
R2025-2: AUTHORIZING THE CITY MANAGER TO ENTER INTO A LETTER OF INTENT WITH PICKLEPORT MYRTLE BEACH LLC.

Applicant/Purpose: Staff/ to authorize the City Manager to enter into a Letter of Intent with PicklePort Myrtle Beach LLC concerning the development of a pickleball facility on unimproved City-owned property located at 900 Harrelson Boulevard in Myrtle Beach, South Carolina (PIN No. 443-00-00-0015) (the "Property").

Brief:

- PicklePort desires to develop a pickleball facility on unimproved property adjacent to Whispering Pines Golf Course and has requested the City enter into a Letter of Intent that would allow PicklePort to evaluate the suitability of the Property for such development and serve as a framework to allow the parties to negotiate terms of a subsequent agreement to be presented to City Council.

Issues: The Letter of Intent contains the following framework for the parties potential agreement:

- The Letter of Intent includes one binding term: The parties will negotiate exclusively with each other regarding the project for 180 days after execution; the remainder of the terms are non-binding.
- PicklePort would be permitted to develop and operate a recreational complex focused on racquet sports/pickleball, with associated signage, food, beverage, merchandise and other entertainment supporting the operation, such as live music, video/simulators/games, and big-screen viewing of pickleball tournaments, together with associated parking and site improvements to include indoor courts and covered outdoor courts. Additional parameters concerning the specific permitted uses will be incorporated in the future agreement.
- The agreement would be for an initial term of 20 years, with 3 separate renewal terms of 5 years each upon mutual consent of the parties.
- PicklePort has the ability to terminate the agreement at any time after the 10th anniversary of the agreement upon 60 days' notice and payment of a termination fee of 1 year's annual payment. City can terminate at any time if PicklePort fails to comply with the agreement.
- Annual payments for use of the Property from the commencement of the term through the earlier of Year 2 or substantial completion of the project shall be in the amount of \$17,500.00 per year. Annual payments from substantial completion or the end of Year 2, whichever is earlier, through Year 5 shall be in the amount of \$35,000.00 per year. At the beginning of Year 6 and every five years thereafter, the annual payment shall be adjusted to account for the annualized increase in the Consumer Price Index (CPI) over the previous five years, but not less than 10%.
- At the expiration or termination of the agreement, all improvements and alterations become the City's property unless the City opts not to take possession of the improvements. In such case, PicklePort must remove the improvements within ninety (90) days and return the Property to its original condition.
- PicklePort is responsible for all repairs, maintenance, insurance and utilities, as well as any taxes. PicklePort is also responsible for insuring the Property with the City named as an additional insured and will agree to indemnify the City against claims arising from PicklePort's use of the Property.
- PicklePort shall not damage or create safety hazards on the City's adjacent property, including the golf course and driving range, and any such damage or hazard shall be repaired in no less than 60 days. Any damage that results in the golf course or driving range entrance being impassable or causes a safety hazard on the golf course must be remedied immediately.

- 1
- 2 • PicklePort is permitted to enter the Property for 180 days after execution of the Letter
- 3 of Intent for purposes of inspecting, testing, and reviewing the property to determine
- 4 the feasibility of development of the facility. Terms for this right of entry are set forth
- 5 in a Right of Entry Agreement and include: 1) a requirement that PicklePort and those
- 6 entering on its behalf obtain insurance and execute a release/indemnity agreement; 2)
- 7 no invasive testing without City's prior approval; and 3) PicklePort must return the
- 8 Property to the condition in which it existed before the inspection period.
- 9

10 **Public Notification:** Normal meeting notification.

11

12 **Alternatives:**

- 13 • Deny or modify the proposed Resolution and Letter of Intent.
- 14

15 **Financial Impact:** Annual payments for use of the Property as outlined above, in addition to

16 business license fees and associated taxes on revenue.

17

18 **Manager's Recommendation:** I recommend approval.

19

20 **Attachment(s):** Proposed Resolution and Exhibit A (Letter of Intent).

RESOLUTION R2025-2

**CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA**

**RESOLUTION AUTHORIZING THE CITY
MANAGER TO ENTER INTO A LETTER OF
INTENT WITH PICKLEPORT MYRTLE
BEACH LLC**

WHEREAS, the City of Myrtle Beach, South Carolina (the "City") is an incorporated municipality located in Horry County, South Carolina and has all powers granted to municipalities by the Constitution and general laws of this State; and

WHEREAS, the City owns real property located at 900 Harrelson Boulevard in Myrtle Beach, South Carolina (PIN No. 443-00-00-0015) (the "Property"); and

WHEREAS, PicklePort Myrtle Beach LLC ("PicklePort") desires to develop a pickleball facility on an unimproved portion of the Property; and

WHEREAS, PicklePort has requested the City enter into a non-binding Letter of Intent concerning the development of such pickleball facility to allow PicklePort to evaluate the suitability of the Property for the proposed development and to allow the parties to negotiate terms of a subsequent agreement to be presented to City Council; and

NOW, THEREFORE, BE IT RESOLVED the City Manager or Assistant City Manager is hereby authorized to pursue negotiations with PicklePort and execute the Letter of Intent in substantially the same form as attached hereto and incorporated herein as Exhibit A. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the attached Letter of Intent as may be necessary or appropriate, provided there is no compromise of the substantive purposes of this City Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further actions by City Council, then the Letter of Intent shall be presented to Council for further review before final execution. Notwithstanding anything in this Resolution or in the Letter of Intent to the contrary, City Council expressly reserves its legislative discretion with respect to any later Ordinance that will be before Council for approval concerning this matter.

SIGNED, SEALED and DATED on this 14th day of January 2025.

ATTEST:

BRENDA BETHUNE, MAYOR

JENNIFER ADKINS, CITY CLERK



EXHIBIT A

January 14, 2025

Mr. Brian Tucker
Assistant City Manager
City of Myrtle Beach
937 Broadway Street
Myrtle Beach, SC 29577

RE: Letter of Intent concerning occupancy of approximately 6.00 Acres, being a portion of real property bearing Horry County TMS/PIN No.: 180-00-02-125/443-00-00-0015, located at 900 Harrelson Boulevard, Myrtle Beach, South Carolina 29577 (the "Premises").

Dear Brian:

PicklePort Myrtle Beach LLC, a South Carolina limited liability company, or an affiliate ("Occupant") proposes to enter into an agreement (the "Agreement") with the City of Myrtle Beach, a body politic under the laws of the State of South Carolina (the "Owner") for the occupancy of the Premises, under the following terms and conditions:

1. Premises. A preliminary map of the Premises, together with the initially proposed site plan is attached hereto as Exhibit "A" (the "Preliminary Site Plan"). Upon or prior to execution of the Agreement, Occupant shall obtain a survey of the Premises, to be approved by Owner, to be used as the description of the Premises.
2. Current Occupancy of Premises. Owner and Occupant acknowledge that the Premises is presently encumbered by an agreement for the operation of the existing Whispering Pines golf course (the "Golf Course Agreement"), and that Owner shall be solely responsible for the release of the Premises from the Golf Course Agreement.
3. Agreement and Term. Occupant acknowledges the Premises is subject to restrictions, conditions, and covenants contained in the Quitclaim Deed conveying the Premises from the United States of America to Owner and that any Agreement between Owner and Occupant must be approved by the Department of the Interior. The Agreement shall be effective upon execution; however, the initial term of the Agreement shall be for twenty (20) years (the "Initial Term"), commencing on Occupant's receipt of a building permit.
4. Extended Terms. At the expiration of the Initial Term, the Agreement may be renewed upon mutual agreement of the parties for three (3) separate renewal terms of five (5) years each (each an "Extended Term," together the "Extended Terms"). Provided that Occupant is not then in default of the Agreement, is maintaining the Premises in keeping with prudent management standards, and

980 CIPRIANA DRIVE
SUITE A1 #166
MYRTLE BEACH SC 29572
843.385.9200
THEPICKLEPORT.COM

is operating in a manner consistent with the public health, safety and general welfare, then Owner will not unreasonable withhold its agreement to an Extended Term.

5. Right of Termination. Occupant reserves the right to terminate the Agreement at any time following the tenth (10th) anniversary of the Agreement upon sixty (60) days' prior written notice to Owner, and the payment by Occupant of a termination fee to Owner in an amount equal to one (1) year of the then current rent paid under the Agreement. Owner reserves the right to terminate the Agreement at any time upon Occupant's failure to perform any covenant or obligation under the Agreement.

6. Annual Payment. Annual payments during the term of the Agreement, as extended, shall be paid in equal monthly installments. Annual payments from the commencement of the Term through the earlier of Year 2 or substantial completion shall be in the amount of \$17,500.00 per year. Annual payments from substantial completion or the end of Year 2, whichever is earlier, through Year 5 shall be in the amount of \$35,000.00 per year.

At the beginning of Year 6 and every five years thereafter, the annual payment shall be adjusted to account for the annualized increase in the Consumer Price Index (CPI) over the previous five years and in no event shall the increase be less than 10%.

7. Additional Costs. During the Term of the Agreement, as the same may be extended, Occupant shall be responsible for all repairs, maintenance, insurance and utilities serving the Premises. Occupant is responsible for real property taxes.

8. Improvements. Occupant shall be solely responsible for the design, permitting and approval of the improvements to be made to the Premises, as well all expenses associated with the same, provided that the same shall be constructed using first class materials and methods and by contractors licensed in the State of South Carolina. All construction must be in accordance with applicable laws, regulations, and building codes. Prior to construction of any improvements, modifications, or alterations to the Premises, Occupant must first obtain Owner's prior written approval. At the expiration or termination of the Agreement, all improvements and alterations to in and to the Premises shall, in the sole discretion of Owner, become the property of the Owner. However, if Owner determines it shall not take possession of one or more of the improvements or alterations, Occupant shall completely remove the same within ninety (90) days and return the Premises to its original condition.

9. Damage to Surrounding Property. Occupant shall not damage or create any safety hazards on the adjacent property of Owner, including but not limited to the Whispering Pines golf course and driving range properties ("Golf Course Property"). If Occupant causes damage that results in the entrance and/or driveway of the Golf Course Property being impassable, interferes with the operation of the golf course or driving range, or causes a safety hazard on the Golf Course Property, then Occupant shall immediately repair or remedy such damage or safety hazard. Any other damage to the Golf Course Property shall be repaired as soon as practicable, but no later than sixty (60) days after learning of such damage.

10. Insurance and Indemnification. Occupant shall be required to obtain insurance of the type and in the amounts of coverage satisfactory to Owner. Policies shall name as additional insureds

Owner, its employees, agents, officers, and volunteers. Occupant shall also indemnify, hold harmless, and defend Owner, its employees, agents, officers, and volunteers from and against all liability, loss, suits, claims, damages, judgments, attorneys' fees, and costs which arise in whole or in part from: a) the use or misuse of the Premises; b) the Permitted Use; and c) any act or omission of Occupant, its employees, officers, agents, contractors, and/or guests.

11. Mortgage. Occupant shall have the option, in Occupant's sole discretion, to borrow funds for development of the improvements on the Premises, secured by Occupant's interest in the Agreement, provided that in no event shall the fee be encumbered.

12. Permitted Use. If approved by the Department of the Interior, Occupant shall be permitted to use the Premises for the operation of a recreational complex focused on racquet sports generally, and pickleball specifically, with associated signage, food, beverage, merchandise and other entertainment supporting Occupant's operation, together with associated parking and site improvements to include indoor courts and covered outdoor courts (collectively, the "Permitted Use"). "Other Entertainment" would be tangential activities in support of and in conjunction with playing pickleball such as live music, video/simulators/games, and big-screen viewing of other pickleball tournaments (collectively, the "Permitted Use"). Additional parameters or limitations concerning the Permitted Use to be incorporated in the Agreement. Use of the Premises for any other purpose shall not be permitted without the prior written consent of Owner. Should Occupant use the Premises for other than the Permitted Use, this Agreement shall terminate immediately at the discretion of Owner. No use shall be made or permitted that violates the restrictions, conditions, easements, and covenants contained in the Quitclaim Deed conveying the Premises from the United States of America to Owner.

13. Inspection Period. Buyer will have a period beginning on the date of execution of the Agreement, and extending for a period of one hundred eighty (180) calendar days, in which to inspect the Premises (the "Inspection Period"). Occupant shall have the right to enter the Premises and inspect, test and review the Premises during the Inspection Period for the purposes of determining the feasibility of Occupant's development of the Premises. Terms of such inspection period are more fully set forth in the Right of Entry Agreement attached as Exhibit "B," which shall be fully executed before access or entry is granted.

14. Payment Commencement Date. The annual payments under the Agreement shall commence on execution of the Agreement. (the "Rent Commencement Date").

15. Signage. Occupant shall be entitled to erect signage on the Premises, in accordance with the applicable ordinances of the City of Myrtle Beach. Such signage must be approved by the City Manager or designee, must comply with the Myrtle Beach Code of Ordinances, and must receive all appropriate governmental approvals. Signage shall be at Occupant's expense.

16. Exclusive Negotiation. For a period of one hundred eighty (180) days following the execution of this Letter of Intent Owner agrees to negotiate exclusively, and in good faith with Occupant, the Agreement, and to refrain from soliciting, entertaining or accepting any other offers. This Section 16 shall be binding upon the parties.

Except as specifically set forth herein this Letter of Intent shall be non-binding on either party.

Very truly yours,

PICKLEPORT MYRTLE BEACH LLC,
a South Carolina limited liability company

By: 

Name: Dwight R. Hunsicker

Title: Managing Member

AGREED TO AND ACCEPTED THIS 14th DAY OF
January, 2025

CITY OF MYRTLE BEACH

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Preliminary Site Plan

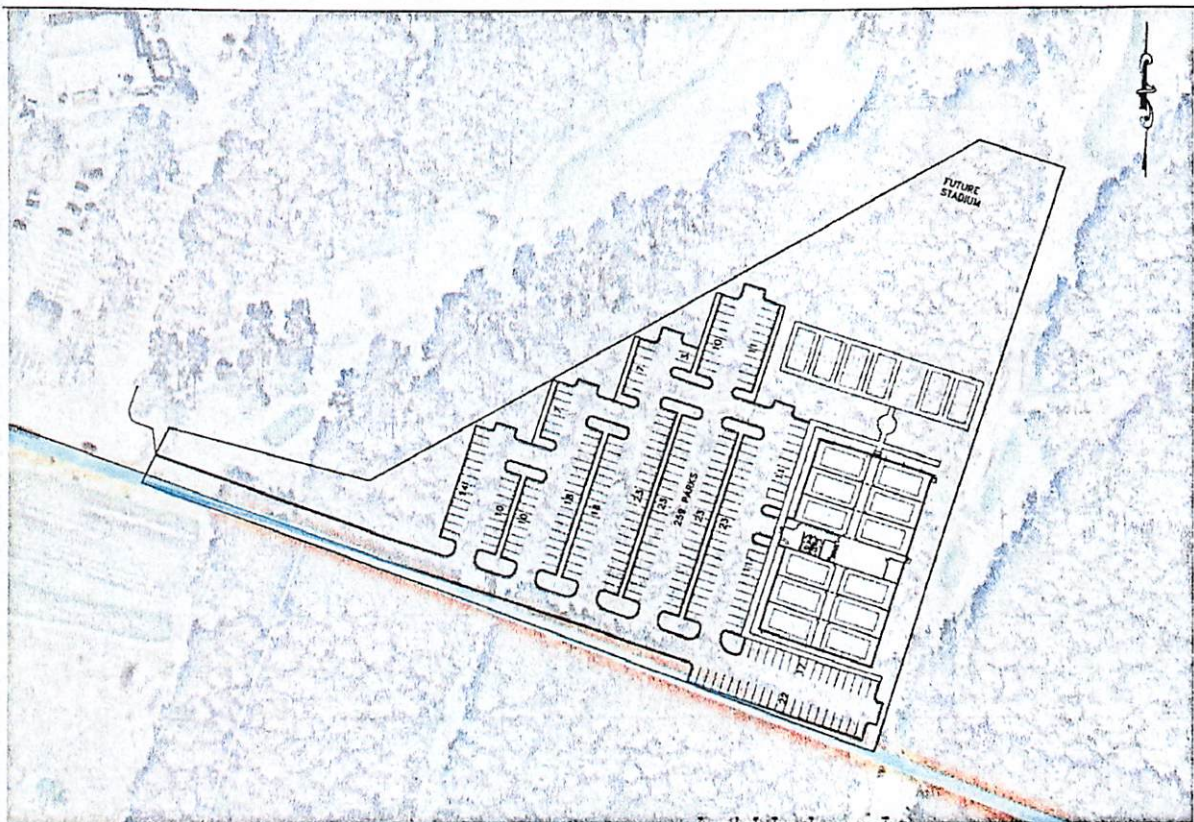


EXHIBIT "B"

Right of Entry Agreement

RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called this "Agreement") is made and entered into as of January 14, 2025, by **City of Myrtle Beach, SC** (herein called "Grantor"), and **PicklePort Myrtle Beach LLC** (herein called "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of the real property more particularly described on Exhibit A, attached hereto and incorporated herein by reference (herein called the "Property");

WHEREAS, Grantee has requested the right of entry upon and access to the Property for the purpose of digging, boring, undertaking tests, inspections and other due diligence activities (herein called the "Due Diligence Activities") in connection with the proposed development by Grantee of the Property;

WHEREAS, Grantor has agreed to grant to Grantee, and Grantee has agreed to accept from Grantor, a non-exclusive, revocable license to enter upon the Property to perform the Due Diligence Activities in accordance with the terms and provisions of this Agreement;

WHEREAS, Grantor and Grantee desire to execute and enter into this Agreement for the purpose of setting forth their agreement with respect to the Due Diligence Activities and Grantee's entry upon the Property.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. Access by Grantee.

(a) Grantee and Grantee's agents, employees, contractors, representatives and other designees (herein collectively called "Grantee's Designees") shall have the right to enter upon the Property for the purpose of conducting Due Diligence Activities provided Grantee gives Grantor at least two (2) business days' prior written notice of each inspection, test or other Due Diligence Activities, does not disturb the operation of the Whispering Pines golf course, and otherwise complies with the Terms and provisions of this Agreement. The right of entry shall extend for 180 days or until the Agreement is terminated, whichever occurs first.

(b) Grantee expressly agrees as follows: (i) any activities by or on behalf of Grantee, including, without limitation, the entry by Grantee and/or Grantee's Designees onto the Property in connection with the Due Diligence Activities shall not damage the Property or damage adjacent property in any manner whatsoever or disturb or interfere with the rights or possession of any tenant on the Property and/or adjacent property, (ii) in the event the Property or adjacent

property is altered or disturbed in any manner by Grantee or Grantee's Designees, Grantee shall immediately return the Property and/or adjacent property to the condition existing before the execution of this Agreement, (iii) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Grantor as a result of, by reason of, or in connection with the Due Diligence Activities or the entry by Grantee or Grantee's Designees onto the Property or adjacent property, and (iv) each of Grantee's Designees must sign a separate Release, Waiver and Indemnification Agreement substantially similar to the form set forth in **Exhibit B** attached hereto (the "Indemnification Agreement") and submit the completed Indemnification Agreement and proof of insurance to Grantor at least seven (7) days prior to accessing the Property.

(c) Notwithstanding any provision of this Agreement to the contrary, Grantee shall not have the right to undertake any invasive activities or tests upon the Property, or any environmental testing on the Property beyond the scope of a standard "Phase I" investigation, without the prior written approval by Grantor of a workplan for such "Phase II" or invasive testing. If Grantor does not respond or reject any workplan within five (5) days of Grantee's delivery of the written workplan proposal to Grantor pursuant to the notice provisions of this Agreement, then Grantor shall be deemed to have approved the submitted workplan and Grantee may proceed with such testing. If Grantor rejects such proposed workplan in whole or in part, Grantor and Grantee shall attempt to negotiate a suitable alternative workplan. If a suitable alternative workplan cannot be negotiated, this Agreement shall become null and void at the sole option of Grantee.

(d) Grantee shall have a duty to return the Property and adjacent property to the condition in which it existed before the execution of this Agreement, excepting normal wear and tear, to the satisfaction of Grantor. All work undertaken by Grantee to return the Property and adjacent property to its pre-Agreement condition shall be completed in a manner acceptable to Grantor's City Manager, or his designee. If Grantee fails to return the Property and adjacent property to its pre-Agreement condition within ten (10) days, Grantor may take any and all steps necessary to return the Property and adjacent property to its pre-Agreement condition and collect all costs and expenses from Grantee. Grantee agrees to pay to Grantor, within thirty days of demand, the costs and expenses associated with returning the Property to its pre-Agreement condition including but not limited to all out-of-pocket costs incurred by Grantor as well as reasonable charges for Grantor employee labor and use of Grantor equipment. If Grantee fails to pay such costs and expenses, Grantor may collect the full sum owed to Grantor, together with interest and attorneys' fees incurred in collecting such costs and expenses, as debts owed to Grantor by bringing an action in any court of competent jurisdiction or in any manner allowed by law. Grantor's rights under this paragraph are in addition to any other rights and/or remedies allowed at law or equity.

2. Lien Waivers. Upon receipt of a written request from Grantor, Grantee will provide Grantor with lien waivers following completion of the Due Diligence Activities from each and every contractor, materialman, engineer, architect, surveyor and any other company, entity or person who might have lien rights, in form and substance reasonably satisfactory to Grantor and its counsel. Grantee shall be bound by the same indemnification, defense, and hold harmless

obligation as specified above in Section 1(b) with respect to any claims or demands for payment, or any liens or lien claims made against Grantor or the Property, arising out of the Due Diligence Activities.

3. Insurance. Grantee shall procure, and shall cause all of Grantee's Designees performing Due Diligence Activities to procure or maintain, a policy of commercial general liability insurance issued by an insurer satisfactory to Grantor covering the Due Diligence Activities performed by the Grantee's Designee with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00. Each policy of insurance obtained by Grantee and by Grantee's Designees shall be endorsed to name Grantor and its employees, officers, agents, concessionaires, and representatives as additional insureds and include a waiver of subrogation in favor of the additional insureds. The policy or policies of insurance shall be maintained throughout the term of this Agreement. Proof of Grantee's insurance shall be provided to Grantor at least seven (7) days before Grantee enters the Property. Grantee shall likewise provide Grantor proof of insurance procured by Grantee's Designees at least seven (7) days before Grantee's Designee enters the Property. With respect to the insurance requirements of Grantee's Designees, Grantor reserves the right to increase or decrease the coverage amount and to change other terms based on the nature and scope of the Due Diligence Activities to be performed.

4. Successors. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

5. Limitations. Grantor does not hereby convey to Grantee any right, title or interest in or to the Property, but merely grants the specific rights and privileges hereinabove set forth.

6. No Recording of Agreement or Memorandum of Agreement. In no event shall this Agreement or any memorandum hereof be recorded, and any such recordation or attempted recordation shall constitute a breach of this Agreement by the party responsible for such recordation or attempted recordation.

7. Notices. All notices, demands and other communications shall be given in writing and shall be delivered by personal delivery, by certified mail, return receipt requested, or via email with delivery notification. Notices shall be considered given upon (a) personal delivery, (b) receipt evidenced by a signed return receipt, or (c) email delivery confirmation. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

Grantee:	PicklePort Myrtle Beach LLC 980 Cipriana Drive Suite A1 / #166 Myrtle Beach, SC 29572 Attn.: Mr. Dwight R. Hunsicker Email: dwight@thepickleport.com City of Myrtle Beach
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Grantor Attn: City Manager, Jonathan "Fox" Simons, Jr.
937 Broadway Street
Myrtle Beach, SC 29577
fsimons@cityofmyrtlebeach.com

Copy to: William A. Bryan, Jr.
937 Broadway Street
Myrtle Beach, SC 29577
wabryan@cityofmyrtlebeach.com

8. Entire Agreement. This Agreement, together with all exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

9. Severability. The provisions of this Agreement are severable, and, if any one or more provisions may be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable so as to effectuate the intent of the entire Agreement, to the maximum extent legally permissible.

10. Amendments. Any amendments to this Agreement shall be effective only when duly executed by Grantor and Grantee.

11. Attorneys' Fees. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, or any other court action occurs arising out of this Agreement, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees, costs, and expenses from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

12. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Grantor and Grantee and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without giving effect to the laws of such state in relation to choice of laws).

14. Assignment of Agreement. Neither Grantor nor Grantee may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other, which consent may be granted or withheld in the sole and absolute discretion of the applicable party.

15. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

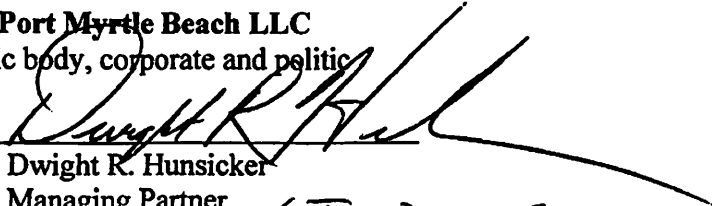
IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and sealed, all the day and year first written above.

GRANTOR:

By: _____
Name: _____
Date Executed: _____

GRANTEE:

PicklePort Myrtle Beach LLC
a public body, corporate and politic

By: 
Name: Dwight R. Hunsicker
Title: Managing Partner
Date Executed: 14 JAN 2025

Attest:

Name and Title: _____

Exhibit A to Right of Entry Agreement - Property

