

March 28, 2023 – 1st Reading

1 **2023-20 (1ST READING): TO AMEND ORDINANCE 2022-40 AUTHORIZING THE**
2 **SALE OF 21.6 ACRES, A PORTION OF TMS 1730004170 TO MHI CAPITAL, LLC**
3 **TO AID IN CONSTRUCTION OF THE PROPOSED SURF PARK**

4 **Applicant/Purpose:** Staff / to amend ordinance 2022-40 authorizing the sale of 21.6 acres, a
5 portion of TMS 1730004170 to MHI Capital for a proposed surf park.

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7 **Brief:**

- 8 • Council approved Ordinance 2022-40 on September 27, 2022.
- 9 • Ordinance 2022-40 authorized the execution of Purchase agreement to sell 21.6 acres
10 to MHI Capital, Inc. for \$4.5 Million for the development and construction of a surf park
- 11 • The Buyers have proposed five changes to the current contract.
 - 12 ○ Assignment from MHI Capital, LLC to Surfworks Land Holdings, LLC.
 - 13 ○ Extend closing to October 9, 2023.
 - 14 ○ Increase Earnest Money to \$150,000 which will be immediately non-refundable.
 - 15 ○ Require that the Buyer provide proof of \$54 Million in legally binding
 - 16 commitments from an SEC regulated Fund.
 - 17 ○ Replace the Donation Clause with only a Right of Repurchase.

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19 **Issues:**

- 20 • The project is still on schedule. The developer is continuing with design, engineering
21 and permitting. The extension is solely to allow the multiple investors to make final
22 arrangements.
- 23 • Staff is not in favor of closing on the property until all details related to ownership and
24 funding are completely satisfied.

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26 **Public Notification:** Normal meeting notification.

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28 **Alternatives:** Do not amend and allow contract to terminate.

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30 **Financial Impact:** The City will sell the property for \$4,500,000 at a later date.

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32 **Manager's Recommendation:**

- 33 • I recommend 1st reading (3.28.23)

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35 **Attachment(s):** Proposed ordinance, contract extension

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**CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA**

**TO AMEND ORDINANCE 2022-40
AUTHORIZING THE SALE OF 21.6 ACRES,
A PORTION OF TMS 1730004170 TO MHI
CAPITAL, LLC TO AID IN CONSTRUCTION
OF THE PROPOSED SURF PARK**

WHEREAS, the City Council approved ordinance 2022-40 on September 27, 2022 authorizing execution of a Purchase Agreement to sale of a portion of TMS 1730004170 to MHI Capital for \$4.5 Million to close no later than March 15, 2023 for the development and construction of a surf park;

WHEREAS, Buyer and Seller have discussed necessary modifications to the original Agreement and summarized in the Contract Extension, Amendment and Ratification document which is attached as Exhibit A, which are necessary to the success of the anticipated project;

NOW, THEREFORE IT BE ORDAINED the City Manager and Assistant City Manager, or either one of them, acting alone, are hereby authorized and directed to execute, acknowledge and deliver the Contract Extension Amendment and Ratification in the name of and on behalf of the City. The Contract Extension Amendment and Ratification is to be in substantially the form attached to this Ordinance as Exhibit A, with such changes as shall be approved by the City Manager or Assistant City Manager, or either one of them, acting alone, such person's or persons' execution and delivery thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the Purchase Agreement now before this meeting.

This ordinance is effective upon second reading.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1st READING: 3-28-2023

2nd READING:

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

CONTRACT EXTENSION, AMENDMENT AND
RATIFICATION

WHEREAS, The City of Myrtle Beach, (the "Seller" or "COMB"), and MHI Capital, LLC, a Wyoming limited liability company (the "Buyers"), entered into an Agreement for Purchase and Sale (the "Agreement") for the sale and purchase of 21.6 acres of land in Myrtle Beach, Horry County, identified as a portion of PIN #42400000006, South Carolina as Amended; and

WHEREAS, MHI Capital, LLC assigned the Agreement to Surfworks Land Holdings, LLC a South Carolina Limited Liability Company, which assignment was consented to by the Seller on _____, 2023.

WHEREAS, Section 10 of the Agreement as amended provided for a closing date of on or before January 13, 2023; and

WHEREAS, Buyer gave notice and exercised its both of its right to extend the contract for up to thirty (30) days each, which made the closing date on or before March 15, 2023; and

WHEREAS, Buyer and Seller have discussed necessary modifications to the Agreement, which are necessary to the success of the anticipated project.

NOW THEREFORE, the Buyer and Seller agree to extend for up to an additional one hundred and eighty days (180) days. The Parties agree that pursuant to this extension the transaction must close on or before the first business day after one hundred eighty (180) days from April 11, 2023 which would be October 9, 2023.

IT IS AGREED THAT THE AGREEMENT IS MODIFIED AND AMENDED AS FOLLOWS:

Section 3. Earnest Money shall be deleted and amended as follows:

Section 3. Earnest Money: On or before May 6, 2023 the Buyer shall deposit with the attorney for the Seller, Daniel J. MacDonald, MacDonald and Hicks, P.A. Trust Account "Escrow Agent", One

Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars earnest money, which shall be non-refundable, except in the event of default by the Seller or otherwise in accordance with this Agreement; and shall be applicable to the Purchase Price.

Section 10.1 Time and Place is deleted in its entirety and replaced with the following:

Time and Place. Provided that all conditions set forth in this Agreement are theretofore fully satisfied or performed, Closing shall be held at the offices of Bellamy Law Firm, P.A., on or before October 9, 2023 (the "Closing Date").

Section 19.1 (b) is deleted in its entirety and replaced with the following:

19.1 (b) At closing Buyer shall have in place and provide proof of Fifty-Four Million (\$54,000,000.00) Dollars US of legally binding funding, which funding shall be to the reasonable satisfaction of the Seller and may include escrowed funds, or legally binding commitments from an SEC regulated fund.

Section 19.4 (sic 20.4) Donation of Property shall be deleted in its entirety and replaced with the following:

Section 19.4 (sic 20.4) Right of Repurchase. Donation of Property. If no redevelopment plan is approved or if a redevelopment plan is approved but Buyer fails to comply with the agreed construction schedule, Buyer agrees, at its own expense, to return the Property to clear and level ground free of hazardous waste or contaminants, with the exception of (1) any soils that were on-site prior to development (2) the amphitheater and its infrastructure (3) and the parking lots. The Seller shall have a right to repurchase the Property at the original purchase price. Should the Buyer, its assigns or successors fail to return the property to the condition required herein, the Seller shall obtain an estimate of the costs to return the property to clear and level ground and deduct the amount of the estimated costs from the purchase price. The Seller shall have the right to enter the property to inspect and test to determine the steps and methods required to return the property to clear and level ground, without any hazardous waste or contaminants.

Except for the terms specifically amended or extended in this Contract Extension, Amendment, and Ratification all provisions of the Agreement remain in full force and effect.

RATIFICATION. The parties hereby ratify the Agreement as amended by this Contract Extension, Amendment, and Ratification as being a binding agreement.

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

Effective date: _____, 2023

SELLER:

The City of Myrtle Beach

By:
Its:

Buyer:

MHI Capital, LLC

By: _____

Its: _____