

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: December 1, 2025

Agenda Item: 7C	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Second Public Hearing	Date: November 24, 2025
Subject: Regarding the First Amendment to the Amended and Restated Development Agreement for Bahama Island Phase II	Division: Legal

Background:

Summary of Amendments to the Bahama Island Development Agreement:

1. **Maximum Structure Height – Piano Lots.** The Development Agreement is amended to revise the maximum allowable building height for the lots designated as the “Piano Lots,” located on the Atlantic Intracoastal Waterway within the Bahama Island PDD. The maximum height is increased from thirty-five feet (35') to fifty-two feet (52'), measured from grade.
2. **Survival and Enforcement of Restrictive Covenants.** The Development Agreement is further amended to provide that the restrictive covenants contained therein shall survive the expiration or termination of the Development Agreement and shall remain in full force and effect thereafter. The restrictive covenants shall be incorporated into and disclosed in all sales materials provided to third-party purchasers. Enforcement of the restrictive covenants shall be the responsibility of the administrator of the applicable covenants, conditions, and restrictions (CCRs). The City may, but is not required to, enforce the restrictive covenants set forth in the CCRs.

Recommended Action:

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 _____ 2 nd By _____ To _____		

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

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“*First Amendment*”) is made and entered this ____ day of _____, 2025, by and between **PULTE HOME COMPANY, LLC**, a Michigan limited liability company, its 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, the Developer, SW Int 90 Holdco, LLC, SW Int 90 Holdco II, LLC, Myrle Beach ZD Group, LLC, SW Int 90 Holdco III, LLC and SW Int Holdco IV, LLC, entered into that certain Amended and Restated Development Agreement for Bahama Island Phase II, dated August 8, 2025 and recorded August 19, 2025 in Deed Book 4980 at Page 3416, in the Office of the Register of Deeds for Horry County, South Carolina (the “***Development Agreement***”); and

WHEREAS, subsequent to the execution of the Development Agreement, Pulte Home Company, LLC, as Developer, acquired all of the interest in the Property previously held by SW Int 90 Holdco, LLC, SW Int 90 Holdco II, LLC, Myrtle Beach ZD Group, LLC, SW Int 90 Holdco III, LLC and SW Int 90 Holdco IV, LLC; and

WHEREAS, the City and the Developer, as the remaining parties to the Development Agreement, now desire to amend said Development Agreement to reconcile a height limitation set for in the Bahama Island Planned Development District (the “*PDD*”), 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. **RECORDING.** Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this First Amendment 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 First Amendment.
3. **AMENDMENT TO SECTION 10(D) USES AND DENSITY.** Section 10(D) of the Development Agreement set forth a height limitation of 35 feet. The 35 foot limitation, however, did not recognize the higher height limit for those single family detached lots located along the Atlantic Intracoastal Waterway (the “*AIWW*”), which lots are referred to as “*Piano Lots*” in the PDD. In order to reconcile the height limitations of the PDD and the Development Agreement, the

City and the Developer agree that Section 10(D) of the Development Agreement shall be deleted in its entirety, and replaced with the following:

“(D) **Uses and Density.** As a public benefit, Development of the Property shall be determined in accordance with the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement, provided that the Property and the applicable approved Master Plan shall provide for not more than 137 total Residential Units, at a maximum height not to exceed 35’ for all Single Family Detached Traditional Residential Units, and not to exceed 52’ for all Single Family Detached Piano Lot Residential Units. For purposes of this Agreement, and without regard to applicable floodplain, no Single Family Detached Piano Lot Residential Unit shall exceed 52’ measured from grade.”

4. **AMENDMENT TO SECTION 15 RESTRICTIVE COVENANTS.** Section 15 of the Development Agreement shall be deleted in its entirety, and replaced with the following:

“The obligations and public benefits agreed to and accepted by Developer set forth in this Agreement (the “**Restrictive Covenants**”) shall survive, continue in full force and effect without regard to the termination or expiration of this Agreement, and run with the Property as continuing obligations, public benefits and restrictions. The Developer covenants and agrees to include the applicability of the Restrictive Covenants in any sales and marketing materials provided to third-party purchasers, or to otherwise notify third-party purchasers of the Restrictive Covenants, and the Developer shall certify to the City that it has done so prior to the sale of any Residential Unit to a third-party purchaser. Developer further covenants and agrees that, to the extent the Property is encumbered by covenants, conditions and restrictions (the “**CCRs**”) as part of the development thereof, whether such CCRs are 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. Prior to the execution of the CCRs, copies of the CCRs shall be sent to the City; provided, however, if there is a need to enforce any of the Restrictive Covenants set forth in the CCRs, it is up to the administrator of the CCRs, whether an Owners Association or not, to enforce such Restrictive Covenants. The City may, but is not required to, enforce the Restrictive Covenants set forth in the CCRs.

NOTICE TO SUBSEQUENT PURCHASERS OF THE PROPERTY: THE PROPERTY SHALL BE SUBJECT TO THE RESTRICTIVE COVENANTS AND THE CCRS, AND THE PROVISIONS OF THIS DEVELOPMENT AGREEMENT ARE BINDING ON SUBSEQUENT OWNERS OF THE PROPERTY.”

5. **SECTION 20.** The following is added as a new Section 20:

“Developer and the City agree to execute and record a separate Restrictive Covenants Agreement (the “**Restrictive Covenants Agreement**”) applicable to the Property and attached hereto as **Exhibit “I”**. The Restrictive Covenants Agreement shall be recorded simultaneously with the First Amendment and shall run with the land and be binding upon the parties and their respective successors and assigns.”

6. **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.

7. **FORCE AND EFFECT.** If Developer has not 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:

PULTE HOME COMPANY, LLC, a
Michigan limited liability company

Name: _____

By: _____

Name: _____

Name: _____

Title : _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of PULTE HOME COMPANY, LLC, a Michigan 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 _____, 2025, by _____, as _____ 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 "I"

Restrictive Covenants Agreement

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

RESTRICTIVE COVENANTS AGREEMENT

THIS RESTRICTIVE COVENANTS AGREEMENT ("this "*Agreement*") is made and entered this ____ day of _____, 2025, by and between **PULTE HOME COMPANY, LLC**, a Michigan limited liability company, its affiliates, subsidiaries, successors and assigns ("*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 Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement, as defined below.

RECITALS:

WHEREAS, the City, the Developer, SW Int 90 Holdco, LLC, SW Int 90 Holdco II, LLC, Myrtle Beach ZD Group, LLC, SW Int 90 Holdco III, LLC and SW Int Holdco IV, LLC, entered into that certain Amended and Restated Development Agreement for Bahama Island Phase II, dated August 8, 2025 and recorded August 19, 2025 in Deed Book 4980 at Page 3416, in the Office of the Register of Deeds for Horry County, South Carolina (the "*Original Development Agreement*"); and

WHEREAS, subsequent to the execution of the Development Agreement, Pulte Home Company, LLC, as Developer, acquired all of the interest in the Property previously held by SW Int 90 Holdco, LLC, SW Int 90 Holdco II, LLC, Myrtle Beach ZD Group, LLC, SW Int 90 Holdco III, LLC and SW Int 90 Holdco IV, LLC; and

WHEREAS, the City, and the Developer, shall enter into that certain First Amendment to Amended and Restated Development Agreement for Bahama Island Phase II, dated _____, 2025 and recorded simultaneously herewith in Deed Book _____ at Page _____, in the Office of the Register of Deeds for Horry County, South Carolina (the "*First Amendment*", together with the Original Development Agreement, the "*Development Agreement*"); and

WHEREAS, the City and the Developer now desire to enter into this Agreement to separately outline the restrictions applicable to the Property (as defined in the Development Agreement). These restrictions will be recorded simultaneously with the First Amendment and will run with the land, binding the parties and their respective successors and assigns.

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. **RESTRICTIVE COVENANTS.** The Property shall be subject to the following restrictive covenants which will run with the land, binding the parties and their respective successors and assigns:

(A) **Prohibition Against Conservation Easements and Other Restrictions on the Property.** 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 single-family homes or amenities on the approved Concept Plan is restricted for future development of such portion of the Property. 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 the Development Agreement.

(B) **Restrictive Covenants.** The obligations and public benefits agreed to and accepted by Developer set forth in this Agreement (the “*Restrictive Covenants*”) shall survive, continue in full force and effect without regard to the termination or expiration of the Development Agreement, unless the parties thereto agree to terminate this Agreement, and run with the Property as continuing obligations, public benefits and restrictions. The Developer covenants and agrees to include the applicability of the Restrictive Covenants in any sales and marketing materials provided to third-party purchasers, or to otherwise notify third-party purchasers of the Restrictive Covenants, and the Developer shall certify to the City that it has done so prior to the sale of any Residential Unit to a third-party purchaser. Developer further covenants and agrees that, to the extent the Property is later encumbered by covenants, conditions and restrictions (the “*CCRs*”) as part of the development thereof, whether such CCRs are 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. Prior to the execution of the CCRs, copies of the CCRs shall be sent to the City; provided, however, if there is a need to enforce any of the Restrictive Covenants set forth in the CCRs, it is up to the administrator of the CCRs, whether an Owners Association or not, to enforce such Restrictive Covenants. The City may, but is not required to, enforce the Restrictive Covenants set forth in the CCRs.

NOTICE TO SUBSEQUENT PURCHASERS OF THE PROPERTY: THE PROPERTY SHALL BE SUBJECT TO THE RESTRICTIVE COVENANTS AND THE CCRS, AND THE PROVISIONS OF THIS AGREEMENT ARE BINDING ON SUBSEQUENT OWNERS OF THE PROPERTY.

3. **INDEMNIFICATION.** In the event that any future resident or occupant of the Property initiates legal action related to the restrictive covenants set forth herein, the Developer shall indemnify, defend, and hold the City harmless from and against any and all claims, demands,

liabilities, damages, losses, costs, and expenses, including reasonable attorney's fees, arising out of or related to any legal action initiated by a future resident or occupant of the Property related to the restrictive covenants set forth herein.

4. **LEGAL EFFECT.** Each covenant contained in this Agreement: (a) constitutes a covenant running with the land; (b) binds every party hereto and every subsequent owner now having or hereafter acquiring an interest in the Property; and (c) will inure to the benefit of each party hereto and each subsequent owner and each party's and each subsequent owner's heirs, successors and assigns.

[SIGNATURE PAGES FOLLOW]

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

DEVELOPER:

WITNESSES:

PULTE HOME COMPANY, LLC, a
Michigan limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of PULTE HOME COMPANY, LLC, a Michigan 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.

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 _____, 2025, by _____, as _____ 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: _____