

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: September 20, 2021

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| Agenda Item: 7F | Prepared by: Chris Noury, City Attorney |
| Agenda Section: New Business: Ordinance. First Reading | Date: August 23, 2021 |
| Subject: To approve the amendment to the Barefoot Resort & Golf Development Agreement regarding Sea Glass II and to authorize the City Manager to sign the document on behalf of the City | Division: Legal |

Background:

The following summarizes the major aspects of the Amendment to the Barefoot Resort & Golf Development Agreement (Sea Glass II) as follows:

Term: The initial term of the Development Agreement shall be for a period of five (5) years. The term will automatically renew at the end of five years for two (2) more terms of five (5) years each if the developer is not in default and the project has not been completed.

Density: The project shall consist of not less than 86 residential units and not more than 92 residential units as approved under the PDD and Master Site Plan.

Prohibition Against Conservation Easement: The developer agrees not to subject any portion of the property to a conservation easement or other restrictive covenant regarding any of the property shown as single family homes or amenities on the master site plan.

Minimum Term of Any Rental Agreement: The minimum term of any rental agreement for the residential units constructed on the Subject Property shall be for 6 months, provided that following any such 6 month period, residential leases may be extended for periods of less than 6 months to the same tenant, provided such extensions are for successive periods of not less than 30 days. No sub-lease or assignment shall be permitted which would result in a party occupying a residential unit for a period of less than 6 months.

Beach Access Fee: The developer shall pay to the City a beach access fee of \$1,100 per residential unit. This fee shall be due at the time of issuance of the building permit. At a minimum, the City shall receive \$94,600 (86 units x 1,100) which amount could increase *if* the site plan is amended to allow additional units up to the cap of 92 units.

Park Enhancement Fee: The developer shall pay a Park Enhancement fee of \$200 for each separate residential unit at the time of issuance of a building permit for a residential unit. The City will receive at least \$17,200 (86 x 200) which amount could increase *if* the site plan is amended to allow additional units up to the cap of 92.

Other Fees: The developer shall pay a Police /Fire Substation Fee in the amount of \$450 per residential unit, a water extension fee in the amount of \$500 per unit and a sewer extension fee in the amount of \$175 per residential unit.

Amenities: The developer shall provide a completed swimming pool accessible by the project residents on or before the date on which building permits have been issued for 60 residential units to be constructed on the property.

Traffic Signal: The developer shall install a traffic signal on Barefoot Resort Bridge Road at an estimated cost of \$350,000. The City will contribute \$150,000 towards the cost. The developer agrees that the traffic signal will either be complete on or before the date on which building permits have been issued for 60 of the residential units to be constructed on the property or, the developer shall provide a bond in favor of the City for the remaining cost of the traffic signal.

Conversion of Commercial Boulevard from a public ROW to a private ROW: The developer shall have two years to convert Commercial Boulevard from a public ROW to a private ROW. In the event the conversion does not occur within two years, the City may withhold approval of any future subdivision plats within the PDD and may withhold the issuance of any future building permits until the conversion is completed.

Recommended Action:

Approve the ordinance on first reading

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By _____ 2nd By _____ To _____

AN ORDINANCE

AN ORDINANCE TO APPROVE THE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR BAREFOOT RESORT & GOLF PDD REGARDING SEA GLASS II AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH

WHEREAS, the City of North Myrtle Beach and Cottage Holdings, LLC desire to enter into an amendment to the Barefoot Development Agreement regarding Sea Glass II; and

WHEREAS, that certain document identified as the Amendment to the Development Agreement for Barefoot Resort & Golf PDD (Sea Glass II), as agreed upon by the Parties, has been prepared and is presented to City Council for approval; 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 Amendment to the Development Agreement for Barefoot Resort & Golf (Sea Glass II) 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: 9.20.2021

SECOND READING: _____

REVIEWED:

City Manager

ORDINANCE: 21-37

successors and assigns, including Developer, for up to Two (2) additional five-year terms. Notwithstanding the terms and provisions in this Section or elsewhere in this Agreement to the contrary, if a court of competent jurisdiction hereafter determines that the length of the Term, or the provision for extension of the Term set forth above, exceeds the maximum term allowed under the Act and if all applicable judicial appeal periods have expired without such determination being overturned, then the Term of this Agreement relative to all or specific affected portions of the Property shall be reduced to the maximum permissible term under the Act, as determined by a court of competent jurisdiction.

2. **Continuing Encumbrance and Obligation on the Parties.** Despite any change in ownership and/or the configuration and boundaries of the various real property subjected to the Development Agreement, and the Exhibits to the Development Agreement, except as hereby expressly amended or supplemented, the Development Agreement shall remain in full force and effect. More specifically, the obligations and provisions contained in this Agreement run with the Land, including the Subject Property and as such are obligations of the Parties as well as obligations of any subsequent transferees, purchasers, assignees or acquiring parties whether in whole or part with respect to any portion of the Land or the Subject Property relating thereto. Additionally, if any Party as well as any subsequent transferees, purchasers, assignees or acquiring parties whether in whole or part with respect to any portion of the Land or the Tracts relating thereto defaults or fails to satisfy, complete or comply with any of the provisions contained in the Development Agreement or this Agreement, it shall be considered a default by the applicable Party and handled accordingly as specifically provided for in the Development Agreement as amended by this Agreement.

3. **Amendment to Exhibit G.** **Exhibit G** attached to the Development Agreement is the Planned Development District (formerly called the Planned Unit Development), as amended, from time to time during the term of the Development Agreement (the “**PDD**”) is amended by that certain PDD Amendment entitled “Sea Glass Cottages Phase 2, PDD Amendment, Barefoot Resort and Golf PDD, dated _____, 2021 (the “**PDD Amendment**”), which PDD Amendment is applicable solely to the Subject Property, a copy of which is attached hereto as **Exhibit “G-1”**.

4. **Additional Amendments.** As a condition to the approval of the PDD, the City, the Landowner and the Developer have agreed that certain additional amendments to the Development Agreement, which include the following:

- A. **Landowner and Developer** specifically covenant and agree not to subject the Subject Property to a conservation easement or other restrictive covenant, whereby any portion of the Subject Property shown on the approved Master Plan included in the PDD is restricted for future development of such portion of the Subject Property, the same shall also constitute a default hereunder, provided that, for purposes of this Agreement any conveyance to any homeowners association having jurisdiction over any portion of the Subject Property shall not be deemed such an easement or restriction, and shall not constitute a default.
- B. The residential units to be constructed upon the Subject Property, pursuant to the PDD, shall be no less than Nine Hundred (900) square feet in size, and the total number of residential units to be constructed upon the Subject Property shall be not less than Eighty Six (86) residential units and not more than Ninety Two (92) residential units.

For purposes of calculating the Park Enhancement Fee and the Beach Access Parking Fee, each as defined below, the Subject Property shall be deemed to include the greater of (i) Eighty Six (86) residential units; or (ii) the actual number of residential units constructed upon the Subject Property. For purposes of this Agreement, a residential unit shall be deemed a separate unit, whether free-standing, or within a larger building, such that multi-unit buildings such as townhomes, as an example, would be deemed multiple residential units despite being incorporated into a single building. The square footage composition of the residential units to be constructed on the Subject Property is set forth in the PDD, as well as **Exhibit "I"** attached hereto (the "**Unit Composition Table**").

- C. Landowner and Developer agree that the minimum term of any rental agreement for residential units constructed upon the Subject Property shall be Six (6) months, provided that following any such initial Six (6) month period, residential leases may be extended for periods of less than Six (6) months to the same tenant, provided such extensions are for successive periods of not less than Thirty (30) days. No sub-lease or assignment shall be permitted which would result in a party occupying a residential unit for a period of less than Six (6) months, the express intent of this provision being to prohibit short-term and/or overnight rentals.

- D. The City and the Landowner that, in lieu of the conveyance of any portion of the Subject Property by the Landowner to the City, the Landowner and the City agree instead to a fee-in-lieu of conveyance, providing the funds necessary to allow the City to expand its existing parks (the "**Park Enhancement Fee**"). The Park Enhancement Fee shall be in an amount equal to the greater of (i) Two Hundred and No/100 (\$200.00) Dollars for each separate residential unit constructed on the Subject Property in accordance with the Master Plan; or (ii) Seventeen Thousand Two Hundred and No/100 (\$17,200.00) Dollars in the aggregate, in the event the number of separate residential units constructed on the Subject Property in accordance with the approved Master Plan is less than Eighty Six (86), in total. The Park Enhancement Fee shall be due and payable at the time of the issuance of a building permit for such residential unit constructed on the Subject Property. The imposition of the Park Enhancement Fee applicable to the Subject Property shall thereafter apply only to the Subject Property, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Landowner, the Developer and the City as a part of the PDD Amendment.

- E. The City and the Landowner further acknowledge that the conversion of the Subject Property 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 the Landowner being required to make provisions for beach access parking for the residents of the Subject Property, the Landowner, and Developer, if Developer is successor in title to Landowner, agree to pay to the City, for such residential properties to be constructed on the Subject Property, 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**"). The Park Enhancement Fee shall be in an amount equal to the greater of (i) One Thousand One Hundred and No/100 (\$1,100.00) Dollars for each separate residential unit constructed on the Subject Property,

in accordance with the Master Plan; or (ii) Ninety Four Thousand Six Hundred and No/100 (\$94,600.00) Dollars in the aggregate, in the event the number of separate residential units constructed on the Subject Property in accordance with the approved Master Plan is less than Eighty Six (86) in total. The Beach Access Parking Fee shall be due and payable at the time of the issuance of a building permit for such residential unit constructed on the Subject Property. The imposition of the Beach Access Parking Fee applicable to the Subject Property shall thereafter apply only to the Subject Property, and not to any other portion of the Land, and shall constitute a portion of the public benefit negotiated by the Landowner, the Developer and the City as a part of the PDD Amendment.

- F. A portion of the Subject Property, and additional real property was previously platted as a public street of approximately 100 feet in width (the “***Commercial Boulevard***”) in anticipation of continued expansion of the commercial development upon the Subject Property. As a result of the lack of demand for commercial development, and the conversion of the Subject Property from commercial development to residential development pursuant to the PDD Amendment, the Landowner and the Developer no longer desire that the Commercial Boulevard be maintained as a public street, and the Landowner and Developer shall take such action as may be required by the City, which includes the filing of an action for street closure in the Fifteenth Judicial District, at the sole expense of the Landowner and Developer, and upon a ruling closing the Commercial Boulevard as a public street and converting the same to a private street, to be maintained by the Landowner and/or the Developer, their respective successors and assigns, as a private street. Landowner and Developer anticipate completion of the conversion of the Commercial Boulevard to a private street within Twenty Four (24) months of the date of this Agreement. In the event Developer fails to complete the conversion of the Commercial Boulevard to a private street within such Twenty Four (24) month period, absent a declared state of emergency which extends for a period of more than Thirty (30) days (said Twenty Four (24) month period being extended for the period of such declared state of emergency) the City, in the City’s sole discretion, may withhold approval of any future subdivision plats within the PDD, and may withhold the issuance of any future building permits until such time as the Commercial Boulevard is converted to a private street.
- G. Landowner and Developer agree that, as a result of the relative density of the residential development set forth in the PDD Amendment, the City desires to insure the preservation of a portion of the Subject Property as open space, to make provisions for additional guest parking, and to insure adequate on-site amenity facilities for the residents upon the Subject Property by the addition of a separate swimming pool. Developer agrees that the swimming pool will be complete on or before the date on which a certificate of occupancy has been issued for Sixty (60) of the residential units to be constructed on the Subject Property. Therefore, in accordance with the master plan attached to the PDD Amendment, _____ acres of the Subject Property are and shall be set aside as open space, _____ acres of the Subject Property are and shall be set aside as guest parking, and _____ acres of the Subject Property are and shall be set aside as on-site amenity facilities, the exact location of which open space, guest parking and on-site amenity facilities shall be

subject to the master plan attached to the PDD Amendment, as the same may be further amended from time to time.

H. The City desires to provide for additional signalization of Barefoot Resort Bridge Road (the “**Traffic Signal**”), in order to promote the safety and welfare of residents, including pedestrians, bicycles and golf carts traveling on or crossing Barefoot Resort Bridge Road, which include the residents of the Subject Property. Landowner and Developer have estimated that the costs of such signalization, in accordance with the standards of the City and the South Carolina Department of Transportation will total not less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars, as set forth on **Exhibit “H”** attached hereto (the “**Traffic Signal Estimated Cost**”). The Traffic Signal Estimated Cost cannot be absorbed by the Subject Property alone, and, in order to equitably allocate the Traffic Signal Estimated Cost among as many of the benefiting property owners as is feasible and fair, Landowner, Developer and the City agree that the actual cost of the Traffic Signal shall be shared between Landowner and Developer (together with such other parties as may agree to contribute to the costs of the Traffic Signal by separate agreement) in an amount equal to all of the actual cost of the Traffic Signal, less a contribution by the City in an amount equal to One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars. In addition, for purposes of calculating the respective share of the costs of the Traffic Signal, to the extent the City is successful in securing any available public funds as a contribution to the costs of the Traffic Signal, the respective share of the costs of the Traffic Signal to be contributed by the City, shall be reduced by the amount of such contribution.

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

6. **Force and Effect.** If all Parties have not properly executed this Agreement within sixty (60) business days following execution of this Agreement by the City, then this Agreement shall be null and void and of no further force or effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date and below are their respective signatures.

[Separate signature pages follow]

[Signature page to Amendment to
Development Agreement for Barefoot Towne Center, LLC]

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

BAREFOOT TOWNE CENTER, LLC, a
South Carolina limited liability company

Witness #1
Print Name: _____

By: _____
Name: _____
Title: _____

Witness #2/Notary
Print Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

ACKNOWLEDGEMENT

The within instrument was acknowledged before me this ____ day of _____, 2021,
by BAREFOOT TOWNE CENTER, LLC, a South Carolina limited liability company by
_____, as its _____.

[Print name] _____
Notary Public for the State of South Carolina
My Commission expires _____

EXHIBIT "H"

Traffic Signal Cost Estimate

EXHIBIT H

PROJECT : Barefoot Cottages Phase 2
OWNER: Sands Winchester, LLC.
LOCATION : North Myrtle Beach, South Carolina
CONTRACTOR: TBD
PREPARED BY: Thomas and Hutton



| | |
|-----------------------------------|----------------------|
| DATE PREPARED : 2021-07-01 | |
| BASIS FOR ESTIMATE | |
| (No design completed-Master Plan) | |
| X | (Preliminary design) |
| | (Final design) |
| | (Other) |

OPINION OF PROBABLE CONSTRUCTION COST

Since the Engineer has no control over the cost of labor, materials, equipment, over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the Opinions of Probable Construction Costs provided for herein are made on the basis of his experience and qualifications. These opinions represent his best judgment as a design professional familiar with the construction industry. However, the Engineer cannot and does not guarantee that proposals, bids, or the construction cost will not vary from Opinions of Probable Construction Costs prepared by him.

| ITEM | DESCRIPTION | QUANTITY | | COST | |
|------|-------------|-----------------|--------------|----------|------------|
| | | NUMBER OF UNITS | UNIT MEASURE | PER UNIT | TOTAL COST |

| IDENTIFICATION | | | | | |
|---------------------------|-------------------------------------------|-----|----|---------------|------------|
| Master Plan Budget | | | | | |
| 1 | Mobilization | 1 | LS | \$ 7,500.00 | \$ 7,500 |
| 2 | Traffic Control | 1 | LS | \$ 15,000.00 | \$ 15,000 |
| 3 | Mast Arm Assemblies | 1 | LS | \$ 120,000.00 | \$ 120,000 |
| 4 | Conduit, Loop Detectors, Electrical, etc. | 1 | LS | \$ 70,000.00 | \$ 70,000 |
| 5 | Controller & Cabinets | 1 | LS | \$ 10,000.00 | \$ 10,000 |
| 6 | Traffic Signals | 1 | LS | \$ 15,000.00 | \$ 15,000 |
| 7 | Pedestrian Signals & Signage | 1 | LS | \$ 10,000.00 | \$ 10,000 |
| 8 | Accessible Ramps | 4 | EA | \$ 2,500.00 | \$ 10,000 |
| 9 | Sidewalk | 200 | LF | \$ 50.00 | \$ 10,000 |
| 10 | | | | \$ - | \$ - |
| | | | | Subtotal | \$ 267,500 |

| | |
|----------------------------------|----------------------|
| Construction Budget | \$ 267,500.00 |
| Contingency (10%) | \$ 26,750.00 |
| TOTAL CONSTRUCTION BUDGET | \$ 294,250.00 |

| Allowances | | | | | |
|------------|--------------------------------------|---|----|--------------|-----------|
| 1 | Connect with Existing Signal Systems | 1 | LS | \$ 25,000.00 | \$ 25,000 |
| 2 | | | LS | \$ - | \$ - |
| | | | | Subtotal | \$ 25,000 |

| | |
|-----------------------------------------|----------------------|
| TOTAL CONSTRUCTION BUDGET w/ ALLOWANCES | \$ 319,250.00 |
| Survey & Engineering Allowance | \$ 21,925.00 |
| | \$ 351,175.00 |

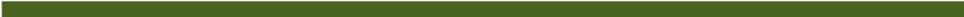


EXHIBIT "I"

Unit Composition Table Development Composition

| Plan Name | Bedrooms | # of Units | Total bedrooms | Mix ¹ | | Unit S.F. | Parking Required |
|---------------------|----------|------------|----------------|------------------|--|----------------------------------------------|------------------|
| Edisto (at grade) | 2 | 22 | 44 | 23.91% | | 1,102 | 33 |
| Edisto (elevated) | 2 | 14 | 28 | 15.22% | | 1,102 | 21 |
| Sanibel (at grade) | 2 | 20 | 40 | 21.74% | | 978 | 30 |
| Sanibel (elevated) | 2 | 8 | 16 | 8.70% | | 978 | 12 |
| Hatteras (at grade) | 2 | 6 | 12 | 6.52% | | 978 | 9 |
| Marco (at grade) | 3 | 10 | 30 | 10.87% | | 1,693 | 20 |
| Marco (elevated) | 3 | 2 | 6 | 2.17% | | 1,693 | 4 |
| Pamplico (at grade) | 3 | 8 | 24 | 8.70% | | 1,288 | 16 |
| Pamplico (elevated) | 3 | 2 | 6 | 2.17% | | 1,288 | 4 |
| Totals | | 92 | 206 | 100.00% | | Average S.F. 1,153.48¹ | 149 |

1. To the extent that the Composition Mix or the average square footage of the units is revised, the same shall be submitted to the zoning administrator for determination as to any required amendment to this PDD.