

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: April 3, 2023

Agenda Item: 7D	Prepared By: Chris Noury, City Attorney	
Agenda Section: New Business: Second Public Hearing	Date: March 29, 2023	
Subject: Second public hearing regarding the Separate and Independent Amendment to the Parkway Group PDD Development Agreement for creating the McDowell Corporate Center	Division: Legal	
The main provisions of the amendment to the Parkway PPD Development Agreement regarding the McDowell Corporate Center are: <u>Improvements to Water Tower Road:</u> The Developer will have the obligation to widen the paved section of Water Tower Road, within the existing public ROW of Water Tower Road, to accommodate turning movements concurrently with the site work improvements for the first building within the amended site plan parcel. The improvements shall be completed or bonded per the City's Land Development Regulations at or prior to the issuance of a CO for the first building within the amended site plan parcel. In the event the roadway improvements are not completed in accordance with this section, the City will have no obligation to issue additional building permits until such roadway improvements are complete. The Developer shall also improve the section of Water Tower Road adjacent to the project with the installation of sidewalks and street trees per city standards in lieu of fees. <u>East Coast Greenway Obligation:</u> Within 90 days of the effective date of the agreement, the Developer shall convey to the City a deed of dedication in conjunction with a platted right-of-way depicting a 25' in width ROW which shall be used as a portion of the East Coast Greenway over this site. The Developer shall also convey an area of 10' of ROW through the portion of on-site wetlands adjacent to the 25' ECG ROW for construction and maintenance of the ECG (as depicted on Exhibit B). <u>Miscellaneous Provisions:</u> The Agreement also contains a prohibition against conservation easements and other similar restrictions on the property, a general mowing and maintenance schedule regarding undeveloped areas of the site, and a provision that the Developer shall incorporate not less than 20% of open space regarding the amended site plan parcel. <u>Recommended Action:</u> Allow comments from the public regarding the proposed Development Agreement		
Reviewed by Department Head	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 FOR
MCDOWELL CORPORATE CENTER**

THIS SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this “**Agreement**”) entered into by and among the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the “**City**”), a South Carolina municipal corporation, **APACHE PROPERTIES, LLC**, a South Carolina limited liability company (“**APACHE**”) and **MCC WATERTOWER 1** (“**Developer**”).

RECITALS:

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

WHEREAS, the Master Development Agreement as amended, by the City and the then current owners of all of the Land which is subject to the Master Development Agreement, by that certain First Amendment to Master Development Agreement, dated March 23, 2020 and effective December 16, 2019, recorded March 24, 2020 in Deed Book 4298 at Page 2823 to include all signature pages, in the public records of Horry County, South Carolina (the “**First Master Amendment**”), which First Master Amendment provided, among other things, for the negotiation by and between the City and any of the then current Landowners, of amendments to certain public benefits agreed to by the City and the Landowners, at the time of any proposed amendment to the Master Site Plan, or the Parkway Group Planned Development District (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; and

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

WHEREAS, as a result of a scrivener’s error, LL Chestnut, which was never organized as a South Carolina limited liability company, and did not appear in the chain of title for any of the properties subject to the Master Development Agreement, should have instead been referred to as

J.B.Chestnut Limited Liability Company, a South Carolina limited liability company (“**JB Chestnut**”), which was the owner of record of the tract referred to in the Master Development Agreement as the “LL Chestnut Tract”; and

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

WHEREAS, Apache 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, West of S.C. Highway 31, within the PDD, an unrecorded map of which is attached hereto as **Exhibit “A”** (the “**Amended Site Plan Parcel**”) which PDD Amendment is approved by the City simultaneously with the approval of this Agreement; and

WHEREAS, 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 Amendment Site Plan Parcel portion of the PDD, in the manner set forth below.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and the sum of Five and No/100 (\$5.00) Dollars, to each party by the other paid, the parties agree as follows:

1. **TERM**. 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 (the “**Term**”). 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**. 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 and the Henry Road West Tract subjected to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, including the obligations regarding the Traffic Circle, which was dedicated as a public road as of August 2021, whether previously and currently encumbered by the Development Agreement, as amended by this Agreement, except as hereby expressly amended or supplemented, all terms and provisions of the Development Agreement relating to the 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. **WETLAND/WETLAND BUFFER MAINTENANCE.** In accordance with the Continuing Encumbrance provision contained herein, Apache acknowledges and agrees that 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**”) which are located adjacent to Water Tower Road. 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, Apache 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-footwide 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 and shall remain natural except to the extent vegetation is mulched to maintain required sight triangle distances along Water Tower Road.

4. **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.

5. **IMPROVEMENTS TO WATER TOWER ROAD.** In accordance with the Continuing Encumbrance provision contained herein, Apache, or its successor in title to the Amended Site Plan Parcel only, (e.g., Developer) as a condition to the improvement of the Amended Site Plan Parcel, shall, at the expense of the owner of the Amended Site Plan Parcel:

- (A) **Roadway Improvements.** As an obligation, widen the paved section of Water Tower Road, within the existing public right-of-way of Water Tower Road, to accommodate turning movements, concurrently with the site work improvements for the first building within the Amended Site Plan Parcel, such improvements shall be either (i) complete; or (ii) bonded in accordance with the City’s Land Development Regulations, at or prior to the issuance of a certificate of occupancy for the first building within the Amended Site Plan Parcel. In the event the roadway improvements are not completed in accordance with this section 5(A), then the City will have no obligation to issue additional building permits until such roadway improvements are complete. A map of such improvements

to Water Tower Road is attached hereto as **Exhibit “B”** (the “**Overall Master Plan**”), which road improvements shall be at the sole cost and expense of Developer.

- (B) **Complete Streets.** The City intends to improve Water Tower Road to comply with the Complete Streets portion of the City’s land development regulations. As an obligation, the Developer shall install sidewalks and street trees during the development of the Amended Site Plat Parcel in accordance with the Complete Streets portion of the City’s Land Development Regulations.
- (C) **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.
- (D) **East Coast Greenway Obligation.** Developer or the then current owner of the Amended Site Plan Parcel, shall convey to the City, platted as right-of-way in conjunction with a deed of dedication, to form a portion of the East Coast Greenway, within Ninety (90) days of the effective date of this amendment, that portion of the East Coast Greenway which is located on the Amended Site Plan Parcel, respectively, being twenty five (25’) feet in width, as shown and depicted on the Overall Master Plan attached hereto as Exhibit “B”. In addition to the twenty-five (25’) feet right-of-way, the developer shall also provide a further ten (10’) feet of right-of-way through the portion of on-site wetlands for purposes fo constructing and maintaining the East Coast Greenway, platted as public right-of-way in conjunction with a deed of dedication, as noted on the Amended site plan attached hereto as Exhibit “B.”
- (E) **Assignment of Developer 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.
- (F) **Development Schedule.** As an obligation, the Amended Site Plan Parcel shall be developed in accordance with the PDD as well as 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.
- (G) **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. 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. As an obligation, Developer shall provide stormwater conveyance and retention facilities sufficient in capacity to accommodate the storm water generated from the property, and provide the city with evidence of the necessary and required permanent and perpetual easements necessary to facilitate such drainage from the property.

- (H) **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.
- (I) **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.
- (J) **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.
- (K) **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.
- (L) **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.
- (M) **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.
- (N) **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.
- (O) **Ponds and Lakes.** As an obligation, Developer shall install pond(s) or lake(s) as required and 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.

(P) **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 this Agreement are binding upon, and benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

(Q) **Temporary Storm Drainage Measures.** As an obligation, Developer will provide temporary storm drainage measures, which incorporate any existing storm drainage facilities located on the Property to the reasonable satisfaction of the Public Works Director for the City, such that prior to commencement of Development Work, the Property shall continue to maintain 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.

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

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

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

8. **ADDITIONAL OBLIGATIONS AND PUBLIC BENEFITS.**

(A) **Development Activity, Clearing and Grading.** As an obligation, Development Activity, Clearing and Grading, as defined in Article II and Article II of the Code of Ordinances, shall conform to the following:

- (i) It is the desire of the Developer and the City that the impacts of Development Activity within the Property to areas outside of the Property be minimized, therefore initial clearing within the Property shall be limited to infrastructure for the Property, including roadways, water and sewer distribution and service lines, and storm drainage facilities in accordance with each phase.

- (ii) Following the issuance of the initial permits associated with Clearing and Grading set forth in Section (i) above, subsequent permits may include any remaining portion of the infrastructure for the Property, including roadways, water and sewer distribution and service lines, and storm drainage facilities in the respective phase of the Property, shown on the preliminary plat.
- (iii) Permits may be issued concurrently, as the Developer may have commenced, but not have completed the scope of one permit, prior to commencing additional phases of the Property for which an additional permit is required.
- (iv) The above standards have been established so as to minimize the number of trips generated by construction vehicles, including and particularly high-capacity vehicles removing or delivering materials from or to the Property which are more disruptive to the existing communities surrounding the Property during Development Activities, including Clearing and Grading.

(B) Prohibition Against Conservation Easements and Other Restrictions on the Property.

As a public benefit, Developer specifically covenants and agrees not to subject the Property to a conservation easement or other restrictive covenant, whereby any portion of the Property not shown as being developed on the approved Concept Plan is restricted for future development of such portion of the Property, and the same is conveyed to a Owners Association, such restriction against development shall not constitute a Developer Default hereunder, and shall not be deemed a conservation easement or restrictive covenant prohibited by this provision. Notwithstanding the above restriction, the parties agree that, for purposes of this Agreement any conveyance by Developer of a portion of the Property which has been shown or depicted as common area, buffer, ponds, lakes, open spaces or the like to any Owners Association shall not be deemed such an easement or restriction, and shall not constitute a default by Developer, provided that such portion of the Property so conveyed, prior to the date of such conveyance to any Owners Association, has been clearly designated on a map or site plan submitted to the City, and approved by the City, as not being a portion of the Property to be developed for any residential or commercial use as a part of the development anticipated by this Agreement.

(C) General Maintenance and Mowing. As an obligation, Developer must maintain the Property consistent with the Code of Ordinances of the City, provided that, at a minimum, 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 Property, such tree removal to occur during the same periods set out for mowing above. The Developer shall be given a reasonable period of time to be determined by the City Manager or his designee, to mow the Property and remove fallen trees on the Property in the event of a hurricane, rain event or other force majeure that prevents the Developer from complying with the mowing/maintenance schedule referenced above.

If the Developer fails to comply with the scheduled time frames for mowing and removal of fallen trees, as determined by the City Manager or his designee, then the City shall have the

right to enter the Property for the purpose of mowing and removing any fallen trees, and the Developer shall reimburse the City for the costs of such mowing and/or tree removal in an amount equal to One Hundred (100%) percent of such the costs incurred by the City for mowing and/or tree removal. In the event Developer should fail to reimburse the City within Thirty (30) days of the date an invoice is delivered by the City to the Developer, the City may place a lien upon the Property, which lien shall be enforceable in the same manner as a property tax lien, which may only be satisfied by payment thereof, and the City may elect to withhold the issuance of any further building permits or certificates of occupancy for development within the Property until such time as the lien is paid in full.

(D) **Prohibited Materials.** As a public benefit, Developer further agrees that certain materials shall be prohibited for incorporation in the development of the Property as shown in the PDD and the Pattern Book

9. **PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE.** The City and Developer recognize that development can have negative as well as positive impacts. Specifically, the City considers the protection of the natural environment and nearby waters, and the preservation of the character and unique identity of the City, to be important goals. Developer shares this commitment and therefore agrees to abide by all provisions of federal, state and local laws and regulations for the handling of storm water.
10. **COMPLIANCE REVIEWS.** Developer, or its assigns, shall meet with the City, or its designee, at least once per year during the Term to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year as compared to the Development Schedule. The City shall provide written notice to the Developer of the date for such compliance review not less than Five (5) business days in advance, provided such notice shall not be applicable to standard reviews and inspections otherwise performed by the City as to the improvement of the Property. The Developer must demonstrate good faith compliance with the terms of this Agreement. The Developer, or its designee, shall be required to provide such information as may reasonably be requested by the City. The Development Schedule is only a projection, and Developer's obligation at each respective Compliance Review shall be to reconcile the projected Development Schedule attached to this Agreement with the actual schedule of development for the Project at each respective Compliance Review. Failure to meet the Development Schedule shall not constitute a default hereunder.
11. **DEFAULTS.** Developer shall continuously and diligently proceed with Development Work on the Property. Developer's failure to proceed with Development Work on the Property for a period of more than Six (6) months, shall constitute a default hereunder on the part of Developer. In the event of a default, the City shall provide written notice to Developer of such default, and Developer shall have a period of thirty (30) days in which to cure a default by commencement of Development Work with regards to the next portion of the Property to be developed in accordance with phasing plan of the 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.

12. **MODIFICATION OF AGREEMENT.** This Agreement may be modified or amended only by the written agreement of the City and the Developer. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced except as otherwise provided in the Act.
13. **NOTICES.** Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

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

With a copy to:

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

With a copy to:

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

And to the Developer

MCC Watertower 1 LLC.
196 Stonebridge Dr.
Unit D
Myrtle Beach, SC 29588
Attention: Ed McDowell

14. **GENERAL.**

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

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

(C) **Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between the City and the Developer relative to the Property and its development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

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

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

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

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

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

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

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

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

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

15. **DESCRIPTION OF LOCAL DEVELOPMENT PERMITS NEEDED.** The development of the Property 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's Planning and Development Department 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 Concept Plan, subject to any Concept Plan Revisions as defined herein. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions. It is expressly understood and acknowledged by all parties to this Agreement that any portions of the Property donated or sold by any Developer to the City shall not be subject to any private declaration of restrictions or property owners association(s) created by any Developer for any subsequent subdivision of the Property.

16. **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.

17. **INDEPENDENT AMENDMENT.** In accordance with the Continuing Encumbrance provision contained herein, this Separate and Independent Amendment to Master Development Agreement is intended to be applicable only to the Amended Site Plan Parcel, which is a portion of the Apache Tract, and shall not be deemed applicable to any other portion of the Land which is subject to the Development Agreement, as amended, or to any other Landowner within the PDD, who is not a successor or assign of Apache.
18. **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.
19. **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.

[Individual signature pages follow for each of the Parties]

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

CITY OF NORTH MYRTLE BEACH

By: _

Name: _____

Title: _____

Witness #1

Sworn to before me this _____ day of _____, 2022

Notary Public for _____
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **ACKNOWLEDGEMENT**

[Signature page to Separate and Independent Amendment to
Master Development Agreement for Innovative Construction Group]

STATE OF _____)
)
COUNTY OF _____)

ACKNOWLEDGEMENT

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named MCC Watertower 1, LLC by _____ its _____, sign and seal and as both his act and deed deliver the within written Agreement and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

**MCC WATERTOWER 1, LLC. a South
Carolina limited liability company**

By: __

Name: __

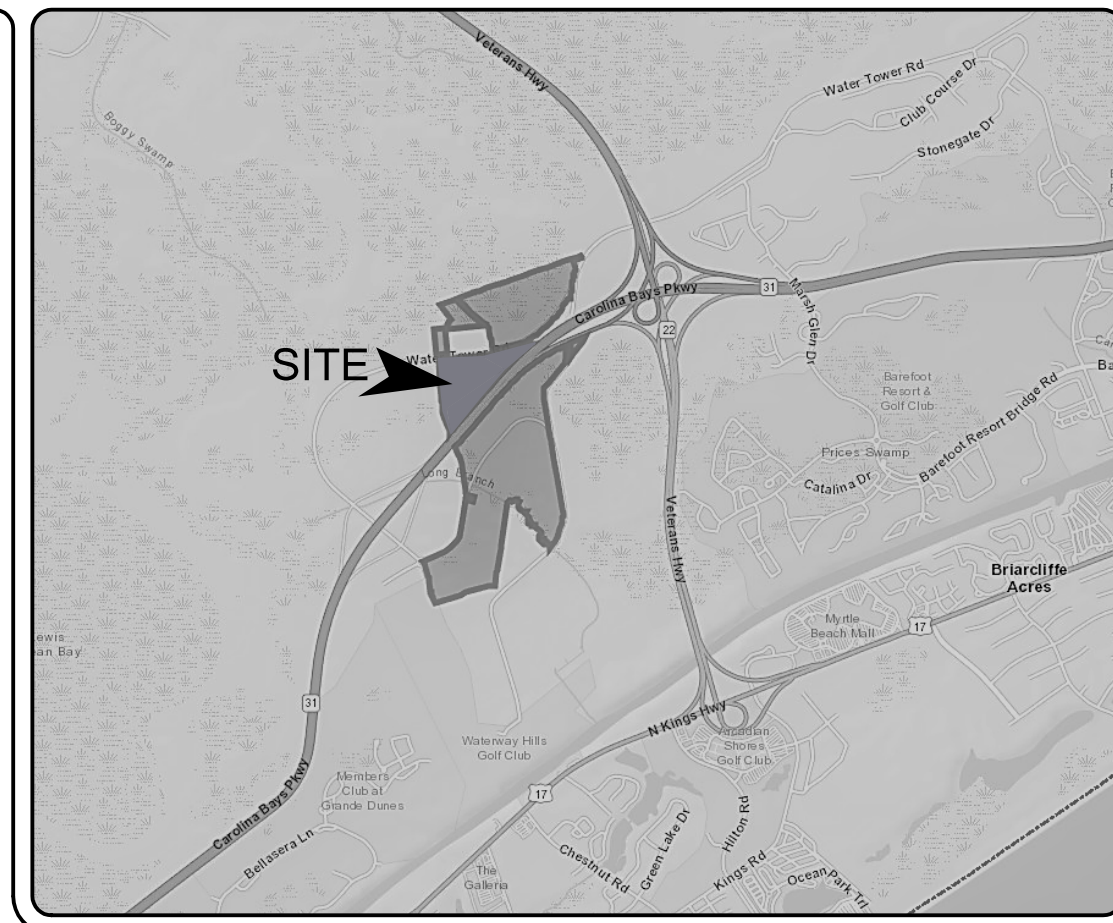
Title: _

Sworn to before me this ____ day of
_____, 2022

Witness #1

Notary Public for _____
My Commission Expires: _____

Exhibit A



VICINITY MAP

THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON OR PERSONS SHOWN IN THE TITLE BLOCK AND THIS DOESN'T MAKE ANY CERTIFICATION TO ANY UNNAMED PARTIES WITHOUT A REVISION AND UPDATE TO THE CERTIFICATION WITH THE CLIENTS AUTHORIZATION. ADDITIONAL FEES.

NOTE

1. DATE OF FIELD WORK: JUNE, 2022
2. LOT APPEARS TO BE LOCATED IN FLOOD ZONE 'X'
AS SHOWN ON FLOOD MAP 45051C0591K, DATED
DECEMBER 16, 2021 AND IS SUBJECT TO
VERIFICATION.
3. SUBJECT TO ANY TITLE REPORT
DISCLOSURE-NOT SUPPLIED.
4. TMS: 155-00-01-054
PIN: 389-00-00-0003

REFERENCE

PLAT BOOK: 291 PAGE: 78
PLAT BOOK: 128 PAGE: 93
SC D.O.T. PROJECT: STP-GSLA (003)
DEED: 1887 PAGE: 597

"APPROVED JURISDICTIONAL DETERMINATION EXHIBIT" BY THE
BRIGMAN COMPANY FEBRUARY 2, 2022

DATE OF ORIGINAL: AUGUST 18, 2022

REVISION: UPDATE- ADDED WETLANDS DATE: MARCH 14, 2023

REVISION: _____ DATE: _____

REVISION: _____ DATE: _____

REVISION: _____ DATE: _____



Spartina Surveying
BOLTON & MENK, INC.

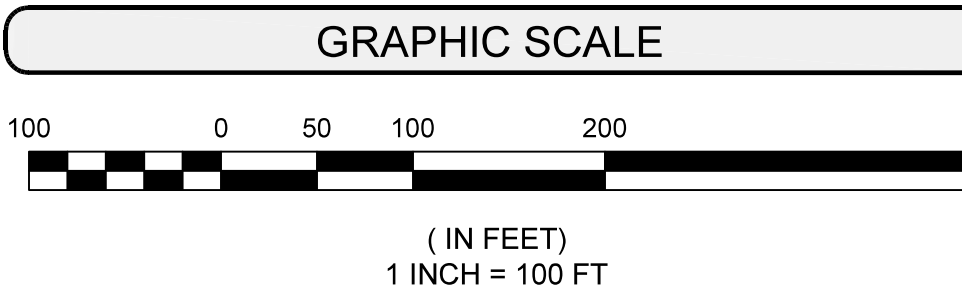
BOUNDARY SURVEY

OF
A PORTION OF TMS: 155-00-01-054
LOCATED IN CITY OF NORTH MYRTLE BEACH
HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR

MCDOWELL CONSTRUCTION
MARCH 14, 2023

SURVEYED AND MAPPED BY
SPARTINA SURVEYING - BOLTON & MENK, INC.
802 MAIN STREET, CONWAY SC 29526
PHONE: 843-340-0285 / OFFICE 843-488-1040

SDP	WATERTOWER ROAD BOUNDARY.DWG	JOB# 2824-222
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I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS OF A CLASS B SURVEY AS THAT ALL NECESSARY MARKERS HAVE BEEN INSTALLED AND THERE ARE NO ENCROACHMENTS OTHER THAN SHOWN HEREON.

F. WILLIAM FAIREY IV. P.L.S. #27446