

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: May 2, 2022

Agenda Item: 5E	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Ordinance. Second Reading	Date: April 27, 2022
Subject: Regarding the Separate and Independent Amendment to the Parkway PDD Master Development Agreement regarding a portion of the Henry Road West Tract and the entire Apache Tract	Division: Legal

Background:

Fees and Public Benefit:

The developer will have the option to install sidewalk and street trees along Water Tower Road (WTR) **OR** pay the City \$105,000 in two separate installments on or before the issuance of building permits for Buildings 1 and 2, as identified on the site plan.

In addition, the Developer will widen the paved section of WTR within the existing public right-of-way to accommodate turning movements (both acceleration and deceleration lanes) concurrently with the site work improvements for the first building within the amended site plan parcel.

Park Land:

The Park Enhancement Fee is waived because the Developer will provide 2 acres of public parkland adjacent to Water Tower Road that will be used as a future trailhead and parking area for the East Coast Greenway which will be conveyed to the City within 90 days of the final approval of this amendment to the Development Agreement.

East Coast Greenway (ECG) Easement:

The Developer will also convey a 25' perpetual public access easement to accommodate the East Coast Greenway through the Apache Tract. This easement has been placed on the site to avoid heavy commercial/truck traffic through the Apache Tract. This ECG easement will also connect to the previously referenced 2 acre trailhead.

Property Exchange:

Because of wetlands located on the majority of the City's lot (approximately 3.09 acres) that was previously conveyed to the City as the future location for a fire station in the Parkway PDD area; the Developer will convey *another lot* to the City containing approximately 6.34 acres located adjacent to Hunt Club Drive and Water Tower Road as the future location of the fire station and the City will convey the previously mentioned lot back to the Developer.

Water Tank/Tower:

The Developer shall have the right to, but not the obligation to, at the Developer's sole cost and expense, install a water tank or water tower of sufficient capacity to address water pressure issues for fire related services to the warehouse buildings that will be constructed as depicted on the site plan. The Developer will be required to provide a recorded maintenance agreement regarding the water tank prior to final site plan construction approvals if the developer elects to build the water tank.

Recommended Action:

Approve the ordinance on second reading

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By _____ 2nd By _____ To _____

AN ORDINANCE

AN ORDINANCE TO APPROVE THE SECOND AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PARKWAY PDD REGARDING THE HENRY ROAD TRACT AND THE APACHE TRACT (IDENTIFIED AS THE PALMETTO INDUSTRIAL PARK) AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

WHEREAS, the City of North Myrtle Beach and Henry Road West, LLC and Apache Properties, LLC desire to enter into the Separate and Second Amendment to the Master Development Agreement regarding the Henry Road Tract and the Apache Tract within the Parkway PDD; and

WHEREAS, that certain document identified as the Separate and Independent Amendment to the Master Development Agreement (Palmetto Industrial Park), as agreed upon by the Parties, has been prepared and is presented to City Council for approval.

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 Separate and Independent Amendment to the Master Development Agreement (Palmetto Industrial Park) 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 _____, 2022.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 4.4.2022

SECOND READING: 5.2.2022

REVIEWED:

City Manager

ORDINANCE: 22-17

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**SEPARATE AND INDEPENDENT
AMENDMENT TO THE MASTER
DEVELOPMENT AGREEMENT
(Palmetto Coast Industrial Park)**

THIS SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this "Agreement") entered into by and among the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the "City"), a South Carolina municipal corporation, **HENRY ROAD WEST, LLC**, a South Carolina limited liability company ("Henry Road") and **APACHE PROPERTIES, LLC**, a South Carolina limited liability company ("Apache").

RECITALS:

WHEREAS, the City, 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 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"); and

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 and 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; and

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

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"; and

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

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**"; and

WHEREAS, Henry Road has proposed an amendment to the Master Site Plan and the PDD (collectively the "**PDD Amendment**"), for a portion of the real property owned by Henry Road, West of S.C. Highway 31, within the PDD, an unrecorded map of which is attached hereto as **Exhibit "A"** (the "**Amended Site Plan Parcel**") which PDD Amendment is approved by the City simultaneously with the approval of this Agreement; and

WHEREAS, in addition, Henry Road and Apache have proposed a realignment of the proposed East Coast Greenway (the "**ECG**") from the right-of-way of Water Tower Road, to a location on both the Henry Road Tract and the Apache Tract which minimizes the conflicts between pedestrians and bicycle traffic expected along the ECG, and the heavy truck traffic expected as a result of the proposed use for the Amended Site Plan Parcel, the route of such ECG being described herein, and as an exhibit to the PDD Amendment described above; and

WHEREAS, in addition, Apache has previously conveyed to the City, a portion of the Apache Tract intended for use as a fire and emergency services station, as described herein (the "**Original Fire Station Site**"), the City and Apache now being made aware of a significant and material portion of the Original Fire Station Site being classified as jurisdictional wetlands, Apache and the City have agreed to the exchange of the Original Fire Station Site, for a new parcel to be used as a fire and emergency services station, which is located at the current termination of Hunt Club Drive, near the existing United Parcel Services facility within the Parkway Group PDD, being described herein (the "**New Fire Station Site**"); and

WHEREAS, the City has previously required the improvement of a roadway to the Original Fire Station Site, which roadway would have been located partially on the Henry Road Tract and partially on the Apache Tract, provided however, that, as a result of the relocation of the proposed fire and emergency services station from the Original Fire Station Site to the New Fire Station Site, the need for such roadway is eliminated, and instead, Henry Road and Apache will agree to construct, or cause to construct, a shared driveway for access between the Henry Road Tract and the Apache Tract, as described herein; and

WHEREAS, Henry Road has also agreed to convey to the City, within Ninety (90) days of the date the last party to this Amendment signs this Amendment (hereinafter the "**Effective Date**"), as a portion of the relocated ECG, a parcel of approximately 2.0 acres, which is preferred by the City in lieu of the parcel of approximately 5.5 acres proposed for conveyance under the PDD, as initially approved, this 2.0 acre parcel being a portion of the Henry Road Tract (the "**ECG Trailhead Site**"),

as described herein, in exchange for the waiver by the City of any park enhancement fees or beach parking fees which would otherwise be assessed for residential properties within the Parkway Group PDD; and

WHEREAS, any portion of the Henry Road Tract or the Apache Tract which is not included in the Amended Site Plan Parcel, the New Fire Station Site, the ECG or the ECG Trailhead Site 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 Henry Road Tract or the Apache Tract which are not included in the Amended Site Plan Parcel, the New Fire Station Site, the ECG or the ECG Trailhead Site;

WHEREAS, the Parties now desire to enter into a separate and independent amendment to the Development Agreement, in order to specify certain fees and obligations imposed by the City pursuant to the Development Agreement, as amended, which would only be applicable to the Amendment Site Plan Parcel portion of the PDD, in the manner set forth below.

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. **Continuing Encumbrance**. Despite any change in ownership and/or the configuration and boundaries of the various tracts subjected to the Development Agreement, as amended, and the Exhibits to the Development Agreement, previously subjected to the Development Agreement, as amended, by 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 Henry Road Tract and the Apache Tract subjected to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, including the obligations regarding the Traffic Circle, which was dedicated as a public road as of August 2021, whether previously and currently encumbered by the Development Agreement, as amended by this Agreement, except as hereby expressly amended or supplemented, all terms and provisions of the Development Agreement relating to the Henry Road Tract or the Apache Tract, including any portion of the Henry Road Tract or the Apache Tract which is included in the Amended Site Plan Parcel, the New Fire Station Parcel, the ECG or the ECG Trailhead Site, shall remain in full force and effect (the "**Continuing Encumbrance**").

2. **Amendment to Section 2.13**. In accordance with the Continuing Encumbrance provision contained herein and solely with respect to the Amended Site Plan Parcel, Section 2.13 of the Development Agreement, as amended, is further amended to acknowledge the Traffic Circle, as defined in Section 2.13, has been dedicated as a public road as of August 2021.

3. **Wetland/Wetland Buffer Maintenance**. In accordance with the Continuing Encumbrance provision contained herein, Henry Road acknowledges and agrees that the Amended Site Plan Parcel includes one or more jurisdictional wetlands which are located adjacent to Water Tower Road. Unless and until such wetlands are filled or otherwise mitigated to no longer remain classified as jurisdictional wetlands, Henry Road agrees that all on-site wetlands shall be surrounded with a

minimum 20-foot wide water quality buffer within which no building shall occur. These buffer areas and the wetlands they surround shall be maintained in common ownership, shall remain natural except to the extent vegetation is mulched to maintain required sight triangle distances along Water Tower Road.

4. **Improvements to Water Tower Road**. In accordance with the Continuing Encumbrance provision contained herein, Henry Road, or its successor in title to the Amended Site Plan Parcel only, as a condition to the improvement of the Amended Site Plan Parcel, shall, at the expense of the owner of the Amended Site Plan Parcel:

(A) Widen the paved section of Water Tower Road, within the existing public right-of-way of Water Tower Road, to accommodate turning movements (both acceleration and deceleration lanes), concurrently with the site work improvements for the first building within the Amended Site Plan Parcel, such improvements being either (i) complete; or (ii) bonded in accordance with the City's typically roadway improvement bonding standards, at or prior to the issuance of a certificate of occupancy for the first building within the Amended Site Plan Parcel.

(B) The City intends to improve Water Tower Road to comply with the Complete Streets portion of the City's land development regulations, provided however, that as of the date of this Amendment, the existing roadway section of Water Tower Road does not allow for installation of sidewalks or street trees, and therefore, in lieu of sidewalks and street trees being installed during the development of the Amended Site Plat Parcel, the owner of the Amended Site Plan Parcel, will contribute to the City, based upon an engineer's estimate approved by the City, an amount equal to One Hundred Five Thousand and No/100 (\$105,000.00) Dollars, in two separate and equal installments, the first of such installments due and payable on or before the issuance of the building permit of the first building within the Amended Site Plan Parcel, and the second of such installments due and payable on or before the issuance of the building permit for the second building within the Amendment Site Plan Parcel, to be used by the City for improvement of Water Tower Road.

(C) Henry Road and Apache shall convey to the City, platted as right-of-way or by perpetual easement, at the option of the City, to form a portion of the ECG, within Ninety (90) days of the Effective Date of this Amendment, that portion of the ECG which is located on the Henry Road Tract and the Apache Tract, respectively, being Twenty Five (25') feet in width, as shown and depicted on **Exhibit "C"** attached hereto.

(D) Henry Road shall convey to the City, within Ninety (90) days of the Effective Date of this Amendment, the ECG Trailhead Site, to form a portion of the ECG, such ECG Trailhead Site being shown and depicted on **Exhibit "C-1"** attached hereto. Henry Road covenants and agrees that the ECG Trailhead Site shall be not less than 1.98 acres in total, of which not less than 1.58 acres shall be upland acres. In the event the ECG Trailhead Site includes less than 1.58 upland acres at the time of conveyance, Henry Road shall modify the ECG Trailhead Site to include not less than 1.58 upland acres, the preliminary plat of such ECG Trailhead Site being subject to the approval of the City, not to be unreasonably withheld. Further, the costs of surveying, platting, recording and conveying the ECG Trailhead Site shall be the sole expense of Henry Road, the City bearing no expense in such conveyance.

(E) Apache shall convey to the City, within Ninety (90) days of the Effective Date of this Amendment, the New Fire Station Site, in exchange for the City's simultaneous conveyance of the Old Fire Station Site to Apache, each of the New Fire Station Site and the Old Fire Station Site being shown and depicted on **Exhibit "D"** attached hereto. Apache covenants and agrees that the New Fire Station Site shall be not less than 4.0 acres in total, of which not less than 2.3 acres shall be upland acres. In the event the New Fire Station Site includes less than 2.3 upland acres at the time of conveyance, Apache shall modify the New Fire Station Site to include not less than 2.3 upland acres, the preliminary plat of such New Fire Station Site being subject to the approval of the City, not to be unreasonably withheld. Further, the costs of surveying, platting, recording and conveying the New Fire Station Site, and the reconveyance of the Old Fire Station Site, shall be the sole expense of Henry Road, the City bearing no expense in such conveyance.

(F) Prior to the issuance of a certificate of occupancy for the proposed expansion of the United Parcel Service site on the Apache Tract, or the proposed light industrial use on the Henry Road Tract, Henry Road and Apache will install the shared drive, being shown and depicted on **Exhibit "D"** attached hereto.

(G) 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 Council of the City approves this Agreement at second and final reading.

5. **Water Tank/Tower.** In accordance with the Continuing Encumbrance provision contained herein, Henry Road, or its successor in title to the Amended Site Plan Parcel, in order to accommodate any deficiency in the current capacity for water services to the Amended Site Plan Parcel to accommodate the intended use of the Amended Site Plan Parcel, shall have the right, but not the obligation, to install, on the Amended Site Plan Parcel, a water tank or water tower, of sufficiently capacity and in accordance with all regulatory requirements of the South Carolina Department of Health and Environmental Control, to serve the Amended Site Plan Parcel only, at the sole expense of the owner of the Amended Site Plan Parcel, as shown on the Master Site Plan for the Amended Site Plan Parcel, as defined in Section 7 below. In the event a water tank or water tower is installed on the Amended Site Plan Parcel by the Developer, Developer shall record a maintenance agreement for such water tank or water tower in the public records of Horry County, South Carolina, prior to final construction approvals for the operation of the water tank or water tower. If such a water tank or water tower is installed, the height shall not exceed Fifty Five (55) feet above grade.

6. **Master Site Plan.** The master site plan for the Amended Site Plan Parcel, which is the same site plan incorporated in the PDD, as amended, is attached hereto as **Exhibit "B"** (the "***Master Site Plan***").

7. **Independent Amendment.** In accordance with the Continuing Encumbrance provision contained herein, this Separate and Independent Amendment to Master Development Agreement is intended to be applicable only to the Amended Site Plan Parcel, which is a portion of the Henry Road Tract, the ECG, which is a portion of the Henry Road Tract and the Apache Tract, the ECG Trailhead Site, which is a portion of the Henry Road Tract, the New Fire Station Site which is a portion of the Apache Tract, the Old Fire Station Site which is owned by the City, and the shared drive to be

constructed on both the Henry Road Tract and the Apache Tract, 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 Henry Road and/or Apache.

8. **No Further Amendment.** In accordance with the Continuing Encumbrance provision contained herein, except as specifically amended by this Separate and Independent Amendment to Master Development 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.

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

[Individual signature pages follow for each of the Parties]

EXHIBIT "A"

Map of Amended Site Plan Parcel (Portion of the Henry Road Tract)

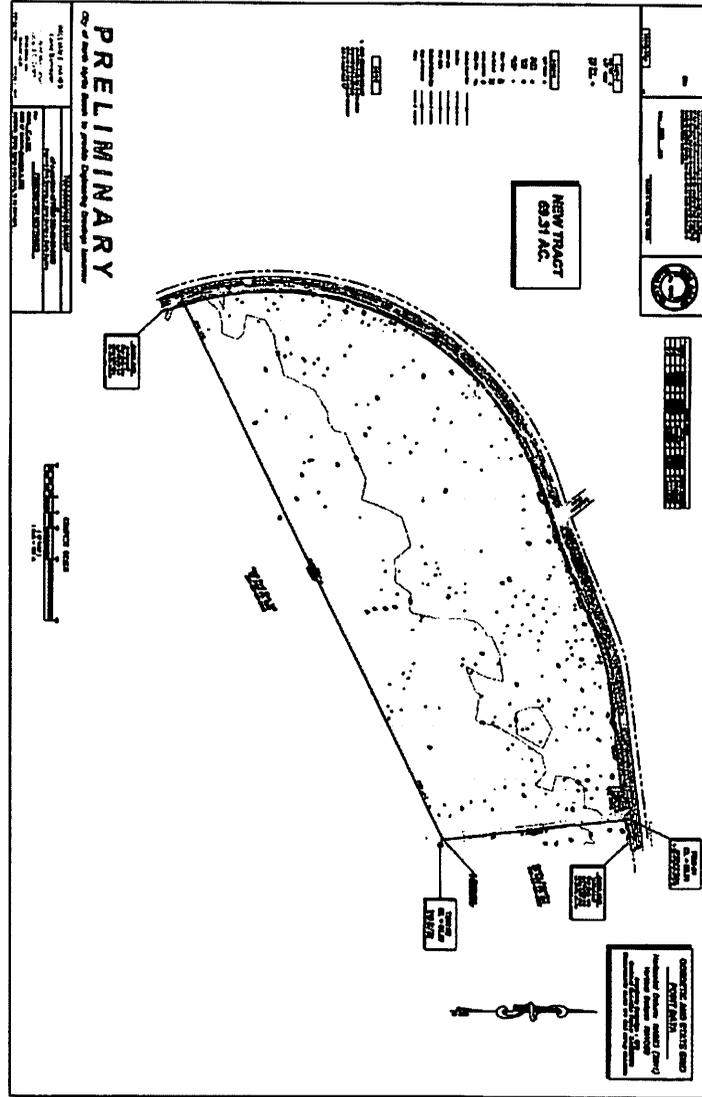


EXHIBIT "B"

Master Site Plan

[To be attached]

EXHIBIT "C"

Route for ECG and Trailhead Site Location



**EAST COAST GREENWAY
ALIGNMENT**

PARKWAY PDD

JOB NO.	21-186
SCALE	1"=50'
DRAWN BY:	SCJ
CHECKED BY:	SCJ
DATE	3/10/07
EXHIBIT NUMBER	

1

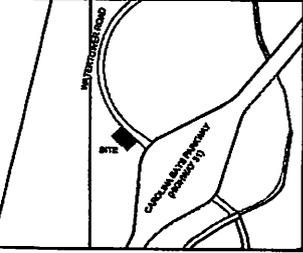
drag

DRAG CONCEPTS AND DESIGN, LLC
1000 W. BROADWAY, SUITE 200
AMSTERDAM, NY 12007
PHONE: 518.547.8800
WWW.DRAGCONCEPTS.COM

EXHIBIT "C-1"

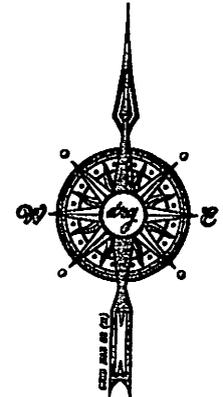
ECG Trailhead Site Location Detail

P:\21196 - EDGEWATER - PALMETTO BUSINESS PARK\SURVEY\SURVEY EXHIBITS\21196_2022-04-27_SURVEYEXHIBIT.DWG



~VICINITY MAP~

PIN: 389-00-00-0002
TMS: 155-00-01-053
Current Owner
Henry Road West LLC
Deed Book: 3467 Page: 1562



PIN: 389-00-00-0002
TMS: 155-00-01-053
Current Owner
Henry Road West LLC
Deed Book: 3467 Page: 1562

New Parcel
A Portion Of
PIN: 389-00-00-0002
86,224 Sq.Ft.
1.98 Acres

1/2" Iron Pipe Set
N:722356.06
E:2667079.10

1/2" Iron Pipe Found
N:722389.31
E:2667391.68

1/2" Iron Pipe Set
N:722105.26
E:2667341.54

1/2" Iron Pipe Found
N:722136.38
E:2667656.34

GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.

East Coast Greenway Trailhead Exhibit

DATE: 04/27/2022	SCALE: 1" = 100'
<i>drg</i>	
Development Resource Group 4703 Oleander Drive Myrtle Beach, SC 29577 Telephone: 843-839-3350 www.drgpllc.com	

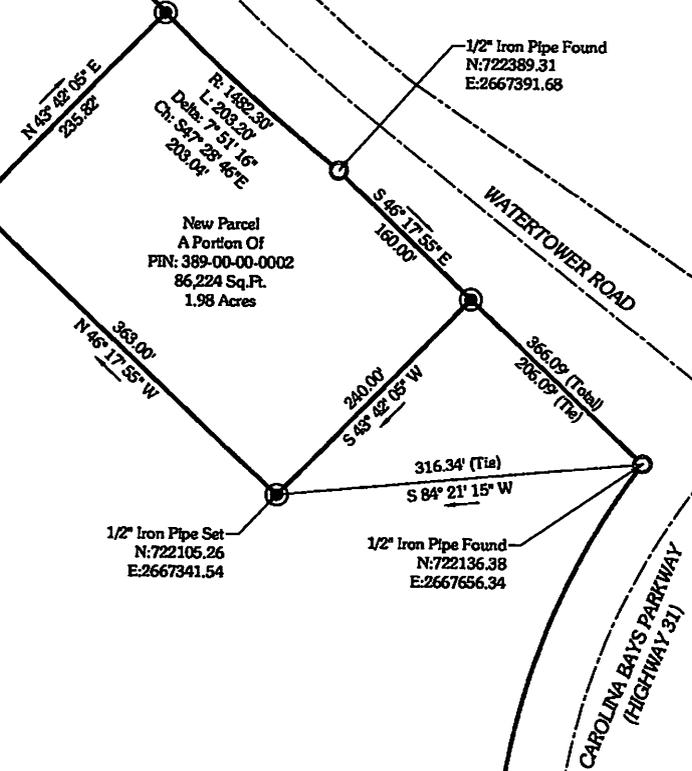


EXHIBIT "D"

Fire Station, Shared Drive Locations

drg

DEVELOPMENT RESOURCE GROUP, LLC
JOB CLEARER GROUP
MYRTLE BEACH, SC 29577
404-488-3382 | DRG@DRG.COM

FIRE STATION/SHARED
DRIVEWAY EXHIBIT

PARKWAY PDD

JOB NO: 21.199
SCALE: 1"=100'
DRAWN BY: SCH
CHECKED BY: SCH
DATE: 3/10/2022
EXHIBIT NUMBER:

2

