

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: November 7, 2022

Agenda Item: 7G	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Second Public Hearing	Date: November 2, 2022
Subject: Regarding the Separate and Independent Amendment to the Master Development Agreement for the area of the Parkway Planned Development District (PDD) known as The Preserve	Division: Legal

The main elements of the amendment to the Master Development Agreement regarding the Preserve are as follows:

1. **Term:** The Parkway PDD Development Agreement was executed on January 9, 2009 and expires on January 9, 2029.
2. **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).
Public Safety Fee: \$3,600 per RDU (due at issuance of building permit for each RDU).
\$5,000 total for each RDU.
3. **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.
4. **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.
5. **Jurisdictional and Non-jurisdictional Waters:** Jurisdictional and non-jurisdictional waters within the project which are not mitigated, filled, or otherwise modified shall be surrounded by a water quality buffer of not less than 20' in width within which no building shall occur.
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 shown as single homes or amenities on the approved concept plan.
7. **Prohibition Against Short-Term Rentals:** No leases less than 6 months for each RDU. Leases can be extended to the same tenant for less than 6 months, but no extension term shall be for less than 30 days.

Recommended Action:

Allow comments from the public regarding the proposed Development Agreement

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By _____ 2nd By _____ To _____

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

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

THIS SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this “Agreement”) entered into as of the Effective Date (as defined herein) by and among the CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA (the “City”), a South Carolina municipal corporation, APACHE PROPERTIES, LLC, a South Carolina limited liability company (“Apache”) and APARTMENT ASSET ADVISORS, LLC, a Florida limited liability company (“Developer”).

RECITALS:

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

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

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

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

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

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

WHEREAS, Apache, acting together with Developer, 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 Apache, within the PDD, consisting of approximately 100 acres as shown on 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.

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

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 Amended 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. **Incorporation**. The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.
2. **Continuing Encumbrance**. Despite any change in ownership and/or the configuration and boundaries of the various tracts 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 Apache Tract subjected to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, 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 Apache Tract, including any portion of the Apache Tract which is included in the Amended Site Plan Parcel, shall remain in full force and effect (the “**Continuing Encumbrance**”).

3. **Development of the Amended Site Plan Parcel.** The Amended Site Plan Parcel shall be developed in accordance with the Development Agreement, this Agreement and all of its Exhibits, the PDD, 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 the 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 a 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.

4. **Improvements within Amended Site Plan Parcel.** In accordance with the Continuing Encumbrance provision contained herein, Apache and Developer, or their respective successors 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 Apache or Developer of the Amended Site Plan Parcel:

(A) Improve the section of Long Branch Loop as shown on **Exhibit “D”**, at Developer’s expense, and upon completion, dedicate and convey the same to the City as a public roadway. The entire Long Branch Loop corridor shall be 100’ in width, the initial section being comprised of a 70’ right-of-way, with easements on each side to complete the 100’ corridor, and the section being approved as a part of this Amendment being a 100’ right-of-way. For purposes of delineating which parcels and which developers are responsible for each portion of Long Branch Loop, **Exhibit “D”** is attached hereto, and made a part of this Agreement.

5. 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.

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

Developer intends to include within the mixed-use development of the Amended Site Plan Parcel (the "***Project***") a maximum of 804 residential development units ("***RDU***s"), in three separate segments or phases, each with its own amenity area, as follows and as shown in the PDD as well as **Exhibit "H"** showing the Master Site Plan for the Amended Site Plan Parcel:

- a. 370 Multifamily RDUs.
- b. 207 Build-To-Rent RDUs.
- c. 227 Paired Villa RDUs.

In addition, Developer intends to include within the mixed use development a 10,000 square foot building to be used as commercial space.

With respect to each of the three segments of residential development, their respective amenity areas will be completed, and a certificate of occupancy issued, at or prior to the issuance of certificates of occupancy for fifty percent (50%) of the RDUs in the applicable segment (e.g., segment a., 185 multifamily RDUs, segment b., 104 build-to-rent RDUs, and segment c., 114 Paired Villa RDUs). With respect to the commercial facility, that portion of the mixed-use development will be completed, and a certificate of occupancy issued, at or prior to the issuance of certificates of occupancy for eighty percent (80%) of the total RDUs regardless of the segment or type (643 RDUs). If Developer does not secure the certificates of occupancy on the terms as here specified, notwithstanding any other remedy that may be available to the City at law, or in equity, as a result of a Developer default under this Agreement, Developer and the City agree that the City may elect to (i) withhold issuance of building permits on the Amended Site Plan Parcel until such default is cured, or (ii) seek injunctive relief to stop any such continuing Developer default.

7. **Amendment to Section 2.4.** Section 2.4 of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current Section 2.4 in its entirety.

8. **Amendment to Section 2.12.** Section 2.12 of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current Section 2.12 in its entirety and replacing it with the following Section 2.12:

“2.12 **Streets and Building Pattern Book.** In order to enhance the PDD, the Current Owners have previously submitted to the City, a Street and Building Pattern Book (hereinafter the "**Pattern Book**"). The parties recognize, however, that the nature of development, and the composition of each tract comprising the Land (or any portion of a tract thereof), as to both presently approved commercial and residential use, is and will continue to evolve as portions of the Land is developed. Therefore, the parties agree that, at the time of any amendment to the previously approved Master Site Plan, by any of the Current Owners, such owner may also be required to submit, as a part of the PDD zoning amendment, a project pattern book (individually each a "**Project Pattern Book**" and collectively the "**Project Pattern Books**"), which Project Pattern Book will include the architectural styles, streetscapes and landscaping for such owner's property, or portion thereof, being proposed for amendment, rather than amending the previously submitted Pattern Book for the PDD, as the same may have been, or may be, amended from time to time. In the event of a conflict between the City of North Myrtle Beach Zoning Ordinance and a Project Pattern Book or Project Pattern Books, the City of North Myrtle Beach Zoning Ordinance shall control.

Porches and patios will be allowed up to 10' from front property line. All units shall be clad in wood siding, cementitious fiberboard, brick, tabby, genuine float-finish stucco, or synthetic stucco. In addition:

- i. The use of Exterior Insulation and Finish System (EIFS), sometimes referred to as synthetic stucco, is discouraged, but may be used if properly maintained. Moisture intrusion reports will be required during Project construction. Only drainable synthetic stucco will be permitted.
- ii. Vinyl siding, metal siding, decorative concrete block, concrete block (except subsurface wall), fiberglass, plastic, asphalt siding, logs, and other types not specifically enabled herein shall be prohibited.
- iii. Brick RDUs shall use Flemish or English Bond, or another more intricate bonding pattern; Common Bond is not allowed.
- iv. Large expanses of blank walls should be avoided.

With respect to the Amended Site Plan Parcel only and notwithstanding anything to the contrary in the Master Development Agreement, the City hereby agrees that upon Apache's proper submission and City approval of the necessary application and required supporting documentation including, but not limited to, the Project Pattern Book(s) required above, the approved density for the Amended Site Plan Parcel shall be a maximum of 804 RDUs as approved in the First Master Amendment and as generally depicted on **Exhibit "B"** attached hereto (which is provided merely to generally reflect the agreed upon density calculations only and not with respect to building specifics, location or design etc.). The parties also agree that such approved density for the Amended Site Plan Parcel may not increase without the City's approval of a major amendment to the PDD zoning. In the event Apache applies for a reduction in the approved density for the Amended Site Plan

Parcel, such submittal may be considered by the City as a minor amendment to the PDD.

9. **Amendment to Section 4.6.** Section 4.6 of the Master Development Agreement is amended, as to the Amended Site Plan Parcel only, by deleting the current Section 4.6 in its entirety and replacing it with the following Section 4.6:

“4.6 The Developer, Apache and the City agree that Apache or Developer shall pay an “Enhancement Fee” of \$5,000.00 per RDU to the City. Developer further agrees that the Enhancement Fees shall be subject to an annual increase, beginning on 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 the Enhancement Fees continue to reflect the City’s on-going increases in the costs of services provided. Such Enhancement Fee breakdown is set forth below:

A. Beachfront Parking Enhancement Fee in an amount equal to \$1,100.00 per RDU, which fee shall be payable at the time of building permit issuance for each such RDU.

B. A Park Enhancement Fee in an amount equal to \$300.00 per RDU, which fee shall be payable at the time of building permit issuance for each such RDU.

C. A Public Safety Enhancement fee in an amount equal to \$3,600.00 per RDU, which fee shall be payable at the time of building permit issuance for each such RDU.

D. Collectively, the fees above are referred to herein as the Enhancement Fee.

10. **Amendment to Exhibit H – Master Site Plan. Exhibit “H”** of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current **Exhibit “H”** in its entirety and replacing it with the attached **Exhibit “H”**.

11. **Amendment to Exhibit J – P.U.D. General Development Standards. Exhibit “J”** of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current Table 1 – Proposed Dimensional Standards Chart in its entirety and replacing it as set forth in the PDD.

12. **Effect of Future Laws.** Developer shall have vested rights to undertake development of any or all of the Amended Site Plan Parcel in accordance with the Code of Ordinances 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 and the Land Development Regulations, which conflict with this Agreement shall apply to the Amended Site Plan Parcel 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 Amended Site Plan Parcel 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 Amended Site Plan Parcel only in accordance with the Act and this Agreement.

13. **Amendment to Exhibit N – Development Schedule for Amended Site Plan Parcel.** **Exhibit “N”** of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current **Exhibit “N”** in its entirety and replacing it with the attached **Exhibit “N”**.

14. **Amendment to Exhibit R – Open Space.** **Exhibit “R”** of the Master Development Agreement is amended as to the Amended Site Plan Parcel only, by deleting the current **Exhibit “R”** in its entirety and replacing it with the attached **Exhibit “R”**.

15. **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, 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 Amended Site Plan Parcel 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 13,**

the following activities on the part of Developer shall not be deemed “development of the Property”: (i) the filing of this Agreement, the Conceptual Site Plan and the petitioning for or consenting to any amendment of this Agreement or the Code of Ordinances; (ii) the subdivision and conveyance of any portions of the Amended Site Plan Parcel to the City as contemplated under this Agreement; (iii) the subdivision and conveyance of the portion of the Amended Site Plan Parcel designated as “Open Space” on the Conceptual 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 Amended Site Plan Parcel, 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 Amended Site Plan Parcel for public utility purposes; (vi) the conveyance of portions of the Amended Site Plan Parcel to public entities in the case of any road realignments or grants of road rights of way; (vii) the marketing of the Amended Site Plan Parcel as contemplated under this Agreement; and (viii) any other activity which would not be deemed “development” under the Act.

16. **Infrastructure and Services.** The City and Developer recognize that the majority of the direct costs associated with the development of the Amended Site Plan Parcel will be borne by the Developer. Subject to the conditions set forth herein, the parties make specific note of and acknowledge the following:

A. **Roads.** All roads within the Project serving any single family lots shall be public roads. All roads within the Project serving any multifamily units, build-to-rent units or paired villas shall be private roads, provided such roads, driveways and alleys are constructed to City standards, are approved by the City Planning Commission as part of the subdivision plat approval process or approved by City staff as a part of site specific development plan review, and will be owned and maintained by a private Owners Association.

Notwithstanding the above provisions regarding any potentially applicable public roads within the Project, the City and Developer acknowledge that, prior to possible 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 roads, driveways, alleyways or other improvements which do not comply with the Complete Streets provisions of the City’s Land Development Regulations or in the City’s sole and absolute discretion.

B. **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 possibly accepted by, the City for public ownership and maintenance. 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 accept or expend any funds of the City or borrow any sums in connection with improvements to the roads subject to this Section 16.B.

C. Storm Drainage System. All stormwater runoff, drainage, retention and treatment improvements within the Amended Site Plan Parcel shall be designed 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 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.

D. Solid Waste and Recycling Collection. 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 RDU purchaser or owner is required in return for such service for each RDU and the City reserves the right to terminate or discontinue such service(s) to any RDU or group of RDUs until such payment(s) have been made.

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

F. Fire Services. 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.

G. Emergency Medical Services. The City shall provide emergency medical services to the Amended Site Plan Parcel, on the same basis as it provided to other residents and businesses within the City.

H. 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 RDU constructed prior to the issuance of a certificate of occupancy.

I. 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 Amended Site Plan Parcel 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.

J. 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.

K. 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 Amended Site Plan Parcel or any other property owned by the Developer or any affiliate of the Developer for sewer plant expansion by the City.

L. 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 Amended Site Plan Parcel 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 to: (i) establish the amenity components of the Amended Site Plan Parcel; (ii) establish the signage and entry monumentation for the Amended Site Plan Parcel; and (iii) establish the signage and lighting standards for the Amended Site Plan Parcel provided, however, nothing contained herein shall be deemed or construed to restrict the City in the appropriate exercise of its eminent domain powers.

M. 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.

N. Ponds and Lakes. In accordance with 16.C above, the Developer shall install pond(s) or lake(s) as shown 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). Such ponds and lakes must be conveyed and owned by the Owners Association.

O. Prohibition Against Conservation Easements and Other Restrictions on the Amended Site Plan Parcel. 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 Conceptual 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.

P. Temporary Storm Drainage Maintenance. Developer will provide temporary storm drainage measures, which incorporate any existing storm drainage facilities located on the Amended Site Plan Parcel to the reasonable satisfaction of the Public Works Director for the City, such that prior to commencement of Development Work, the Amended Site Plan Parcel shall continue to maintain any existing storm drainage facilities until the storm drainage facilities which are a part of the Development Work for each respective Phase of the Project are complete, and the same are dedicated to the City.

Q. General Maintenance and Mowing. Developer must maintain the Amended Site Plan Parcel consistent with the City's Code of Ordinances. Developer will mow the undeveloped Property 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 Amended Site Plan Parcel 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.

R. 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 (14) days of final approval by the City, at the second and final reading of City Council; in addition, the burdens and benefits hereunder shall inure to successors in interest to Developer.

S. Short Term Rental Prohibition. Developer, or the then current owner of the Project agree that the minimum term of any rental agreement for each RDU constructed upon the Property shall be Six (6) months, provided that following any such initial Six (6) month period, residential leases may be extended for periods of less than Six (6) months to the same tenant, provided such extensions are for successive periods of not less than Thirty (30) days. No sub-lease or assignment shall be permitted which would result in a party occupying a RDU for a period of less than Six (6) months, the express intent of this provision being to prohibit short-term and/or overnight rentals of any and all RDU's constructed on the Amended Site Plan Parcel.

T. Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States within the Project ("Wetlands") which are not mitigated, filled or otherwise modified, shall be surrounded by a water quality buffer of not less than Twenty (20) feet in width. Developer will convey all Wetlands located within the Project to the Owner's Association for maintenance and operation not later than the date on which the Project is complete.

U. Developer agrees that the Project shall incorporate not less than Twenty (20%) percent open space, which for purposes of this Agreement shall include Wetlands, required buffers, ponds, lakes, amenity lots and parcels, open spaces, green space or other undeveloped acreage which is within the Project.

17. **Wetland/Wetland Buffer Maintenance.** In accordance with the Continuing Encumbrance provision contained herein, Apache, any successor property owner, including Developer, acknowledge and agree that the Amended Site Plan Parcel may or does include one or more Wetlands. Unless and until such Wetlands are filled or otherwise mitigated to no longer remain classified as Wetlands, all current and future owners of the Amended Site Plan Parcel agree that all on-site Wetlands shall be surrounded with a water quality buffer having a width of not less than 20-feet, 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 in accordance with applicable permits.

18. **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 particular 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.

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

20. **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. 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.

21. **Impact Fees.** The Amended Site Plan Parcel shall be subject to all development impact fees or the like 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 the issuance of a building permit for the vertical development of any subdivided lot or portion of the Amended Site Plan Parcel. In particular, the Developer agrees that it shall not seek any exemptions for any portions of the Amended Site Plan Parcel 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.

22. **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 any and all provisions of federal, state and local laws and regulations for the handling of storm water.

23. **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 Amended Site Plan Parcel. 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.

24. **Defaults.** Developer shall continuously and diligently proceed with Development Work on the Amended Site Plan Parcel. Developer's failure to proceed with Development Work on the Amended Site Plan Parcel 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 Amended Site Plan Parcel to be developed in accordance with phasing plan of the Project. 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 this Agreement, 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.

25. **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 Developer at:

Apartment Asset Advisors, LLC
645 Mayport Road
Atlantic Beach, FL 32233
Attention: KoKo Head

With a copy to:

Longleaf Real Estate, LLC
P.O. Box 5
Conway, SC 29528
Attention: Joshua Hughes

With a copy to:

AmveStar Capital, LLC
645 Mayport Road
Atlantic Beach, FL 32233
Attention: Koko Head, Esq.

With a copy to:

Law Office of Koko Head, P.A.
645 Mayport Road
Atlantic Beach, FL 32233
Attention: Koko Head, Esq.

And to Apache at:

Apache Properties, LLC
4705 Oleander Drive, Suite A
Myrtle Beach, SC 29577
Attention: Keith Hinson

26. **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 Amended Site Plan Parcel 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 Amended Site Plan Parcel, 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 the terms of Section 13, in the event of conveyance of all or a portion of the Amended Site Plan Parcel, 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 Amended Site Plan Parcel so transferred; provided, however, the transferee(s) of the one acre contemplated for subdivision and conveyance shall not be deemed to succeed to any development rights and obligations of Developer under this Agreement.

27. **Description of Local Development Permits Needed**. The development of the Amended Site Plan Parcel shall be pursuant to this Agreement, the Land Development Regulations, and Code of Ordinances, as amended; provided, however, in the event of any conflict between this Agreement and 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 Conceptual Site Plan, subject to any Conceptual 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 Amended Site Plan Parcel 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 ("Owners Association") for any subsequent subdivision of the Amended Site Plan Parcel.

28. **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.

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

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

[Individual signature pages follow for each of the Parties]

EXHIBIT "A"

Amended Site Plan Parcel Track 1, Track 2, and Tract 3

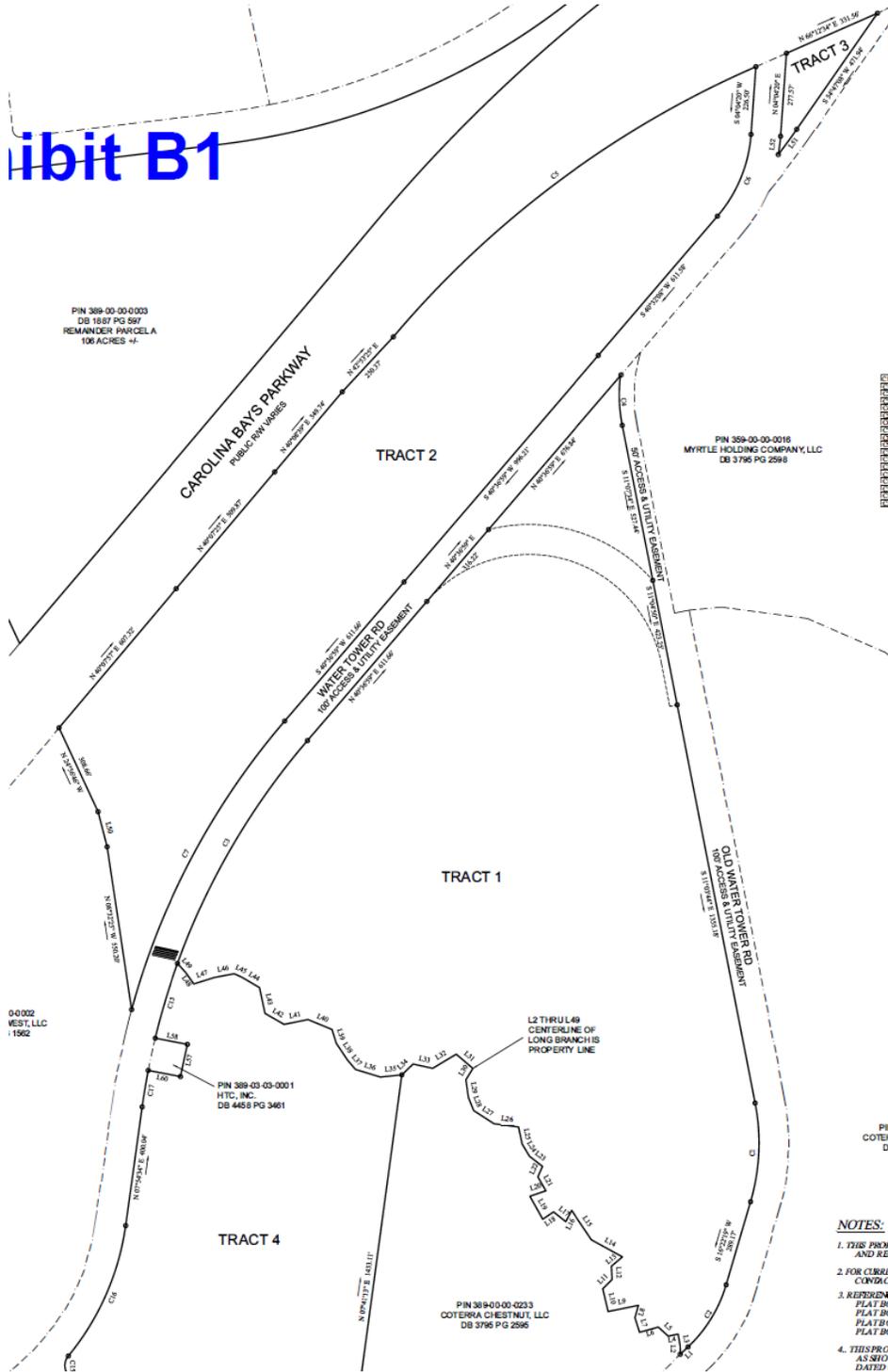
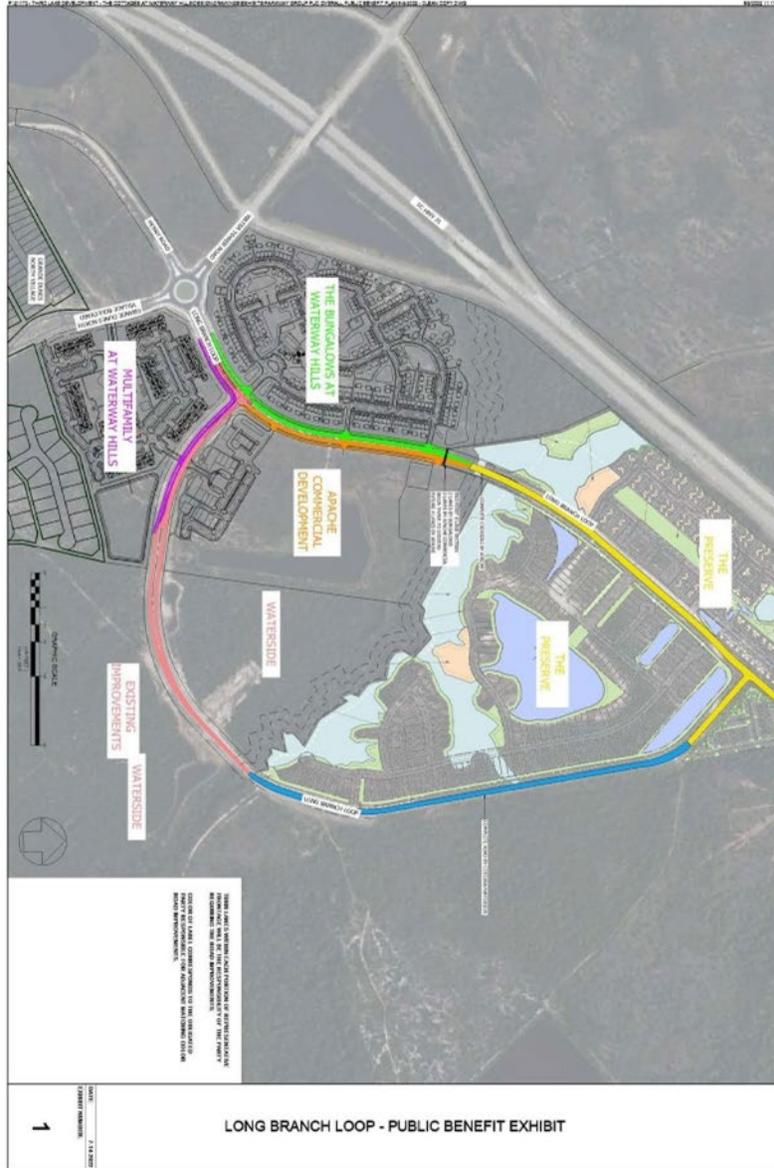


EXHIBIT "D"

Long Branch Loop Improvements





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SEALS

PROJECT INFORMATION

Project Title: Build-To-Rent Site Plan

Sheet Number: L-1.4

PROJECT

618 Colonial Road
 Myrtle Beach, SC 29577
 843.666.1000

PROJECT

Site Development Plans
The Preserve PDD
 North Myrtle Beach • South Carolina
 Prepared For:
Longleaf Real Estate

PROJECT

7/20/22
 21-488

REVISIONS

Planning Commission
 8/11/22

REVISIONS

21-488

EXHIBIT “N”

Development Schedule

Project construction will begin following receipt of permits from the City and from any other necessary or required regulatory bodies. The nature of this Project, together with the current economic conditions, prevents 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 Project is subject to then current market demands, Developer anticipates starting the installation of the infrastructure within a period of approximately Twenty-four (24) months from the Effective Date of this Agreement to allow for design, permitting and mobilization. Approximately One-Third of the Project will be complete within Four (4) years of the Effective Date of this Agreement, with an additional Two-Thirds of the Project being completed in the subsequent five (5) year period.

EXHIBIT "R"

Open Space



Exhibit R



11378 Charles Road
 Myrtle Beach, SC 29577
 MARY W. WOOD, P.E.
 PROFESSIONAL ENGINEER
 STATE OF SOUTH CAROLINA
 LICENSE NO. 11378
 EXPIRES 08/09/22
 PROJECT

Site Development Plans
The Preserve PDD
 North Myrtle Beach • South Carolina
 Prepared For:
Longleaf Real Estate

21-080
 PROJECT NUMBER
 PLANNING COMMISSION
 0-17
 DATE
 08/09/22
 REVISIONS



SEALS
 SHEET TITLE
 Open Space
 PLAN
 SHEET NUMBER
L-11