

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: March 15, 2021

Agenda Item: 5F	Prepared By: Chris Noury, City Attorney
Agenda Section: Consent: Ordinance. Second 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 second reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:

Motion By _____ 2nd By _____ To _____

AN ORDINANCE

AN ORDINANCE TO AMEND THE 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 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 NGD 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 NGD 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: 3-1-2021
SECOND READING: 3-15-2021

REVIEWED:

City Manager

ORDINANCE: 21-08

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**SECOND SEPARATE AND
INDEPENDENT AMENDMENT TO
MASTER DEVELOPMENT
AGREEMENT**

THIS SECOND SEPARATE AND INDEPENDENT AMENDMENT TO MASTER DEVELOPMENT AGREEMENT (this “**Second Agreement**”) is entered into and effective as of this ___ day of _____, 2021 (the “**Effective Date**”), by and between the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the “**City**”), a South Carolina municipal corporation and **NGD PROPERTY II LLC**, a Delaware limited liability company (“**NGD II**” or “**Owner**”), as of the date last signed and acknowledged by either party named above. Capitalized terms used in this Second Agreement, and not otherwise defined herein, shall have the meanings ascribed to them in the below-described Master Development Agreement, as amended herein.

RECITALS:

WHEREAS, the City and various other landowner parties entered into that certain Master Development Agreement dated January 9, 2009 and recorded January 20, 2009 in Deed Book 3382 at Page 3357, and re-recorded in Deed Book 3383 at Page 1662 in the public records of Horry County, South Carolina (the “**Master Development Agreement**”), as amended by that certain First Amendment to Development Agreement dated as of March 23, 2020 and recorded March 24, 2020 in Deed Book 4298 at Page 2823 in the public records of Horry County, South Carolina (“**First Master Amendment**”); and

WHEREAS, the First Master Amendment provided, among other things, for the negotiation by and between the City and any one of the then current owners, individually, of any amendments to the Master Development Agreement that affect only the rights and obligations of such individual landowner or property; and

WHEREAS, pursuant to the First Master Amendment, the City and NGD II entered into that certain Separate and Independent Amendment to Master Development Agreement dated March 23, 2020 (the “**Separate and Independent Amendment**”), and recorded on March 24, 2020, in the Office of the Register of Deeds for Horry County in Deed Book 4298, at Page 2978 in Horry County, South Carolina; and

WHEREAS, NGD II and the City desire to set forth the terms of their agreement regarding certain additional amendments to the Master Development Agreement, which amendments would be separate and independent of any other amendments, and applicable only to the property owned by NGD II (“**NGD Tracts**”), or its successors and assigns.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and other good and valuable consideration, the parties agree as follows:

1. **Continuing Encumbrance.** Despite any change in: (a) ownership of the NGD Tracts; (b) the configuration and boundaries of the NGD Tracts; or (c) the Exhibits to the Master Development Agreement (including, but not limited to, the PDD), the real property which is subjected to the Master

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]

EXHIBIT "A"

LAND USE SUMMARY

PARCEL	LOT SIZE	PRODUCT	UNITS
1	70'x130'	PAIRED VILLAS	76
2	70'x120'	PAIRED VILLAS	56
3	24'x100'	TOWNHOMES	173
4	24'x120'	TOWNHOMES	135
5	43'x120'	COTTAGE HOMES	71
6	53'x120'	COTTAGE HOMES	53
7a	55'x120'-130'	COTTAGE HOMES	34
7b	55'x120'-130'	COTTAGE HOMES	28
8a	43'x150'	COTTAGE HOMES	34
8b	43'x150'	COTTAGE HOMES	31
9	53'x120'	COTTAGE HOMES	92
10	63'x120'	ESTATE HOMES	98
11	43'x120'	COTTAGE HOMES	117
TOTAL			998



Grande Dunes
NORTH MYRTLE BEACH, SC

FREEHOLD
COMMUNITIES

Preliminary Master Plan

Date: January 7, 2021
TRC Submission Jan. 21, 2021