

ORDINANCE NO. 2014-1187

**AN ORDINANCE AMENDING ORDINANCE 2012-1144
AN ORDINANCE FURTHER AMENDING ORDINANCE NO. 172
CITY OF ORANGE BEACH ZONING ORDINANCE –
PHOENIX WEST II
PLANNED UNIT DEVELOPMENT MODIFICATION
(#1201-PUDA – 11)**

WHEREAS in 2005, Brett Real Estate, Robinson Development Co., Inc. (“BR Development”) submitted an application for a planned unit development with the City known as Phoenix West II Planned Unit Development (Case No. 0207-PUD-05) (“the “PUD”); and

WHEREAS, in connection with seeking approval of such PUD application from the City, BR Development made certain “development commitments” in favor of the City consisting of certain items that BR Development would undertake for the benefit of the City to offset the impact of the development on the City; and

WHEREAS, the building permit for the foundation was issued by the City on January 1, 2006, and the building permit for the thirty-one (31) story, three hundred fifty-eight (358) unit structure was issued by the City on July 3, 2006, for the condominium development within the PUD to be known as Phoenix West II Condominiums (the “Condominiums”), which Condominiums (including the common areas) are owned by Phoenix; and

WHEREAS the Condominiums were constructed to a shell, but construction stalled, and the project was not complete; and

WHEREAS, in 2012, BR Development applied to the City to modify the nature of the development commitments, in connection with its desire to restart and complete the construction of the Condominiums;

WHEREAS, in April 2012, the City adopted Ordinance No. 2012-1144 (the “2012 Ordinance”), which served as a modification to the PUD, such that the nature of the “development commitments” was modified;

WHEREAS, disputes between the City and BR Development as to the nature and substance of the revised “development commitments” contained in the 2012 Ordinance have been resolved, as set forth in the Release and Settlement Agreement approved by the City Council on January 27, 2014;

WHEREAS, under the terms of the Release and Settlement Agreement, the City agreed to initiate proper public action to revise the “development commitments” applicable to the PUD;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Orange Beach, Alabama, that Section 1 of Ordinance 2012-1144 be amended to read as follows:


SECTION 1:

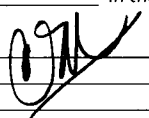
That the Zoning Ordinance of the City of Orange Beach as previously amended is hereby further amended to substitute the following development commitments applicable to the PUD:

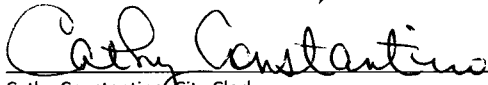
- (a) The BR Parties will furnish the City with a title policy insuring good and marketable title in the City as to the Rights of Way, free and clear of any liens or encumbrances, within (1) day after the effective date.
- (b) The BR Parties will grade and improve a twelve (12) foot wide portion of the Right of Way portion of the Right of Way to create a hard surface that is sufficient to allow for emergency and beach service vehicular ingress and egress subject to approval by the City, all in a good, legal and workmanlike manner, by a licensed contractor acceptable to the City to be completed no later than September 2014.
- (c) Upon completion of the improvements to the Right of Way, the BR Parties will furnish the City with an ALTA survey from a licensed Alabama surveyor showing the boundaries of the Right of Way together with any improvements therein, certified in favor of the City, together with an endorsement to the title policy thereon, showing that there are no new liens or encumbrances on the Right of Way.
- (d) The BR Parties will construct an approximately 2,300 foot, 12-foot wide paved trail, connecting State Road 182 to the City's Rosemary Dune segment of Hugh S. Branyon Backcountry Trail, the exact location to be identified by the City, and construction of the trail to be completed within one (1) year after receiving a notice to proceed from the City. The City will be responsible for obtaining any necessary permits or approvals for constructing such trail.
- (e) The BR Parties will pay to the City \$1,532,242.00, together with interest, in accordance with the terms and conditions of a Promissory Note in the form and substance attached to the Release and Settlement Agreement fully executed by all parties on February 21, 2014.
- (f) All of the foregoing covenants are joint and several obligations of the BR Parties, except for Phoenix West II, LLC

This Ordinance shall become effective immediately upon its adoption and publication as required by law.

APPROVED and ADOPTED this 20th of May 2014.


Cathy Constantino, MMC
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies that the foregoing Ordinance 2014-1187 was posted on 6/9/2014 in the following three (3) public places:
Orange Beach City Hall 
Orange Beach Post Office _____
Orange Beach Public Library _____


Cathy Constantino, City Clerk