
1 **2018-48 (2nd READING): AN ORDINANCE TO APPROVE THE 7th AVENUE NORTH**
2 **REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF MYRTLE BEACH AND LANIADO**
3 **DEVELOPMENT, LLC (DEVELOPER).**

4 **Applicant/Purpose:** Staff / approve a redevelopment agreement w/ Laniado Properties, LLC.
5

6 **Brief:**

- 7 • The developer is planning to construct a commercial & residential/accommodation mixed use
 - 8 ocean-front development at 7th N & Ocean Blvd.,
 - 9 • The project is the 2nd request to utilize the Floating Zone & Redevelopment Financial Incentives
 - 10 adopted by City Council in 2015 & 2016.
 - 11 • Qualifying projects must address conditions which suppress or stagnate economic & social
 - 12 development of commercial, residential, or mixed-use.
 - 13 • The parties must enter into a development agreement to qualify for financial incentives.
 - 14 • Proposed development agreement:
 - 15 ○ Allows for vesting certain property rights by protecting the developer from subsequently
 - 16 enacted legislation.
 - 17 ○ Developer pays normal impact fees (may be refunded thru the incentive policy).
 - 18 ○ 2-year term of the agreement, automatic renewal unless 1 party notifies the other at
 - 19 least 1 year before expiration date.
 - 20 ○ Either party may terminate for a breach if the other doesn't cure w/in 30 days.
 - 21 • No changes since 1st reading.
- 22

23 **Issues:**

- 24 • After adoption of the ordinance the developer will have 6 months to obtain a building permit to
 - 25 remain eligible for the incentive.
 - 26 • The developer must complete the project w/in 2 years of the date of obtaining the building
 - 27 permit to be eligible for the incentive.
- 28

29 **Public Notification:**

- 30 • 3 signs posted. 21 letters mailed. Legal ad ran 10 days prior to public hearing. Several calls for
 - 31 information received with no negative input.
 - 32 • Normal meeting notification.
- 33

34 **Alternatives:**

- 35 • Modify the request.
 - 36 • Deny the proposed ordinance.
- 37

38 **Financial Impact:**

- 39 • The developer may receive incentive vouchers in an amount not to exceed 2% of the total project
 - 40 cost, up to a maximum of \$2,000,000.
 - 41 ○ Upon issuance of a CO, vouchers would 1st be used to reimburse permit, impact,
 - 42 construction lay-down, & tap fees paid by the developer.
 - 43 ○ Remainder would be used to reimburse for utility bills, business licenses, hospitality fees,
 - 44 & local A-Tax associated w/ that project.
 - 45 • If not zeroed out 1st, all vouchers expire 5 years from issuance.
- 46

47 **Manager's Recommendation:**

- 48 • I whole-heartedly recommend 1st reading to approve the redevelopment agreement. This is
 - 49 totally consistent w/ our emerging downtown redevelopment efforts. (7/10/18).
 - 50 • I recommend 2nd reading & adoption (7/24/18).
- 51

52 **Attachment(s):** Proposed ordinance, development agreement.

ORDINANCE 2018-48

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE TO APPROVE THE 7TH
AVENUE NORTH REDEVELOPMENT
AGREEMENT BETWEEN THE CITY OF
MYRTLE BEACH AND LANIADO
DEVELOPMENT, LLC (DEVELOPER)

This Redevelopment Agreement (“Agreement”), is entered into this ____ day of _____, 2018 effective upon second reading (“Effective Date”), by and between the City of Myrtle Beach, South Carolina (“City”), a South Carolina municipal corporation, including any and all of its subdivisions, and Laniado Development, LLC, a South Carolina limited liability company(the “Developer”). Respectively, the term Developer or City as used throughout this Agreement shall include all agencies, departments, divisions, agents, employees and officials of the Developer and City and shall also include any successors in interest or successors in title and/or assigns by virtue of assignment or other instrument pursuant to the terms hereof. The City and the Developer may be referred to collectively hereafter as the “Parties.”

RECITALS

WHEREAS, Developer proposes to redevelop three oceanfront lots and two (2) non-oceanfront lots in the Hotel Section of Myrtle Beach with a mixed-use oceanfront condominium development, including commercial and residential uses, together with associated parking, known as the Gateway Galleria Horizontal Property Regime (the “Project”) within approximately one (1) acre of land, all of which is located within the limits of the City and none of which is in the unincorporated County of Horry, South Carolina; and

WHEREAS, the Project should be developed according to the approved Redevelopment Plan, which is approved as an underlying document, as amended from time to time; and

WHEREAS, this Agreement shall encourage the vesting of certain property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing plans, policies and procedures of the Parties which may conflict with any term or provision hereof or in any way hinder, restrict, or prevent the development of the Project or would frustrate the accomplishment of the Parties’ expectations contained herein, providing a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote

1 the public safety, health, and general welfare of the citizens of the City and of our
2 State; and

3 **WHEREAS**, the City has inherent authority to enter into binding agreements with
4 persons or entities; and

5 **WHEREAS**, the Parties acknowledge that the lack of certainty in the approval of
6 developments can result in a waste of economic and land resources, and can discourage
7 commitment to comprehensive planning, which the Parties seek to avoid in connection
8 with the Project and its phases of development; and

9 **WHEREAS**, Developer seeks assurances that upon receipt of its Development
10 Permits (as that term is defined herein) it may proceed in accordance with existing laws
11 and policies, subject to this Agreement; and

12 **WHEREAS**, the Parties hereto seek predictability in the development process for
13 the Project so as to encourage the maximum efficient utilization of resources at the
14 least economic cost to the public; and

15 **WHEREAS**, public benefits and facilities derived from this Agreement may
16 include, but are not limited to, design standards, infrastructure and other
17 improvements; and

18 **WHEREAS**, the Parties' willingness to agree in advance as to the planning and
19 redevelopment process for the Project as described in this Agreement shall serve to
20 foster and facilitate the cooperation and coordination of the requirements and needs
21 of the Parties and various other governmental agencies having jurisdiction over land
22 development.

23 **NOW THEREFORE**, in consideration of the mutual promises and covenants
24 contained herein and other good and valuable consideration, the receipt and sufficiency
25 of which are hereby acknowledged, the Parties hereto agree and contract as follows:

26 **ARTICLE 1: Definitions**

27 For purposes of this Agreement, the following definitions shall apply:

1 1.1 "Comprehensive Plan" shall have the meaning set forth in the South Carolina
2 Local Government Development Agreement Act §§6-31-10, et seq. of the South Carolina
3 Code of Laws (the "Development Agreement Act").

4 1.2 "Development Permit" shall include building permits, zoning permits,
5 subdivision approvals, rezoning certifications, special exceptions, variances, or any
6 other official action of the City having the effect of permitting or allowing the
7 development of property.

8

9 1.3 "Land Development Regulations" shall have the meaning set forth in the
10 Development Agreement Act §§6-31-10 et seq. of the South Carolina Code of Laws. This
11 term shall also include, but not be limited to, the underlying documents and ordinances
12 or regulations.

13

14 1.4 "Property" shall mean all the real property and improvements within the
15 identified lands, as it is now or hereafter constituted, the current boundary being
16 described herein on Exhibit A hereto, which is incorporated by reference herein, and
17 includes the earth, water, and air, above, below, or on the surface, and includes any
18 improvements or structures customarily regarded as a part of real property, and any
19 other real property added to the Agreement subsequently upon the mutual written
20 consent of the Parties.

21

22 1.5 "Public Facilities", if applicable, shall have the meaning set forth in the
23 Development Agreement Act §6-31-10, et seq. of the South Carolina Code of Laws.

24

25 1.6 "Laws" shall have the meaning set forth in Title 6, Chapters 29 and 31 in their
26 entirety of the South Carolina Code of Laws, and the Code of Laws of the City of Myrtle
27 Beach; provided however, Title 31 specifically does not govern or dictate the efficacy
28 of this Agreement between the parties, but rather serves a guiding and illustrative
29 purpose only by mutual consent.

1 Other capitalized terms are defined throughout this Agreement. All Exhibits, A - B, are
2 attached hereto and all underlying documents are incorporated fully herein by
3 reference.

4
5 **ARTICLE 2: Property Development**

6
7 2.1 Property Description and Information. A legal description of the Property is
8 attached hereto at Exhibit A, along with Boundary Surveys. Exhibit B sets forth the
9 names of the legal and equitable owners of the Property. Redevelopment Plans, as
10 approved by City Council for the Project, depicting the various areas for development
11 are hereby incorporated and referenced, without attachment, but are specifically
12 included with the underlying documentation for the Project.

13
14 2.2 Duration. This Agreement shall be effective as of the Effective Date and shall
15 continue for two (2) years from the Effective Date (the "Initial Term") unless or until
16 earlier terminated as provided herein. The Agreement shall renew automatically for
17 two (2) additional years unless either party provides notice of completion or
18 termination no later than one (1) year before the termination date. The Parties may
19 extend the termination date by mutual agreement or enter into a subsequent
20 development agreement.

21
22 2.3 Development Uses. The development uses permitted on the Property include
23 those set forth in the Redevelopment Plan including those set out above.

24
25 2.4 Vested Rights. Subject to the Development Agreement Act and the terms of this
26 Agreement (including all Exhibits), all rights and prerogatives accorded to Developer
27 and the City by this Agreement shall immediately constitute vested rights, including for
28 the development of the Property pursuant to the approved Redevelopment Plan as
29 adopted pursuant to Ordinances 2015-70, 2016-7, 2016-8 and this Ordinance; such

1 vesting shall pertain to all those rights and prerogatives afforded by the Land
2 Development Regulations, and an ordinances, regulations or other laws related to the
3 City's obligations contained herein. Further, any provision hereof does not abrogate any
4 rights either preserved by law or that may have vested pursuant to common law and
5 otherwise in the absence of a development agreement.

6

7 The Project shall be subject to normal and customary permit and impact fees; provided
8 however, these may be subject to Chapter 15, Article IV, incentive program as provided
9 for in Ordinances 2015-70 and 2016-8, relating to this Ordinance, as an underlying
10 document.

11

12 2.5 Later Enacted Ordinances. The laws applicable to the development of the
13 Property are those in force on the Effective Date of this Agreement. With the parties
14 mutual consent to employ Title 31 as guidance and for illustrative purposes in the
15 Agreement, and in accordance with the guidance of Section 6- 31-80 of the
16 Development Agreement Act, and by mutual consent subject to the provisions of
17 Section 6-31- 140, the City may apply subsequently adopted Laws to the Project only if
18 the City has held a public hearing and determined: (1) the Laws are not in conflict with
19 the Laws governing this Agreement and do not prevent the development of the Project
20 set forth in this Agreement; (2) the Laws are essential to the public health, safety or
21 welfare and the Laws expressly state that they apply to a development that is subject
22 to a development agreement; (3) the Laws are specifically anticipated and provided for
23 in this Agreement; (4) the City demonstrates that substantial changes have occurred in
24 pertinent conditions existing at the time of approval of this Agreement which changes,
25 if not addressed by the City, would pose a serious threat to the public health, safety or
26 welfare; or (5) the Agreement is based on substantially and materially inaccurate
27 information supplied by the Developer. Further, in the event state or federal laws or
28 regulations enacted after the execution of this Agreement prevent or preclude
29 compliance with one or more provisions of this Agreement, the provisions of this

1 Agreement must be modified or suspended as may be necessary to comply with the
2 state or federal laws or regulations.

3

4 The provisions of this Agreement are not intended, nor should they be construed in any
5 way, to alter or amend the rights, duties and privileges of the City to impose or increase
6 service charges or fees, which are similarly applied to other residents of the City. As
7 further provided in the Development Agreement Act, this Section 2.5 does not abrogate
8 any rights preserved by law or that may vest pursuant to common law or otherwise in
9 the absence of this Agreement.

10

11 The underlying Ordinances relating to this Project include the Ordinance which adopted
12 the Redevelopment District Zone and Redevelopment Plan in Ord. 2018- _____, the
13 Ordinance adopting the application of incentives in Ord. 2018- ____ and this Ordinance
14 adopting a redevelopment agreement, as numbered above.

15 **2.6 Consistency with Comprehensive Plan.** The City, by executing this Agreement,
16 hereby confirms that the Project is consistent with the City's Comprehensive Plan,
17 Zoning Code and Land Development Regulations, as adopted, including any amendments
18 thereto.

19

20 **ARTICLE 3: Mutual Agreements**

21

22 Pursuant to the terms hereof, in addition to other representations, warranties,
23 covenants, or agreements contained elsewhere in the Agreement, the City and
24 Developer hereby agree and represent the following:

25

26 **3.1** This Agreement and underlying documents are mutually approved by the Parties,
27 upon their action in reliance thereof, as documents of equal dignity upon the same
28 subject and shall read as together encompassing the intent of the Parties. This
29 Agreement can only be changed through written agreement of the Parties.

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ARTICLE 4: Termination

4.1 Termination as a Result of Breach. In accordance with the mutually accepted guidance of S.C. Code §6-31-90, beginning on the Effective Date hereof, every twelve (12) months the City's Zoning Administrator shall review the status of the Developer's compliance with the terms of this Agreement. Developer has the burden of demonstrating a good faith compliance with the terms hereof. If, as a result of a periodic review, the City finds and determines that the Developer has committed a material breach of the terms or conditions of the Agreement, the City shall serve notice in writing, within a reasonable time after the periodic review, upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time in which to cure the material breach. If the Developer fails to cure the material breach within the time given, then the City unilaterally may terminate or modify the Agreement; provided, that the City has first given the Developer the opportunity:

- (1) to rebut the finding and determination; or
- (2) to consent to amend the Agreement to meet the concerns of the City with respect to the findings and determinations.

4.2 Termination as a Result of Breach. Either party reserves the right to immediately terminate its obligations pursuant to this Agreement in the event the other party (a) fails to perform any material terms or conditions of this Agreement and fails to rectify such breach within thirty (30) days written notice of said failure or, (b) if there is a default which cannot be cured within such thirty (30) day period, and if the party does not commence the cure of such default within such thirty (30) day period, and thereafter diligently prosecute the same to completion.

1 **ARTICLE 5: Miscellaneous**

2
3 5.1 Recordation. Developer shall record this Agreement with the Horry County
4 Register of Deeds within fourteen (14) days after the full execution of it by both Parties.

5
6 5.2 Partial Invalidity. This Agreement and all questions relating to its validity,
7 interpretation, performance and enforcement shall be governed by and construed in
8 accordance with the laws of South Carolina. If any part, clause or provision of this
9 Agreement is held to be void by a court of competent jurisdiction, the remaining
10 provisions of this Agreement shall be unaffected and shall be given such construction
11 as to permit it to comply with the requirements of all applicable laws and the intent of
12 the Parties hereto.

13
14 5.3 Waiver. A party's waiver of a breach of any term of this Agreement shall not be
15 constituted as a waiver of any subsequent breach of the same or another term contained
16 in the Agreement. A party's subsequent acceptance of performance by the other party
17 shall not be construed as a waiver of a preceding breach of this Agreement other than
18 failure to perform the particular duties so accepted.

19 5.4 Controlling Law. The laws in effect applicable to the development of the
20 Property are those in effect at the time of the execution of this Agreement, unless
21 otherwise expressly provided herein.

22
23 5.5 Entire Agreement. This Agreement, and the underlying documents as
24 referenced above, contain the entire understanding between the Parties hereto with
25 respect to the subject matter hereof, and supersedes all prior agreements and
26 understanding, expressed or implied, oral or written.

27
28 5.6 Amendment. This Agreement may not be amended, modified, or altered except
29 upon mutual written consent of the Parties hereto or their successors in interest.

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5.7 Conformity with State Statutes. Any provision of this Agreement which is in conflict with any statutes, local ordinances or law, or regulations of the state in which services are provided, is hereby amended to conform to the minimum requirements of such statutes.

5.8 Successors in Interest/Assigns. The burdens of this Agreement are binding upon and the benefits shall inure to, the Parties hereto, 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 Developer's obligations hereunder as to the portion of the Property so transferred. In addition, unless the City gives its written consent (which consent shall be deemed given if the City does not respond after thirty (30) days written notice and which consent shall not be unreasonably withheld) to a transfer or assignment, Developer shall remain jointly and severally liable to the City under this Agreement. The City's determination whether to give consent shall be based on the ability of the purchaser/transferee to perform the obligations of this Agreement associated with the tract transferred. Such written consent cannot be unreasonably withheld if such ability is demonstrated.

5.9 Ownership. The legal or equitable owners of the Project are set forth on Exhibit "B".

5.10 Legislative Act. This Agreement constitutes a legislative act of the City Council of the City. The City Council entered into this Agreement only after following procedures required by law in furtherance of public health, safety and welfare. This Agreement is not intended to be construed to constitute a debt of the municipal corporation. Nothing in this Agreement is intended to be deemed to be a pledge of the City's general credit or taxing powers.

1 5.11 Notices. All notices hereunder shall be given in writing by certified mail, postage
2 prepaid, at the following addresses:

3 To the City:
4 City Manager
5 937 Broadway St.
6 P. O. Box 2468
7 Myrtle Beach, SC 29577
8

9 To the Developer:
10 Laniado Development, LLC
11 Attn: Joshua Laniado
12 P.O. Box 1008
13 North Myrtle Beach, SC 29582
14

15 5.12 Relationship of the Parties. This Agreement creates a contractual relationship
16 between the Parties. This Agreement is not intended to create, and does not create,
17 the relationship of master/servant, principal/agent, independent
18 contractor/employer, partnership, joint venture, or any other relationship where one
19 party may be held responsible for the acts of the other party. Further, this Agreement
20 is not intended to create, nor does it create, a relationship whereby the conduct of the
21 Developer constitutes "state action" for any purpose. Further, this Agreement is not
22 intended to create, nor does it create, a relationship whereby one Party may be
23 rendered liable in any manner for the debts or obligations of another Party, to any
24 person or entity whatsoever, whether such debt or obligation arises under this
25 Agreement or outside this Agreement. Further, this Agreement is not intended to
26 create, nor does it create, rights for any third party beneficiary.

27

28 5.13 Headings. Headings used throughout this Agreement are for reference and
29 convenience purposes only and have no binding effect and are not a part of this
30 Agreement.
31

1 **IN WITNESS WHEREOF THE PARTIES AFFIX THEIR SIGNATURES HERETO.**

2

3 [Signatures appear on following pages]

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CITY OF MYRTLE BEACH

City of Myrtle Beach, South Carolina,

Witness _____

By: _____

Its: Manager

Witness _____

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGMENT

COUNTY OF HORRY)

I, _____ do hereby certify that the City of Myrtle Beach, by John G. Pedersen, its City Manager personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2018.

_____ (Seal)

(Notary Sign here and above)

Notary Public for South Carolina

My Commission Expires: _____

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DEVELOPER

Laniado Development, LLC

Witness _____

By: _____

Its: _____

Witness _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF HORRY)

I, _____ do hereby certify that Laniado Development, LLC, a South Carolina limited liability company, by Joshua Laniado, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2018.

_____ (Seal)

(Notary Sign here and above)

Notary Public for South Carolina

My Commission Expires: _____

1 **EXHIBIT A**

2 **Legal Description of Land**

3
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5 **Parcel 1:**

6
7 All that certain piece, parcel or lot of land, known as Lot Four (4), Block One (1) of the
8 Hotel Section of Myrtle Beach, also known as Lot Four A (4A), Block One (1), of the
9 Hotel Section of Myrtle Beach in the County of Horry, State of South Carolina, and
10 depicted on "Combination Plat of Lot 4A, Block 1, Hotel Section of Myrtle Beach, Horry
11 County, South Carolina" for Agnes R. Swope and Margaret B. Epps by Robert L. Bellamy,
12 Jr. on November 16, 1995 and recorded in the Office of the Register of Deeds for Horry
13 County in Plat Book 138 at Page 93, said plat being incorporated herein by reference.

14
15 Lot 4A includes both the original Lot 4, Block 1, Hotel Section shown on Plat Book 1 at
16 Page 84 and the adjacent five (5') foot strip carved from the north side of Lot 5, Block
17 1, Hotel Section, shown on Plat Book 1 at Page 84, recorded in the Office of the Register
18 of Deeds for Horry County.

19
20 **Parcel 2:**

21
22 All and singular, all that certain piece, parcel or lot of land situate, lying and being in
23 Dogwood Neck Township, Horry County, South Carolina and being located on the east
24 side of North Ocean Boulevard and known as Lot Five (5), Block One (1) of the Hotel
25 Section of Myrtle Beach on a plat recorded in the Office of the Register of Deeds for
26 Horry County in Plat Book 1 at Page 84. The lot is also shown on a map made by Robert
27 Bellamy, P.E., dated August 21, 1965.

28
29
30 **Parcel 3:**

31
32 All and singular, that certain piece, parcel or lot of land in the Town of Myrtle Beach,
33 Dogwood Neck Township, Horry County, South Carolina, located on the east side of
34 North Ocean Boulevard at the corner of Seventh Avenue North and North Ocean
35 Boulevard. Said lot being designated on a plat of the town of Myrtle Beach as Lot Six
36 (6) of Block One (1) of the Hotel Section, which plat is recorded in Plat Book 1 at Page
37 84 in the Office of the Register of Deeds for Horry County.

38
39 Said lot is bounded as follows: On the north by Lot 5; on the east by the Old Boardwalk;
40 on the south by Seventh Avenue North; and on the west by North Ocean Boulevard. This
41 lot has a frontage of 70 feet on North Ocean Boulevard, a frontage of 70 feet on the
42 Boardwalk, and a depth of 130 feet and is the lot on which the Chesterfield Inn was
43 located.

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Parcel 4:

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County of Horry, State of South Carolina, Dogwood Neck Township, and being shown and designated as Lot Seven (7), Block Nineteen (19) of the Hotel Section of Myrtle Beach, on a map made by Stanley H. Wright, Engineer, made in June and July, 1926 and recorded in the Office of the Register of Deeds for Horry County in Plat Book 1 at Page 84.

Parcel 5:

All and singular that certain piece, parcel or lot of land, together with the improvements thereon, situate lying and being in the City of Myrtle Beach, County and State aforesaid, and being known and designated as Lot No. One (1) of Block No. Fifteen (15) of the Hotel Section as is shown on a survey thereof made by Craig Mercer Thomas, P.L.S., being dated December 8, 1998 and recorded on December 16, 1998 in the Office of the Register of Deeds for Horry County in Plat Book 159 at page 195, reference to which is craved as forming a part of these presents.

See boundary survey(s), **Exhibit A - 1** hereto

1 **Exhibit B**

2

3 **Legal Owner of the Property: Laniado Development, LLC, a South Carolina limited**
4 **liability company**

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17 **This ordinance will take effect upon adoption.**

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BRENDA BETHUNE, MAYOR

22

23 **Attest:**

24

25

26 **JENNIFER STANFORD, INTERIM CITY CLERK**

27

28 **1st Reading:**

29 **2nd Reading:**