

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: March 1, 2021

Agenda Item: 7E	Prepared By: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: February 16, 2021
Subject: The Second Separate and Independent Amendment to the Master Development Agreement between the City and NGD II regarding the Grande Dunes North Section of the Parkway PDD	Division: Legal

Background:

The main provisions of the Second Separate and Independent Amendment to the Master Development Agreement (which modifies the Separate and Independent Amendment to the Master Development Agreement) are as follows:

Section 2.12 provides that the approved density for the NGD tracts shall be a total of 998 single-family residential units (down from the previously approved density of 1,216 units) and that the density for the NGD tracts may not increase without the City's approval of a major amendment to the PDD Zoning.

The amendment to section 4.6 concerns the Beach Access Parking Fee and provides that NGD agrees to pay to the City at building permit issuance a beach access parking fee of \$1,100 for each single-family residential unit.

The amendment to this section further provides that within 30 days after the issuance of the 150th certificate of occupancy for single-family residential units, NGD must begin construction of its proposed amenity center.

The document also provides that receipt of a building permit from the City for the amenity center shall be evidence of NGD starting construction for the amenity center and that NGD must complete construction of the amenity center within 18 months after the issuance of the building permit.

In the event a certificate of occupancy for the amenity center is not issued within the completion time (18 months) then NGD shall pay a beach access parking fee of \$1,650 for each subsequent single-family residential unit until such time as a CO is issued for the amenity center. Once a CO is issued for the amenity center, the amount of the beach access fee shall revert back to \$1,100 for each single-family residential unit.

All other terms of the Separate and Independent Amendment to the Master Development Agreement between the City and NGD shall remain in effect.

Recommended Action:

Approve the ordinance on first reading

Reviewed by City Manager		Reviewed by City Attorney
Council Action: Motion By _____ 2 nd By _____ To _____		

AN ORDINANCE

AN ORDINANCE TO AMEND THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY AND NDG II REGARDING THE GRANDE DUNES NORTH SECTION OF THE PARKWAY PDD AND TO APPROVE THE SECOND SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT AND TO AUTHORIZE THE CITY TO SIGN THE DOCUMENT.

Whereas, the City and NDG II (the Parties) have previously entered into a development agreement dated March 23, 2020 and identified as the Separate and Independent Amendment to the Master Development Agreement; and

Whereas, the City and NDG desire to amend certain provision within the Separate and Independent Amendment to the Master Development Agreement; and

Whereas, that certain document identified as the Second Separate and Independent Amendment to the Master Development Agreement, as agreed upon by the Parties, has been prepared for the purpose of amending the Separate and Independent Amendment to the Master Development Agreement; and

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 Second Separate and Independent Amendment to the Master Development Agreement 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 _____, 2021.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 3-1-21

SECOND READING: _____

REVIEWED:

City Manager

ORDINANCE: 21-08

Development Agreement shall not change except as expressly amended or supplemented hereby, and the Master Development Agreement shall remain in full force and effect except as modified or amended with respect to the NGD Tracts as contained herein.

2. **Amendment to Section 2.12.** The second paragraph of Section 2.12 of the Master Development Agreement is amended as to the NGD Tracts only, by deleting the current second paragraph of Section 2.12 in its entirety and replacing it with the following:

“2.12 Streets and Building Pattern Book.

With respect to the NGD Tracts only and notwithstanding anything to the contrary in the Master Development Agreement, the City hereby agrees that upon NGD II's proper submission and City approval of the necessary application and required supporting documentation including, but not limited to, the Project Pattern Book(s) required above, the approved density for the NGD Tracts shall be a total of 998 single-family residential units as generally depicted on **Exhibit “A”** attached hereto (which is provided to generally reflect the agreed upon density calculations only and not with respect to building specifics, location or design, etc.). The parties also agree that such approved density for the NGD Tracts may not increase without the City's approval of a major amendment to the PDD zoning. Subject to a determination by the City Zoning Administrator, which shall not be unreasonably conditioned, withheld or delayed, in the event NGD II applies for a reduction in the approved density for the NGD Tracts, typically such submittal shall be considered by the City as a minor amendment to the PDD zoning which requires only City staff approval. Additionally and consistent with the prior sentence, revisions to the site plan as generally depicted on **Exhibit “A”** and as contained in the PDD in more detail, made during the preparation of construction design documents to account for topography, soil quality, trees, grading, minor adjustments to roadway alignment, and changes to the location of lot lines, provided that such revisions do not increase the maximum allowable density of the Project or create a new product type to be developed on the NGD Tracts, all of which shall typically be deemed administrative revisions or amendments to the PDD, which do not require a corresponding revision or amendment to this Agreement.”

3. **Amendment to Section 4.6.** The Beach Access Parking Fee in Section 4.6 is hereby revised as follows:

“4.6 Beach Access Parking Fee. The City and NGD II acknowledge that the conversion of significant portions of the PDD from commercial space to residential units will increase the demand for beach access and services to be provided by the City, including, but not limited to, beach access parking. In lieu of NGD II being required to make provisions for beach access parking for the residents of the residential properties within the PDD, NGD II agrees to pay to the City, for such residential properties which were previously approved as commercial properties under the PDD, a fee-in-lieu of providing beach access parking. Such fee-in-lieu shall be used by the City to expand its existing and future beach access parking (the **“Beach Access Parking Fee”**). NGD II agrees to pay to the City at building permit issuance,

a Beach Access Parking Fee of One Thousand One Hundred and 00/100 Dollars (\$1,100.00) for each single-family residential unit and the City shall issue the then current and customary parking decal(s) and/or permit(s) to each residential unit pursuant to and in accordance with City Code of Ordinances Section 21-40 entitled "Annual Parking Fee Exemption". Such proposed density shall not exceed 998, but could be slightly less depending on the final plan of development for the NGD Tracts.

NGD agrees that within thirty (30) days after the issuance of the 150th Certificate of Occupancy for single-family residential units located on the NGD Tracts, NGD II must begin construction of its proposed Amenity Center to serve its proposed development of the NGD Tracts based generally upon a conceptual design provided to the City (the last day of such thirty (30) day time period being referred to herein as the "**Amenity Construction Commencement Deadline Date**"), which said deadline may be extended due to a Force Majeure Event (as defined herein) as hereinafter provided or by agreement of the parties. Evidence of NGD II's start of construction for the Amenity Center shall be satisfied by NGD II's receipt of a building permit from the City for its proposed Amenity Center for the single-family residential units within the NGD Tracts. NGD II must complete the construction of the Amenity Center within eighteen (18) months after the issuance of the applicable building permit (the last day of such eighteen (18) month time period being referred to herein as the "**Amenity Construction Completion Deadline Date**"), which said deadline may be extended due to a Force Majeure Event as hereinafter provided or by agreement of the parties. If the City has not issued a Certificate of Occupancy for such Amenity Center by the later of (i) the original Amenity Construction Completion Deadline Date or (ii) any extension thereof as herein provided or agreed to by the parties, then NGD II shall pay a Beach Access Parking Fee of \$1,650.00 (One-Hundred and Fifty Percent (150%) of the Beach Access Parking Fee (\$1,100 x 1.5 = \$1,650.00)) for each subsequent single-family residential unit until such time as a Certificate of Occupancy is issued for the Amenity Center. Once a Certificate of Occupancy is issued for the Amenity Center, the amount of the Beach Access Fee shall immediately revert back to \$1,100.00 for each single-family residential unit as previously agreed to by the parties. NGD II shall be entitled to any reasonable extension(s) of the Amenity Construction Commencement Deadline and the Construction Completion Deadline as a result of a delay(s) caused by fire, flood, earthquake, hurricane, tornado, flood or other act of God, war, theft, malicious mischief, governmental regulation, failure of a governmental agency to furnish information or to approve or to disapprove the work (e.g. building moratorium etc.), caused by the City, or caused by any other cause beyond the reasonable control of NGD II."

4. **Independent Amendment.** This Second Agreement is intended to be applicable only to the NGD Tracts and shall not be deemed applicable to any other portion of the land which is subject to the Master Development Agreement, or to any other landowner within the PUD, who is not a successor or assign of NGD II as owner of all or a portion of the NGD Tracts.

5. **No Further Amendment.** Except as specifically amended by this Second Agreement, all of the terms and conditions of the Master Development Agreement shall remain in full force and effect, unless and until amended in writing signed by all of the parties hereto.

6. **No Default.** The parties acknowledge and represent that neither party to this Second Agreement is in default of the Master Development Agreement.

IN WITNESS WHEREOF, the parties have executed this Second Agreement as of the Effective Date by their respective signatures below.

[Individual signature pages follow for each of the Parties]

[Signature page to Second Separate and Independent Amendment to
Master Development Agreement for NGD II (NGD Property II LLC)]

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF**

NGD PROPERTY II LLC,
a Delaware limited liability company

Witness #1
Print Name: _____

By: _____
Name: _____
Title: Authorized Signatory
Date: _____

Witness #2/Notary
Print Name: _____

STATE OF _____)
COUNTY OF _____) ACKNOWLEDGMENT

The within instrument was acknowledged before me this ____ day of _____, 2021
by NGD PROPERTY II LLC, a Delaware limited liability company, by
_____, as its Authorized Signatory.

[Print name] _____ (SEAL)
Notary Public for the State of _____
My Commission expires _____



EXHIBIT "A"