

June 28, 2022 – Presented for 1st Reading

1 **R2022-29: RESOLUTION AUTHORIZING THE PURCHASE OF PIN**
2 **#44401040006 LOCATED IN THE OCEANFRONT REDEVELOPMENT PROJECT**
3 **AREA**

4 **Applicant/Purpose:** Staff / authorize staff to complete acquisition of a parcel within the
5 downtown core.

6
7 Parcel is as follows:
8 PIN: 44401040006
9 TMS: 181-07-03-008

10
11 **Brief:**

- 12 • Through the adoption of the Pavilion Area Master Plan in 1999 and Tax Increment
13 Financing District in 2008, and the Downtown Master Plan in 2019, City Council has
14 committed to restore the downtown to a prominent commercial district.
- 15 • The City continues to invest in redevelopment efforts and infrastructure upgrades in
16 these areas.
- 17 • The referenced properties are within the TIF district, and are strategically located for
18 future redevelopment.
- 19 • The purchase price was negotiated with the seller and is consistent with recent
20 comparable transactions.
- 21 • This property is contiguous with other recent purchase made by the City.

22
23 **Issues:**

- 24 • To restore downtown to the prominent commercial district, the acquisition is necessary.
- 25 • These parcels are located within the TIF district and situated next to the Pavilion site,
26 which represents the most critical redevelopment opportunity in the city.

27
28 **Public Notification:** Normal meeting notification.

29
30 **Alternatives:** Do not purchase the property.

31
32 **Financial Impact:** The City will acquire this parcel for a total price of \$1,200,000.

33
34 **Manager's Recommendation:** I recommend approval.

35
36 **Attachment(s):** Proposed resolution, purchase and sale agreement, amendments, inspection
37 summaries and summaries of calls for service.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AUTHORIZING THE PURCHASE OF PIN
#44401040006 LOCATED IN THE
OCEANFRONT REDEVELOPMENT
PROJECT AREA

WHEREAS, Myrtle Beach's Oceanfront Redevelopment Project Area, generally described as the areas east and west of Kings Highway from 14th Avenue S. to 22nd Avenue N., once was the thriving center of commerce in the City; and

WHEREAS, this central business district, including the oceanfront, once served as the City of Myrtle Beach's original commercial hub and the primary tourism amusement area for the entire Grand Strand; and

WHEREAS, through the adoption of Ordinance 2008-78, enacted October 21, 2008, City Council approved a redevelopment plan entitled "Tax Increment Financing Plan for the Oceanfront Redevelopment Project Area" (hereinafter "Oceanfront Redevelopment Project"); and

WHEREAS, over time, this downtown area experienced a loss of business relative to other parts of the community, as new residential and commercial areas developed elsewhere, and some of the structures in the central downtown area deteriorated through lack of use and maintenance; and

WHEREAS, this lack of new business activity, pedestrian traffic and residential involvement in the downtown area created a stagnant appearance, with resulting concerns about prospects for redevelopment and the overall image that such a primary gateway into Myrtle Beach should project; and

WHEREAS, while many elements of the Pavilion Area Master Plan have been accomplished, the conditions described above in the immediate downtown area have combined to result in an environment which deters interest in new private development; and

WHEREAS, City Council previously confirmed its commitment to restore the downtown and the central oceanfront amusement area to a prominent commercial role, as well as to enhance its character as a significant gateway into the city and a prime location for tourism, entertainment, culture, arts and innovation; and

WHEREAS, through the adoption of Resolution 2019-20, enacted March 12, 2019, City Council adopted the Downtown Master Plan and the Downtown Master Plan Implementation Plan to facilitate redevelopment, increase business activity, and to serve as the general blueprint for future revitalization and redevelopment of the area traditionally known as "Downtown Myrtle Beach"; and

WHEREAS, by Resolution 2020-37, City Council adopted the Advanced Master Plan of the Downtown Master Plan to further the plan and vision of creating a resilient, adaptive, sustainable and innovative district; and

WHEREAS, property acquisition within the Downtown Master Plan area is necessary to meet the overall redevelopment and revitalization goals; and

1 WHEREAS, South Carolina law authorizes municipalities to take actions not inconsistent
2 with the Constitution and general laws of this State, regarding any subject the
3 municipality finds necessary and proper for the security, general welfare and
4 convenience of the municipality. Specifically, municipalities are authorized to own and
5 possess property; and

6
7 WHEREAS, the City of Myrtle Beach recognizes the need to acquire real property within
8 the Downtown Master Plan area and that the acquisition is necessary and proper for the
9 general welfare and convenience of the municipality, and furthers the overarching
10 commitment to restore this district as the prominent commercial district in Myrtle Beach.

11
12 NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

13
14 The above recitals are adopted and incorporated into this Resolution.

15
16 It is necessary and desirable and in the public's interest and welfare to acquire PIN
17 44401040006 (TMS: 181-07-03-008) within the Oceanfront Redevelopment District:

18
19 The property to be acquired is shown on the attached Exhibit A.

20
21 The purchase of the real property for a negotiated price of \$1,200,000 is hereby
22 approved.

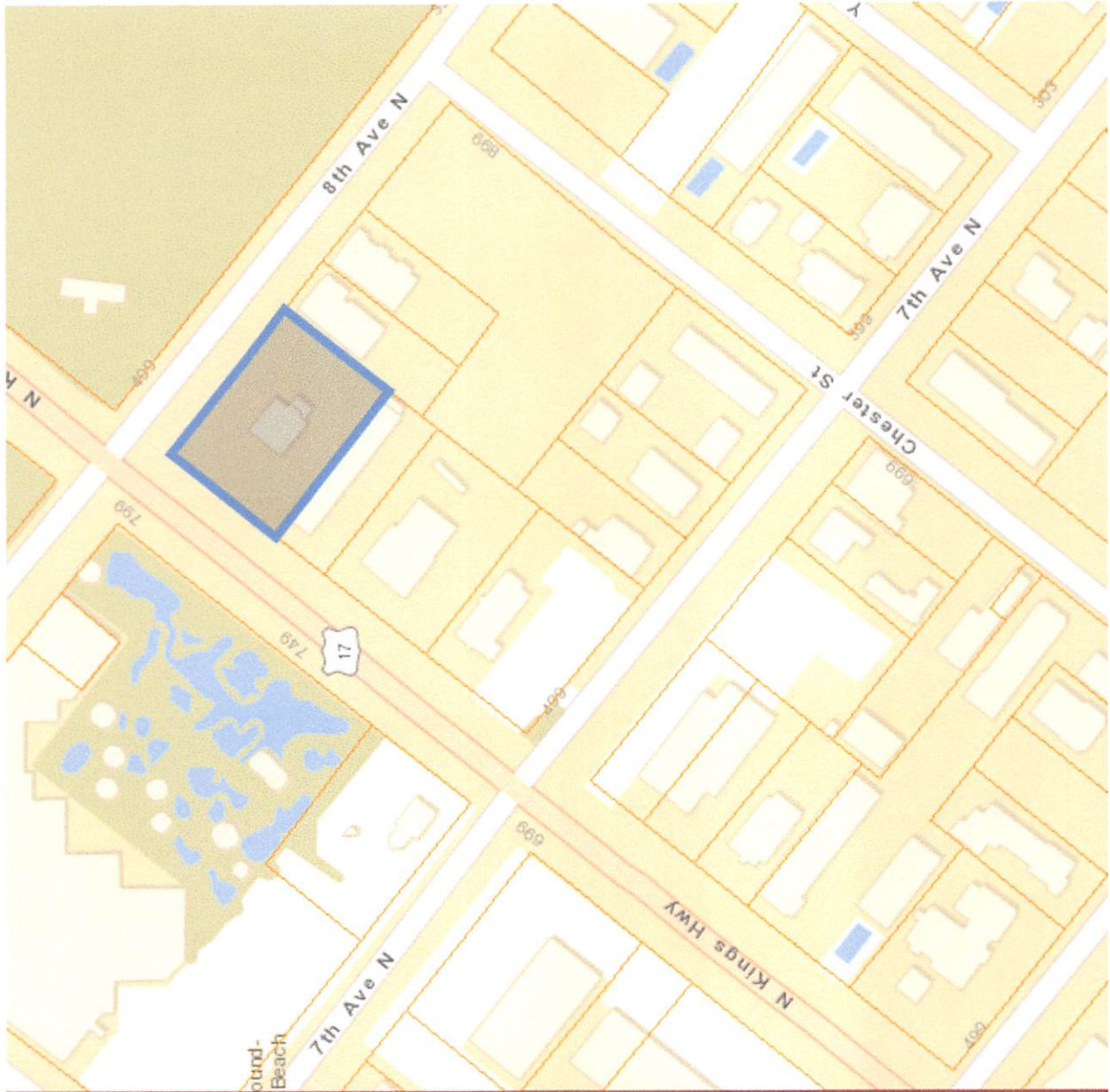
23
24 The City Manager, the Assistant City Manager, the Chief Financial Officer, the City
25 Attorney and the City Clerk, for and on behalf of the City, are fully empowered and
26 authorized to take such further action and to execute and deliver such additional
27 documents as may be necessary to effectuate the acquisition and transfer and the action
28 of such officers consistent herewith is hereby fully authorized. All actions taken in the
29 name of or on behalf of the City in connection with the property acquisition prior to the
30 effective date of this Resolution are expressly ratified and confirmed.

31
32 SIGNED, SEALED and DATED, this 28th day of June, 2022.

33
34
35
36 _____
BRENDA BETHUNE, MAYOR

37 ATTEST:

38
39 _____
40 JENNIFER ADKINS, CITY CLERK
41



HERRING ELBERT N TRUSTEE
44401040006
1810703008
2
NONE
MYRTLE BEACH
29577
896
HOTEL SECT; LTS 16-17 BL 31
20344.66
0
DISTRICT 2
5704 LONGLEAF DR
MYRTLE BEACH, SC 29577
2
2362
1137

CONTRACT OF SALE

THIS CONTRACT OF SALE (this "Agreement") entered into by and between Joanne W. Herring as Trustee U/T/A dated April 17, 2001 (hereinafter referred to as "Seller") and SPE SEVENTH AVENUE MYRTLE BEACH, LLC, a South Carolina limited liability (hereinafter referred to as "Purchaser") on February 3rd, 2022 (the "Effective Date");

Just MARCH
WITNESSETH:

WHEREAS, Seller is the owner of real property located in the City of Myrtle Beach, Horry County, South Carolina, identified as TMS/PIN No.: 181-07-03-008/444-01-04-0006, consisting of a single commercial lot and improvements thereon, more particularly described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, Seller is the Lessor under that certain lease with Subway with regards to the Property (the "Subway Lease"); and

WHEREAS, the Purchaser has agreed to accept the Property subject to the Subway Lease; and

NOW, THEREFORE Seller agrees to sell and the Purchaser agrees to purchase the Property, subject to the terms and conditions of this Agreement, to wit:

1. **PROPERTY.** The Property described above, is the subject of this Agreement.
2. **PURCHASE PRICE.** The Purchaser shall pay the Purchase Price for the Property which is to be conveyed by the Seller to the Purchaser, in an amount equal to One Million Two Hundred Thousand and No/100 (\$1,200,000.00) Dollars (the "Purchase Price"), payable as follows:
 - a. **Earnest Money.** Simultaneously with the execution of this Contract by both parties, an earnest money deposit ("Earnest Money") in the amount of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars, will be delivered by Purchaser to Robert S. Guyton, P.C. ("Escrow Agent") to be deposited in its Escrow Account to be held in trust and applied to the Purchase Price at the time of the closing, refunded to Purchaser or forfeited to Seller pursuant to the terms of this Agreement.
 - b. **Cash at Closing.** Purchaser shall pay to Seller, the Purchase Price, less the application of the Earnest Money, at Closing.
 - c. **Refunds and Reimbursements.** Notwithstanding any provision herein to the contrary, Seller confirms and agrees that, in the event Seller cannot comply with the terms of the Contract, or in the event a title defect exists, other than the "Permitted Exceptions", as that term is defined herein, for which Seller is unable to provide a cure, then Purchaser shall be entitled to a refund of any and all Earnest Money deposits.

3. **TITLE. Real Property.** The title to the Property to be delivered by the Seller to the Purchaser will be by general warranty deed which shall convey the Property in fee simple, subject to the following:

- A. General real estate taxes for 2022, and subsequent years.
- B. Conditions, covenants, restrictions, and easements of record, including, without limitation, those appearing on any plats.
- C. Governmental statutes, ordinances, rules and regulations.
- D. The "*Permitted Exceptions*" as defined below.
 - (i) Any monetary encumbrances, which shall be satisfied at the Closing.
 - (ii) Any other matters effecting title which are recorded in the public records of Horry County, South Carolina, specifically including any master deed, declaration of covenants, conditions and restrictions.

4. **INSPECTION OF THE PROPERTY.** From the Effective Date up and until 5:00 PM on April 18, 2022 (the "*Inspection Period*"), Purchaser, upon providing written notice to the Seller as to the scheduled time for any such activities, shall have the right and privilege to have independent contractors or consultants inspect, survey and/or test the Property to determine its condition, including but limited to tests or assessments as to the environmental condition of the Property, examination of equipment, supplies and materials, and review of all notes and liens. In the event Purchaser should elect, for any reason, or no reason, to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser may do so and shall be entitled to the full return of the Earnest Money.

5. **INTENTIONALLY DELETED.**

6. **CONDITION OF THE PROPERTY.** Seller represents and warrants that the Property is in compliance with all applicable permits, regulations, ordinances and other requirements of any governmental, or quasi-governmental agency having jurisdiction over the Property. In addition, Seller shall provide to Purchaser, within Ten (10) days of the Effective Date, copies of all maps, plats, studies, reports, appraisals, title insurance policies, property tax bills, personal property inventories, permits, approvals, leases, contracts and other information related to the Property which is the subject of this Agreement, which Seller possesses or may reasonably acquire from its agents, employees, contractors and consultants. Purchaser acknowledges that such information is being provided by Seller for information purposes only and without warranty as to the accuracy or completeness of such information.

7. **DELIVERY OF DEED, RECORDING COSTS, AND CLOSING COSTS.** The cost of preparation of the deed, general assignment, assignment of the Subway Lease, and the applicable recording fee based upon the Purchase Price of the Property shall be paid by Seller. The balance of costs for recording the deed, bill of sale, assignment of notes and liens, title examination

and all other loan closing costs, title insurance premiums and recording costs shall be paid by the Purchaser.

8. **TAXES, ASSESSMENTS, ETC.** Taxes and assessments, if applicable, shall be prorated as of the date of Closing based upon the latest available assessment and tax information on the Property. Roll-back taxes, if applicable shall be paid by the Purchaser.

9. **RISK OF LOSS.** Risk of loss or other damage to the Property and the responsibility and control of same shall remain with the Seller until delivery of the deed. In the event of damage to the Property, Purchaser shall have the option of either terminating this Agreement and receiving a refund of the Earnest Money or closing with an assignment of all insurance proceeds.

10. **BROKERAGE COMMISSION.** Seller warrants and represents to Purchaser that Seller has dealt with no real estate agent or broker with regards to this transaction, and Seller shall also indemnify, defend and hold Purchaser harmless from any real estate commission or claim therefore by any person claiming to have acted for or on behalf of Seller.

Purchaser warrants and represents to Seller that it has dealt with no real estate agents or brokers with regard to this transaction, and Purchaser shall indemnify, defend and hold Seller harmless from any real estate commission or claim therefore by any person claiming to have acted for or on behalf of Purchaser or claiming to have brought the Property to Purchaser's attention.

11. **CLOSING.** This transaction will be closed on or before 5:00 PM on May 15, 2022 (the "*Closing*").

12. **PRORATION OF INCOME AND EXPENSES.** In the event this transaction closes on a day that is not the last day of a month, income for the month, if any, shall be pro-rated between Seller and Purchaser. To the extent Seller has pre-paid expenses beyond the month in which Closing occurs, Purchaser shall pay to Seller at Closing, an additional amount equal to such pre-paid expenses.

13. **POSSESSION.** Seller shall deliver possession at Closing.

14. **DEFAULT.** In the event that either party fails to perform its respective obligations hereunder, except as excused by the other's default, the party claiming default will make written demand for performance. If the Seller fails to perform (for any reason other than an inability to convey the quality of title set forth in Paragraph 3 of this Agreement and fails to comply with the written demand within ten (10) days after notice thereof, the Purchaser may elect to either (i) sue for specific performance on the part of Seller, or (ii) terminate this Agreement and receive a refund of all Earnest Money and any other deposits or fees paid hereunder. If the Purchaser fails to perform and fails to comply with the written demand within ten (10) days after notice thereof, the Seller will have the right to terminate this Agreement and Seller will retain the non-refundable Earnest Money.

15. **ASSIGNMENT.** Purchaser shall have the right to assign this Agreement, without the consent of Seller. Such assignment shall be effective upon Purchaser providing Seller with notice of such assignment, together with a copy of the assignment form, which shall include the name and physical address of the assignee, and assigning all of Purchaser's rights in this Agreement, including any Earnest Money deposit, or any other fees or deposits, to such assignee. For purposes of this Agreement, upon such assignment, the assignee shall thereafter be deemed the Purchaser.

16. **SURVEY.** Purchaser, at Purchaser's expense, may elect to have a boundary survey of the Property prepared, for approval by Seller, such approval not to be unreasonably withheld, which sets forth the boundary of the Property, easements, restricted areas and roadways, to be approved by the City of Myrtle Beach, and recorded in the public records of Horry County, prior to the expiration of the Inspection Period (the "Survey"). The Survey, should Purchaser elect to prepare such, shall be the basis of the description for conveyance of the Property at Closing.

17. **APPLICABLE LAW.** This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

18. **CONDEMNATION.** If any part of the Property shall be condemned or otherwise taken through any power of eminent domain prior to Closing and the Property can still be used for its intended purpose, the Purchase Price shall be reduced pro rata by the amount of Property so taken. If all of the Property or such amount is taken as would prevent the Property from being used for its intended use, then such action shall terminate the Agreement, the earnest money shall be refunded to Purchaser, and the contract shall be completely void, relieving both Purchaser and Seller of all duties and/or obligations hereunder.

19. **EARNEST MONEY.** Escrow Agent does not guarantee payment of a check or checks accepted as Earnest Money. Purchaser and Seller authorize the Escrow Agent to hold the Earnest Money in a trust account, and to disburse the same in accordance with the terms hereof and hereby release Escrow Agent for liability associated with said action. After deposit, the Earnest Money shall be non-refundable, other than in accordance with the terms of this Agreement.

20. **GENERAL PROVISIONS:**

- a. This written Agreement, including all Exhibits attached hereto and documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties or covenants not contained herein.
- b. This Agreement may be amended only by a written memorandum subsequently executed by all of the parties hereto.
- c. No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act or default.

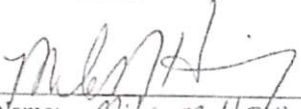
- d. Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday or legal holiday.
- e. In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.
- f. Headings of paragraphs are for convenience of reference only and shall not be construed as a part of this Agreement.
- g. This Agreement is binding on the parties hereto and on their several successors, heirs, executors or administrators, as the case may be.
- h. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as but a single instrument.
- i. The Effective Date shall be the date upon which both parties have executed this Agreement.

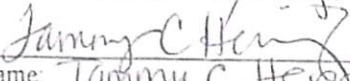
[Signatures appear on the following page]


IN WITNESS WHEREOF, the Seller and Purchaser have executed this Agreement the date below their respective signatures.

SELLER:

WITNESSES:


Name: Miles M. Herring


Name: Tammy C. Herring

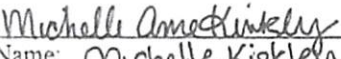
By: 
Joanne W. Herring, Trustee U/T/A
dated April 17, 2001

PURCHASER:

SPE SEVENTH AVENUE MYRTLE
BEACH, LLC, a South Carolina limited
liability company

WITNESSES:


Name: Pamela Smith


Name: Michelle Kiekeley


By: 
Name: Peter S. Smith
Title: Manager

EXHIBIT "A"

Description of Property

ALL AND SINGULAR all those certain pieces, parcels or lots of land, and improvements thereon, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being known and designated as **LOTS NUMBER SIXTEEN (16) AND SEVENTEEN (17) OF BLOCK NUMBER THIRTY-ONE (31) OF THE HOTEL SECTION OF MRYTLE BEACH**, as is shown on a map made by Stanley H. Wright, Engineer, dated June and July 1926 and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page 84, reference to which is craved as forming a part of these presents.

DERIVATION: This being the same property conveyed to Elbert N. Herring as Trustee U/T/A dated April 17, 2001 by Deed of Elbert N. Herring and Joanne W. Herring, recorded April 18, 2001 in Deed Book 2362 at Page 1137, in the public records of Horry County, South Carolina.

TMS/PIN No.: 181-07-03-008/444-01-04-0006

STATE OF SOUTH CAROLINA)
) CONTRACT EXTENSION
COUNTY OF HORRY)

WHEREAS, Joanne W. Herring as Trustee U/T/A dated April 17, 2001 (the "Seller"), and SPE Seventh Avenue Myrtle Beach, LLC (the "Buyer"), entered into an Agreement of Sale and Purchase (the "Agreement") dated February 3, 2022 for the sale and purchase of property known as Lots 16 and 17 of Block 31, of the Hotel Section of Myrtle Beach PIN #444-01-04-0006, Horry County, South Carolina; and

WHEREAS, the Agreement provided an Inspection Period of the property which expires on April 18, 2022; and

WHEREAS, Buyer is unable to complete its inspection, including resolving issues related the current lease encumbering the property and has requested an extension of time to complete the inspection of the property and determine if the issues related to the lease can be resolved.

NOW THEREFORE, it is hereby agreed that the contract is hereby amended to extend the expiration of the Inspection Period as follows:

The Inspection Period shall now expire at 5 PM, EDT on June 20, 2022.

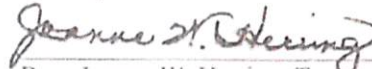
Except as stated above, all terms and conditions of said contract shall remain in full force and effect.

[Signatures appear on the following page]

Effective date: April 7, 2022


SELLER

Joanne W. Herring as Trustee U/T/A
dated April 17, 2001


By: Joanne W. Herring, Trustee

Buyer:

SPE Seventh Avenue Myrtle Beach,
LLC


By: Robert S. Guyton, Registered
Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

SECOND
CONTRACT EXTENSION

WHEREAS, Joanne W. Herring as Trustee U/T/A dated April 17, 2001 (the "Seller"), and SPE Seventh Avenue Myrtle Beach, LLC (the "Buyer"), entered into an Agreement of Sale and Purchase (the "Agreement") dated February 3, 2022 for the sale and purchase of property known as Lots 16 and 17 of Block 31, of the Hotel Section of Myrtle Beach PIN #444-01-04-0006, Horry County, South Carolina; and

WHEREAS, the Seller and Buyer entered into a Contract Extension extending the Inspection Period of the Agreement; and

WHEREAS, Seller and Buyer wish to execute the Second Contract Extension to extend the closing date of the transaction upon completion of the Inspection Period pursuant to the Agreement and Contract Extension.

NOW THEREFORE, it is hereby agreed that the Agreement is hereby amended to extend the Closing Date as follows:

Closing shall occur on or before June 30, 2022.

Except as stated above, all terms and conditions of said contract shall remain in full force and effect.

(Signatures appear on the following page.)

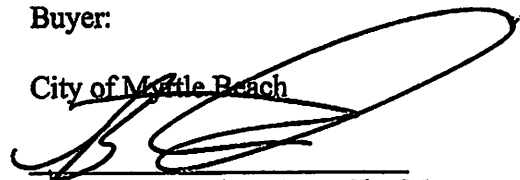
Effective date: May 31, 2022

SELLER:

Joanne W. Herring as Trustee U/T/A
dated April 17, 2001

Buyer:

City of Myrtle Beach

A large, stylized handwritten signature in black ink, appearing to be 'BT', is written over the text 'City of Myrtle Beach'.

By: Brian Tucker, Asst. City Mgr.