

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: July 19, 2021

Agenda Item: 7B	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: July 15, 2021
Subject: First Reading to approve the Development Agreement for the Hope Pointe PDD and to authorize the City Manager to sign the document on behalf of the City	Division: Legal

Background: The following summarizes the major aspects of the Hope Pointe Development Agreement:

Term: The initial term of the Development Agreement shall be for a period of five (5) years. The term will automatically renew at the end of five years for two (2) more terms of five (5) years each if the developer is not in default and the project has not been completed.

Density: The project shall consist of not less than 220 residential units and not more than 260 residential units as approved under the PDD and Master Site Plan.

Prohibition Against Conservation Easement: The Developer agrees not to subject any portion of the property to a conservation easement or other restrictive covenant regarding any of the property shown as single family homes or amenities on the Master Site Plan.

Temporary Storm Drainage Maintenance and Mowing: The Developer will provide temporary storm drainage measures to the satisfaction of the Public Works Director until such time that the storm drainage facilities that are a part of the development work are completed. In addition, the Developer shall mow the property no less than four (4) times per year until the PDD is fully developed. The mowing shall occur in the periods between April 1 and October 31 of each year.

Fees and Public Benefit: The Developer shall pay to the City \$400,000 payable in increments of \$50,000 for each of the eight (8) phases due at the time of submittal of a preliminary plat for each phase. In the event that the on the 10th business day following the 5th anniversary of this Agreement the entire \$400,000 has not been paid, the Developer shall pay to the City the difference between the total of the amounts previously paid to the City and \$400,000.

The Developer shall also pay to the City a beach access fee of \$1,100 per residential unit and a park enhancement fee of \$200 per residential unit for a total of \$1,300 per unit. This fee shall be due at the time of issuance of the building permit. If on the 10th business day following the 5th anniversary of the agreement the total amount of park and beach fees is less than \$375,000, the developer shall pay an additional amount equal to the difference between the amounts previously paid and the greater of \$375,000 or an amount equal to \$1,300 per residential unit. (Guarantees the payment of at least \$375,000.)

Amenities: The Developer shall provide a completed swimming pool accessible by the project residents prior to the issuance of 151 residential units.

Turn Lane: The Developer shall provide a turn lane into the property within the public right-of-way of Little River Neck Road in accordance with the traffic recommendation of the Public Works Director.

Recommended Action:

Approve the ordinance on first reading

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By _____ 2nd By _____ To _____

AN ORDINANCE

**AN ORDINANCE TO APPROVE THE DEVELOPMENT AGREEMENT FOR HOPE POINTE PDD
AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF
THE CITY OF NORTH MYRTLE BEACH.**

Whereas, City of North Myrtle Beach and NVR, INC., desire to enter into an agreement regarding the development of land identified as the Hope Pointe PDD; and

Whereas, that certain document identified as the Development Agreement for Hope Pointe PDD, as agreed upon by the Parties, has been prepared and is presented to City Council for approval; and

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 Development Agreement for Hope Pointe is hereby approved.

Section 2: The City Manager is authorized to sign the above referenced document on behalf of the City of North Myrtle Beach.

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

DONE, RATIFIED AND PASSED, THIS _____ DAY OF _____, 2021.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 7.19.2021

SECOND READING: _____

REVIEWED:

City Manager

ORDINANCE: 21-26

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

**DEVELOPMENT AGREEMENT FOR
HOPE POINTE PDD**

THIS DEVELOPMENT AGREEMENT (“*Agreement*”) is made and entered this ___ day of _____, 2021, by and between **NVR, INC.**, a Virginia corporation, its affiliates, subsidiaries, successors and assigns (“*Developer*”), and the governmental authority of the **CITY OF NORTH MYRTLE BEACH**, a body politic under the laws of the State of South Carolina (“*City*”).

WHEREAS, the legislature of the State of South Carolina has enacted the “South Carolina Local Government Development Agreement Act” (the “*Act*”), as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and

WHEREAS, Section 6-31-10(B)(1) of the Act recognizes that “[t]he lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning”; and

WHEREAS, Section 6-31-10(B)(6) of the Act also states that “[d]evelopment agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State”; and

WHEREAS, the Act further authorizes local governments, including municipal governments, to enter into development agreements with developers to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and

WHEREAS, the City seeks to protect and preserve the natural environment and to secure for its citizens quality, well planned and designed development and a stable and viable tax base; and

WHEREAS, Canal Land & Timber, LLC, a South Carolina limited liability company (the “*Owner*”) is the legal owner of the Property hereinafter defined and have given permission to Developer, the equitable owner of the Property, to enter into this Agreement with the City; and

WHEREAS, the City finds that the program of development for this Property (as hereinafter defined) proposed by Developer over approximately the next Five (5) years or as extended as provided herein is consistent with the City’s comprehensive land use plan and land development regulations, and will further the health, safety, welfare and economic wellbeing of the City and its residents; and

WHEREAS, the development of the Property and the program for its development presents an opportunity for the City to secure quality planning and growth, protection of the environment, and to strengthen the City’s tax base; and

WHEREAS, the City, at the request of the Developer, has approved the Hope Pointe Planned Development District (“**PDD**”), in lieu of the previously approved Esperanza P.U.D, July 2, 2007, as the applicable ordinance for the development of the Property, together with this Agreement, on or about the ____ day of _____, 2021; and

WHEREAS, this Agreement is being made and entered into between Developer and the City, under the terms of the Act, for the purpose of providing assurances to Developer that it may proceed with its development plan under the terms hereof, consistent with its approved zoning (as hereinafter defined) without encountering future changes in law which would materially affect the Developer’s ability to develop the Property under its approved zoning, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the City;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both the City and Developer by entering this Agreement, and to encourage well planned development by Developer, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Developer hereby 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. **DEFINITIONS.** As used herein, the following terms mean:

“**Act**” means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; attached hereto as **Exhibit “A”**.

“**Code of Ordinances**” means the Code of Ordinances for the City, as amended and in effect as of the date hereof, including the PDD, as the same may be amended from time to time, a complete copy of which is on file in the City’s office.

“**Developer**” means NRV, Inc., a Virginia corporation, all of its permitted assignees, and all successors in title or lessees who undertake development of the Property as a Developer or who are transferred Development Rights and Obligations.

“**Developer Default**” for purposes of this Agreement, Developer Default shall mean that (i) Developer has breached the specific obligations of this Agreement, and, following prior written notice from the City, has failed to cure such breach within Thirty (30) days of the date of written notice from the City; or (ii) Developer has failed to continue with Development Work, as defined in this Agreement, on the Property for a period of more than Six (6) months, and, following prior written notice from the City, has failed to cure such breach within Thirty (30) days of the date of written notice from the City.

“**Developer Default Remedy**” notwithstanding any other remedy that may be available to the City at law, or in equity, as a result of a Developer Default, Developer and the City agree that the City may elect to (i) withhold issuance of building permits until such Developer Default is cured;

or (ii) seek injunctive relief to stop any such continuing Developer Default.

“Development Rights and Obligations” means the rights, obligations, benefits and approvals of the Developer(s) under the Planned Development District and this Agreement.

“Development Work” means the periodic operation of development activities on the Property, which include, but are not limited to clearing, grading, erosion control, site work, and landscaping under the terms of a written contract with the Developer.

“Land Development Regulations” means the Land Development Regulations for the City, as amended and in effect as of the date hereof, which includes the Complete Streets Ordinance of the City, a complete copy of which is attached hereto as **Exhibit “E”**, as the same may be amended by the PDD, or further amended from time to time pursuant to this Agreement.

“Master Site Plan” means that certain conceptual master site plan prepared by Developer and approved under the PDD, as defined below, a copy of which is attached hereto as **Exhibit “D”**, as it may be amended from time to time pursuant to the PDD, this Agreement or the Code of Ordinances.

“Master Site Plan Revisions” means the revision of the Master Site Plan as attached hereto, and incorporated in the PDD, which revisions are made during the preparation of construction design documents to account for topography, soil quality, trees, grading, minor adjustments to roadway alignment, and changes to the location of lot lines, provided that such revisions do not increase the maximum allowable density of the Project, all of which shall be deemed administrative revisions or amendments to the PDD, which do not require a corresponding revision or amendment to the Development Agreement.

“PDD” means the Hope Pointe Planned Development District ordinance for the Property, which is approved by the City on or about the ___ day of _____, 2021, a copy of which is attached hereto as **Exhibit “C”**.

“Owners Association” means a legal entity formed by Developer pursuant to South Carolina statutes which is responsible for the enforcement of neighborhood restrictions and covenants, and for the maintenance and upkeep of any common areas and/or community infrastructure developed under this Agreement, but not accepted by the City for perpetual ownership and maintenance, to include but not be limited to: private drives and alleyways, common areas, neighborhood parks and recreational facilities, and storm water management systems.

“Project” means a Ryan Homes branded master planned community to include both single family detached lots and single family attached townhome lots, with required commercial components and related amenities project envisioned by the PDD and the Master Site Plan and approved by the City pursuant to this Agreement and the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement.

“Property” means that tract of land described on **Exhibit “B”**.

“Ryan Homes” means the name under which the Developer intends to market, construct and sell homes within the PDD, which brand incorporates superior amenities, landscaping and

community activities, thereby providing acceptable benefits to the City as a result of such branding, in exchange for the provisions of the PDD, and this Agreement.

“*Term*” means the duration of this Agreement as set forth in Section 3 hereof.

“*Residential Unit*” means a residence within the PDD, whether a single family lot, townhome, condominium, duplex or any other residence for occupancy within the PDD.

3. TERM. The Developer represents and warrants that the Property consists of a total of not less than 25 acres and not more than 250 acres of “highland” within the meaning given that term by the Act. The term of this Agreement shall commence on the date on which this Agreement is executed by the City and the Developer and shall terminate on the date which is five (5) years from the date of execution, provided, however, that, so long as the Developer is not in default (after being provided with notice and opportunity to cure as set forth below) of this Agreement, and the Project has not been completed, at the conclusion of the initial five-year term, provided Developer is not in default hereunder, and has continued to diligently pursue development of the Property, the termination date of this Agreement shall be automatically extended by both the City and the Developer for up to Two (2) additional five-year terms. Notwithstanding the terms and provisions in this Section or elsewhere in this Agreement to the contrary, if a court of competent jurisdiction hereafter determines that the length of the Term, or the provision for extension of the Term set forth above, exceeds the maximum term allowed under the Act and if all applicable judicial appeal periods have expired without such determination being overturned, then the Term of this Agreement relative to all or specific affected portions of the Property shall be reduced to the maximum permissible term under the Act, as determined by a court of competent jurisdiction.

4. DEVELOPMENT OF THE PROPERTY. The Property shall be developed in accordance with this Agreement, the PDD, the Code of Ordinances, and other applicable land development regulations required by the City (except as may be amended or superseded by the PDD or this Agreement), State, and/or Federal Government. The City shall, throughout the Term, maintain or cause to be maintained a procedure for the processing of reviews as contemplated by the PDD, this Agreement and the Code of Ordinances. The City shall review applications for development approval based on the development standards adopted as a part of the Code of Ordinances, unless such standards are superseded by the terms of the PDD or this Agreement, in which case the terms of the PDD or this Agreement shall govern.

5. CONVEYANCES OF PROPERTY AND ASSIGNMENT OF DEVELOPMENT RIGHTS AND OBLIGATIONS. The City agrees with Developer, for itself and its successors and assigns, including successor Developer(s), as follows:

A. Conveyance of Property. In accordance with the Act, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors in interest and assigns of all parties hereto, except for Excluded Property, as such term is defined below. For the purposes of this Agreement, “*Excluded Property*” means property that is conveyed by the Developer to a third party and is: (i) a single-family residential lot for which a certificate of occupancy has been issued; (ii) a parcel for which certificates of occupancy have been issued and on which no additional residential structures can be built under local ordinances governing land development; (iii) any other type of lot for which a certificate of occupancy has been issued and which cannot be further subdivided into one or more unimproved lots or parcels under local ordinances governing land

development; or (iv) a single-family residential lot which has been subdivided and platted and is not capable of further subdivision without the granting of a variance. Excluded Property shall at all times be subject to the Code of Ordinances of the City, including the PDD, and those incorporated in this Agreement. The conveyance by a Developer of Excluded Property shall not excuse that Developer from its obligation to provide infrastructure improvements within such Excluded Property in accordance with this Agreement.

B. Assignment of Development Rights and Obligations. The Developer, or any subsequent developer, shall be entitled to assign and delegate the Development Rights and Obligations to a subsequent purchaser of all or any portion of the Property with the consent of the City, provided that such consent shall not be unreasonably withheld or delayed. The City understands that any such assignment or transfer by the Developer of the Development Rights and Obligations shall be non-recourse as to the assigning Developer. Upon the assignment or transfer by Developer of the Development Rights and Obligations, then the assigning Developer shall not have any responsibility or liability under this Agreement. For purposes of this Section 5, the following activities on the part of Developer shall not be deemed “development of the Property”: (i) the filing of this Agreement, the PDD and Master Site Plan and the petitioning for or consenting to any amendment of this Agreement, the PDD or the Code of Ordinances; (ii) the subdivision and conveyance of any portions of the Property to the City as contemplated under this Agreement; (iii) the subdivision and conveyance of the portion of the Property designated as “Open Space” on the Master Site Plan to any person or entity so long as the same shall be restricted in use to “open space”; (iv) the subdivision and conveyance of portions of the Property, not to exceed in the aggregate one (1) acre, more or less, provided that such conveyances shall be deed-restricted to single-family residential use; (v) the conveyance of easements and portions of the Property for public utility purposes; (vi) the conveyance of portions of the Property to public entities in the case of any road realignments or grants of road rights of way; (vii) the marketing of the Property as contemplated under this Agreement; and (viii) any other activity which would not be deemed “development” under the Act.

6. DEVELOPMENT SCHEDULE. The Property shall be developed in accordance with the development schedule, attached as Exhibit “F” (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 13 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.

7. USES AND DENSITY. Development of the Property shall be determined in accordance with the PDD and the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement, provided that the initial PDD, as approved by the City shall include

not less than 220 total Residential Units, and not more than 260 total Residential Units, as approved under the PDD and shown on the Master Site Plan, at a maximum height as set forth in the PDD, commercial uses and amenities may not exceed the height limitations set forth in the PDD.

8. EFFECT OF FUTURE LAWS. Developer shall have vested rights to undertake development of any or all of the Property in accordance with the Code of Ordinances, the PDD, and the Land Development Regulations, as amended and in effect at the time of this Agreement, for the entirety of the Term. Future enactments of, or changes or amendments to the Code of Ordinances, the PDD, and the Land Development Regulations, which conflict with this Agreement shall apply to the Property only if permitted pursuant to the Act, and agreed to in writing by the Developer and the City. The parties specifically acknowledge that building moratoria or permit allocations enacted by the City during the Term of this Agreement or any adequate public facilities ordinance as may be adopted by the City shall not apply to the Project except as may be allowed by the Act or otherwise agreed to in writing by the Developer and the City.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, of any tax or fee of general application throughout the City, provided such fees are applied consistently and in the same manner to all single family properties within the City. Notwithstanding the above, the City may apply subsequently enacted laws to the Property only in accordance with the Act and this Agreement.

9. INFRASTRUCTURE AND SERVICES. The City and Developer recognize that the majority of the direct costs associated with the development of the Property will be borne by the Developer. Subject to the conditions set forth herein, the parties make specific note of and acknowledge the following:

A. Potable Water. The City represents that it has available sufficient supply to potable water to serve the Property. Potable water will be supplied to the Property by the City upon request of the Developer and subject to the provisions of this Section 9.A., provided that the Developer keeps the City informed in writing of its progress with respect to the Development Schedule as set forth in Section 6. The City's obligation to provide potable water for use within the Property is subject to any delay in the availability of water capacity or transmission facilities caused by Force Majeure. "***Force Majeure***" means 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 City. Developer will construct or cause to be constructed at Developer's cost all necessary water service infrastructure to, from, and within the Property per City specifications which will be maintained by it or the provider. The Developer shall be responsible for maintaining all related internal water infrastructure until offered to, and accepted by, the City for public ownership and maintenance. To the extent easements are required to connect the improvements within the Property to the City's existing improvements, Developer will be responsible for providing such easements. Upon final inspection and acceptance by the City, the Developer shall provide a twelve (12) month warranty period for all water infrastructure constructed to serve the Project.

Subject to the provisions of Section 9.N below, the Property shall be subject to all current water capacity fee/hookup charges ("***Water Impact Fees***") imposed by the City, provided such fees

are applied consistently and in the same manner to all similarly-situated property within the City limits. In particular, subject to the limitations of Section 9.N below, the Developer agrees that it shall not seek any exemptions for any portions of the Property from any current Water Impact Fees (so long as such development impact fees are applied consistently and in the same manner to all similarly-situated property within the City limits. Subject to the limitations of Section 9.N below, Developer shall be responsible for paying all such Water Impact Fees but not until application for a building permit for the vertical development of each subdivided lot or portion of the Property.

Notwithstanding the provisions referenced above, nothing in this Agreement shall preclude the City and Developer from entering into a separate utility agreement for cost-sharing of water transmission systems when such agreement may be of mutual benefit to both parties. Nothing herein shall be construed as precluding the City from providing potable water to its residents in accordance with applicable provisions of laws.

B. Sewage Treatment and Disposal. The City represents that it has available sufficient unallocated sewage treatment capacity to serve the Property. Accordingly, sewage treatment and disposal will be provided to the Property by the City, provided that the Developer keeps the City informed in writing of its progress with respect to the Development Schedule as set forth in Section 6 and further provided that the Development Schedule is not within five years of the effective date of this Agreement accelerated to increase demand within the Property beyond that reasonably foreseeable as of the effective date of this Agreement. The City's obligation to provide sewage treatment and disposal to services to the Property is subject to any delay in the availability of the same or sewage transmission facilities caused by Force Majeure. "**Force Majeure**" means 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 City. Developer will construct or cause to be constructed at Developer's cost all related infrastructure improvements to, from, and within the Property per City specifications. Including, but not limited to either of (i) two (2) new sewer pump stations; or (ii) one (1) new sewer pump station and the expansion and upgrading of an existing pump station owned by the City, which, in either event, shall be sufficient to provide capacity as necessary for the proposed development of the Project. The Developer shall be responsible for maintaining all related sewer infrastructure until offered to, and accepted by, the City for public ownership and maintenance. Upon final inspection and acceptance by the City, the Developer shall provide a twelve (12) month warranty period for all internal sewer infrastructure constructed to serve the Project. This property is also subject to a supplemental sewer extension fee in addition to sewer impact fees typically assessed within the City.

The City covenants that it has, will have, will construct or will acquire sufficient additional capacity so as to meet all reasonably foreseeable needs of current and projected future customers of the sewage system, including, but not limited to, that generated by the Property consistent with the Development Schedule shown in Exhibit "F".

The only remedy at law or in equity that shall be available to Developer in the event of a breach by the City of the provisions of Subsections A and B of this Section 9 shall be an action for specific performance of the express terms hereof.

Subject to the provisions of Section 9.N below, the Property shall be subject to all current

sewer connection/capacity fees (“***Sewer Impact Fees***”) imposed by the City, provided such Sewer Impact Fees are applied consistently and in the same manner to all similarly-situated property within the City limits. In particular, subject to the limitations of Section 9.N below, Developer agrees that it shall not seek any exemptions for any portions of the Property from any current Sewer Impact Fees (so long as such Sewer Impact Fees are applied consistently and in the same manner to all similarly-situated property within the City limits. Subject to the limitations of Section 9.N below, Developer shall be responsible for paying all such Sewer Impact Fees but not until application for a building permit for the vertical development of each subdivided lot or portion of the Property.

Notwithstanding the provisions referenced above, nothing in this Agreement shall preclude the City and Developer from entering into a separate utility agreement for cost-sharing of sewer transmission systems when such agreement may be of mutual benefit to both parties. Nothing herein shall be construed as precluding the City from providing sewage treatment to its residents in accordance with applicable provisions of laws.

C. Public Roads. All roads within the Project serving the single family lots shall be public roads. Roads serving the proposed townhome section of the Project shall be private as provided herein below. Private driveways and alleys may be allowed in limited circumstances, provided such driveways and alleys are constructed to City standards, are approved by the City Planning Commission as part of the subdivision plat approval process, and will be owned and maintained by a private Owners Association.

Notwithstanding the above provisions regarding public roads within the Project, the City and Developer acknowledge that, prior to acceptance by the City as a public road, Developer reserves the right to close portions of the roads within the Project which are adjacent to Developer’s model homes and/or sales center, so as to preclude access to the general public. During such temporary road closures, the City may continue to access and use such roads for public purposes. Nothing herein shall be deemed to require that the City accept driveways, alleyways or other improvements which do not comply with the Complete Streets provisions of the City’s Land Development Regulations.

D. Road Standards and Traffic Impact. All public roads within the Project shall be constructed to City specifications. The exact location, alignment, and name of any public road within the Project shall be subject to review and approval by the City Planning Commission as part of the subdivision platting process. The Developer shall be responsible for maintaining all public roads until such roads are offered to, and accepted by, the City for public ownership and maintenance. Developer shall also provide a turn lane into the Property from Little River Neck Road, in accordance with the traffic recommendations of the City’s Public Works Director. Upon final inspection and acceptance by the City, the Developer shall provide a warranty period for all public roads within the Project, pursuant to the City’s Street Acceptance Policy in effect at the time of this Agreement.

Notwithstanding any provision herein to the contrary, this Agreement does not obligate the City to expend any funds of the City or borrow any sums in connection with improvements to the roads subject to this Section 9.D. The parties understand and agree that except as set out in the preceding sentence, the City may seek funding from third parties for any such improvements which by reason of this Section 9.D are not the responsibility of the Developer or the City, and that the availability of such funding is beyond the control of either the Developer or the City.

E. Storm Drainage System. Except with respect to retention ponds, ditches and other storm water retention and treatment areas, all stormwater runoff, drainage, retention and treatment improvements within the Property shall be designed in accordance with the Code of Ordinances, provided, however, that the storm water storage capacity for the PDD shall be designed to retain storm water in the event of a 25 year storm. All stormwater runoff and drainage system structural improvements, including culverts and piped infrastructure, will be constructed by the Developer and dedicated to the City. Upon final inspection and acceptance by the City, the Developer shall provide a one-year warranty period for all drainage system structural improvements within the Project. Retention ponds, ditches and other stormwater retention and treatment areas will be constructed and maintained by the Developer and/or an Owners Association, as appropriate.

F. Solid Waste and Recycling Collection. The City shall provide solid waste and recycling collection services to the Property on the same basis as is provided to other residents and businesses within the City.

G. Police Protection. The City shall provide police protection services to the Property on the same basis as is provided to other residents and businesses within the City.

H. Fire Services. The City shall provide fire services to the Property on the same basis as is provided to other residents and businesses within the City.

I. Emergency Medical Services. The City shall provide emergency medical services to the Property, on the same basis as it provided to other residents and businesses within the City.

J. School Services. The City neither provides nor is authorized by law to provide public education facilities or services. Such facilities and services are now provided by the Horry County School District. The person or entity, whether it be homebuilder or another assignee of Developer, who actually initiates the building permit shall be responsible for paying all impact fees levied by the School District for each residential unit constructed prior to the issuance of a certificate of occupancy.

K. Private Utility Services. Private utility services, including electric, natural gas, and telecommunication services (including telephone, cable television, and internet/broadband) shall be provided to the site by the appropriate private utility providers based upon designated service areas. All utilities on the Property shall be located underground, and shall be placed in locations approved by the City so as to reduce or eliminate potential conflicts within utility rights-of-way.

L. Streetlights. Developer shall install or cause to be installed streetlights within the Project. To the extent that the City provides the same benefit to other similarly-situated neighborhoods, the City shall contribute toward the monthly cost for each streetlight in an amount equal to the costs for the base street light fixture offered by the utility provider. The remaining monthly cost for each streetlight, including additional charges associated with an enhancement street light fixture, if any, shall be borne by the Developer and/or Owners Association.

M. No Donation of Acreage for Sewer Plant Expansion. The City shall not require, mandate or demand that, or condition approval(s) upon a requirement that the Developer donate, use, dedicate or sell to the City or any other party for public purposes any portion of the

Property or any other property owned by the Developer or any affiliate of the Developer for sewer plant expansion by the City.

N. No Required Donations for Civic Purposes. The City shall not require, mandate or demand that, or condition approval(s) upon a requirement that, the Developer donate, use, dedicate or sell to the City or any other party for public purposes any portions of the Property or any other property owned by the Developer (or any of the entities or parties comprising the Developer) or any affiliate of the Developer. No additional public benefits shall be required of Developer for the amendments to the PDD to: (i) establish the commercial components of the Property; (ii) establish the amenity components of the Property; (iii) establish the signage and entry monumentation for the Property; and (iv) establish the signage and lighting standards for the Property provided, however, nothing contained herein shall be deemed or construed to restrict the City from negotiating additional public benefits as a result of the future amendment of the PDD or this Agreement, other than as set forth above, nor shall anything contained herein be deemed or construed to restrict the City in the appropriate exercise of its eminent domain powers.

O. Easements. Developer shall be responsible for obtaining, at Developer's cost, all easements, access rights, or other instruments that will enable the Developer to tie into current or future water and sewer infrastructure on adjacent properties.

P. Ponds and Lakes. In accordance with Section 9.E above, the Developer shall install pond(s) or lake(s) as shown in the approved PDD and on the Master Site Plan, in addition to pond(s) already in place. The City agrees to cooperate and assist the Developer in the permitting process for such pond(s) and lake(s), including any repair or enlargement thereof, it being understood that the City will not accept maintenance responsibility or any other liability for such pond(s) and lake(s).

Q. Prohibition Against Conservation Easements and Other Restrictions on the Property. Developer specifically covenants and agrees not to subject the Property to a conservation easement or other restrictive covenant, whereby any portion of the Property shown as single family homes or amenities on the approved Master Site Plan included in the PDD is restricted for future development of such portion of the Property, the same shall also constitute a Developer Default hereunder, provided that, for purposes of this Agreement any conveyance to the Owners Association shall not be deemed such an easement or restriction, and shall not constitute a Developer Default.

R. Temporary Storm Drainage Maintenance. Developer will provide temporary storm drainage measures, which incorporate the existing storm drainage facilities located on the Property from the relic golf course to the reasonable satisfaction of the Public Works Director for the City, such that prior to commencement of Development Work, the Property shall continue to maintain the existing storm drainage facilities until the storm drainage facilities which are a part of the Development Work for each respective Phase of the PDD are complete, and the same are dedicated to the City.

S. General Maintenance and Mowing. Developer will mow the undeveloped Property no less than four times per year until the PDD is fully developed. The mowing shall occur in the periods between April 1 and October 31 of each calendar year. In addition, until the PDD is fully developed, the Developer shall remove any fallen trees on the Property, such tree removal to occur during the same periods set out for mowing above. The Developer shall be given a reasonable

period of time to be determined by the City Manager or his designee, to mow the Property and remove fallen trees on the Property in the event of a hurricane, rain event or other force majeure that prevents the Developer from complying with the mowing/maintenance schedule referenced above.

If the Developer fails to comply with the scheduled time frames for mowing and removal of fallen trees, as determined by the City Manager or his designee, then the City shall have the right to enter the Property for the purpose of mowing and removing any fallen trees, and the Developer shall reimburse the City for the costs of such mowing and/or tree removal in an amount equal to One Hundred (100%) percent of such the costs incurred by the City for mowing and/or tree removal. In the event Developer should fail to reimburse the City within Thirty (30) days of the date an invoice is delivery by the City to the Developer, the City may place a lien upon the Property, which lien shall be enforceable in the same manner as a property tax lien, which may only be satisfied by payment thereof.

T. Recording of Agreement. In accordance with provisions of § 6-31-120, Code of Laws of South Carolina (1976) as amended Developer shall record this agreement within fourteen days of final approval by the City; in addition, the burdens and benefits hereunder shall inure to successors in interest to Developer.

10. IMPACT FEES. The Property shall be subject to all development impact fees imposed by the City at the time of this Agreement, or following the date of this Agreement, provided such fees are applied consistently and in the same manner to all similarly-situated property within the City limits. All such impact fees shall not be due and payable until an application of any person or entity for a building permit for the vertical development of any subdivided lot or portion of the Property. In particular, the Developer agrees that it shall not seek any exemptions for any portions of the Property from any current development impact fees (so long as such development impact fees are applied consistently and in the same manner to all similarly-situated property within the City limits) for any reason.

11. ADDITIONAL FEES AND PUBLIC BENEFITS. The Developer and the City acknowledge that the Property was previously subjected to the Esperanza P.U.D. (the “**Prior Ordinance**”), which Prior Ordinance included a contribution agreement requiring total contributions to the City in an amount equal to (i) \$50,000.00 for each the Eight (8) proposed phases of development, totaling \$400,000, and if not paid in full in 5 years, the remaining balance must be paid at the end of 5 years; and (ii) \$1,000.00 each of the proposed 375 residential units to be developed under the Prior Ordinance; and (iii) \$50,000.00 as a portion of the costs to be incurred by the City in commissioning a traffic study for Little River Neck Road. In lieu of the fees set forth under the Prior Ordinance, and in addition to any other fees set forth elsewhere in this Agreement, Developer and City acknowledge that the Project and its residents will place additional demands on certain services, resources and amenities provided by the City for its residents, and, in accordance with the terms of the PDD, Developer shall also pay to the City, or make for the benefit of the City, those public benefits set forth in the PDD, which fees are being paid in lieu of any other impact fees or development fees adopted by the City at any time during the Term of this Agreement, as set forth below:

A. The contribution to the City of an amount equal to \$50,000.00 for each of the Eight (8) Phases within the PDD, at the time of Developer’s submittal of a preliminary plat for each respective Phase, totaling \$400,000.00, provided that, not later than Ten (10) business days following

the Fifth (5th) anniversary of this Agreement, Developer shall pay to the City, the difference between the total of the amounts previously paid by Developer to the City and \$400,000.00.

B. Beachfront parking fee in an amount equal to \$1,100.00 per Residential Unit, together with a park enhancement fee in an amount equal to \$200.00 per Residential Unit, each as shown on the approved Master Plan, and which total of \$1,300.00 per Residential Unit shall be payable at the time of building permit issuance, provided, however that, to the extent the aggregate total of the beachfront parking fees and park enhancement fees paid in the aggregate are less than \$375,000.00, then, not later than Ten (10) business days following the 5th anniversary of the date of this Agreement, Developer shall pay an additional amount equal to the difference between the amounts previously paid for beachfront parking fees and park enhancement fees, in the aggregate, and the greater of (i) \$375,000.00; or (ii) an amount equal to \$1,300.00 per Residential Unit shown on the approved Master Plan.

C. Stormwater conveyance and retention facilities sufficient in capacity to accommodate the storm water generated from the Property, and provide the City with evidence of the necessary and required permanent and perpetual easements necessary to facilitate such drainage from the Property.

D. Developer shall also provide, at Developer's expense, within the public right-of-way of Little River Neck Road, a turn lane into the Property from Little River Neck Road, in accordance with the traffic recommendations of the City's Public Works Director.

E. Developer recognizes that on-site amenities and open spaces within the PDD reduce the demand on the recreational services which must otherwise be provided by the City, and therefore Developer agrees that the following recreational amenities and open spaces shall be provided in accordance with the approved Master Plan for the PDD:

- (1) The marina within the PDD provides both recreational and aesthetic benefits to the residents of the PDD, and may be installed in phases by the Developer, provided that the waterfront promenade portion of the marina will be installed prior to the completion of the remaining portions of the marina.
- (2) Sidewalks and walking trails are inter-connected and are provided within the PDD in accordance with the Master Plan for the PDD to provide pedestrian access within the PDD.
- (3) Developer will provide a pavilion/lookout with a walking trail to connect the waterfront areas of the PDD to the sidewalks within the PDD.
- (4) Developer will accelerate the swimming pool so that, prior to the issuance of building permits for more than 151 residential units within the PDD, the swimming pool is completed and accessible to the residents of the PDD.
- (5) Developer will incorporate exercise stations, pocket parks, a dog park and a "tot lot" within the PDD, in accordance with the Master Plan for the PDD.

12. PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE. The City and Developer recognize that development can have negative as well as positive impacts. Specifically, the City considers the protection of the natural environment and nearby waters, and the preservation of the character and unique identity of the City, to be important goals. Developer shares this commitment and therefore agrees to abide by all provisions of federal, state and local laws and

regulations for the handling of storm water.

13. COMPLIANCE REVIEWS. Developer, or its assigns, shall meet with the City, or its designee, at least once per year during the Term to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year as compared to the Development Schedule. The City shall provide written notice to the Developer of the date for such compliance review not less than Five (5) business days in advance, provided such notice shall not be applicable to standard reviews and inspections otherwise performed by the City as to the improvement of the Property. The Developer must demonstrate good faith compliance with the terms of this Agreement. The Developer, or its designee, shall be required to provide such information as may reasonably be requested.

14. DEFAULTS. Notwithstanding the provisions of Section 6 above, Developer shall continuously and diligently proceed with Development Work on the Property. Developer's failure to proceed with Development Work on the Property for a period of more than Six (6) months, other than as a result of Force Majeure, as defined in Section 6 above, shall constitute a default hereunder on the part of Developer. In the event of a default, the City shall provide written notice to Developer of such default, and Developer shall have a period of thirty (30) days in which to cure a default by commencement of Development Work with regards to the next portion of the Property to be developed in accordance with phasing plan of the PDD. The failure of the Developer to comply with the terms of this Agreement shall constitute a default, entitling the City to pursue such remedies as deemed appropriate, including withholding the issuance of building permits in accordance with the provisions of the PDD, specific performance and the termination or modification of this Agreement in accordance with the Act; provided however no termination of this Agreement may be declared by the City absent its according the Developer the notice and opportunity to cure in accordance with the Act.

15. MODIFICATION OF AGREEMENT. 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.

16. NOTICES. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582

Attention: City Manager

With a copy to:

Franklin G. Daniels, Esq.
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577

With a copy to:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582
Attention: City Attorney

And to the Developer at:

NRV, Inc.

Attention: _____

With a copy to:

Robert S. Guyton, Esq.
Robert S. Guyton, P.C.
4605 B Oleander Drive, Suite 202
Myrtle Beach, SC 29577

17. GENERAL.

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement (“*New Laws*”), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by Developer and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement.

B. Estoppel Certificate. The City or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing, within thirty (30) days of such written notice, that this Agreement is in full force and effect, that this Agreement has not been amended or modified, or if so amended, identifying the amendments, whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Agreement sets forth, and incorporates by reference

all of the agreements, conditions and understandings between the City and the Developer relative to the Property and its development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

D. No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City or any Developer or to render such party liable in any manner for the debts or obligations of another party.

E. Exhibits. All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

F. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

G. Transfer of Title. Transfers of title to the Property, in whole or in part, may be made, at any time and to any person or entity, without the consent of the City.

H. Binding Effect. The parties hereto agree that this Agreement shall be binding upon their respective successors and/or assigns.

I. Governing Law. This Agreement shall be governed by the laws of the State of South Carolina, and the parties further agree that venue shall be proper, without regards to any conflict of law principals, in a court of competent jurisdiction in Horry County, or such other jurisdiction in South Carolina as is appropriate and necessary under the circumstances.

J. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

K. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the City's right and power of eminent domain under the laws of the State of South Carolina.

L. No Third Party Beneficiaries. The provisions of this Agreement may be enforced only by the City and the Developer. No other persons shall have any rights hereunder, unless specified in this Agreement.

M. Release of Developer. Subject to Section 5.B, in the event of conveyance of all or a portion of the Property, the Developer shall be released from any obligations and liabilities with respect to this Agreement as to the portion of Property so transferred, and the transferee shall be substituted as the Developer under the Agreement as to the portion of the Property so transferred; provided, however, the transferee(s) of the one acre contemplated for subdivision and conveyance under Section 5.B shall not be deemed to succeed to any Development Rights and Obligation of Developer under this Agreement.

18. DESCRIPTION OF LOCAL DEVELOPMENT PERMITS NEEDED. The development of the Property shall be pursuant to this Agreement, the PDD, the Land Development

Regulations, and Code of Ordinances, as amended; provided, however, in the event of any conflict between this Agreement and the PDD, the Land Development Regulations, and/or the Code of Ordinances, the provisions of this Agreement shall control. Necessary permits include, but may not be limited to, the following: building permits, zoning compliance permits, sign permits (permanent and temporary), temporary use permits, accessory use permits, driveway/encroachment/curb cut permits, clearing/grading permits, and land disturbance permits. Notwithstanding the foregoing, the City acknowledges that City Planning and Zoning Director or the City Planning Commission approval of plats will be given if any such plats are materially consistent with the site plan of the Project shown on the Master Site Plan, subject to any Master Site Plan Revisions as defined herein. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions. It is expressly understood and acknowledged by all parties to this Agreement that any portions of the Property donated or sold by any Developer to the City shall not be subject to any private declaration of restrictions or property owners association(s) created by any Developer for any subsequent subdivision of the Property.

19. 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.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

NRV, INC., a Virginia corporation

WITNESSES:

Name:

By: _____

Name: _____

Title: _____

Name:

STATE OF SOUTH CAROLINA)

)

COUNTY OF Horry)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, as _____ of NRV, Inc., a Virginia corporation. He or she personally appeared before me and is personally known to me.

Notary Public

My Commission Expires: _____

[CITY SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

CITY:

WITNESSES:

CITY OF NORTH MYRTLE BEACH

Witness #1

By: _____

Name: _____

Title: _____

Witness #2

STATE OF SOUTH CAROLINA)

)

COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the of the CITY OF NORTH MYRTLE BEACH. He or she personally appeared before me and is personally known to me.

Notary Public

My Commission Expires: _____

EXHIBIT "A"

South Carolina Local Government Development Agreement
Act as Codified in Sections 6-31-10 through 6-31-160
of the Code of Laws of South Carolina (1976), as amended

EXHIBIT "B"

Description of Property

EXHIBIT “C”

PDD

[TO BE ATTACHED]

EXHIBIT “D”

Master Site Plan

[TO BE ATTACHED]

EXHIBIT “E”

Land Development Regulations

[TO BE ATTACHED]

EXHIBIT “F”

Development Schedule

Construction will begin following receipt of permits from the City of North Myrtle Beach and from other regulatory bodies. The nature of this Project, together with the current economic conditions, prevents the Developer from providing exact dates for commencement of future phases or exact completion dates. Although the timing of completion of any particular Phase of the PDD is subject to then current market demands, the Developer anticipates a period of approximately Eighteen (18) months from approval of the PDD for design, permitting and installation of initial required infrastructure, and that approximately Two-Thirds of the Project would be complete within Five (5) years of approval of the PDD, with an additional One-Third of the Project being completed in the subsequent Two (2) year period.