

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: May 1, 2023

Agenda Item: 6D	Prepared by: Chris Noury, City Attorney
Agenda Section: Unfinished Business: Ordinance. Second Reading	Date: April 27, 2023
Subject: First amendment to the Separate and Independent Amendment to the Master Development Agreement for the Parkway PDD regarding the Village at Waterway Hills	Division: Legal

**Background:**

At the April 3, 2023 Council Meeting, the applicant requested to modify the approved agreement by shifting the obligation triggers for off-site roadway improvements and on-site amenities as follows:

The tables below set forth a summary of the triggers for the Roadway Improvements and On-Site Amenities:

**Roadway Improvements (Water Tower Rd, Henry Rd, & Long Branch Loop)**

Use	Trigger
Single Family	Completed or Bonded at 1 <sup>st</sup> Building Permit
Multi-Family	Completed or Bonded at 1 <sup>st</sup> Building Permit
Commercial Zone	Completed or Bonded at 1 <sup>st</sup> Building Permit

**Clubhouse and Pool Amenity**

Use	Commenced	Completed
Single Family	On or before 30 days following issuance of building permit for 50 <sup>th</sup> building	On or before issuance of certificate of occupancy for 100 <sup>th</sup> building
Multi-Family	On or before 30 days following issuance of building permit for 2 <sup>nd</sup> building	On or before issuance of certificate of occupancy for 3 <sup>rd</sup> building

**Recommended Action:**

Approve or deny the proposed ordinance on second reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE**

**AN ORDINANCE TO APPROVE THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT REGARDING THE VILLAGE AT WATER HILLS AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.**

**WHEREAS**, the City of North Myrtle Beach and Henry Road West, LLC; Apache Properties, LLC; and Third Lake Development, LLC desire to enter into the First Amendment to the Separate and Independent Amendment to the Master Development Agreement regarding the project identified as the Village at Waterway Hills; and

**WHEREAS**, that certain document identified as the First Amendment to the Separate and Independent Amendment to the Master Development Agreement for the Village at Waterway Hills, as agreed upon by the Parties, has been prepared and is presented to City Council for approval.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1:** The document identified as the First Amendment to Separate and Independent Amendment to the Master Development Agreement for Village at Waterway Hills is hereby approved.

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

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

DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 4.3.2023

SECOND READING: 5.1.2023

REVIEWED:

\_\_\_\_\_  
City Manager

ORDINANCE: 23-40



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; 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 Master Development Agreement and First Master Amendment were amended by that certain Separate and Independent Amendment to Master Development Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Deed Book \_\_\_\_ at Page \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "*Separate and Independent Amendment*"); and

WHEREAS, the Parties now desire to enter into an amendment to certain provisions of the Development Agreement, in order to further specify the timing of certain fees and obligations imposed by the City upon the Developer pursuant to the Separate and Independent Amendment, as amended, applicable to only the real property which is the subject of the Separate and Independent Amendment, 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. **Section 5 Improvements Off-Site and within the Amended Site Plan Parcel.** Section 5, Subsection (B) of the Separate and Independent Amendment is deleted in its entirety and replaced with the following:

**"(B) Install sidewalks and street trees during the development of the Amended Site Plan Parcel in accordance with the Complete Streets portion of the City's land development regulations, along the boundary of the Project with Water Tower Road , with Long Branch Loop such installments are to be bonded for completion under the City's standard bonding procedures on or before the issuance of the first building permit for the Single Family Neighborhood portion of the Amended Site Plan Parcel for that portion of the Project; and (ii) on or before the issuance of the first building permit for the Multi-Family Neighborhood portion of the Amended Site Plan Parcel for that portion of the Project; and (iii) on or before the issuance of the first building permit for the Commercial Zone portion of the Amended Site Plan Parcel for that portion of the Project. In the event the roadway improvements are not completed in accordance with this Section 5(B), then the City will have no obligation to issue additional building permits until such roadway improvements are complete." For reference see summary table set forth in Section 4 below.**

2. **Section 6 Additional Enhancement Fees, Obligations and Public Benefits.** Section 6, Subsection (E) of the Separate and Independent Amendment is deleted in its entirety and replaced with the following:

**“(E) Multi-Family On-Site Amenity Trigger.** As an obligation, for the Multi-Family Neighborhood portion of the Amendment Site Plan Parcel, the on-site amenity, as shown on the Master Site Plan, shall be commenced on or before the date which is Thirty (30) days following the issuance of a building permit for the 2nd multi-family building within the Multi-Family Neighborhood portion of the Amended Site Plan, and the on-site amenity as shown on the Master Site Plan shall be completed prior to the date on which the certificate of occupancy is issued for the 3rd multi-family building within the Multi-Family Neighborhood portion of the Amended Site Plan. In the event the Multi-Family on-site amenity is not completed in accordance with this Section 6(E), then the City will have no obligation to issue additional building permits until such on-site amenity improvements are complete.” For reference see summary table set forth in Section 4 below.

3. **Section 6 Additional Enhancement Fees, Obligations and Public Benefits.** Section 6, Subsection (F) of the Separate and Independent Amendment is deleted in its entirety and replaced with the following:

**“(F) Single Family Neighborhood Amenity Trigger.** As an obligation, for the Single Family Neighborhood portion of the Amendment Site Plan Parcel, the on-site amenity, as shown on the Master Site Plan, shall be commenced on or before the date which is Thirty (30) days following the issuance of a building permit for the 50th residential unit within the Single Family Neighborhood portion of the Amended Site Plan, and the on-site amenity as shown on the Master Site Plan shall be completed prior to the date on which the certificate of occupancy is issued for the 100th residential unit within the Single Family Neighborhood portion of the Amended Site Plan. In the event the Single Family on-site amenity is not completed in accordance with this Section 6(F), then the City will have no obligation to issue additional building permits until such on-site amenity improvements are complete.” For reference see summary table set forth in Section 4 below.

4. **Summary Table.** Table below sets forth a summary of the revisions set forth in Sections 1, 2 and 3 above:

<b>Single Family Roadway Improvements</b>	<b>Bonded at 1<sup>st</sup> Building Permit</b>
<b>Multi-Family Roadway Improvements</b>	<b>Bonded at 1<sup>st</sup> Building Permit</b>
<b>Commercial Zone Roadway Improvements</b>	<b>Bonded at 1<sup>st</sup> Building Permit</b>
<b>Multi-Family Clubhouse and Pool Amenity Commenced</b>	<b>On or before 30 days following issuance of building permit for 2<sup>nd</sup> building</b>
<b>Multi-Family Clubhouse and Pool Amenity Complete</b>	<b>On or before issuance of certificate of occupancy for 3<sup>rd</sup> building</b>
<b>Single Family Clubhouse and Pool Amenity Commenced</b>	<b>On or before 30 days following issuance of building permit for 50<sup>th</sup> building</b>

Single Family Clubhouse and Pool Amenity Complete	On or before issuance of certificate of occupancy for 100 <sup>th</sup> building
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5. **Continuing Encumbrance.** Despite any change in ownership and/or the configuration and boundaries of the various tracts subjected to the Development Agreement, as amended, and the Exhibits to the Development Agreement, previously subjected to the Development Agreement, as amended, by this Agreement, except as hereby expressly amended or supplemented, shall remain in full force and effect. Notwithstanding any change in ownership and/or the configuration or boundaries of the Henry Road Tract and the Apache Tract subjected to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, whether previously and currently encumbered by the Development Agreement, as amended by this Agreement, except as hereby expressly amended or supplemented, all terms and provisions of the Development Agreement relating to the Henry Road Tract or the Apache Tract, including any portion of the Henry Road Tract or the Apache Tract which is included in the Amended Site Plan Parcel, and the Riparian Trailhead Site, shall remain in full force and effect (the “**Continuing Encumbrance**”).

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

7. **Recording.** Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this Agreement shall be recorded in the public records of Horry County, South Carolina, on or before the date which is Fourteen (14) days following the date on which the City enters into this Agreement. The burdens of the development agreement are binding upon and benefits of this Agreement shall inure to, all successors in interest to the parties to the agreement.

8. **Independent Amendment.** In accordance with the Continuing Encumbrance provision contained herein, this Second Separate and Independent Amendment to Master Development Agreement is intended to be applicable only to the Amended Site Plan Parcel, the Single Family Neighborhood which is located on a portion of the Henry Road Tract, the Multi-Family Neighborhood, which is located on 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 Henry Road and/or Apache, respectively. 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.

9. **No Further Amendment.** In accordance with the Continuing Encumbrance provision contained herein, except as specifically amended by this Second 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.

10. **Invalidity.** The invalidity of one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof, and in the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final order, decree or judgment of a court of competent jurisdiction, this Agreement shall be constituted as if such invalid phrases, sentences, clauses or paragraphs had not been inserted in the 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]







