

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: September 20, 2021

Agenda Item: 7L	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 the Villas Townhomes at Barefoot Resort 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 PDD Development Agreement (MF-4) regarding the Villas Townhomes 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 35 residential units and not more than 37 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.

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 \$38,500 (35 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 \$7,000 (35 x \$200) which amount could increase *if* the site plan is amended to allow additional units up to the cap of 37.

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.

Recommended Action:

Approve the ordinance on first 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 APPROVE THE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR BAREFOOT RESORT & GOLF PDD REGARDING THE DYE ESTATES MF-4 (VILLAS TOWNHOMES) 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 MMG Holdings, LLC and NVR, INC. desire to enter into an amendment to the Barefoot Resort & Golf PDD Development Agreement regarding the Villas Townhomes at Barefoot Resort; and

WHEREAS, that certain document identified as the Amendment to the Development Agreement for Barefoot Resort & Golf PDD (Dye Estates MF-4), 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 PDD (Dye Estates MF-4) 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: 21-40

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**AMENDMENT TO DEVELOPMENT
AGREEMENT FOR BAREFOOT
RESORT & GOLF PDD (Dye Estates
MF-4)**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into and effective as of this ____ day of _____, 2021 (the “**Effective Date**”), by and among the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the “**City**”), a South Carolina municipal corporation, **MMG HOLDINGS, LLC**, a South Carolina limited liability company (the “**Landowner**”), and **NVR, INC.**, a Virginia corporation (the “**Developer**”). City, Landowner and Developer may also be referred to individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used in this Agreement 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, Silver Carolina Development Company, L.L.C., a Delaware limited liability company, and Intracoastal Development Company, LLC, a South Carolina limited liability company entered into that certain Development Agreement, dated November 3, 1999, recorded March 22, 2000 in Deed Book 2242 at Page 0922, in the public records of Horry County, South Carolina (the “**Development Agreement**”); and

WHEREAS, Landowner is successor in title to a portion of the real property which is subject to the Development Agreement (the “**Land**”), which portion of the Land is more particularly shown on a Plat recorded in Plat Book 202 at Page 165, a miniaturized copy of which is attached hereto as **Exhibit “A”** (the “**Subject Property**”); and

WHEREAS, Developer and Landowner have reached a contractual agreement whereby Developer has the right to acquire the Subject Property; and

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

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

1. **Term.** The term of this Agreement shall commence on the date on which this Agreement is executed by the City, the Landowner and the Developer and shall terminate on the date which is five (5) years from the date of execution, provided, however, that, so long as the no default on the part of the Landowner or the Developer has occurred (after being provided with notice and opportunity to cure as set forth below) of this Agreement, and the improvements to the Subject Property have not been completed, at the conclusion of the initial five-year term, provided no default on the part of the Landowner or the Developer has occurred hereunder, and improvement of the Subject Property has continued to be diligently pursued, the termination date of this Agreement shall be automatically extended by the City and the Landowner, or its respective

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 “Dye Estates MF-4 Barefoot Resort and Golf, North Myrtle Beach, SC”, dated May 17, 2021, and Revised June 15, 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”**, and a miniaturized copy of the Master Plan which is a part of the PDD Amendment (the “**Master Plan**”), attached hereto as **Exhibit “H”**.

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 individually owned townhomes on subdivided lots, and the total number of

residential units to be constructed upon the Subject Property shall be not less than Thirty Five (35) residential units and not more than Thirty Seven (37) 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) Thirty Five (35) 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.

- 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) Seven Thousand and No/100 (\$7,000.00) 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 Thirty Five (35), 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) Thirty Eight Thousand Five Hundred and

No/100 (\$38,500.00) 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 Thirty Five (35) 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. The City and a predecessor in title to Landowner entered into that certain instrument entitled “Minor Amendments to the Modification to Development Agreement dated August 1, 2003 and The Sewer and Water Extension Agreement dated August 2, 2003 (the “**Prior Amendment**”), which Prior Amendment provides, among other things for fees as follows: (a) Police/Fire Substation Fee in an amount equal to Four Hundred Fifty and No/100 (\$450.00) Dollars per Density Unit (the “**Fire Station Fee**”); (b) a Water Extension Fee in an amount equal to Five Hundred and No/100 (\$500.00) Dollars per Density Unit (the “**Water Extension Fee**”); and (c) a Sewer Extension Fee in an amount equal to One Hundred Seventy Five and No/100 (\$175.00) Dollars per Density Unit (the “**Sewer Extension Fee**”). Landowner and Developer acknowledge and agree that the Fire Station Fee, the Water Extension Fee and the Sewer Extension Fee are and shall remain applicable to the Subject Property, and that, for purposes of this Amendment, Density Unit shall be deemed equivalent to the residential units otherwise described herein.

5. **Notice Addresses.** Notices to be given pursuant to this Agreement shall be addressed to the following, subject to amendment by future written notice from any party to the remaining parties:

To the City: North Myrtle Beach City Manager
1018 Second Avenue South
North Myrtle Beach, SC 29582

With a copy to: North Myrtle Beach City Attorney
1018 Second Avenue South
North Myrtle Beach, SC 29582

With a copy to: Franklin G. Daniels
Nexsen Pruet

To the Landowner: MMG Holdings, LLC

Attn: _____

To the Developer: NVR, Inc.

Attn: _____

6.

7. **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.

8. **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 City of North Myrtle Beach]

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

CITY OF NORTH MYRTLE BEACH

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
CITY OF NORTH MYRTLE BEACH, by _____, as its
_____.

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

EXHIBIT “G-1”

PDD Amendment

7D. FIRST PUBLIC HEARING REGARDING THE AMENDMENT TO THE DEVELOPMENT AGREEMENT ASSOCIATED WITH THE MAJOR PLANNED DEVELOPMENT DISTRICT (PDD) AMENDMENT CASE Z-21-7 AND REVISIONS TO THE BAREFOOT RESORT & GOLF PDD:

The North Myrtle Beach Planning Commission will host the first of two public hearings regarding the proposed Amended Development Agreement associated with the major amendment to the Barefoot Resort & Golf PDD. The proposal revises the Barefoot Resort Villas Townhomes section of the Dye Estates through changes to the master plan, building footprint, and building elevations and is located off Club Course Drive.

Mr. Robert S. Guyton:

On behalf of MMG HOLDINGS, LLC, a South Carolina limited liability company (the “Landowner”), and NVR, INC., a Virginia corporation (the “Developer”), seeks to enter into this Amended Development Agreement with the City of North Myrtle Beach for the Barefoot Resort & Golf PDD (Dye Estates MF-4), a.k.a. Barefoot Resort Villas Townhomes, covering 5.1 acres of private property generally located off Club Course Drive (identified by PIN 358-09-04-0001).

Development of the property is determined by the approved Barefoot Resort & Golf PDD [Barefoot Resort Villas Townhomes] consisting of not less than 35 total units and not more than 37 total units of in-common townhomes. The master site plan governing approval of the PDD indicates a total of 37 units.

The Amended Development Agreement provides for the following:

ITEMS of NOTE

1. The term of agreement is for five years with automatic extensions for another two, five-year terms if in good standing and diligently pursuing development of the property.
2. Exhibit G changes to Exhibit “G-1” entitled “Dye Estates MF-4 Barefoot Resort and Golf, North Myrtle Beach, SC” dated May 17, 2021, and Revised June 15, 2021.
3. Landowner and developer agree not to subject the property to a conservation easement or other restrictive covenant.
4. Minimum term of any rental agreement is 6 months, but residential leases may be extended for periods of less than 6 months to the same tenant if such extensions are for at least 30 days.

FEES and PUBLIC BENEFITS

1. Landowner agrees to pay to the city at building permit issuance a Beach Access Parking Fee of \$1,100 for each residential unit, together with a Park Enhancement Fee of \$200 per residential unit, for a total \$1,300. The aggregate will not be less than \$45,500.
2. Landowner agrees to continue adhering to the Sewer and Water Extension Agreement requiring \$450 per unit for fire station fees, \$500 per unit for water extension fees, and \$175 per unit for sewer extension fees.

The Planning Commission’s role in Amended Development Agreements is limited to HOSTING the first of two required public hearings. Planning Commission will take no action and will not vote on the Amended Development Agreement, but may offer comments for City Council’s consideration. After hosting the

public hearing, a second public hearing, first reading of ordinance, will take place at the City Council meeting anticipated to occur on Monday, September 20, 2021.

Both the Amended Development Agreement and the major amendment to the Barefoot Resort PDD are being reviewed and considered simultaneously by the city.