2026-58 (1ST READING): AUTHORIZING AN INCENTIVE AGREEMENT BETWEEEN PROJECT WGMB AND THE CITY OF MYRTLE BEACH RELATING TO THE DEVELOPMENT OF A SURF PARK HOSPITALITY PROJECT AND OTHER MATTERS RELATED THERETO

Applicant/Purpose: An Incentive Agreement between Project WGBM and the City of Myrtle Beach

Brief:

- **$150 Million Minimum Private Investment**: The Company is required to develop and operate the proposed Project, including a minimum 150-room hotel, at least 20,000-sf of food/beverage, retail and tourism uses, a Wavegarden surf lagoon of at least 5.5-acres, and related hospitality space, with a minimum capital investment of $150M.
- **$20 Million Incentive Commitment with Multiple Funding Options:** The City commits to provide or facilitate up to $20 million in Incentive Funding to reimburse eligible Project development and construction costs. The funding may be provided through SSRB proceeds, Multi-County Business Park (MCBP) funds, legally available City funds, other lawful sources, or a combination thereof. The Agreement is structured so that SSRB, MCBP, or other authorized funding reduces the Potential Grant Funding dollar-for-dollar, and total Incentive Funding from all sources may never exceed $20 million.
- **Alternative Funding Reduces City Exposure**: SSRB, MCBP, or other authorized funding obtained for the Project reduces the Potential Grant Funding dollar-for-dollar. Any City funds previously designated that are replaced by another funding source are released back to the applicable City fund or account.
- **No Incentive Payment Until Project is at Least 80% Complete**: No Incentive Funding is disbursed until the Project reaches at least 80% completion, the Company demonstrates that financing and equity necessary to finish and open the Project are available, at least $125 million in private capital investment has been made, required governmental approvals are in place, and the other conditions of the Agreement have been satisfied.
- **Reimbursement Only – Not Upfront Funding**: Incentive Funding is paid in a single payment and only as reimbursement for documented Eligible Project Costs already incurred. Funds cannot be used for owner distributions, return of equity, operating expenses, or unrelated purposes, and the City retains documentation, review, and audit rights.
- **Firm Development Milestones & Five-Year Clawback**: Construction must commence by July 1, 2027, reach Substantial Completion by December 31, 2029, and open to the public by March 1, 2030. If Incentive Funding has been paid and the Project fails to complete or open, 100% is repayable. After opening, the Project must operate for five years; permanent cessation of the surf lagoon or substantially all Project operations during that period triggers a monthly prorated repayment of the Incentive Funding.

Issues:

- **Funding Source / City Financial Exposure**: The Agreement provides for up to $20 million in Incentive Funding, with the ultimate funding source still being finalized. Staff continues to pursue SSRB and MCBP funding with Horry County to reduce or replace the amount that may otherwise need to be provided from City sources. Any SSRB, MCBP, or other authorized funding reduces the City's Potential Grant Funding dollar-for-dollar.

- **Future Appropriation / Legal Review**: The current draft contemplates the use of legally available City funds if alternative funding sources are insufficient. The City's funding obligations, including the relationship between the Incentive Agreement and City Council's future appropriation authority, will require additional review by the City Attorney and Bond Counsel prior to second reading.
- **Project Financing and Execution Risk**: The Project represents a minimum $150 million private investment and will require substantial private financing and equity. The Agreement mitigates this risk by requiring evidence of sufficient financing, at least $125 million in private investment, 80% construction completion, required governmental approvals, and other conditions before any City Incentive Funding may be disbursed.
- **Long-Term Performance / Recovery of Incentive**: Once funding is disbursed, the City's financial protection depends on the Project being completed, opened, and remaining operational. The Agreement requires full repayment if the Project fails to complete or open by the required deadlines and provides a prorated clawback if the surf lagoon or substantially all Project operations permanently cease during the five-year Operating Period.

Public Notification: Normal meeting notification

Alternatives: Approve or Deny Ordinance

Financial Impact: The City's maximum financial commitment is $20 million, with SSRB, MCBP, or other authorized funding sources reducing the amount required from City funds on a dollar-for-dollar basis.

Manager's Recommendation:

- I recommend approval 1st reading (9.8.26)

Attachment(s):

- Ordinance
- Incentive Agreement

ORDINANCE 2026-58

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AUTHORIZING AN INCENTIVE AGREEMENT BETWEEN PROJECT WGMB AND THE CITY OF MYRTLE BEACH RELATING TO THE DEVELOPMENT OF A SURF PARK HOSPITALITY PROJECT AND OTHER MATTERS RELATED THERETO

WHEREAS, the City of Myrtle Beach, South Carolina (the "City") was created as a municipal corporation under the laws of the State of South Carolina (the "State") and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities; and

WHEREAS, a developer entity currently identified as "Project WGMB" and/or its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company"), which developer entity will be formed prior to and identified in this Ordinance for second reading, has expressed a desire to invest in the development of a hotel, food and beverage, retail, tourism, surf lagoon, and hospitality space in the City, which is anticipated to provide both direct benefits to the City in the form of capital investment and job creation as well as indirect benefits in serving as a catalyst for additional investment and job creation in the City (the "Project"); and

WHEREAS, the Company has requested certain incentives from the City to support the development of the Project; and

WHEREAS, the City, acting through the City Council of the City of Myrtle Beach, the governing body of the City (the "Council"), is duly empowered to expend public funds for public purposes; and

WHEREAS, Council is mindful of the criteria set forth by the South Carolina Supreme Court in <u>Byrd v. Florence County</u> in determining when an economic development project constitutes a public purpose; in that case, as further developed in <u>Nichols v. South Carolina Research Authority</u>, the Court further developed a four-point standard for local governments providing economic development incentives: (1) the ultimate goal or benefit to the public; (2) whether public or private parties will be the primary beneficiaries; (3) the speculative nature of the project; and (4) the probability that the public interest will be served (collectively, the "Nichols Test"); and

WHEREAS, the City desires to enter into an incentive agreement (the "Incentive Agreement") with the Company whereby, in exchange for the construction by the Company of a hotel consisting of at least 150 keys, at least 20,000 square feet of food and beverage, retail, and tourism facilities, a Wavegarden surf lagoon of not less than 5.5 acres, and hospitality space, the City will provide or facilitate direct cash grants or allocations of existing fund balances pursuant to the MCBP Agreement (as defined below) in the total amount of $20,000,000 in the form and pursuant to the schedule set forth in the Incentive Agreement; and

WHEREAS, an independent third-party economic and fiscal impact analysis of the Project conducted by a consultant selected by the City (the "FIA") found that the Project is anticipated to generate $10.5 million of total annual employee income, $58.1 million in total annual on-site spending, $12.7 million in additional off-site spending, 44,800 annual occupied hotel rooms on-site, 364,000 annual visitors to the Project, all resulting in $3.2 million in annual revenues to the City, $2.6 million in annual revenues to Horry County, and $9 million in annual revenues to the State of South Carolina; and

WHEREAS, the Incentive Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the City for the purposes intended; and

WHEREAS, the City agrees, upon enactment of this Ordinance and a companion ordinance by Horry County Council, that any funds allocated for the repayment of debt intended to finance the acquisition of "Qualifying Public Infrastructure" as defined in that certain Agreement to Develop a Multi-County Business Park in Horry County with Certain Area Inside the City of Myrtle Beach, originally dated December 5, 2000, as the same has been amended from time to time (the "MCBP Agreement"), to the extent such funds are in excess of the amounts required to make debt service payments with respect to any outstanding debt for which such funds were pledged as security, and to the extent the release of such funds shall not give rise to any event of default under any associated debt instruments, are hereby approved for release and payment into a fund to be established for the payment of the grant funding as described herein and in further detail in the Incentive Agreement, such fund to be held by either the City or County and used solely for the purposes described in the Incentive Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Myrtle Beach as follows:

Section 1. The Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the City by generating $10.5 million of total annual employee income, $58.1 million in total annual on-site spending, $12.7 million in additional off-site spending, 44,800 annual occupied hotel rooms on-site, 364,000 annual visitors to the Project, all resulting in $3.2 million in annual revenues to the City, $2.6 million in annual revenues to Horry County, and $9 million in annual revenues to the State of South Carolina pursuant to the findings of the third-party, independent FIA; and; (ii) the Project represents a world-class tourism facility is a significant priority and serves a significant public purpose in promoting tourism, which increases economic opportunities for citizens and businesses in the City; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; (iv) the inducement of the location of the Project within City is of paramount importance and the benefits of the Project to the public are greater than the cost; and (v) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the City, and all other criteria prescribed by law.

Section 2.

A. The City reaffirms the criteria set forth by the South Carolina Supreme Court in the Nichols Test. The City, in providing incentives to the Company, complies with the provisions of Nichols Test as described in Section 2(B) and (C) below.

B. While recognizing that the provision of incentives to private developers has some benefit to the private developers, the primary purpose of the incentives described herein is to benefit the citizens of the City by attracting a world-class tourism facility, thereby drawing significant additional visitors and thus bringing about (i) demonstrable positive direct economic impact upon the City, including an estimated $3.2 million in annual revenues for the City (as well as an additional $2.6 million in annual revenues for Horry County and an additional $9 million in annual revenues for the State of South Carolina (through the imposition of new taxes and fees), and (ii) indirect economic impact upon the City by attracting additional businesses, investment, and patronage into the City, and through enhancing quality of life and enjoyment issues. The City has therefore applied the Nichols Test to the Project and has determined that points 1 and 2 are satisfied.

C. The Project proposed by the Company, while certainly involving risk from its standpoint, carries with it assurances of success to the City since the Company has a proven ability to develop other successful projects across the country in an economically feasible manner. In addition, with respect to points 3 and 4 of the Nichols Test, the City has determined to provide the requested financial support on a conditional basis in order to ensure that the public interest will be served. Specifically, funding shall not be released to the Project until the Project is at least 80% complete, thereby significantly reducing the risk that would be involved in funding being released on a speculative project.

<u>Section 3</u>. The form, terms, and provisions of the Incentive Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Incentive Agreement were set out in this Ordinance in its entirety. The City Manager is hereby authorized, empowered, and directed to execute, acknowledge, and deliver the Incentive Agreement in the name of and on behalf of the City, and thereupon to cause the Incentive Agreement to be delivered to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the City and as shall be approved by the officials of the City executing the same, upon the advice of Counsel to the City, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

<u>Section 4</u>. If any one or more of the provisions this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

<u>Section 5</u>. Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or Ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

<u>Section 6</u>. All resolutions, ordinances, or parts thereof inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency. This Ordinance shall take effect immediately upon its enactment by the Council.

BE IT ORDAINED by the City Council of the City of Myrtle Beach in meeting duly assembling this ____ day of __________________, 2026.

CITY OF MYRTLE BEACH, SOUTH CAROLINA

____
MARK KRUEA, MAYOR

(SEAL)

ATTEST:

____
JENNIFER ADKINS, CITY CLERK

1st Reading: 9-8-2026
2nd Reading:

STATE OF SOUTH CAROLINA)
) INCENTIVE AGREEMENT
CITY OF MYRTLE BEACH)

This Incentive Agreement (the "Incentive Agreement") is entered into this ____ day of _______________, 2026 by and between the City of Myrtle Beach, South Carolina (the "City") and PROJECT [_______] and/or its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company").

RECITALS

WHEREAS, the City is a municipality created under the laws of the State of South Carolina (the "State") and as such possess all general powers granted by the Constitution and statutes of the State to municipalities; and

WHEREAS, the Company ("Project WGMB") has expressed a desire to invest in the development of a hotel, food and beverage, retail, tourism, surf lagoon, and hospitality space in the City, which is anticipated to provide both direct benefits to the City in the form of capital investment and job creation as well as indirect benefits in serving as a catalyst for additional investment and job creation in the City (the "Project"); and

WHEREAS, the Company has requested certain incentives from the City to support the development of the Project; and

WHEREAS, an independent third-party economic and fiscal impact analysis of the Project conducted by a consultant selected by the City (the "FIA") identifies substantial anticipated economic and fiscal benefits associated with the Project, including significant private capital investment, employment, tourism, taxable sales, accommodations activity, and direct and indirect revenues to the City, Horry County, and the State of South Carolina; and

WHEREAS, the City, acting through the City Council of the City of Myrtle Beach, the governing body of the City (the "Council"), is duly empowered to expend public funds for public purposes, and pursuant to an Ordinance of even date herewith, has authorized and approved the execution of this Incentive Agreement; and

WHEREAS, the City acknowledges that the Company is relying on the commitments set forth herein in making its decision to locate the Project within the City, and the Company acknowledges that the City is relying on the representations set forth herein in making its decision to offer this inducement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

COMPANY COMMITMENTS

1.1 **The Project**. The Company shall construct and place in service a hotel consisting of at least 150 keys, at least 20,000 square feet of food and beverage, retail, and tourism facilities, a Wavegarden surf lagoon of not less than 5.5 acres, and hospitality space. The Company shall construct, complete, open, and continuously operate the Project substantially in accordance with the plans and Project description presented to the City and upon which the City relied in approving the Incentive. No material reduction in the scope of the Project shall be permitted without prior written approval of the City.

1.2 **Minimum Private Investment.** The Company shall make or cause to be made a minimum private capital investment in the Project of not less than One Hundred Fifty Million Dollars ($150,000,000) (the "Minimum Investment").

1.3 **Eligible Project Costs.** "Eligible Project Costs" means costs actually incurred in connection with the development, design, engineering, permitting, construction, equipping, and completion of the Project, including related infrastructure and capital costs, but excluding operating expenses, distributions or payments to equity owners, repayment or return of equity contributions, and other costs not directly related to the development and construction of the Project; provided, however, that Eligible Project Costs shall in all events be limited to costs that may lawfully be funded or reimbursed from the applicable source of Incentive Funding.

ARTICLE II

INCENTIVE FUNDING; TERMS AND CONDITIONS

2.1 **Incentive Funding**. Subject to all terms, conditions, and limitations of this Incentive Agreement, the City hereby commits to provide or facilitate economic development funding in the aggregate amount of Twenty Million Dollars ($20,000,000) for reimbursement of Eligible Project Costs (the "Incentive Funding"). The Incentive Funding may be provided through the Potential Grant described in Section 2.2, proceeds of one or more SSRBs, funds available pursuant to an existing MCBP arrangement, or any combination thereof, as further provided herein.

2.1.1 Under no circumstances shall the aggregate Incentive Funding provided to or for the benefit of the Company from all sources exceed Twenty Million Dollars ($20,000,000).

2.2 **Potential Grant Funding.** In order to evidence the City's commitment to provide the Incentive Funding pending completion of the anticipated SSRB and other financing arrangements, the City hereby agrees to provide an economic development grant in an amount of up to Twenty Million Dollars ($20,000,000) (the "Potential Grant Funding"), subject to the terms, conditions, and limitations of this Incentive Agreement. The Potential Grant Funding is intended to serve as a funding commitment for the Project and as an alternative source of the Incentive Funding to the extent the Incentive Funding is not otherwise provided through SSRB proceeds, MCBP funds, or another lawful funding source.

2.2.1 The City may satisfy its obligation to provide the Incentive Funding through (a) proceeds of one or more SSRBs issued by the County; (b) funds lawfully available pursuant to an existing MCBP arrangement; (c) City funds lawfully appropriated or otherwise available for such purpose; and/or (d) any other lawful funding source approved by the City.

2.2.2 To the extent sufficient SSRB proceeds, MCBP funds, or other authorized funding sources have not been obtained or committed to provide the Incentive Funding, the City shall, subject to applicable law and the terms of this Incentive Agreement, take such lawful actions as necessary to appropriate, reserve, designate, or otherwise identify sufficient legally available City funds to satisfy the remaining amount of the Potential Grant Funding. Any funds so appropriated, reserved, designated, or identified shall remain funds of the City, shall not constitute property of the Company, and shall not be subject to disbursement except in accordance with Sections 2.3 and 2.4 of this Incentive Agreement. The City's obligations under this Section shall at all times remain subject to the Company's compliance with this Incentive Agreement and the City's rights and remedies hereunder.

2.2.3 To the extent SSRB proceeds, MCBP funds, or another authorized funding source becomes available to provide any portion of the Incentive Funding, the amount otherwise required to be provided through the Potential Grant Funding shall automatically be reduced on a dollar-for-dollar basis. Any City funds previously appropriated, reserved, allocated, deposited, or otherwise designated for the Potential Grant Funding that are replaced by such other funding source shall be released and returned to, or made available for use by, the applicable City fund, account, or revenue source, subject to applicable law.

2.2.4 The Potential Grant Funding, SSRB proceeds, MCBP funds, and any other funding provided pursuant to this Incentive Agreement constitute alternative or complementary sources of the same Incentive Funding and not separate incentives. Under no circumstances shall the aggregate amount provided to or for the benefit of the Company pursuant to this Incentive Agreement exceed Twenty Million Dollars ($20,000,000).

2.2.5 Notwithstanding the City's commitment to provide the Potential Grant Funding, no portion of the Potential Grant Funding or other Incentive Funding shall become due or payable to the Company, and the Company shall acquire no right, title, or interest in any funds appropriated, reserved, allocated, deposited, or otherwise designated by the City, unless and until the conditions precedent set forth in Section 2.3 have been satisfied or expressly waived by the City and the requirements of Section 2.4 have been satisfied.

2.2.6 The Company may provide this Incentive Agreement to its prospective lenders, investors, and other financing sources as evidence of the City's commitment to provide the Incentive Funding in accordance with the terms hereof; provided, however, that no such lender, investor, financing source, or other third party shall acquire any rights against the City under this Incentive Agreement.

2.3 **Conditions Precedent to Disbursement**. Notwithstanding anything in this Incentive Agreement to the contrary, the Company's right to receive any Incentive Funding shall be expressly conditioned upon satisfaction of each of the following conditions precedent, in form and substance reasonably satisfactory to the City. Furthermore, no Incentive Funding shall be disbursed, and no right of the Company to receive Incentive Funding shall vest, unless and until the foregoing conditions precedent have been satisfied or expressly waived in writing by the City:

2.3.1 The Company shall have commenced construction of the Project and the Project shall have achieved at least eighty percent (80%) completion ("Disbursement Completion Threshold"), as certified in writing by the architect of record and the general contractor for the Project;

2.3.2 The Company shall have provided evidence reasonably satisfactory to the City that all financing and equity commitments necessary to complete, open, and place the Project into operation have been obtained and remain available, including executed commitment letters, loan documents, equity commitments, or other evidence of funding reasonably requested by the City;

2.3.3 The Company shall have provided the City with an updated sources and uses statement demonstrating that sufficient committed funds are available to complete, open, and place the Project into operation;

2.3.4 The Company shall have made or caused to be made not less than One Hundred Twenty-Five Million Dollars ($125,000,000) in private capital investment in the Project, as evidenced by documentation reasonably satisfactory to the City;

2.3.5 All material governmental approvals, permits, site plan approvals, and other authorizations required from applicable authorities having jurisdiction for the construction and completion of the Project shall have been obtained and remain in full force and effect;

2.3.6 The Project, as constructed or then under construction, shall be materially consistent with the Project described in Article I of this Incentive Agreement, and there shall have been no material reduction in the scope of the Project without the prior written approval of the City;

2.3.7 The Company shall have incurred Eligible Project Costs in an amount equal to or greater than the Incentive Funding, as evidenced in accordance with Section 2.4;

2.3.8 No material default by the Company shall exist under this Incentive Agreement, and the Company shall certify that all representations, warranties, and material commitments made by the Company hereunder remain true and correct in all material respects;

2.3.9 The Company shall provide such additional certifications and documentation as may be reasonably requested by the City to establish satisfaction of the foregoing conditions and the Company's ability to complete and open the Project;

2.3.10 The Company shall have provided evidence reasonably satisfactory to the City that no material uncured default exists under the Project's primary construction financing documents and that no liens, claims, or other encumbrances exist that, in the reasonable judgment of the City, materially threaten the Company's ability to complete and open the Project, excluding permitted liens and ordinary-course construction liens being contested or resolved in good faith.

2.3.11 The Company shall provide the City with a copy of the fully executed construction contract for the Project, together with any material amendments or modifications thereto, identifying the general contractor, contract amount, scope of work, and other material terms. The City shall have the right to review such construction contract solely for purposes of confirming consistency with the Project, the Project budget, and the Company's obligations under this Incentive Agreement.

2.3.12 The Company shall provide the City with the then-current construction schedule for the Project, including the anticipated dates for completion of major construction milestones, substantial completion, issuance of applicable certificates of occupancy, and opening of the Project to the public. Such schedule shall demonstrate, to the reasonable satisfaction of the City, that the Project is anticipated to achieve the Project Milestones established pursuant to this Incentive Agreement.

2.3.13 The Company shall provide certificates of insurance or other evidence reasonably satisfactory to the City demonstrating that the Company, general contractor, and/or other applicable parties maintain the insurance coverage required for the construction and operation of the Project, including, as applicable, commercial general liability, workers' compensation, builder's risk, automobile liability, and such other coverage as is customarily maintained for a project of similar type and scale. Such insurance shall be maintained in accordance with applicable law and the requirements of the Project's construction and financing documents.

2.3.14 The Company shall provide the City with the then-current detailed construction and development budget for the Project, including costs incurred to date, remaining costs to complete, contingency amounts, and identification of material changes from the budget previously provided to the City.

2.4 **Reimbursement and Disbursement Procedures.** Upon satisfaction of all conditions precedent set forth in Section 2.3, the Company may submit to the City a written request for disbursement of the Incentive Funding (the "Reimbursement Request"). The Incentive Funding shall be disbursed in a single payment and shall constitute reimbursement solely for Eligible Project Costs previously incurred by or on behalf of the Company in connection with the development and construction of the Project.

2.4.1 The Reimbursement Request shall include documentation reasonably satisfactory to the City substantiating Eligible Project Costs in an amount equal to or greater than the Incentive Funding, including, as applicable, invoices, applications for payment, evidence of payment, lien waivers, certifications from the architect of record and general contractor, and such other supporting documentation as the City may reasonably request.

2.4.2 The City shall have the right to review the Reimbursement Request and all supporting documentation to confirm that (a) all conditions precedent set forth in Section 2.3 have been satisfied; (b) the costs submitted constitute Eligible Project Costs; (c) the Company has incurred Eligible Project Costs in an amount equal to or greater than the Incentive Funding; and (d) the Company is not then in material default under this Incentive Agreement.

2.4.3 Upon the City's determination that the requirements of Sections 2.3 and 2.4 have been satisfied, the City shall cause the Incentive Funding to be disbursed in a single payment to the Company, or, at the written direction of the Company and with the consent of the City, to such lender or other party as may be designated by the Company.

2.4.4 Incentive Funding shall be used solely as reimbursement for Eligible Project Costs and shall not be used for distributions to owners, members, partners, shareholders, or other equity holders of the Company, repayment or return of equity contributions, or for any purpose unrelated to the development and construction of the Project.

2.4.5 Disbursement of the Incentive Funding shall not constitute or be deemed a waiver or satisfaction of any continuing obligation of the Company under this Incentive Agreement, including the Company's obligations relating to completion and opening of the Project, continued operation of the Project, repayment of Incentive Funding, or any applicable clawback provisions.

2.4.6 The Company shall maintain complete and accurate records relating to the Eligible Project Costs and the use of the Incentive Funding for a period of five (5) years following disbursement. Upon reasonable notice, the City and its authorized representatives shall have the right to inspect and audit such records for purposes of confirming compliance with this Incentive Agreement.

2.5 **Project Milestones.** The Company shall diligently pursue the development, construction, completion, and opening of the Project and shall satisfy the following development milestones (collectively, the "Project Milestones"):

2.5.1 The Company shall commence construction of the Project no later than July 1, 2027 (the "Construction Commencement Deadline"). For purposes of this Incentive Agreement, "commence construction" shall mean the commencement of material on-site construction activities pursuant to applicable permits and the construction contract and shall not include demolition, site clearing, grading, temporary improvements, or other preliminary site work alone.

2.5.2 The Company shall achieve Substantial Completion of the Project no later than December 31, 2029 (the "Substantial Completion Deadline"). For purposes of this Section, "Substantial Completion" shall mean that the Project is sufficiently complete in accordance with the applicable plans and construction documents so that the Project may be used for its intended purpose, subject only to completion of customary punch-list items and other minor work that does not materially interfere with such use.

2.5.3 The Company shall obtain all material certificates of occupancy and other governmental approvals necessary to operate the Project and shall open the Project to the public and commence regular operations no later than March 1, 2030 (the "Opening Deadline").

2.5.4 If the Company fails to satisfy any Project Milestone by the applicable deadline, the City shall have no obligation to disburse any Incentive Funding not previously disbursed. If Incentive Funding has previously been disbursed and the Company thereafter fails to achieve Substantial Completion or open the Project by the applicable deadline, such failure shall constitute a default under this Incentive Agreement and shall subject the Incentive Funding to the repayment provisions set forth herein.

2.5.5 Upon written request by the Company demonstrating good cause, the City Manager may extend one or more Project Milestones for a period not to exceed twelve (12) months in the aggregate, provided that the Company is diligently pursuing completion of the Project and the City Manager determines that the extension does not materially increase the City's obligations or risks under this Incentive Agreement. Any extension beyond twelve (12) months in the aggregate shall require approval of City Council.

2.6 **Five-Year Operating Covenant and Clawback.** As a material condition of the City's agreement to provide the Incentive Funding, the Company shall complete and open the Project in accordance with Section 2.5 and shall thereafter continuously operate, or cause the Project to be operated, substantially for its intended purpose for a period of five (5) consecutive years following the Opening Date (the "Operating Period").

2.6.1 For purposes of this Incentive Agreement, the "Opening Date" shall mean the date on which the Project has obtained all material certificates of occupancy and other governmental approvals necessary for operation and has opened to the general public for regular operations.

2.6.2 If Incentive Funding has been disbursed and the Company thereafter fails to achieve Substantial Completion or fails to open the Project on or before the applicable deadlines established in Section 2.5, subject to any extensions permitted thereunder, the Company shall repay to the City one hundred percent (100%) of the Incentive Funding received.

2.6.3 If, following the Opening Date, the Company permanently ceases, or causes the permanent cessation of, the Wavegarden surf lagoon or substantially all operations of the Project prior to expiration of the Operating Period, the Company shall repay a prorated portion of the Incentive Funding based upon the number of full months the Project operated during the Operating Period.

The repayment amount shall be calculated as follows:

Repayment Amount = Incentive Funding Received × [(60 − Full Months of Operation) ÷ 60]

Upon completion of sixty (60) full months of operation, no repayment obligation shall remain under this Section 2.6 solely by reason of the expiration of the Operating Period.

2.6.4 A temporary interruption or suspension of operations resulting from casualty, natural disaster, repairs or maintenance, governmental order, force majeure, or other circumstances beyond the reasonable control of the Company shall not constitute a cessation of operations for purposes of this Section, provided that the Company diligently pursues restoration and resumption of operations.

2.6.5 During the Operating Period, within thirty (30) days following each anniversary of the Opening Date, the Company shall provide the City with a written certification, executed by an authorized representative of the Company, confirming that (a) the Project, including the Wavegarden surf lagoon, remains in regular operation substantially for its intended purpose; (b) the Company remains in material compliance with its continuing obligations under this Incentive Agreement; and (c) no event has occurred that would give rise to a repayment obligation pursuant to this Section. The Company shall provide such reasonable supporting documentation as the City may request to verify the foregoing.

2.6.6 The Company shall provide written notice to the City within ten (10) business days after becoming aware of any cessation of operations of the Wavegarden surf lagoon or substantially all operations of the Project, other than a temporary interruption permitted under this Section, or of any other event that the Company reasonably determines would give rise to a repayment obligation under this Section.

2.6.7 Any amount required to be repaid pursuant to this Section shall be due and payable to the City within sixty (60) days following written notice from the City specifying the event giving rise to the repayment obligation and the amount due. Any amount not paid when due shall accrue interest at the legal rate applicable to judgments under South Carolina law from the date payment was due until paid in full.

2.6.8 The obligations of the Company under this Section shall survive disbursement of the Incentive Funding and shall remain in effect until expiration of the Operating Period and satisfaction of any repayment obligation arising hereunder.

ARTICLE III

MISCELLANEOUS

3.1 **Applicable Law.** This Incentive Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with the laws of South Carolina, without regard to any conflict of law principles that would refer governance of this Incentive Agreement to any other state.

3.2 **Binding Effect of Agreement.** To the extent permitted by law, this Incentive Agreement represents binding and enforceable commitments between the City (including its constituent agencies and departments) and the Company.

3.3 **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Incentive Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Incentive Agreement.

3.4 **Events of Default.** Each of the following shall constitute an "Event of Default" by the Company under this Incentive Agreement:

3.4.1 failure by the Company to perform or observe any material covenant, obligation, or agreement required to be performed or observed by the Company under this Incentive Agreement;

3.4.2 any representation, certification, or material information furnished by the Company to the City in connection with this Incentive Agreement or any request for Incentive Funding proves to have been materially false or misleading when made;

3.4.3 use of any portion of the Incentive Funding for purposes other than Eligible Project Costs as permitted by this Incentive Agreement;

3.4.4 abandonment of the Project prior to completion and opening;

3.4.5 failure to satisfy the Project Milestones established pursuant to Section 2.5, subject to any extensions permitted thereunder;

3.4.6 failure to operate the Project during the Operating Period as required by Section 2.6; or

3.4.7 any assignment, transfer, sale, or other disposition in violation of Section 3.10 of this Incentive Agreement.

3.5 **Notice and Opportunity to Cure**. Except with respect to an obligation to make payment when due, misuse of Incentive Funding, abandonment of the Project, or another Event of Default that by its nature is not reasonably capable of cure, the City shall provide the Company written notice of an Event of Default and thirty (30) days from receipt of such notice to cure such Event of Default. If the Event of Default is not reasonably capable of cure within thirty (30) days, the Company shall have such additional time, not to exceed ninety (90) additional days, as may be reasonably necessary to complete the cure, provided that the Company commences corrective action within such thirty (30)-day period and thereafter diligently and continuously pursues such cure to completion.

3.6 **Remedies.** Upon the occurrence and continuation of an Event of Default following expiration of any applicable notice and cure period, the City may exercise any one or more of the following remedies: (a) suspend or terminate any obligation to provide undisbursed Incentive Funding; (b) release any City funds appropriated, allocated, reserved, restricted, or otherwise designated for the Incentive; (c) require repayment of Incentive Funding to the extent provided in Section 2.6 or otherwise required under this Incentive Agreement; and (d) exercise any other rights or remedies available at law or in equity. The City's rights and remedies shall be cumulative, and the exercise of any one remedy shall not preclude the exercise of any other available remedy.

3.7 **Further Actions**. Each party agrees, to the extent permitted by law, to take such reasonable actions and execute such additional documents as may be reasonably necessary to carry out its respective obligations under this Incentive Agreement.

3.8 **Counterparts**. This Incentive Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were on the same instrument.

3.9 **Termination by Company**. Prior to disbursement of any Incentive Funding, the Company may elect not to proceed with the Project and may terminate this Incentive Agreement upon written notice to the City, whereupon the City shall have no further obligation to provide or facilitate the Incentive Funding. Following disbursement of any Incentive Funding, the Company shall have no unilateral right to terminate this Incentive Agreement, and all continuing obligations of the Company, including the completion, operation, repayment, and clawback obligations set forth herein, shall remain in full force and effect.

3.10 **Assignment and Transfer.** Prior to expiration of the Operating Period, the Company shall not assign this Incentive Agreement or sell, transfer, convey, or otherwise dispose of all or substantially all of its interest in the Project without prior written notice to and consent of the City; provided, however, that the Company may assign this Incentive Agreement to an affiliate under common control with the Company upon prior written notice to the City, provided that such affiliate assumes in writing all obligations of the Company hereunder and the Company shall not be released from its obligations hereunder without the express written consent of the City.

3.10.1 Any proposed transferee of the Project during the Operating Period shall, as a condition of any City consent, assume in writing all remaining obligations under this Incentive Agreement, including the obligations relating to continued operation and repayment of Incentive Funding. No assignment or transfer shall relieve the Company of its obligations under this Incentive Agreement unless expressly agreed to in writing by the City.

3.11 **Cooperation.** The parties hereby agree, to the extent permitted by law, to cooperate with one another in carrying out the purposes of this Incentive Agreement and sustaining its enforceability.

3.12 Notices. All notices, requests, demands, consents, approvals, and other communications required or permitted under this Incentive Agreement shall be in writing and shall be deemed properly given when (a) delivered personally; (b) sent by nationally recognized overnight courier service; or (c) sent by certified or registered United States mail, return receipt requested, postage prepaid, in each case addressed to the applicable party at the address set forth below, or to such other address as either party may designate by written notice in accordance with this Section:

If to the City:
City of Myrtle Beach
Attn: City Manager
PO Drawer 2469
Myrtle Beach, South Carolina 29578-2468

With a copy to:
City Attorney
City of Myrtle Beach
PO Drawer 2469
Myrtle Beach, South Carolina 29578-2468

If to the Company:
[Company]
Attn: __________
[Address]

With a copy to:

[Company Counsel]
[Address]

Notices shall be effective upon actual delivery or refusal of delivery.

3.13 **Amendments and Waivers.** This Incentive Agreement may be amended, modified, or supplemented only by a written instrument executed by duly authorized representatives of the City and the Company and, where required by applicable law or the Ordinance, approved by Council. No waiver of any provision of this Incentive Agreement shall be effective unless made in writing by the party against whom the waiver is asserted. No waiver of any breach or default shall constitute a waiver of any other or subsequent breach or default, and no failure or delay by either party in exercising any right or remedy hereunder shall operate as a waiver thereof.

3.14 **Indemnification.** To the fullest extent permitted by law, the Company shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, employees, agents, and representatives (collectively, the "City Indemnified Parties") from and against any and all third-party claims, demands, actions, damages, losses, liabilities, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to (a) the development, design, financing, construction, ownership, operation, maintenance, repair, or use of the Project; (b) any act or omission of the Company or its affiliates, contractors, subcontractors, consultants, agents, employees, tenants, or operators in connection with the Project; (c) any bodily injury, death, or damage to property arising out of or relating to the Project; or (d) the Company's material breach of this Incentive Agreement, except in each case to the extent finally determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of a City Indemnified Party. The obligations of the Company under this Section shall survive the expiration or termination of this Incentive Agreement.

3.15 **No City Responsibility for Project.** Any review, inspection, receipt, approval, acceptance, or acknowledgment by the City of any plans, specifications, construction contracts, construction schedules, budgets, financing documents, insurance coverage, certifications, reimbursement requests, or other documents relating to the Project shall be solely for purposes of administering this Incentive Agreement and protecting the City's interests hereunder. No such action by the City shall constitute or be construed as a representation, warranty, approval, or determination by the City as to the design, engineering, construction, safety, financing, feasibility, operation, or legal compliance of the Project, nor shall any such action impose upon the City any responsibility or liability for the Project. The Company shall remain solely responsible for the development, design, financing, construction, completion, ownership, operation, maintenance, safety, and legal compliance of the Project.

3.16 **No Third-Party Beneficiaries.** Except for the City Indemnified Parties expressly identified in Section 3.14, nothing in this Incentive Agreement is intended to confer upon any person or entity other than the City and the Company any rights, remedies, obligations, or benefits under or by reason of this Incentive Agreement.

3.17 **Entire Agreement.** This Incentive Agreement, together with the Ordinance and any exhibits or other documents expressly incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions, representations, understandings, and agreements, whether oral or written, relating to such subject matter. Neither party has relied upon any representation, promise, or agreement not expressly set forth herein or in the documents expressly incorporated herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Incentive Agreement as of the day and year first above written.

CITY OF MYRTLE BEACH,
SOUTH CAROLINA

Signature: ______________________________
Name: __________________________________
Title: __________________________________

(SEAL)

ATTEST:

Signature: ______________________________
Name: __________________________________
Title: __________________________________

PROJECT [_____]

Signature: ______________________________
Name: __________________________________
Title: __________________________________