

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: January 3, 2022

Agenda Item: 7G	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: December 22, 2021
Subject: Regarding a proposed amendment to the Bahama Island PDD Development Agreement and authorize the City Manager to sign the document on behalf of the City	Division: Legal

Background:

The developer of the RV Resort portion of the Bahama Island PDD, Kirk Hanna, has proposed the attached amendment to the Development Agreement regarding the ±0.6 parcel to be added to the PDD.

The primary element of the amendment to the PDD concerns the developer's contribution for its impact on beach parking. The proposed amendment requires the developer to pay the City a Beach Access Fee in the amount of \$400 for each park model site having a sewer connection. There are 8 park model sites which brings the total contribution to \$3,200. This fee will be due in full prior to approval of the site-specific development plans for Phase 1C of the PDD.

NOTE: During the first public hearing, the Planning Commission recommended that the Beach Access Fee be increased from \$400 for each park model site to \$1,100 and that a Park Enhancement Fee of \$200 also be required for each park model site consistent with other recent Development Agreement requirements.

Recommended Action:

Approve or deny the proposed ordinance on first reading

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

ORDINANCE

AN ORDINANCE TO APPROVE THE THIRD AMENDMENT TO THE BAHAMA ISLAND PDD DEVELOPMENT AGREEMENT AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

Whereas, the developer for the RV Resort section of the Bahama Island Planned Development District has proposed the third amendment to the Bahama Island PDD Development Agreement attached hereto; and

Whereas, the amendment to the development agreement primarily concerns the payment of a beach access fee related to the impacts the project will have regarding public parking near the beach.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:

Section 1: The Amendment to the Development Agreement is hereby approved.

Section 2: The City Manager is authorized to sign the document on behalf of the City.

Section 3: This Ordinance shall become effective upon the date of passage.

DONE, RATIFIED AND PASSED, THIS _____ DAY OF _____, 2022.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED:

FIRST READING: 1.3.2022

SECOND READING: _____

City Manager

ORDINANCE: _____

STATE OF SOUTH CAROLINA	)	THIRD AMENDMENT TO THE PLANNED
	)	DEVELOPMENT DISTRICT MASTER
	)	DEVELOPMENT AGREEMENT ADDING PHASE 1C
COUNTY OF HORRY	)	TO THE BAHAMA ISLAND RESORT

THIS THIRD AMENDMENT TO PLANNED DEVELOPMENT MASTER DEVELOPMENT AGREEMENT Phase 1C to the Bahama Island Resort PDD (this or the within "Third Amendment") entered into by and among the City of North Myrtle Beach, a South Carolina municipal corporation (hereinafter "City" or "City"); Canal Land and Timber, LLC (hereinafter "Canal") and Myrtle Beach Power Sports, Inc. (hereinafter "MBPS") (MBPS hereinafter collectively the "Owners" and MBPS and City hereinafter collectively the "Parties").

RECITALS:

WHEREAS, Owners are the owners of certain real property located in North Myrtle Beach, South Carolina and more particularly described in Exhibit A attached hereto, being Horry County PIN Numbers 350-06-04-0031 and 350-00-00-0080, 11.87 Acres (the MBPS tract), said property being hereinafter referred to as the "Property;" and

WHEREAS, the Property has previously been annexed into the City and zoned as a Planned Development District named Bahama Island Resort Planned Development District (hereinafter "PDD" or "the PDD"); and

WHEREAS, City, Canal Land and Timber, LLC and MBPS's predecessor in title entered into that certain Planned Development District Agreement dated June 06, 2006, that was recorded into the public records of Horry County, South Carolina together with amendments to the same dated February 27, 2017 and February 21, 2020 which are recorded within the public records for Horry County; and

WHEREAS, Canal Land and Timber, LLC hereby approves of the amendment and the changes contained in this document; and

WHEREAS, MBPS desires for the Planned Development District Agreement to be amended adding

Phase 1C of the PDD (Major PDD Amendment [Z-21-33] being simultaneously reviewed by City Council), in order that the intended use of the within Phase 1C, be amended to allow further development of the PDD; and

WHEREAS, the PDD Agreement expressly states in Section Eleven (11) that amendments may be sought by any of the parties; and

WHEREAS, in 2009 the City amended its zoning code, section 23-29 changing the designation of Planned Unit District (PUD) to Planned Development District (PDD) and for the purpose of creating consistency between this document and the City's zoning code, the zoning designation for the land described in Exhibit A attached hereto shall be referred to as PDD; and

WHEREAS, the provisions of the South Carolina Local Government Development Agreement Act (South Carolina Code §6-31-10 et. seq.) require certain minimal standards that must be included in a Development Agreement and the parties' wish to ensure that all statutory elements are included in the PDD Agreement, as amended; and

WHEREAS, the Parties have determined that the PDD Agreement, as amended hereby, adheres to the land development regulations; and

WHEREAS, the Parties hereby agree that Canal Land and Timber, LLC will have no financial obligations under this amendment with respect to Phase 1C of the PDD; and

WHEREAS, the Parties now desire to amend said PDD Agreement, in the manner set forth below in order to accommodate MBPS' s requests for development of its property;

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and the sum of Five and No/100 (\$5.00) Dollars, to each party by the other paid, the parties agree as follows:

- 1. Purpose:** The purpose of the Bahama Island Resort Planned Development District (PDD) is hereby amended to include the addition of eight park model sites in Phase 1C of the PDD. As amended, the purpose of the PDD is to create a mixed-use development with

existing dry dock facilities, to include Campground and RV sites, single-family residential units, condominium multifamily units, both low-rise and mid high-rise, commercial, restaurant, office and or retail space, nature trails, boardwalk areas, and intracoastal waterway boat slips for the harmonious development of the property. As amended, the PDD is consistent with the City's comprehensive plan and land development regulations.

Phase 1C of the PDD will include eight park model sites to the existing and approved 236 RV Camper sites on the adjacent property, together with a dog park, clubhouse, activity area, boardwalks, and Intracoastal Waterway boat slips. The land uses in the additional phases shall not be altered or amended by this Third Amendment.

In Phase 1C, Owners will pay a \$400.00 Beach Access Fee per park model site with a sewer connection as an impact fee for beach parking to the City of North Myrtle Beach. This fee will be due in full prior to approval of the site-specific development plans for Phase 1C of the PDD.

All development within this project will be regulated by the terms of the approved PDD Ordinance, as amended herein, including the original Agreement and the Original Master Plan prepared by Carter Architecture, Inc., recorded on June 6, 2006 (the "Master Plan"), and attached hereto as Exhibit B and incorporated by reference, the revised Master Plan prepared by Venture Engineering, recorded February 27, 2017, and attached hereto as Exhibit C and incorporated by reference, the revised Master Plan prepared by Wall Engineering, recorded February 21, 2020 (Phase 1B), and the revised Master Plan dated December 13, 2021 (Phase 1C), and attached hereto as Exhibit D.

The revised Master Plan concerning Phase 1 is binding and shall override with regard to any conflict between the Revised Master Plan and this Third Amendment. The original Agreement and the Original Master Plan shall control development of the

remaining phases within the PDD.

Phase 1C (located on PIN# 350-06-01-0139)

8 Park Models

Development Standards: Development and building standards, locations and design shall be regulated in Phase 1, Phase 1B, and Phase 1C by the revised Master Plan, which are to be recorded simultaneously herewith in the records of Horry County, and for all additional phases by the Master Plan, which was previously recorded in the records of Horry County, South Carolina. The revised Master Plan and the Master Plan are herein after, collectively referred to as the "Plans". Only those structures designated (and designed) on the respective Plans shall be permitted and any changes to the structures on the Plans shall have to be approved by City Council as amendments to the adopted Master Plan (except for Minor Amendments as set forth below which may be approved by the Planning Commission).

Prohibition Regarding Preservation Easement: The parties hereto agree that no property within Phase 1C of the PDD shall be dedicated for use by the Owners as a conservation preservation easement, district, or area.

Contribution to Beach Parking: Prior to approval of the site-specific development plans for Phase 1C of the PDD, MBPS will make a financial contribution to the City for funding of additional public beach parking at the rate of four hundred and no/100 Dollars (\$400.00) for each park model site having a sewer connection for a total of three thousand two hundred and no/100 Dollars (\$3,200.00). In the event the Owners pursue development of multifamily/condominium units for Phase 1B, the City and Owners shall negotiate a per unit access fee with Owners getting a credit of \$400.00 paid in Phase 1B as designated before, if previously paid.

2. **Duration.** The parties' Master Development Agreement, as amended hereby, shall be effective until December 31, 2025, and all construction permitted through the December

31, 2025, shall be allowed to be completed.

3. **Independent Amendment.** This Amendment is intended to be applicable only to Phase 1C of the PDD, as is depicted on the revised Master Plan, which is the MBPS Tract, and shall not be deemed applicable to any other portion of the Land which is subject to the Planned Development District Agreement dated June 6, 2006, any subsequent amendments to the Master Plan per Section 1, or to any other landowner within the PDD, who is not a successor or assignee of MBPS.

It is stipulated that future amendments to the Planned Development District Agreement, if any, that only affect one Tract (or any portion thereof), which is subject to the Planned Unit Development Agreement need not be consented to by any of the Landowners other than the Owner of the parcel to which the amendment is applicable.

4. **No Further Amendment:** Except as specifically amended by the within First Amendment, Second Amendment, and this Third Amendment to Planned District Development Agreement all of the terms and conditions of the Planned Development District Agreement dated June 06, 2006 and subsequent amendments per Section 1, shall remain in full force, unless and until amended in writing and signed by all of the parties.
5. **Consistency Statement:** The City has determined that the PDD Agreement, as amended, is consistent with the City's comprehensive plan and land development regulations.
6. **Permit Requirements:** Nothing herein shall be construed to relieve the Owners, or their successors from obtaining all applicable permits prior to commencing and continuing construction activities. Failure of the PDD Agreement, as amended, to address a particular permit, condition, term, or restriction does not relieve the Owners of the necessity of complying with the law governing the permitting requirements, conditions, terms, or

restrictions.

7. **Subordination of Mortgage(s):** Landowners hereby represent and warrant that this Agreement, upon its execution, shall not be subordinate to any encumbrances of any kind, including mortgage liens, mechanics liens, tax liens and judgments. The parties do hereby stipulate and agree that any prospective mortgage or mortgages encumbering the Property, or any portion thereof shall be subordinated to the privileges, conditions, terms, and obligations of the PDD Agreement, as amended.
8. **Recordation:** The Landowners agree to record this Agreement with the Horry County Register of Deeds within seven (7) days after its full execution.
9. **Partial Invalidity:** If any part, clause, or provision of this Agreement is held to be void by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unaffected and shall be given such construction as to permit it to comply with the requirements of all applicable laws and the intent of the Parties herein.
10. **Waiver:** A party's waiver of a breach of any term of this Agreement shall not be construed as a waiver of any subsequent breach of the same or another term contained in the Agreement. A party's subsequent acceptance of performance by the other party shall not be construed as a waiver of the preceding breach of this Agreement other than the failure to perform the particular duties so accepted.
11. **Governing Law:** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of South Carolina.
12. **Successors in Interest:** All burdens and obligations of this Agreement are binding upon, and the benefits shall inure to the Parties hereto and to all successors in interest to the Parties

and all assigns. A purchaser, lessee, or other successor in interest of any portion of the property shall be responsible for the performance of the respective Landowner's obligations hereunder as to the portion of the Property so transferred.

- 13. Effective Date:** The agreement shall be effective upon the date when the document is signed by all parties to the Agreement which date shall be the _____ day of _____, 20____.

IN WITNESS WHEREOF, the Parties have executed this Agreement, the date below their respective signatures.

[Signature page to Third Amendment to
Planned Development District Agreement
for Canal Land and Timber, LLC.]

Witness:

Canal Land and Timber, LLC

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Acknowledgement

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named Canal Land and Timber, LLC by _____, its _____, sign and seal and as both deeds deliver the Third Amendment to the Planned District Development Agreement and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Witness #1

Sworn to before me this _____ day
Of _____ 20____

Notary Public for SC
My Commission Expires:_____

“EXHIBIT A”
(Legal Description)

All that tract or parcel of land lying and being in Sandridge Landing, North Myrtle Beach, Horry County, South Carolina and being more particularly described as follows:

TRACT ONE:

ALL AND SINGULAR all that certain piece, parcel or tract of land situate and being in Little River Township, County of Horry, State of South Carolina, and being shown and designated as 10.78 acres (more or less) as appears upon a plat prepared for Cove Partners, LLC by Atlantic Land Surveying, Co., dated December 18, 2002 and December 30, 2003 and recorded March 18, 2003 in Plat Book 188 at Page 218 in the office of the ROD for Horry County, SC. Reference to which is made as forming a part of these presents.

TMS# 130-00-08-217

TRACT TWO:

ALL AND SINGULAR that certain piece, parcel or Lot of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being more fully described as Lot Nine (9) as appears upon a map of 13.69 acres of land and eight (8) lots near Nixon’s Crossroad by C.B. Berry R.L.S. dated February 11, 1977, and addition of Lot Nine (9) dated November 10, 1982 which map is recorded in Plat Book 89 at Page 100 in the office of the Register of Deeds for Horry County.

TMS# 130-00-08-117

The tracts conveyed herein being the same property conveyed to Myrtle Beach Power Sports, Inc. by deed of LR LAND LLC recorded December 19, 2016, in Book 3973, Page 2446 in the ROD Office for Horry County.

“EXHIBIT B”

The attached copy of the original Agreement and the Original Master Plan prepared by
Carter Architecture, Inc., recorded June 6, 2006

ORIGINAL



PUBLIC PARKS (HIGH LAND)	
WATER FRONT	2.1 ACRES
INLAND	7.1 ACRES (5.4 HIGHLAND)
TOTAL	9.2 ACRES

PHASE	TOTAL UNITS	COMMERCIAL SPACE
PHASE I	496	96,100 SF DRY STACK
PHASE II	9	NA
PHASE III	155	41,099 SF
PHASE IV	378	11,516 SF
PHASE V	336	12,740 SF
TOTAL	1,374	161,455 SF

LEGEND

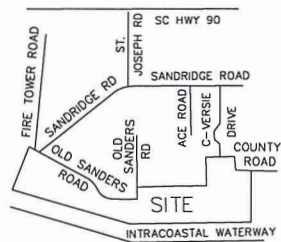
- R-4 TYPE HIGHRISE (I,T)
- COMMERCIAL / RETAIL (S)
- DRY DOCK (U)
- 4 STORY MULTI-FAMILY, 100 UNIT (A,B,C,D)
- 4 STORY MULTI-FAMILY, 24 UNIT (E,F,G,H)
- 4 STORY MULTI-FAMILY, 32 UNIT (P)
- LIVE/WORK (J,K,Q)
- 2 STORY MULTI-FAMILY (L,M,N,O)
- RESTAURANT (R)
- WETLANDS
- PROPOSED CITY PARKS
- LANDSCAPING & BUFFERS



(IN FEET)
1 inch = 100 ft.
REDUCED SIZE

“EXHIBIT C”

The attached Revised Master Plan prepared by Venture Engineering, recorded February 27, 2017

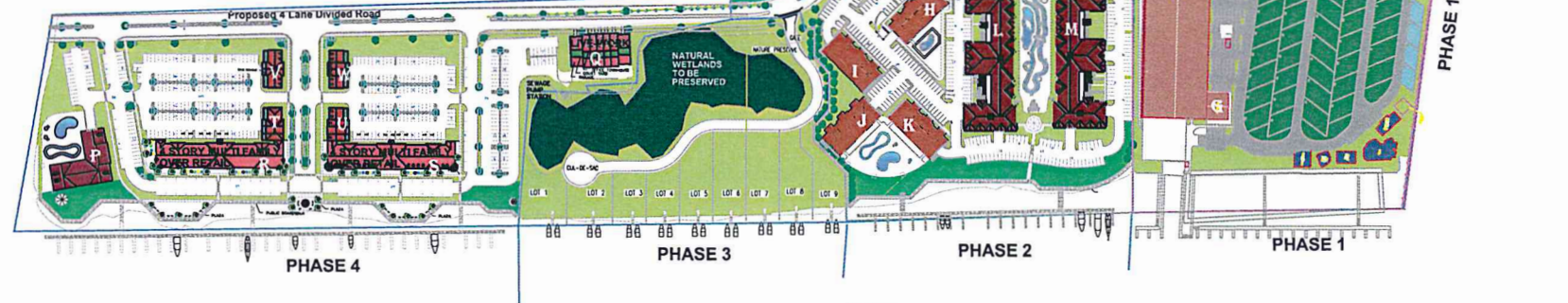


PUBLIC PARKS (HIGH LAND)	
WATER FRONT	2.1 ACRES
INLAND	7.1 ACRES (5.4 HIGHLAND)
TOTAL	9.2 ACRES

PHASE	TOTAL UNITS	COMMERCIAL SPACE
PHASE 1	N/A	96,100 SF DRY STACK, 105 CAMPS
PHASE 2	296	N/A
PHASE 3	9	NA
PHASE 4	155	41,099 SF
PHASE 5	378	11,516 SF
TOTAL	838	161,455 SF, 105 CAMPS

LEGEND

- RV/CAMPER SITES (A)
- POP UP TENT AREA (B)
- OUTDOOR STORAGE (C)
- CAMPGROUND FACILITIES (1,2,3,4,5,6, CHECK IN BLDG, AND FIRE PIT AREA)
- RV WASH-AREA & DUMPSTATION (D)
- EXISTING DRY DOCK FACILITY (E,F, G)
- 4 STORY MULTI-FAMILY, 24 UNIT (H,I,J,K)
- 4 STORY MULTI-FAMILY, 100 UNIT (L,M)
- R-4 TYPE HIGHRISE (N)
- RESTAURANT (O)
- 4 STORY MULTI-FAMILY, 32 UNIT (P)
- LIVE/WORK (Q,R,S)
- 2 STORY MULTI-FAMILY (T,U,V,W)
- WETLANDS
- PROPOSED CITY PARKS
- LANDSCAPING & BUFFERS



REVISED MASTER PLAN "EXHIBIT C"
FOR
BAHAMA ISLAND RESORT
& RV AND DRY DOCK
NORTH MYRTLE BEACH, SC
VENTURE ENGINEERING INC.
JANUARY 18, 2017

ATLANTIC INTRACOASTAL WATERWAY

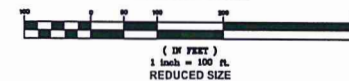
ROADWAY IMPROVEMENTS AS
APPROVED ON THE SITE PLAN AND
MEETING THE "URBAN BOULEVARD:
4-LANE DIVIDED" CROSS SECTION AS
ILLUSTRATED IN THE LAND
DEVELOPMENT REGULATIONS
APPENDIX A AND DESCRIBED IN THE
NMB RV RESORT AND DRYDOCK PDD
AMENDMENT

1.22 ACRES TO BE CONVEYED
AS PUBLIC RIGHT-OF-WAY TO THE
CITY OF NORTH MYRTLE BEACH

0.05 ACRES TO BE CONV
AS PUBLIC RIGHT-OF-W
CITY OF NORTH MYRTLE

WOODEN
PRIVACY
FENCE
(6' HEIGHT;
INSTALLED
DIRECTLY ON
PROPERTY LINE)

GRAPHIC SCALE



“EXHIBIT D”

The attached Revised Master Plan prepared by Wall Engineering, recorded
February 21, 2020

LEGEND

- RV / CAMPER SITES (A)
- POP UP TENT AREA (B)
- OUTDOOR STORAGE (C)
- CAMPGROUND FACILITIES (1,2,3,4,5,6, CHECK IN BLDG, AND FIRE PIT AREA)
- RV WASH-AREA & DUMPSTATION (D)
- EXISTING DRY DOCK FACILITY (E,F,G)
- 4 STORY MULTI-FAMILY, 24 UNIT (H,I,J,K)
- 4 STORY MULTI-FAMILY, 100 UNIT (L,M)
- R-4 TYPE HIGHRISE (N)
- RESTAURANT (O)
- 4 STORY MULTI-FAMILY, 32 UNIT (P)
- LIVESTOCK (Q,R,S)
- 2 STORY MULTI-FAMILY (T,U,V,W)
- WETLANDS
- PROPOSED CITY PARKS
- LANDSCAPING & BUFFERS
- PROPOSED WATERFRONT PAVILION(X)

PUBLIC PARKS (HIGH LAND)

WATER FRONT	2.1 ACRES
INLAND	7.1 ACRES (3.4 HIGHLAND)
TOTAL	9.2 ACRES

PHASE 1A & 1B

PHASE	TOTAL UNITS	COMMERCIAL SPACE
PHASE 1A & 1B	N/A	96,100 SF DRY STACK - 466 CAMPS
PHASE 2	296	N/A
PHASE 3	9	N/A
PHASE 4	155	41,099 SF
PHASE 5	378	11,516 SF
TOTAL	838	161,455 SF - 466 CAMPS

REVISED MASTER PLAN "EXHIBIT C"
BAHAMA ISLAND RESORT
AS SHOWN BY AERIAL PHOTOGRAPH
VENTURE ENGINEERING INC.
JANUARY 16, 2007

REVISED MASTER PLAN "EXHIBIT C"
FOR
BAHAMIA ISLAND RESORT
A. NINE RV AND DRY DOCK
NORTH MYSTLE BEACH, SC
VENTURE ENGINEERING INC.