REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: February 19, 2024

Agenda Item: 7E	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: February 1, 2024
Subject: An amendment to the lease agreement between the City and Apex Wake Parks, Inc.	Division: Legal

Background:

Apex Wake Park, Inc. (Apex) currently leases a portion of the lake located at the NMB Park and Sports Complex. Regarding the rental amount Apex pays to the city, the lease provides as follows:

For each calendar year of the lease beginning with January 1, 2017 and continuing through the Lease Termination Date, the Lessee shall pay rent to the City equal to the greater of (i) minimum rent of Twenty Thousand and 00/100 ($20,000.00) ("Minimum Rent"); or the percentage of gross revenue generated from the Leased Premises as set forth below:

Less than $1,000,000	7% of Gross Revenue to the City
More than $1,000,000+	10% of Gross Revenue to the City
More than $1,300,000+	12% of Gross Revenue to the City
More than $1,600,000+	14% of Gross Revenue to the City
More than $2,000,000+	15% of Gross Revenue to the City

Apex has requested the lease be amended to eliminate the table above so that the lease provides for a rental rate equal to the greater of (i) minimum rent of Twenty Thousand and 00/100 ($20,000.00) **or** 8% of Gross Revenue generated from the leased premises.

The Director of Parks and Recreation supports the proposed change to the rental rate.

Recommended Action:

Approve or deny the proposed ordinance on first reading

Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney

Council Action:

Motion By_____ 2nd By_____ To_____

AN ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH TO AMEND THE LEASE AGREEMENT BETWEEN THE CITY AND APEX WAKE PARKS, INC., SECTION 5, TITLED RENTAL, TO PROVIDE THAT THE LESSEE SHALL PAY TO THE CITY ANNUALLY THE GREATER OF THE MINIMUM RENT OF $20,000.00 OR 8% OF THE GROSS REVENUE GENERATED FROM THE LEASED PREMISES.

WHEREAS, the City and Apex Wake Park, Inc. (Apex) entered into a lease dated September 24, 2015, which stipulated Apex would pay rent to the City equal to the greater of (i) minimum rent of Twenty Thousand and 00/100 ($20,000.00) Dollars or (ii) the percentage of Gross Revenue generated from the Leased Premises as set forth below:

Less than $1,000,000	7% of Gross Revenue to the City
More than $1,000,000	10% of Gross Revenue to the City
More than $1,300,000	12% of Gross Revenue to the City
More than $1,600,000	14% of Gross Revenue to the City
More than $2,000,000	15% of Gross Revenue to the City

WHEREAS, Apex has requested that the lease be amended to include annual rent to the City equal to the greater of (i) minimum rent of Twenty Thousand and 00/100 ($20,000.00) Dollars or (ii) Eight percent (8%) of Gross Revenue to the City.

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

Section I: An amendment to the Lease Agreement is authorized to set the annual rental to be paid by the Lessee to the City equal to the greater of the minimum rent of Twenty Thousand and 00/100 ($20,000.00) or 8% of Gross Revenue generated from the leased premises.

Section II: The City Manager is authorized to sign the addendum to the Lease Agreement on behalf of the City.

Section III: The ordinance shall become effective upon the signatures of the City and Apex to the addendum to the Lease Agreement.

DONE, RATIFIED AND PASSED, THIS _____ DAY OF_____, 2024.

_____
Mayor Marilyn Hatley

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

FIRST READING: 2.19.2024
SECOND READING: _____

REVIEWED:

_____
City Manager

ORDINANCE: _____

STATE OF SOUTH CAROLINA)

) **Second Addendum to Lease Agreement**

COUNTY OF HORRY)

WHEREAS, the City of North Myrtle Beach (Lessor) and Apex Wake Parks, LLC (Lessee) entered into the Lease Agreement (Lease) on September 24, 2015; and

WHEREAS, the Lease was amended by a previous addendum dated September 2, 2016; and

WHEREAS, the Lessor has adopted an ordinance on _____, 2024, to further amend the Lease regarding the rental amount due from the Lessee to the Lessor.

NOW, THEREFORE, THE LESSOR AND LESSEE AGREE TO AMEND THE LEASE AS FOLLOWS:

RENTAL:

For each calendar year of the Lease Agreement beginning with January 1, 2024, and continuing through the Lease Termination Date, the Lessee shall pay Rent to the City equal to the greater of (i) minimum rent of Twenty Thousand and 00/100 ($20,000.00); or (ii) 8% of Gross Revenue generated from the Leased Premises.

IN WITNESS WHEREOF, Lessor and Lessee have executed the Second Addendum to the Lease set forth above and made part of the certain Lease Agreement dated September 24, 2015, between the Lessor and Lessee.

WITNESSES:

_____

_____

LESSOR:

City of North Myrtle Beach
A South Carolina Body Politic

By: _____
Mike Mahaney
Its: City Manager

Date: _____

Attest: _____

WITNESSES:

_____

_____

LESSEE:

APEX Wake Parks, LLC
A Florida Limited Liability Company

By: _____

Its: _____

Date: _____

Attest: _____