

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: November 7, 2022

Agenda Item: 7E	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: November 2, 2022
Subject: Regarding an amendment to the Development Agreement (DA) for Barefoot Resort concerning the Cottages at Dye Club	Division: Legal

The main provisions of the Amendment to the Development Agreement for Barefoot Resort regarding the Cottages at Dye Club are as follows:

1. **Term:** The initial term for the amendment to the DA will be for a period of five (5) years from the date the document is executed by both parties. At the conclusion of the initial five-year term, the DA will automatically extend for two (2) additional five (5) year terms (provided the Developer is not in default and the developer is working diligently to complete the improvements to the amended site plan).
2. **Density:** 21 transient, in-common, single-family detached units.
3. **Enhancement Fees:**
Beachfront Parking Enhancement Fee: \$1,100 per residential unit (due at issuance of building permit for each RDU)
Park Enhancement Fee: \$300 per RDU (due at issuance of building permit for each RDU)

The above referenced fees will be increased beginning January 1, 2024 per the formula included in the document (page 4).

The Developer will also pay the Fire Station Fee (\$450), the Water Extension Fee (\$500) and the Sewer Extension Fee (\$175) per residential unit.
4. **Open Space:** The project shall contain not less than 20% open space which shall include protected wetlands, required buffers, ponds, green space, or other undeveloped acreage within the project.
5. **Maintenance and Mowing:** The Developer will mow the undeveloped property no less than eight times a year until the project is fully developed. Mowing shall occur between March 1 and November 30 of each year. Removal of any fallen trees on the undeveloped property will occur during the above referenced schedule.
6. **Prohibition Against Conservation Easements:** The Developer agrees not to subject the property to a conservation easement or other restrictive covenant regarding any portion of the property unless submitted to the City for approval.
7. This document does *not* contain a clause prohibiting short-term rentals.

Recommended Action:

Approve or deny the proposed 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 AN AMENDMENT TO THE BAREFOOT RESORT DEVELOPMENT AGREEMENT REGARDING THE COTTAGES AT DYE CLUB 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 Dye Club Villas, LLC, desire to enter into an Amendment to the Development Agreement for Barefoot Resort & Golf PDD regarding the Cottages at Dye Club; and

WHEREAS, that certain document identified as the Amendment to the Development Agreement for Barefoot Resort & Golf PDD (The Cottages at Dye Club), 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 Amendment to Development Agreement for Barefoot Resort & Golf PDD (The Cottages at Dye Club) 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: 11.7.2022

SECOND READING: _____

REVIEWED:

City Manager

ORDINANCE: _____

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**AMENDMENT TO DEVELOPMENT
AGREEMENT FOR BAREFOOT
RESORT & GOLF PDD
(THE COTTAGES AT DYE CLUB)**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into and effective as of this ____ day of _____, 2022 (the “**Effective Date**”), by and between the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the “**City**”), a South Carolina municipal corporation, and **DYE CLUB VILLAS, LLC**, a South Carolina limited liability company (the “**Developer**”). City and Developer may also be referred to individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the below-described Development Agreement, as hereby amended.

RECITALS:

WHEREAS, the City, Silver Carolina Development Company, L.L.C., a Delaware limited liability company, and Intracoastal Development Company, LLC, a South Carolina limited liability company entered into that certain Development Agreement, dated November 3, 1999, recorded March 22, 2000 in Deed Book 2242 at Page 0922, in the public records of Horry County, South Carolina (the “**Development Agreement**”); and

WHEREAS, the Developer is successor in title to a portion of the real property which is subject to the Development Agreement (the “**Land**”), which portion of the Land is more particularly shown on a Plat recorded in Plat Book ____ at Page ____, in the public records of Horry County, a miniaturized copy of which is attached hereto as **Exhibit “A”** (the “**Amended Site Plan Parcel**”); and

WHEREAS, the Developer intends to develop the Amended Site Plan Parcel as transient accommodations for visitors to the golf course facilities within the Barefoot Resort and Golf PDD; and

WHEREAS, the Parties now desire to amend said Development Agreement, in the manner set forth below.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and other good and valuable consideration, the parties agree as follows:

1. **Term**. 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 no default on the part of the Developer has occurred (after being provided with notice and opportunity to cure as set forth below) of this Agreement, and the improvements to the Amended Site Plan Parcel have not been completed, at the conclusion of the initial five-year term, provided no default on the part of the Developer has occurred hereunder, and improvement of the Amended Site Plan Parcel has continued to be diligently pursued, the termination date of this Agreement shall be automatically

extended by the City and the Developer, or its respective successors and assigns, 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. For purposes of this Agreement, the “**Effective Date**” shall be the date on which the last of the parties has executed this Agreement.

2. **Continuing Encumbrance and Obligation on the Parties.** Despite any change in ownership and/or the configuration and boundaries of the various real property subjected to the Development Agreement, and the Exhibits to the Development Agreement, except as hereby expressly amended or supplemented, the Development Agreement shall remain in full force and effect. More specifically, the obligations and provisions contained in this Agreement run with the Land, including the Amended Site Plan Parcel and as such are obligations of the Parties as well as obligations of any subsequent transferees, purchasers, assignees or acquiring parties whether in whole or part with respect to any portion of the Land or the Amended Site Plan Parcel relating thereto. Additionally, if any Party as well as any subsequent transferees, purchasers, assignees or acquiring parties whether in whole or part with respect to any portion of the Land or the Tracts relating thereto defaults or fails to satisfy, complete or comply with any of the provisions contained in the Development Agreement or this Agreement, it shall be considered a default by the applicable Party and handled accordingly as specifically provided for in the Development Agreement as amended by this Agreement.

3. **Party Obligations Run with the Land/Cross Default by Owner of Multiple Parcels.** For purposes of this Agreement, the obligations hereunder shall run with the land, such that the owner of the portion of the real property which is subject to any particularly provisions hereof shall be obligated to fulfill such obligations. Further to the extent that any owner of real property which is subject to the terms and conditions of this Agreement owns more than One (1) parcel of real property which is subject to the terms and conditions of this Agreement, a default under the obligations with regards to any one of such parcels of real property shall also constitute a default with regards to any of the other parcels of real property also owned by such owner. Provided, however, that no owner of any portion of the real property which is subject to this Agreement shall be responsible for the obligations of any other owner, or accountable to the City or the other owners for the obligations of any other owner.

4. **Wetland/Wetland Buffer Maintenance.** In accordance with the Continuing Encumbrance provision contained herein, Developer acknowledges and agrees that, to the extent the Amended Site Plan Parcel includes those areas identified by the United States Army Corps of Engineers (“**Corps**”) and/or the South Carolina Department of Health and Environmental Control (“**DHEC**”) or any other applicable governmental authority as wetland areas subject to the regulation of the Corps and/or DHEC (“**Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States**”), unless and until such Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States are filled or otherwise mitigated to no longer remain classified as Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States, Developer agrees that all on-site Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States not filled or modified pursuant to permits issued by the governmental

entities having jurisdiction over such on-site Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States, shall be surrounded with a minimum 20-foot wide water quality buffer within which no building shall occur. These buffer areas and the Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States they surround shall be maintained in common ownership, shall remain natural except to the extent vegetation is trimmed in accordance with any permits issued by the governmental entities having jurisdiction over the Amended Site Plan Parcel.

5. **Amendment to Exhibit G. Exhibit G** attached to the Development Agreement amended by that certain PDD Amendment entitled “The Cottages at Dye Club” (the “**PDD Amendment**”), approved simultaneously with this Agreement, which PDD Amendment is applicable solely to the Amended Site Plan Parcel.

6. **Master Plan.** The Master Plan for the Amended Site Plan Parcel, which is included in the above referenced PDD Amendment, is attached hereto as **Exhibit “B”** (the “**Master Plan**”).

7. **Other Obligations, Fees and Public Benefits.** Developer agrees that the following shall constitute additional obligations, fees and public benefits to be provided by the Developer for the Amended Site Plan Parcel:

(A) **Transient Units.** The residential units to be constructed upon the Amended Site Plan Parcel, pursuant to the PDD, shall be free-standing individual units, owned on common, and the total number of residential units to be constructed upon the Amended Site Plan Parcel shall be Twenty One (21) transient residential units (the “**Transient Units**”). For purposes of this Agreement, a Transient Unit shall be deemed a separate unit, whether free-standing, or within a larger building, such that multi-unit buildings such as townhomes, as an example, would be deemed multiple residential units despite being incorporated into a single building.

(B) **Park Enhancement Fee.** As a public benefit, The City and the Developer agree that, in lieu of the conveyance of any portion of the Amended Site Plan Parcel by the Developer to the City, the Developer and the City agree instead to a fee-in-lieu of conveyance, providing the funds necessary to allow the City to expand its existing parks (the “**Park Enhancement Fee**”). The Park Enhancement Fee shall be in an amount equal to Three Hundred and No/100 (\$300.00) Dollars for each separate Transient Unit constructed on the Amended Site Plan Parcel in accordance with the Master Plan. The Park Enhancement Fee shall be due and payable at the time of the issuance of a building permit for such Transient Unit constructed on the Amended Site Plan Parcel. The imposition of the Park Enhancement Fee applicable to the Amended Site Plan Parcel shall thereafter apply only to the Amended Site Plan Parcel, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Developer and the City as a part of the PDD Amendment.

(C) **Beach Access Parking Fee.** As a public benefit, the City and the Developer further acknowledge that the development of the Amended Site Plan Parcel as Transient Units will increase the demand for beach access and services to be provided by the City, including, but not limited to beach access parking. In lieu of the Developer being required to make provisions for beach access parking for the occupants of the Amended Site Plan Parcel, the Developer agrees to pay to the City, for such Transient Units to be constructed on the Amended Site Plan Parcel, a fee-in-lieu of

providing beach access parking. Such fee-in-lieu shall be used by the City to expand its existing and future beach access parking (the “**Beach Access Parking Fee**”). The Beach Access Parking Fee shall be in an amount equal to One Thousand One Hundred and No/100 (\$1,100.00) Dollars for each separate Transient Unit constructed on the Amended Site Plan Parcel, in accordance with the Master Plan. The Beach Access Parking Fee shall be due and payable at the time of the issuance of a building permit for such Transient Unit constructed on the Amended Site Plan Parcel. The imposition of the Beach Access Parking Fee applicable to the Amended Site Plan Parcel shall thereafter apply only to the Amended Site Plan Parcel, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Developer and the City as a part of the PDD Amendment.

(D) **CPI Index**. As a public benefit, Developer further agrees that the Park Enhancement Fee and the Beach Access Parking Fee referenced above shall be subject to annual increase, beginning January 1, 2024, in an amount equal to the lesser of (i) the increase in the Consumer Price Index, published by the U.S. Bureau of Labor Statistics (“**CPI**”) between the beginning and end of the most recent calendar year; or (ii) Two (2%) percent per annum, which increase is intended to ensure that each of the Park Enhancement Fee and Beach Access Parking Fee continue to reflect the City’s on-going increases in the costs of services provided.

(E) **Prior Amendment Fees**. The City and a predecessor in title to Landowner entered into that certain instrument entitled “Minor Amendments to the Modification to Development Agreement dated August 1, 2003 and The Sewer and Water Extension Agreement dated August 2, 2003 (the “**Prior Amendment**”), which Prior Amendment provides, among other things for fees as follows: (a) Police/Fire Substation Fee in an amount equal to Four Hundred Fifty and No/100 (\$450.00) Dollars per Density Unit (the “**Fire Station Fee**”); (b) a Water Extension Fee in an amount equal to Five Hundred and No/100 (\$500.00) Dollars per Density Unit (the “**Water Extension Fee**”); and (c) a Sewer Extension Fee in an amount equal to One Hundred Seventy Five and No/100 (\$175.00) Dollars per Density Unit (the “**Sewer Extension Fee**”). As a public benefit, Developer acknowledges and agrees that, the Fire Station Fee, the Water Extension Fee and the Sewer Extension Fee are and shall remain applicable to the Amended Site Plan Parcel, and that, for purposes of this Amendment, Density Unit shall be deemed equivalent to the Transient Units otherwise described herein.

(F) **Streetlights**. As an obligation, Developer shall install or cause to be installed, streetlights within the Amended Site Plan Parcel, in accordance with the Code of Ordinances. The monthly cost for each streetlight, including additional charges associated with an enhancement streetlight fixture, if any, shall be borne by the Developer and/or any owners association established by Developer for the Amended Site Plan Parcel.

(G) **Conservation Easement Restriction**. As a public benefit, Developer specifically covenants and agrees not to subject the Amended Site Plan Parcel to a conservation easement or other restrictive covenant, whereby any portion of the Amended Site Plan Parcel shown as single family homes or amenities on the approved Master Site Plan is restricted for future development of such portion of the Amended Site Plan Parcel, 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.

(H) **Mowing and Maintenance.** As an obligation, Developer must maintain the Amended Site Plan Parcel consistent with the Code of Ordinances of the City, provided that, at a minimum, Developer will mow the undeveloped Amended Site Plan Parcel no less than eight times per year until the Project is fully developed. The mowing shall occur in the periods between March 1 and November 30 of each calendar year. In addition, until the Project is fully developed, the Developer shall remove any fallen trees on the Amended Site Plan Parcel, 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 Amended Site Plan Parcel and remove fallen trees on the Amended Site Plan Parcel 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 Amended Site Plan Parcel, which lien shall be enforceable in the same manner as a property tax lien, which may only be satisfied by payment thereof.

(I) **Development Regulations.** As an obligation, the Amended Site Plan Parcel shall be developed in accordance with this Agreement, the Code of Ordinances and other applicable land development regulations required by the City, State and/or Federal Government. The City shall, throughout the Term, maintain or cause to be maintained a procedure for processing of reviews as contemplated by this Agreement and the Code of Ordinances. The City shall review applications for development approval based on the development standards adopted as part of the Code of Ordinances, unless such standards are superseded by the terms of this Agreement, in which case the terms of this Agreement shall govern.

(J) **Assignment of Development Rights.** Developer shall be entitled to assign and delegate the development rights and obligations set forth in this Agreement to a subsequent purchaser of all or any portion of the Amended Site Plan Parcel with the consent of the City, provided such consent shall not be unreasonably withheld or delayed. Upon the assignment or transfer by Developer of the development rights and obligations under this Agreement, then the assigning Developer shall not have any responsibility or liability under this Agreement.

(K) **Development Schedule.** The Amended Site Plan Parcel shall be developed in accordance with the following development schedule (the “**Development Schedule**”): development of the Amended Site Plan Parcel shall commence upon the issuance of all permits and approvals, which issuance is anticipated to be complete within Two (2) years of the date of this Agreement, and development of the Amended Site Plan Parcel is anticipated to be complete within Five (5) years of the date of this Agreement.

(L) **Code of Ordinances.** As an obligation, Development of the Amended Site Plan Parcel shall be determined in accordance with the Code of Ordinances, as the same may be

amended from time to time, pursuant to this Agreement, including, but not limited to the PDD, as the same may be amended.

(M) **Stormwater and Drainage.** As an obligation, all stormwater runoff, drainage, retention and treatment improvements within the Amended Site Plan Parcel shall be designated in accordance with the Code of Ordinances. 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 Amended Site Plan Parcel. 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, and will not be accepted or maintained by the City.

(N) **Solid Waste and Recycling.** The City shall provide solid waste and recycling collection services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City. Payment for such services to the City by Developer, an Owners Association or each individual purchaser or owner of any portion of the Amended Site Plan Parcel is required in return for such service for each owner of any portion of the Amended Site Plan Parcel, and the City reserves the right to terminate or discontinue such service(s) to any owner of any portion of the Amended Site Plan Parcel until such payment(s) have been made.

(O) **Police Protection.** The City shall provide police protection services to the Amended Site Plan Parcel on the same basis as provided to other residents and businesses within the City.

(P) **Fire Protection.** The City shall provide fire services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City.

(Q) **Emergency Medical Services.** The City shall provide emergency medical services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City.

(R) **No Education 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

(S) **Open Space Requirement.** As a public benefit, Developer agrees that the development of the Amended Site Plan Parcel shall incorporate not less than Twenty (20%) percent open space, which for purposes of this Agreement shall include protected wetlands, required buffers, ponds, lakes, open spaces, green space or other undeveloped acreage which is within the Amended Site Plan Parcel.

(T) **Minimum Rental Period.** *Intentionally deleted.*

(U) **Easements.** As an obligation, Developer shall be responsible for obtaining, at Developer's cost, all easement, access rights and other instruments that will enable the Developer to tie into current or future water and sewer infrastructure on adjacent properties.

(V) **Ponds and Lakes.** As an obligation, Developer shall install pond(s) or lake(s) as reflected on the approved site plan for the Amended Site Plan Parcel. The City agrees to cooperate with the Developer in the permitting process for such pond(s) and lake(s), it being understood that the City will not accept maintenance responsibility or any other liability for such pond(s) and lake(s), and that such pond(s) and lake(s) shall either be maintained by Developer, or conveyed to an Owners Association for on-going maintenance following completion of the development on the Amended Site Plan Parcel.

(W) **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. The burdens of the development agreement are binding upon, and benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

8. **Notice Addresses.** Notices to be given pursuant to this Agreement shall be addressed to the following, subject to amendment by future written notice from any party to the remaining parties:

To the City: North Myrtle Beach City Manager
1018 Second Avenue South
North Myrtle Beach, SC 29582

With a copy to: North Myrtle Beach City Attorney
1018 Second Avenue South
North Myrtle Beach, SC 29582

With a copy to: Franklin G. Daniels
Nexsen Pruet
1101 Johnson Avenue, Suite 300
Myrtle Beach, South Carolina 29577

To the Developer: The Dye Club Villas, LLC

Attn: Thomas A. Staats

9. **Restrictive Covenants.** The obligations and public benefits agreed to and accepted by Developer set forth in this Agreement (collectively the “**Restrictive Covenants**”) shall survive and continue in full force and effect without regard to the termination of this Agreement for a period ending on the earlier of (i) Fifty (50) years after the Term of this Agreement; or (ii) such time as the parties hereto, or their respective successors and assigns, have recorded a fully executed and effective termination of the Restrictive Covenants in the Office of the Register of Deeds for Horry County. Developer further covenants and agrees that, to the extent the Amended Site Plan Parcel is encumbered by covenants, conditions and restrictions (the “**CCRs**”), whether 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, the same thereafter running with the Amended Site Plan Parcel as continuing obligations, public benefits and restrictions.

10. **No Further Amendment.** Except as specifically amended by this Amendment to Development Agreement all of the terms and conditions of the Development Agreement 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 as of the Effective Date and below are their respective signatures.

[Separate signature pages follow]

[Signature page to Amendment to
Development Agreement for City of North Myrtle Beach]

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF**

CITY OF NORTH MYRTLE BEACH

Witness #1

Print Name: _____

By: _____

Name: _____

Title: _____

Witness #2/Notary

Print Name: _____

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGEMENT

COUNTY OF _____)

The within instrument was acknowledged before me this ____ day of _____, 2022, by
CITY OF NORTH MYRTLE BEACH, by _____, as its
_____.

_____ (SEAL)

[Print name] _____

Notary Public for the State of South Carolina

My Commission expires _____

[Signature page to Amendment to
Development Agreement for The Dye Club Villas, LLC]

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF**

THE DYE CLUB VILLAS, LLC, a
South Carolina limited liability company

Witness #1
Print Name: _____

By: _____
Name: _____
Title: _____

Witness #2/Notary
Print Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

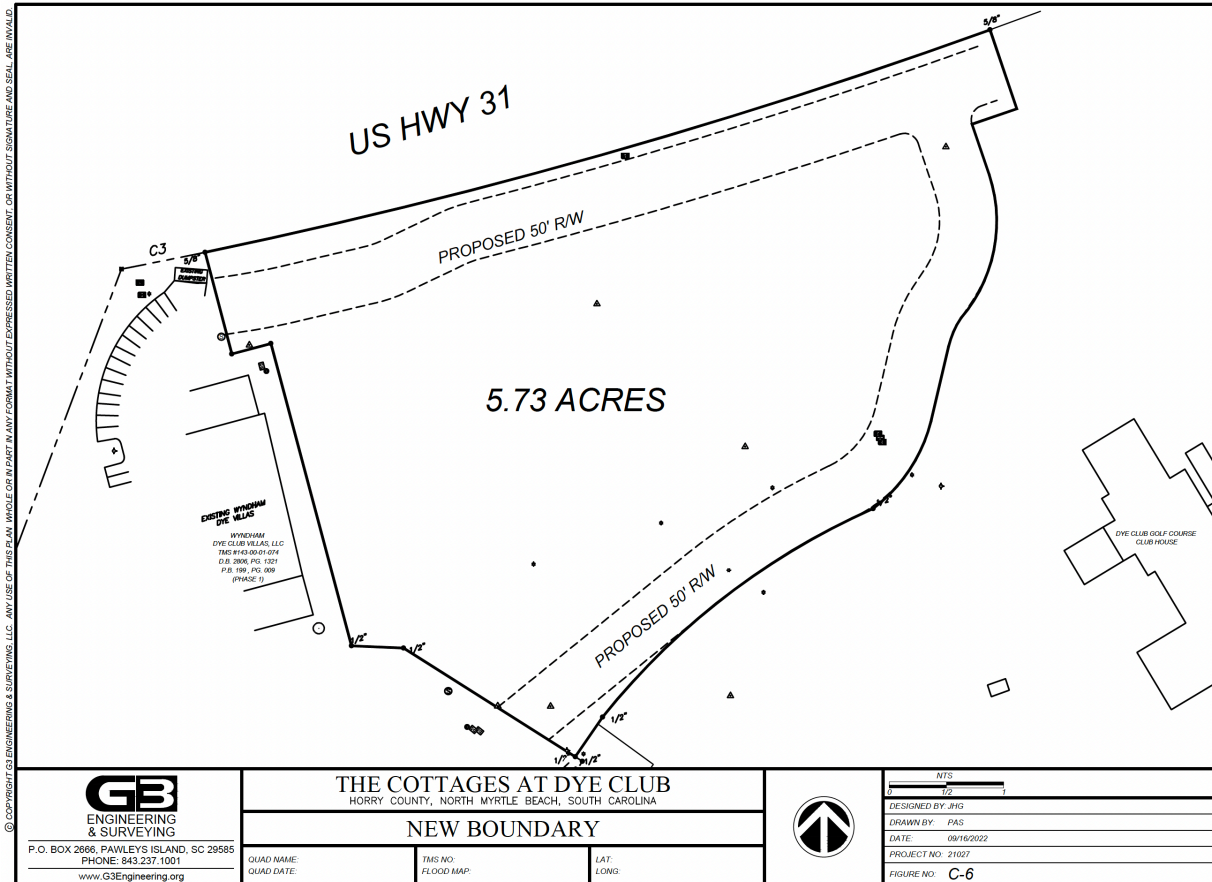
ACKNOWLEDGEMENT

The within instrument was acknowledged before me this ____ day of _____, 2022,
by THE DYE CLUB VILLAS, LLC, a South Carolina limited liability company by
_____, as its _____.

[Print name] _____
Notary Public for the State of South Carolina
My Commission expires _____

EXHIBIT "A"

Boundary Survey of the Amended Site Plan Parcel



Master Plan

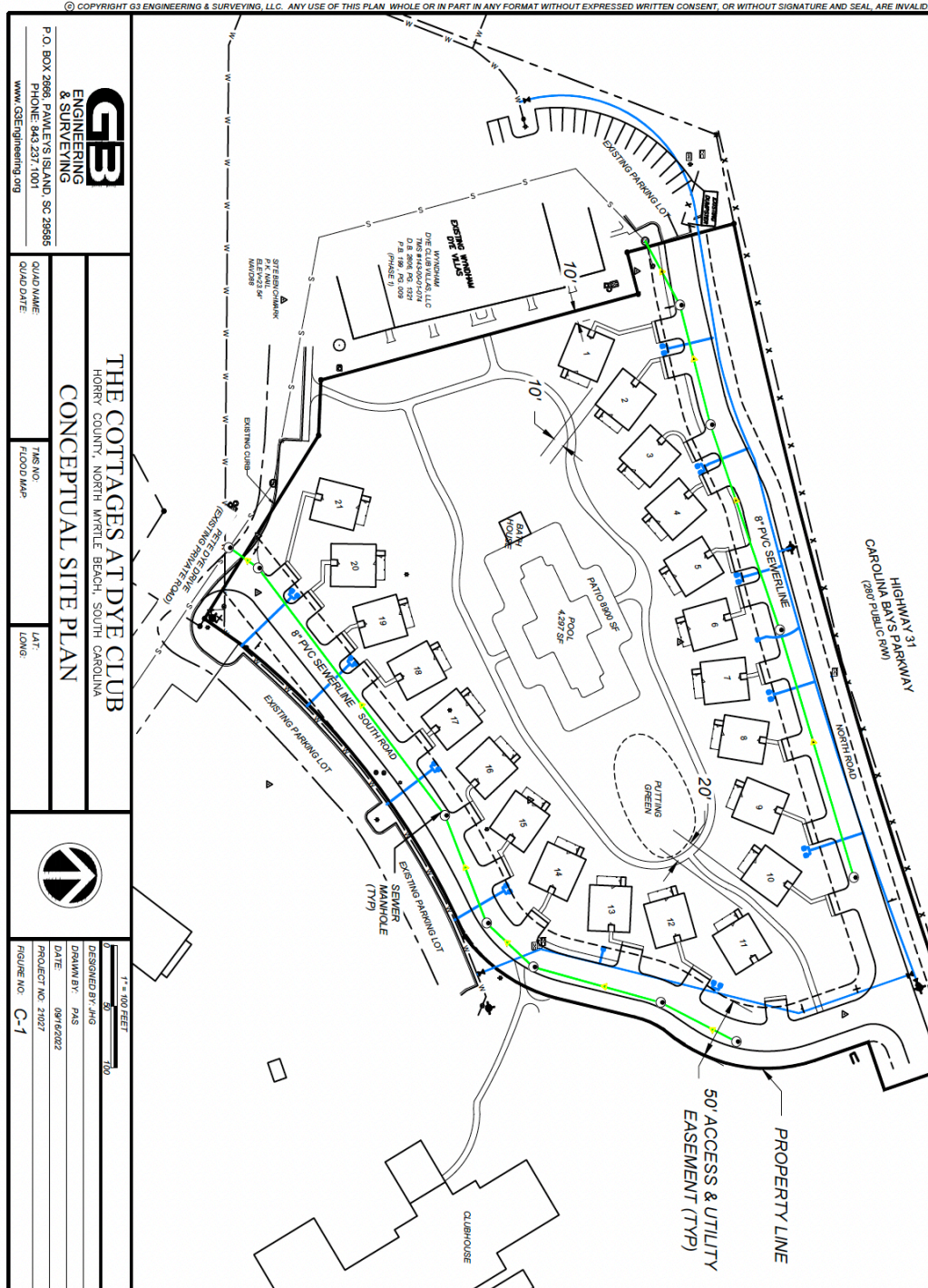


EXHIBIT “G”

PDD Amendment

BAREFOOT RESORT & GOLF PLANNED DEVELOPMENT DISTRICT

THE COTTAGES AT DYE CLUB

PDD AMENDMENT

DEVELOPMENT REGULATIONS

November 2, 2022

INTRODUCTION

The Cottages at Dye Club (the “***Project***”) is envisioned as a transient accommodations enclave, functioning essentially as a cottage hotel, adjacent to the existing Clubhouse and Wyndham Villa at the Dye Private Golf Course within Barefoot Resort & Golf Planned Development District, within the City of North Myrtle Beach, South Carolina (the “***City***”). This portion of the district is intended to include Twenty One (21) detached cottage homes for rent, owned as a single undivided parcel, to be improved in a single phase, although the individual units may be constructed individually, or in any number of sequences all of which are to be improved on One (1) separate parcel, identified as Horry County TMS/PIN No.: 143-00-01-081/358-09-04-0033, totaling approximately 5.43 acres, and a small swath of the adjacent golf course property identified as Horry County TMS/PIN No.: 143-00-01-054/358-00-00-0017 in order to include the entire access roadway for the Project within the Project, the compiled boundary survey of which is included in an Exhibit Supplement submitted with this amendment, the parcel is accessed from Pete Dye Drive, a Private Right-of-Way. The parcel is bounded by Club Course Drive, S. C. Highway 31 and the existing Dye Club Golf Course.

PROJECT DEVELOPER

This parcel, being a small portion of the Barefoot Resort & Golf Planned Development District (“***PDD***”), is currently owned by, proposed for development by Dye Club Villas, LLC, a South Carolina limited liability company (the “***Developer***”), and an affiliate of the owner of the adjacent Dye Club. The Project is being built in up to Twenty One (21) separate sub-phases, each sub-phase consisting of a single cottage building, and the Project will be marketed to the public as overnight and extended stay accommodations for visiting golfers, business travelers, and guests of Dye Club members and their families.

MASTER SITE PLAN AMENDMENT

The most recent amendment to the Master Plan for the PDD indicated the area on which the Project is to be constructed as a multi-story multi-family extension of the existing fractional ownership project under the management of Wyndham. The amendment to the Master Plan for the PDD, which is included in an Exhibit Supplement submitted with this Amendment and shall replace any prior plan, and shall be deemed the controlling plan for this portion of the Master Plan for the PDD, together with this narrative, unless and until further amended.

PROJECT PHASING

The Project is anticipated to be developed in Twenty One (21) separate sub-phases, each consisting of a single building, and a total of Twenty One (21) separate buildings, the minimum square footage of each building being not less than One Thousand (1,000) square feet of interior space. Sub-Phase 1 through Sub-Phase 21 may be constructed in any order, as the demand for occupancy occurs, and more than one Phase may be constructed simultaneously. The anticipated build-out schedule for the entire Project is Five (5) years, based upon One (1) Sub-Phase being constructed in the first Six (6) months, and not less than Two (2) additional Sub-Phases being constructed approximately every Three (3) months thereafter, although the actual build-out schedule may be accelerated based upon demand.

DEVELOPMENT DESCRIPTION

The location of the Project is shielded from the general public, but is prominent as it is adjacent to the Dye Club House, host site of the popular Monday After the Masters golf event, and is adjacent to the Dye Private Golf Course within the PDD. The growth in membership within the Dye Private Golf Course has outpaced the existing amenities, and, as a part of this Project, the pool, pool deck and amenity area are sized much larger than what would be needed for 21 individual cottages, in order to accommodate the Project, the existing Dye Club members, and guest in the Wyndham project adjacent to this Project. Existing mature perimeter vegetation, as well as the majority of the existing trees are being maintained and supplemented in an effort to provide a sense of place, and to provide some level of privacy to guests visiting the Project. Architecturally the Project is compatible with the existing buildings within the Dye Private Golf Course complex, using the same color palette as the existing clubhouse, while incorporating board and batten siding for vertical articulation, and incorporating materials that reflect the quality of the existing Dye Club facilities, while addressing the needs and desires of the transient guest market which will insure the viability and success of the Project. The Project will incorporate materials that are suitable for and durable enough to withstand the demands of both the coastal environmental and to minimize the scope of future maintenance. Public components of the Project, including water and sewer distribution lines, will be dedicated to the City, while private components, such as private right-of-way, landscaping and other improvements which would not be maintained by the City, will be maintained by the developer of the Project, unless and until the project is sold as individual units in the future.

Guests visiting the Project will have the option of taking meals within the existing Dye Club facilities, and pedestrian connections between the Project and the clubhouse are being provided. Pedestrian walkways and soft paths will connect the parking areas to the individual cottages, as well as to the amenities and open spaces.

Each building will provide its own parking. Additional parking spaces will be located within the common areas outside of the boundary of any particular building. Amenities will include a pool and pool deck totaling more than 6,000 square feet, as well as a putting green, for visitors to the Project and other guests of the Dye Private Golf Course. The Developer will reserve the right to control access to the Project and its amenities so that service levels are not compromised, in the discretion of the Developer. City services for trash and refuse will be provided with roll out

containers for each individual building, collected to a central location for pick up. The Private Right-of-Way will provide adequate width and turning capacity to allow the City to provide services to the visitors of the Project.

INFRASTRUCTURE AND COMMON SPACES

Storm drainage will incorporate both underground and above ground drainage systems. Electrical services, cable television, internet and telephone services will be installed underground. These facilities will be maintained by the property owner(s) and the utility companies providing services. Water and Sewer facilities will be dedicated to the City. Landscaping, lighting and pavers, whether within the Private Right-of-Way or within the common areas of the Project, will be maintained by the property owner(s), in keeping with design and maintenance standards established by the Developer, and together with any private roadways, parking areas, walkways, open spaces, common areas, buildings, pools, amenities and other features of the Project.

The Developer will provide for the maintenance and control of the Project, including any roadways, pathways, driveways, open spaces, common areas, and parking areas by restrictive covenants recorded in the public records of Horry County, South Carolina and applicable to the Project. In addition, the Developer may establish rules and regulations from time to time, governing the occupants of the buildings within the Project, which would be comparable to rules and regulations established in other high quality accommodations within the City.

DIMENSIONAL STANDARDS

The dimensional standards which will apply to the Project are set forth in the Exhibit Supplement submitted together with this narrative.

BUILDING MATERIALS AND LANDSCAPE MATERIALS

The Developer has chosen both building materials and landscape materials intended to reinforce the South Carolina Lowcountry image of the Project, while being highly compatible with the existing buildings and both pedestrian and vehicular traffic, as well as being sustainable in light of periodically intense use. The Landscape Materials List is included in the Exhibit Supplement submitted with this Amendment.

DIRECTIONAL SIGNAGE AND LIGHTING

Directional signage will be consistent, in both its material, coloring and numbering schemes. The size, location and content will consistent with the signage ordinances of the City, with representative depictions of the Project signage, including building signage, directional signage and monument signage included in an Exhibit Supplement submitted with this Amendment. Lighting will be in keeping with the existing lighting within the PDD, together with landscape lighting and signage lighting as including in an Exhibit Supplement submitted with this Amendment.

PUBLIC BENEFIT

11. **Additional Amendments.** As a condition to the approval of the PDD, the City, the Developer has agreed that certain additional amendments to the Development Agreement, which include the following:

(X) **Transient Units.** The residential units to be constructed upon the Amended Site Plan Parcel, pursuant to the PDD, shall be free-standing individual units, owned on common, and the total number of residential units to be constructed upon the Amended Site Plan Parcel shall be Twenty One (21) transient residential units (the “**Transient Units**”). For purposes of this Agreement, a Transient Unit shall be deemed a separate unit, whether free-standing, or within a larger building, such that multi-unit buildings such as townhomes, as an example, would be deemed multiple residential units despite being incorporated into a single building.

(Y) **Park Enhancement Fee.** The City and the Developer agree that, in lieu of the conveyance of any portion of the Amended Site Plan Parcel by the Developer to the City, as a public benefit, the Developer and the City agree instead to a fee-in-lieu of conveyance, providing the funds necessary to allow the City to expand its existing parks (the “**Park Enhancement Fee**”). The Park Enhancement Fee shall be in an amount equal to Three Hundred and No/100 (\$300.00) Dollars for each separate Transient Unit constructed on the Amended Site Plan Parcel in accordance with the Master Plan. The Park Enhancement Fee shall be due and payable at the time of the issuance of a building permit for such Transient Unit constructed on the Amended Site Plan Parcel. The imposition of the Park Enhancement Fee applicable to the Amended Site Plan Parcel shall thereafter apply only to the Amended Site Plan Parcel, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Developer and the City as a part of the PDD Amendment.

(Z) **Beach Access Parking Fee.** The City and the Developer further acknowledge that the development of the Amended Site Plan Parcel as Transient Units will increase the demand for beach access and services to be provided by the City, including, but not limited to beach access parking. In lieu of the Developer being required to make provisions for beach access parking for the occupants of the Amended Site Plan Parcel, as a public benefit, the Developer agrees to pay to the City, for such Transient Units to be constructed on the Amended Site Plan Parcel, a fee-in-lieu of providing beach access parking. Such fee-in-lieu shall be used by the City to expand its existing and future beach access parking (the “**Beach Access Parking Fee**”). The Beach Access Parking Fee shall be in an amount equal to One Thousand One Hundred and No/100 (\$1,100.00) Dollars for each separate Transient Unit constructed on the Amended Site Plan Parcel, in accordance with the Master Plan. The Beach Access Parking Fee shall be due and payable at the time of the issuance of a building permit for such Transient Unit constructed on the Amended Site Plan Parcel. The imposition of the Beach Access Parking Fee applicable to the Amended Site Plan Parcel shall thereafter apply only to the Amended Site Plan Parcel, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Developer and the City as a part of the PDD Amendment.

(AA) **CPI Index.** Developer further agrees that, as a public benefit, the Park Enhancement Fee and the Beach Access Parking Fee referenced above shall be subject to annual increase, beginning January 1, 2024, in an amount equal to the lesser of (i) the increase in the Consumer Price Index, published by the U.S. Bureau of Labor Statistics (“**CPI**”) between the

beginning and end of the most recent calendar year; or (ii) Two (2%) percent per annum, which increase is intended to ensure that each of the Park Enhancement Fee and Beach Access Parking Fee continue to reflect the City's on-going increases in the costs of services provided.

(BB) **Prior Amendment Fees.** The City and a predecessor in title to Landowner entered into that certain instrument entitled "Minor Amendments to the Modification to Development Agreement dated August 1, 2003 and The Sewer and Water Extension Agreement dated August 2, 2003 (the "**Prior Amendment**")", which Prior Amendment provides, among other things for fees as follows: (a) Police/Fire Substation Fee in an amount equal to Four Hundred Fifty and No/100 (\$450.00) Dollars per Density Unit (the "**Fire Station Fee**"); (b) a Water Extension Fee in an amount equal to Five Hundred and No/100 (\$500.00) Dollars per Density Unit (the "**Water Extension Fee**"); and (c) a Sewer Extension Fee in an amount equal to One Hundred Seventy Five and No/100 (\$175.00) Dollars per Density Unit (the "**Sewer Extension Fee**"). Developer acknowledges and agrees that, as a public benefit, the Fire Station Fee, the Water Extension Fee and the Sewer Extension Fee are and shall remain applicable to the Amended Site Plan Parcel, and that, for purposes of this Amendment, Density Unit shall be deemed equivalent to the Transient Units otherwise described herein.

(CC) **Street Lights.** As an obligation, Developer shall install or cause to be installed, street lights within the Amended Site Plan Parcel, in accordance with the Code of Ordinances. The monthly cost for each street light, including additional charges associated with an enhancement street light fixture, if any, shall be borne by the Developer and/or any owners association established by Developer for the Amended Site Plan Parcel.

(DD) **Conservation Easement Restriction.** As a public benefit, Developer specifically covenants and agrees not to subject the Amended Site Plan Parcel to a conservation easement or other restrictive covenant, whereby any portion of the Amended Site Plan Parcel shown as single family homes or amenities on the approved Master Site Plan is restricted for future development of such portion of the Amended Site Plan Parcel, 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.

(EE) **Mowing and Maintenance.** As an obligation, Developer must maintain the Amended Site Plan Parcel consistent with the Code of Ordinances of the City, provided that, at a minimum, Developer will mow the undeveloped Amended Site Plan Parcel no less than eight times per year until the Project is fully developed. The mowing shall occur in the periods between March 1 and November 30 of each calendar year. In addition, until the Project is fully developed, the Developer shall remove any fallen trees on the Amended Site Plan Parcel, 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 Amended Site Plan Parcel and remove fallen trees on the Amended Site Plan Parcel 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 Amended Site Plan Parcel, which lien shall be enforceable in the same manner as a property tax lien, which may only be satisfied by payment thereof.

(FF) **Development Regulations.** As an obligation, the Amended Site Plan Parcel shall be developed in accordance with this Agreement, the Code of Ordinances and other applicable land development regulations required by the City, State and/or Federal Government. The City shall, throughout the Term, maintain or cause to be maintained a procedure for processing of reviews as contemplated by this Agreement and the Code of Ordinances. The City shall review applications for development approval based on the development standards adopted as part of the Code of Ordinances, unless such standards are superseded by the terms of this Agreement, in which case the terms of this Agreement shall govern.

(GG) **Assignment of Development Rights.** Developer shall be entitled to assign and delegate the development rights and obligations set forth in this Agreement to a subsequent purchaser of all or any portion of the Amended Site Plan Parcel with the consent of the City, provided such consent shall not be unreasonably withheld or delayed. Upon the assignment or transfer by Developer of the development rights and obligations under this Agreement, then the assigning Developer shall not have any responsibility or liability under this Agreement.

(HH) **Development Schedule.** The Amended Site Plan Parcel shall be developed in accordance with the following development schedule (the “**Development Schedule**”): development of the Amended Site Plan Parcel shall commence upon the issuance of all permits and approvals, which issuance is anticipated to be complete within Two (2) years of the date of this Agreement, and development of the Amended Site Plan Parcel is anticipated to be complete within Five (5) years of the date of this Agreement.

(II) **Code of Ordinances.** As an obligation, Development of the Amended Site Plan Parcel shall be determined in accordance with the Code of Ordinances, as the same may be amended from time to time, pursuant to this Agreement, including, but not limited to the PDD, as the same may be amended.

(JJ) **Stormwater and Drainage.** As an obligation, all stormwater runoff, drainage, retention and treatment improvements within the Amended Site Plan Parcel shall be designated in accordance with the Code of Ordinances. 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 Amended Site Plan Parcel. 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, and will not be accepted or maintained by the City.

(KK) **Solid Waste and Recycling.** The City shall provide solid waste and recycling collection services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City. Payment for such services to the City by Developer, an Owners Association or each individual purchaser or owner of any portion of the Amended Site Plan Parcel is required in return for such service for each owner of any portion of the Amended Site Plan Parcel, and the City reserves the right to terminate or discontinue such service(s) to any owner of any portion of the Amended Site Plan Parcel until such payment(s) have been made.

(LL) **Police Protection.** The City shall provide police protection services to the Amended Site Plan Parcel on the same basis as provided to other residents and businesses within the City.

(MM) **Fire Protection.** The City shall provide fire services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City.

(NN) **Emergency Medical Services.** The City shall provide emergency medical services to the Amended Site Plan Parcel on the same basis as is provided to other residents and businesses within the City.

(OO) **No Education 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.

(PP) **Open Space Requirement.** As a public benefit, Developer agrees that the development of the Amended Site Plan Parcel shall incorporate not less than Twenty (20%) percent open space, which for purposes of this Agreement shall include protected wetlands, required buffers, ponds, lakes, open spaces, green space or other undeveloped acreage which is within the Amended Site Plan Parcel.

(QQ) **Minimum Rental Period.** *Intentionally deleted.*

(RR) **Easements.** As an obligation, Developer shall be responsible for obtaining, at Developer's cost, all easement, access rights and other instruments that will enable the Developer to tie into current or future water and sewer infrastructure on adjacent properties.

(SS) **Ponds and Lakes.** As an obligation, Developer shall install pond(s) or lake(s) as reflected on the approved site plan for the Amended Site Plan Parcel. The City agrees to cooperate with the Developer in the permitting process for such pond(s) and lake(s), it being understood that the City will not accept maintenance responsibility or any other liability for such pond(s) and lake(s), and that such pond(s) and lake(s) shall either be maintained by Developer, or conveyed to an Owners Association for on-going maintenance following completion of the development on the Amended Site Plan Parcel.

(TT) **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. The burdens of the development agreement are

binding upon, and benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

AMENDMENT AND ENFORCEMENT

Upon final approval by the City, the Developer will cause this amendment to the PDD to be recorded in the public records of Horry County, South Carolina. Expansions of and further amendments to the Project shall be permitted only upon approval by the Zoning Administrator of the City and submittal of an appropriate minor or major planned development district, in accordance with the ordinance of the City.

Exhibits: **SEE SEPARATE EXHIBIT SUPPLEMENT.**