REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: April 1, 2024

Agenda Item: 7B	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: March 26, 2024
Subject: First Amendment to the Bahama Island Phase II Master Development Agreement and to authorize the City Manager to sign the document on behalf of the City	Division: Legal

Background:

The City and the Developers for Bahama Island Phase II entered into a Development Agreement on August 31, 2023, which contained obligations by the Developer regarding certain off-site road improvements for roads that are located within the jurisdiction of Horry County which improvements therefore required the consent and approval of Horry County. However, the County has indicated that it will not consent to the off-site road improvements required in the Development Agreement.

Because the County has not consented to/approved of the off-site road improvements, the Developers have proposed an amendment to the Development Agreement as follows:

Exhibit D-1 of the proposed amendment contains three pages which depict modified off-site road improvements to:

(i) The intersection of Sandridge Road and Old Crane Road
(ii) The intersection of Old Crane Road and Bowline Avenue; and
(iii) Provide a left turn pocket (taper and storage) on Bowline Avenue for left turns into the Project.

The proposed amendment to the Development Agreement also contains language that the parties recognize that the off-site road improvements require the approval and consent of Horry County and that in the event that the County does not provide its approval and consent to any of one of the above listed off-site improvements then the Developer will no long be obligated to provide the off-site road improvements for which consent and approval from the County is not granted.

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 TO APPROVE THE DOCUMENT IDENTIFIED AS THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR BAHAMA ISLAND PHASE II AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

WHEREAS, SW INT 90 HOLDCO, LLC; SW INT 90 HOLDCO II, LLC; MYRTLE BEACH ZDGROUP, LLC; SW INT 90 HOLDCO III, LLC; and SW INT 90 HOLDCO IV, LLC have prepared the attached document identified as the First Amendment to the Development Agreement for Bahama Island Phase II for City Council's 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 the Development Agreement for Bahama Island Phase II is hereby approved.

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

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

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

_____
Mayor Marilyn Hatley

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

FIRST READING: 4.1.2024
SECOND READING: _____

REVIEWED:

_____
City Manager

ORDINANCE: _____

STATE OF SOUTH CAROLINA	)	**FIRST AMENDMENT TO DEVELOPMENT**
	)	**AGREEMENT FOR BAHAMA ISLAND**
COUNTY OF HORRY	)	**PHASE II**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("***First Amendment***") is made and entered this ___ day of _____, 2024, by and between **SW INT 90 HOLDCO, LLC**, a South Carolina limited liability company, **SW INT 90 HOLDCO II, LLC**, a South Carolina limited liability company, **MYRTLE BEACH ZDGROUP, LLC**, a South Carolina limited liability company, **SW INT 90 HOLDCO III, LLC**, a South Carolina limited liability company and **SW INT 90 HOLDCO IV, LLC**, a South Carolina limited liability company, their respective affiliates, subsidiaries, successors and assigns (collectively "***Developer***"), and the governmental authority of the **CITY OF NORTH MYRTLE BEACH**, a body politic under the laws of the State of South Carolina ("***City***"). Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings ascribed to them in the below-described Development Agreement, as hereby amended.

RECITALS:

WHEREAS, the City, and the above referenced parties comprising the Developer, entered into that certain Development Agreement for Bahama Island Phase II, dated August 31, 2023 and recorded September 22, 2023 in Deed Book 4726 at Page 494, in the Office of the Register of Deeds for Horry County, South Carolina (the "***Development Agreement***"); and

WHEREAS, the City and the Developer now desire to amend said Development Agreement in the manner set forth below.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Developer hereby agree as follows:

1. **INCORPORATION**. The above recitals are hereby incorporated into this Agreement.

2. **AMENDMENT TO SECTION 10(E) OFF-SITE ROAD IMPROVEMENTS**. Section 10(E) of the Development Agreement set forth certain off-site roadway improvement requirements which required the consent and agreement of Horry County. Horry County, will not consent to the proposed off-site road improvements set forth in Section 10(E) of the Development Agreement, therefore the City and the Developer agree that Section 10(E) of the Development Agreement shall be deleted in its entirety, and replaced with the following:

> "(E) **Off-Site Road Improvements**. As an obligation, subject to Section 3 of this First Amendment set forth below, the City and the Developer acknowledge that the City desires to require the Developer to make certain off-site improvement to the roadways providing access to the Project from Sandridge Road, which improvements shall be subject to the approval and consent of Horry County, and such improvements shall be made in accordance with the standards of Horry County, following the approval and consent of Horry County, and the completion and acceptance of such improvements by Horry County, Developer shall be deemed to have completed such improvements in accordance with the

terms of this First Amendment. Each of the Three (3) off-site roadway improvements to be installed, subject to the approval and consent of Horry County, are attached to this First Amendment as **Exhibit "D-1"** pages 1-3, which shall be deemed to replace **Exhibit "D"** originally attached to the Agreement. The Three (3) off-site roadway improvements are as follows:

(i) Improvements to the intersection of Sandridge Road and Old Crane Road, providing turning movements in accordance with the template attached hereto as **Exhibit "D-1"**.

(ii) Improvements to the intersection of Old Crane Road and Bowline Avenue, providing turning movements in accordance with the template attached hereto as **Exhibit "D-1"**.

(iii) Provide a left turn pocket (taper and storage) on Bowline Avenue for left turns in to the Project, in accordance with the template attached hereto as **Exhibit "D-1"**."

3. **CONDITIONS TO OFF-SITE ROAD OBLIGATIONS**. Notwithstanding any other provision herein, the City and the Developer acknowledge and agree that those off-site roadway improvements set forth in Section 2 of this First Amendment above, require the approval and consent of Horry County. Therefore, to the extent that (i) Horry County does not approve and consent to any one or more of the off-site road improvements set forth above; the Developer shall be released from the obligations of Section 2 of this First Amendment, but only as to those off-site road improvements which are not approved by Horry County, such off-site road improvements approved by Horry County remaining as obligations of the Developer. To the extent any one or more of such off-site roadway improvements are not approved by Horry County Section 2 of this First Amendment shall be deemed satisfied in full with respect only to such off-site roadway improvements not approved by Horry County, with no further action required of Developer.

4. **NO FURTHER AMENDMENT**. Except as specifically amended by this First Amendment, all of the terms and conditions of the Development Agreement shall remain in full force, unless and until amended in a writing signed by the City and the Developer.

5. **FORCE AND EFFECT**. If Developer has properly executed this First Amendment and delivered the same to the City for execution within Sixty (60) days following final approval of this First Amendment by the City, then this First Amendment shall be null and void and of no further force or effect.

[Individual Signature Pages Follow]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

WITNESSES:

SW INT 90 HOLDCO, LLC, a South Carolina limited liability company

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public for _____
Name: _____
My Commission Expires:_____

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

WITNESSES:

SW INT 90 HOLDCO II, LLC, a South Carolina limited liability company

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO II, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public for _____
Name: _____
My Commission Expires:_____

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

WITNESSES:

MYRTLE BEACH ZDGROUP, LLC, a South Carolina limited liability company

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of MYRTLE BEACH ZDGROUP, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public for _____
Name: _____
My Commission Expires:_____

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

WITNESSES:

SW INT 90 HOLDCO III, LLC, a South Carolina limited liability company

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO III, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public for _____
Name: _____
My Commission Expires:_____

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

WITNESSES:

SW INT 90 HOLDCO IV, LLC, a South Carolina limited liability company

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO IV, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public for _____
Name: _____
My Commission Expires:_____

[CITY SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

CITY:

WITNESSES:

CITY OF NORTH MYRTLE BEACH

_____
Name: _____

By: _____
Name: _____
Title: _____

_____
Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this _____day of_____, 2024 by_____, the of the CITY OF NORTH MYRTLE BEACH. He or she personally appeared before me and is personally known to me.

_____
Notary Public for South Carolina
Name: _____
My Commission Expires: _____

EXHIBIT "D-1"
(Replaces Exhibit "D")

3 Separate Off-Site Road Improvement Templates

DEVELOPMENT RESOURCE GROUP, LLC
4701 OLEANDER DRIVE
MYRTLE BEACH, SC 29577
843.839.3350 | DRGPLLC.COM

OFF SITE IMPROVEMENTS

BAHAMA ISLAND

JOB NO:	22.108
SCALE:	1" = 100'
DESIGNED BY:	PTH
DATE:	03/27/2024
EXHIBIT NUMBER:	D-1

DEVELOPMENT RESOURCE GROUP, LLC
4703 OLEANDER DRIVE
MYRTLE BEACH, SC 29577
843-839-3350 | DRGPLLC.COM

OFF SITE IMPROVEMENTS

BAHAMA ISLAND

JOB NO:	22.108
SCALE:	1" = 100'
DESIGNED BY:	PTH
DATE:	03/27/2024
EXHIBIT NUMBER:	D-1

DEVELOPMENT RESOURCE GROUP, LLC
47193 CLEMDER DRIVE
MATTLAPOISETT, MA 02739
843-609-3350 | DRGHLLC.COM

OFF SITE IMPROVEMENTS

BAHAMA ISLAND

JOB NO:	22.108
SCALE:	1" = 100'
DESIGNED BY:	PTH
DATE:	03/27/2024
EXHIBIT NUMBER:	

D-1