to any change in economic conditions, the occurrence of an act of God (including natural disasters), an act of war, an act of terrorism, civil disturbance, strikes, lockouts, fire, flood, hurricane, unavoidable casualties, a health crisis which results in a limitation on business activities in the City extending for a period of more than thirty (30) days, or any other cause or causes beyond the reasonable control of the Developer (collectively “**Force Majeure**”), and the Developer’s good faith efforts made to attain compliance with the Development Schedule. As further provided in the Act, if the Developer requests a modification of the dates set forth in the development agreement and is able to demonstrate that there is good cause to modify those dates, such modification shall not be unreasonably withheld or delayed by the City.

Developer intends to include within the mixed-use development of the Amended Site Plan Parcel (the “**Project**”) a maximum of 848 residential development units (“**RDU**s”), in three separate segments or phases, each with its own amenity area, as follows and as shown in the PDD as well as **Exhibit “H”** showing the Master Site Plan for the Amended Site Plan Parcel:

- a. 370 Multifamily RDUs.
- b. 251 Build-To-Rent RDUs.
- c. 227 Paired Villa RDUs.

With respect to the 370 Multifamily RDUs and the Build-to-Rent RDUs, their respective amenity areas will be completed, and a certificate of occupancy issued, at or prior to the issuance of certificates of occupancy for fifty percent (50%) of the RDUs in the applicable segment (e.g., segment a., 185 multifamily RDUs, and segment b., 125 build-to-rent RDUs).

With respect to only the 227 Paired Villa RDUs the respective amenity area will be completed, and a certificate of occupancy issued, at or prior to the issuance of certificates of occupancy for eighty-five percent (85%) of the RDUs in this segment (e.g., segment c., 193 Paired Villa RDUs).

If Developer does not secure the certificates of occupancy on the terms as here specified, notwithstanding any other remedy that may be available to the City at law, or in equity, as a result of a Developer default under this Agreement, Developer and the City agree that the City may elect to (i) withhold issuance of building permits on the Amended Site Plan Parcel until such default is cured, or (ii) seek injunctive relief to stop any such continuing Developer default.

5. **Amendment to Section 8.** Section 8 of the Separate and Independent Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting a paragraph of the current Section 8 in its entirety and replacing it with the following Section 8:

With respect to the Amended Site Plan Parcel only and notwithstanding anything to the contrary in the Master Development Agreement, the City hereby agrees that upon Apache's proper submission and City approval of the necessary application and required supporting documentation including, but not limited to, the Project Pattern Book(s) required above, the approved density for the Amended Site Plan Parcel shall be a maximum of 848 RDUs as approved in the First Master Amendment and as generally depicted on **Exhibit "B"** attached hereto (which is provided merely to generally reflect the agreed upon density only and not with respect to building specifics, location or design etc.). The parties also agree that such approved density for the Amended Site Plan Parcel may not increase without the City's approval of a major amendment to the PDD zoning. In the event Apache applies for a reduction in the approved density for the Amended Site Plan Parcel, such submittal may be considered by the City as a minor amendment to the PDD.

6. **Independent Amendment.** In accordance with the Continuing Encumbrance provision contained herein, this Agreement is intended to be applicable only to the Amended Site Plan Parcel, and shall not be deemed applicable to any other portion of the Land which is subject to the Development Agreement, as amended, or to any other Landowner within the PDD, who is not a successor or assign of Apache. Notwithstanding the above, to the extent more than one parcel of real property within the Amended Site Plan Parcel is owned by the same owner, a default as to the obligations of that owner with regards to one parcel shall also constitute a default as to the obligations of that same owner as to any other parcels owned by such owner. For purposes of clarity, a default by any owner of real property within the Amended Site Plan Parcel shall constitute a default as to that particular owner, and a default by one owner shall not be deemed to create a default by any other owner within the Amended Site Plan Parcel.

7. **Restrictive Covenants.** The obligations and public benefits agreed to and accepted by Developer set forth in the Development Agreement, the Separate and Independent Amendment and this Agreement (collectively the “**Restrictive Covenants**”) shall run with the Amended Site Plan Parcel as continuing obligations, public benefits and restrictions. Developer further covenants and agrees that, to the extent the Amended Site Plan Parcel is encumbered by covenants, conditions and restrictions (the “**CCRs**”) as part of the development thereof, whether such CCRs are administered by an Owners Association or not, such CCRs shall include the Restrictive Covenants, the effect of which shall be to extend the term of the Restrictive Covenants.

8. **No Further Amendment.** In accordance with the Continuing Encumbrance provision contained herein, except as specifically amended by this Agreement, all of the terms and conditions of the Development Agreement as amended, shall remain in full force, unless and until amended in a writing signed by all of the parties. This Agreement may be modified or amended only by the written agreement of the City and the Developer. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced except as otherwise provided in the Act.

9. **No Default.** The parties acknowledge and represent that neither party to this Agreement is in default of the Development Agreement as amended.

10. **Statement of Required Provisions.** In compliance with Section 6-31-60(A) of the Act, the Developer represents that this Agreement includes all of the specific mandatory provisions required by the Act, addressed elsewhere in this Agreement.

11. **Effective Date.** The “Effective Date” of this Agreement shall be the date the last party signs this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the date below their respective signatures.

[Individual signature pages follow for each of the Parties]









***Retreat at the Preserve (fka Build-to-Rent)***



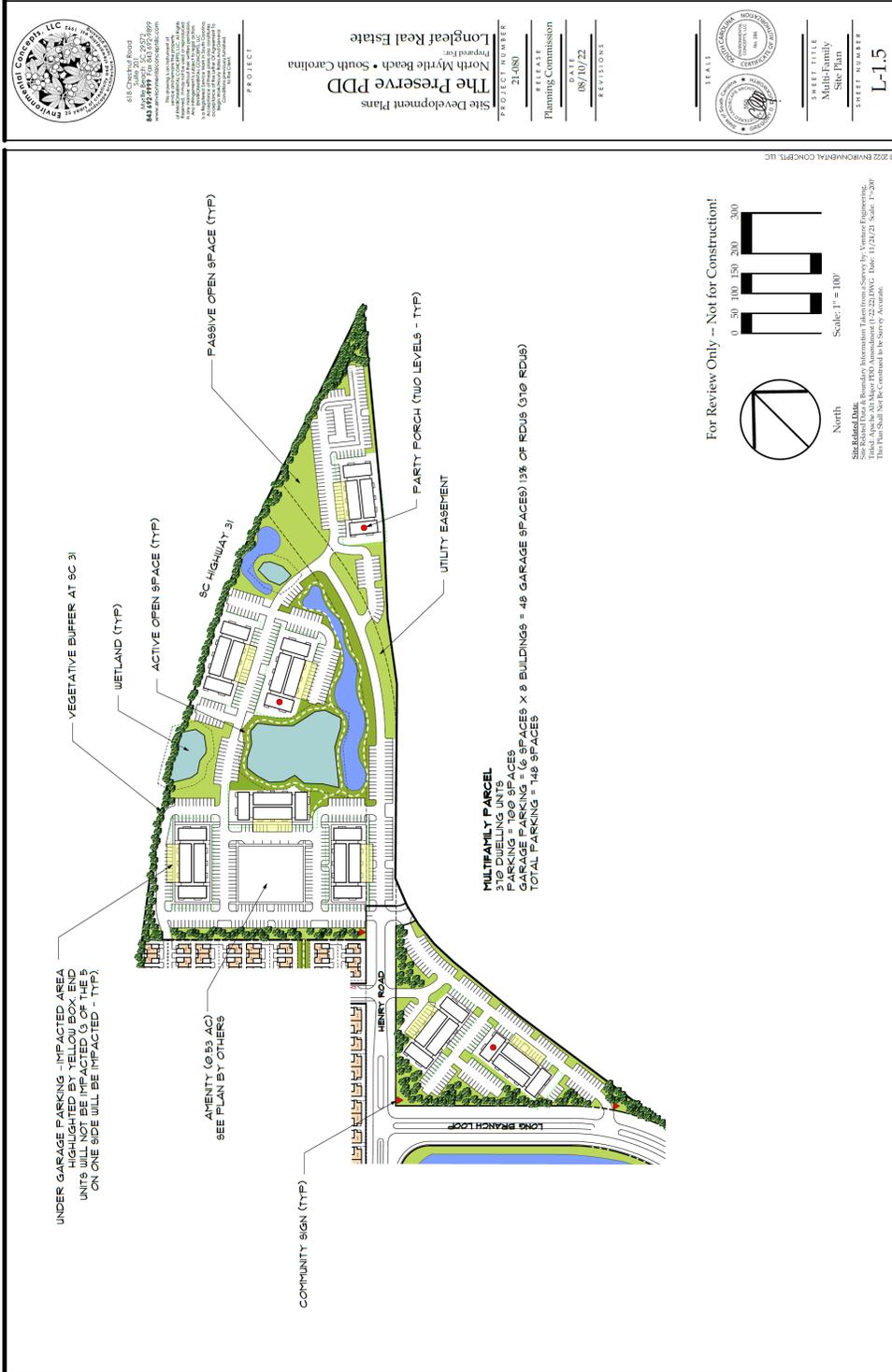


*Indigo at the Preserve (fka Paired Villa)*



# Master Site Plan for the Amended Site Plan Parcel

## Multifamily



*Retreat at the Preserve (fka Build-to-Rent)*



618 Old York Road  
 Charleston, SC 29405  
 843.797.9777 Fax: 843.797.9779  
 www.ventham.com

No warranty is made for use of the information contained herein for purposes not intended by the engineer. The user of the information shall be responsible for determining the applicability of the information to the project. The user shall indemnify and hold the engineer harmless from and against all claims, damages, costs and expenses, including reasonable attorneys' fees, arising out of or from the use of the information contained herein for purposes not intended by the engineer.

PROJECT

The Development Plans  
 Longleaf Real Estate  
 North Myrtle Beach - South Carolina

PROJECT NUMBER  
21-080

RELEASE  
Planning Commission

DATE  
08/10/22

REVISIONS

SEALS



SHEET TITLE  
Multifamily  
Site Plan

SHEET NUMBER  
L-1.5

SEALS







*Indigo at the Preserve (fka Paired Villa)*

