

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: February 17, 2025

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| Agenda Item: 7B  | Prepared by:<br>Chris Noury, City Attorney |
| Agenda Section:<br>New Business: Second Public Hearing   | Date: February 12, 2025                    |
| Subject:<br>Second public hearing regarding a Separate and Independent Amendment to The Parkway Group Planned Development District (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. A *decrease* in the total residential development units (RDUs) from 826 to 613 in 3 separate phases/segments of the development:

1. 135 Bayberry RDUs (formerly Multi-Family)
2. 251 Retreat RDUs (*from the original 229 Build-To-Rent RUDs*)
3. 227 Indigo RDUs (formerly Paired Villas)

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

Regarding the Bayberry RDUs *and* the Retreat RDUs, the respective 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. (67 Bayberry RDUs and 125 Retreat RDUs)

Regarding the Indigo 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. (192 Indigo RDUs)

**Recommended Action:**

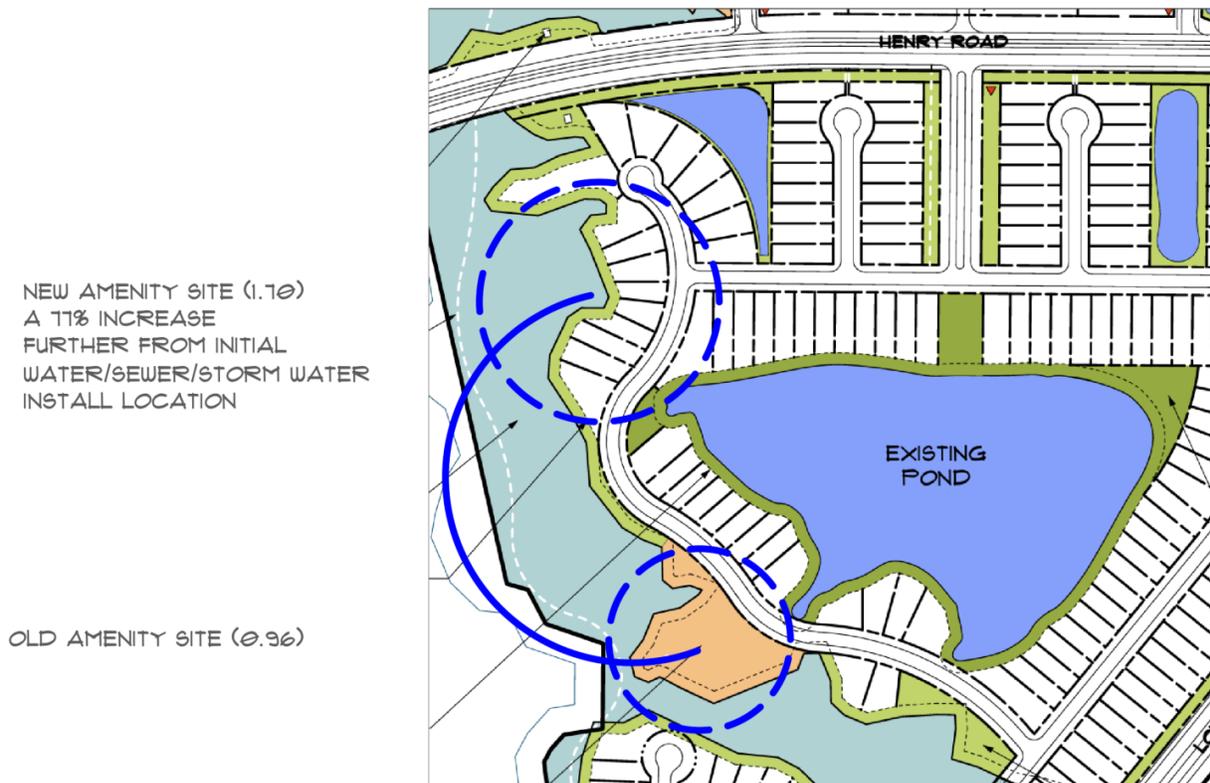
Allow comments from the public regarding the proposed Development Agreement

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

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

**Statement of Changes**  
**to Preserve PDD Development Agreement**

- 1) Reduce Residential Dwelling Unit count and mix throughout document to reflect changes to the site plan.
- 2) Update site plans to reflect changes in RDU count and mix.
- 3) Updated Section 4.6 to allow for additional certificate of occupancy before amenity center is completed.
  - a. Justification: The amenity center was moved, increasing the area of the site by 77%, but resulted in being grouped into a later phase of the project.



STATE OF SOUTH CAROLINA )  
)  
)  
COUNTY OF HORRY )

**FIRST AMENDMENT TO THE  
SEPARATE AND INDEPENDENT  
AMENDMENT TO THE MASTER  
DEVELOPMENT AGREEMENT  
(The Preserve)**

**THIS FIRST AMENDMENT TO THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT** (this “Agreement”) entered into as of the Effective Date (as defined herein) by and among the CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA (the “City”), a South Carolina municipal corporation, PRESERVE ACQUISITION I, LLC, South Carolina limited liability company, and PRESERVE ACQUISITION II, LLC, a South Carolina limited liability company (collectively, the “Developer”).

**RECITALS:**

**WHEREAS**, the City, Henry Road West, LLC (“Henry Road”), Reach 9, LLC, a South Carolina limited liability company (“Reach 9”), Apache Properties, LLC, a South Carolina limited liability company (“Apache”), RW Hills, LLC, a South Carolina limited liability company (“RW”), CW Hills, LLC, a South Carolina limited liability company (“CW”), JW Holiday Family, LLC, a South Carolina limited liability company (“Holiday”), Myrtle Beach National Company (“MB National”), Seashore Farms, LLC, a South Carolina limited liability company (“Seashore”) and LL Chestnut, LLC, a purported South Carolina limited liability company (“LL Chestnut”) entered into that certain planned development district (“PDD”) and Master Development Agreement, dated January 9, 2009, recorded January 20, 2009 in Deed Book 3382 at Page 3357, and re-recorded in Deed Book 3383 at Page 1662 to include signature pages, all in the public records of Horry County, South Carolina (the “Master Development Agreement”);

**WHEREAS**, the Master Development Agreement as amended, by the City and the then current owners of all of the Land which is subject to the Master Development Agreement, by that certain First Amendment to Master Development Agreement, dated March 23, 2020 and effective December 16, 2019, recorded March 24, 2020 in Deed Book 4298 at Page 2823 to include all signature pages, in the public records of Horry County, South Carolina (the “First Master Amendment”), which First Master Amendment provided, among other things, for the negotiation by and between the City and any of the then current Landowners, of amendments to certain public benefits agreed to by the City and the Landowners, at the time of any proposed amendment to the Master Site Plan, or the PDD, by an individual Landowner, which amendments would be separate and independent of any other amendments, and applicable only to the portions of the Land owned by the Landowner, or its successors and assigns, proposing such amendment to the Master Site Plan or the PDD, which separate and independent amendment would be evidenced by a written amendment;

**WHEREAS**, the Master Development Agreement and the First Master Amendment are hereinafter sometimes collectively referred to as the “Development Agreement”;

**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 ~~826~~**613** residential development units (“**RDUs**”), 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. ~~370-135 Bayberry (formerly Multifamily)~~ RDU.
- b. ~~229-251 Build-To-Rent~~Retreat (formerly Build-To-Rent) RDU.
- c. 227 ~~Paired Villa~~Indigo (formerly Paired Villa) RDU.

With respect to ~~each of the 135 Bayberry RDU and the 251 Retreat RDU, three segments of residential development,~~ 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 RDU in the applicable segment (e.g., segment a., ~~315-167 multifamily Bayberry~~ RDU, and segment b., ~~195-125 build-to-rent~~Retreat RDU, ~~and segment c., 193 Paired Villa RDU~~).

With respect to only the 227 Indigo RDU 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 RDU in this segment (e.g., segment c., 192 Paired Villa Indigo RDU).

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 ~~826-613~~ RDU 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 ~~calculations~~ 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]

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**EXHIBIT “H”**

**Master Site Plan for the Amended Site Plan Parcel**

**EXHIBIT “B”**

**Master Site Plan for the Amended Site Plan Parcel**

***Bayberry (formerly Multifamily)***





**Retreat (formerly Build-to-Rent)**



*Indigo at the Preserve (fka Paired Villa)*



**Master Site Plan for the Amended Site Plan Parcel**

**Bayberry (formerly Multifamily)**



**Retreat (formerly Build-to-Rent)**



*Indigo (formerly Paired Villa)*

