

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: November 4, 2024

Agenda Item: 7D	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: October 29, 2024
Subject: Regarding the Barefoot Lakes Development Agreement (DA) and to authorize the Acting City Manager to sign the document on behalf of the City	Division: Legal

**Background:**

In addition to the standard boiler plate, the proposed DA includes language for:

No more than fifty-nine (59) residential units.

1. Park Enhancement Fee in the amount of \$400 for each residential unit.
2. Beachfront Parking Enhancement Fee in the amount of \$1,100 for each residential unit.
3. Public Safety Enhancement Fee in the amount of \$4,000 for each residential unit.  
(Total fees: \$324,500.00)

The trigger for payment of the above referenced fees is at the time of issuance of each building permit for a residential unit.

The proposed DA also includes language for off-site improvements to Marsh Glenn Drive (MGD) as follows: "...Developer shall make certain off-site improvements to MGD which will include a three (3) way stop, and street lighting to adequately light the area of the three (3) way stop, including a wall pack lighting system placed on the underside of the S.C. Highway 31 overpass at MGD...".

Staff has requested additional language to the Minimum Rental Term section, which limits rental agreements for residential units to a minimum of one (1) year, that this restriction be included in the deed for each residential unit site within the project.

The proposed DA also includes language providing the City an option to purchase the property (for a period of 6 months from the date of approval of the DA) for three million dollars (\$3,000,000.00).

**Recommended Action:**

Approve or deny the proposed ordinance on first reading

Reviewed by Department Head	Reviewed by Acting City Manager	Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE**

**AN ORDINANCE TO APPROVE THE BAREFOOT LAKES DEVELOPMENT AGREEMENT  
AND TO AUTHORIZE THE ACTING CITY MANAGER TO SIGN THE AGREEMENT  
ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.**

**WHEREAS**, the Developers for the Barefoot Lakes project have proposed the Development Agreement for Barefoot Lakes; and

**WHEREAS**, the proposed Development Agreement sets forth the obligations of the Developer and the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1:** The document identified as the Development Agreement for Barefoot Lakes is hereby approved.

**Section 2:** The Acting City Manager is authorized to sign the Development Agreement for Barefoot Lakes on behalf of the City.

**Section 3:** This ordinance shall be effective upon the date of passage.

DONE, RATIFIED, AND PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 11.4.2024

SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
Acting City Manager

ORDINANCE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

**DEVELOPMENT AGREEMENT FOR  
BAREFOOT LAKES**

**THIS DEVELOPMENT AGREEMENT (“*Agreement*”)** is made and entered this \_\_\_ day of \_\_\_\_\_, 2024, by and among **BLU WATER INVESTMENTS LLC**, a Wyoming limited liability company, its affiliates, subsidiaries, successors and assigns (“*Developer*”) and the governmental authority of the **CITY OF NORTH MYRTLE BEACH**, a body politic under the laws of the State of South Carolina (“*City*”).

**WHEREAS**, the legislature of the State of South Carolina has enacted the “South Carolina Local Government Development Agreement Act”, as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and

**WHEREAS**, Section 6-31-10(B)(1) of the Act, as defined below, recognizes that “[t]he lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning”; and

**WHEREAS**, Section 6-31-10(B)(6) of the Act, as defined below, also states that “[d]evelopment agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements will provide 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 the public safety, health, and general welfare of the citizens of our State”; and

**WHEREAS**, the Act, as defined below, further authorizes local governments, including municipal governments, to enter into development agreements with developers to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and

**WHEREAS**, the City seeks to protect and preserve the natural environment and to secure for its citizens quality, well planned and designed development and a stable and viable tax base; and

**WHEREAS**, Developer is the legal owner of the real property identified as Horry County TMS/PIN No.: 142-00-01-225/359-00-00-0005, consisting of approximately 59.35 acres +/- (the “*Lake Parcel*”), which parcel has been annexed into the City, zoned as R-1 under the ordinances of the City, intentionally excluded from the Barefoot Resort & Golf PDD, and constitutes the real property upon which not more than Fifty Nine (59) Residential Units, as defined herein, will be constructed, together with related amenities (collectively the “*Project*”); and

**WHEREAS**, Developer is the legal owner of the real property identified as Horry County TMS/PIN No.: 142-00-01-319/359-15-02-0014, consisting of approximately 7.47 acres +/- (the “*Access Road Parcel*”), which parcel is within the corporate limits of the City and is a part of the PDD, as defined below, previously designated as wetlands/open space, subjected to the Barefoot Declaration, as defined below, and designated as an access roadway under the PDD, as defined

below, which Access Road Parcel constitutes the real property upon which the access roadway for the Residential Units totaling not more than Fifty Nine (59) shall be constructed, as defined herein, and the balance of the real property, exclusive of the access roadway will be contributed to a separate homeowners association formed for the purpose of governing the Lake Parcel and the Access Road Parcel, together with any open spaces and common areas; and

**WHEREAS**, Developer, as the legal owner of the Lake Parcel, and the Access Road Parcel, is authorized to enter into this Agreement with the City; and

**WHEREAS**, the City finds that the program of development for this Property (as hereinafter defined) proposed by Developer over approximately the next Four (4) years or as extended as provided herein is consistent with the City's comprehensive land use plan and land development regulations, and will further the health, safety, welfare and economic wellbeing of the City and its residents; and

**WHEREAS**, the development of the Property and the program for its development presents an opportunity for the City to secure quality planning and growth, protection of the environment, and to strengthen the City's tax base; and

**WHEREAS**, the Access Road Parcel, which is subject to this Agreement, and that simultaneously approved amendment (the "***PDD Amendment***") to the Barefoot Resort & Golf Planned Development District (the "***Barefoot Resort PDD***"), but not subjected to the authority and governance of any homeowners association within the Barefoot Resort PDD, is more particularly shown and depicted on **Exhibit "B"** attached hereto; and

**WHEREAS**, the City, at the request of the Developer, has annexed the Lake Parcel, which is more particularly shown and depicted on **Exhibit "C"** attached hereto, and will remain outside the governance of the Barefoot Resort PDD, and none of the Residential Units within the Lake Parcel shall have access to any amenities or to any privileges reserved for residents within the Barefoot Resort & Golf PDD; and

**WHEREAS**, this Agreement is intended to insure that the Project shall be limited in uses, home sizes and densities as state herein, and that any use outside of Fifty Nine (59) detached single family Residential Units together with site improvements, amenities and open spaces including any roadways, utilities and sidewalks over parcel previously designated as wetland/open space under any plat to be recorded in the public records of Horry County, South Carolina, would require an amendment of this Agreement. No other uses of the real property which is the subject of this Agreement shall be allowed unless approved by the City and the Developer.

**WHEREAS**, this Agreement is being made and entered into between Developer and the City, under the terms of the Act, for the purpose of providing assurances to Developer that it may proceed with its development plan under the terms hereof, consistent with its annexation and approved zoning (as hereinafter defined) without encountering future changes in law which would materially affect the Developer's ability to develop the Property under its approved zoning, for the purposes of ensuring certain controls over the development of the Property for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the City;

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both the City and Developer by entering this Agreement, and to encourage well planned development by Developer, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Developer hereby agree as follows:

1. **INCORPORATION.** The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

2. **DEFINITIONS.** As used herein, the following terms mean:

“*Act*” means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; attached hereto as **Exhibit “A”**.

“*Code of Ordinances*” means the Code of Ordinances for the City, as amended and in effect as of the date hereof, as the same may be amended from time to time, a complete copy of which is on file in the City’s office.

“*Developer*” means Blu Water Investments LLC, a Wyoming limited liability company, all of its permitted assignees, and all successors in title or lessees who undertake development of the Property as a Developer or who are transferred Development Rights and Obligations.

“*Developer Default*” for purposes of this Agreement, Developer Default shall mean that (i) Developer has breached the specific obligations of this Agreement, and, following prior written notice from the City, has failed to cure such breach within Thirty (30) days of the date of written notice from the City; or (ii) once commenced, Developer has failed to continue with Development Work, as defined in this Agreement, on the Property for a period of more than Six (6) months, and, following prior written notice from the City, has failed to cure such breach within Thirty (30) days of the date of written notice from the City.

“*Developer Default Remedy*” notwithstanding any other remedy that may be available to the City at law, or in equity, as a result of a Developer Default, Developer and the City agree that the City may elect to (i) withhold issuance of building permits until such Developer Default is cured; (ii) seek injunctive relief to stop any such continuing Developer Default, or (iii) any other remedy available at law or in equity.

“*Development Rights and Obligations*” means the rights, obligations, benefits and approvals of the Developer(s) under the ordinances of the City and this Agreement.

“*Development Work*” means the periodic operation of development activities on the Property, which include, but are not limited to clearing, grading, erosion control, site work, and landscaping under the terms of a written contract with the Developer.

“*Effective Date*” means the date on which this Agreement is executed and finally approved by the City following second reading of the ordinance approving this Agreement by the City Council of the City.

**“Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States”** means those areas identified by the United States Army Corps of Engineers (“**Corps**”) and/or the South Carolina Department of Health and Environmental Control (“**DHEC**”) or any other applicable governmental authority as wetland areas subject to the regulation of the Corps and/or DHEC.

**“Land Development Regulations”** means the Land Development Regulations for the City, as amended and in effect as of the date hereof, which includes the Complete Streets Ordinance of the City, or further amended by this Agreement, and from time to time pursuant to this Agreement.

**“Master Site Plan”** means that certain master site plan prepared by Developer, which Master Site Plan depicts the alignment of the roadway proposed over and through the Access Road Parcel which was previously annexed into the City and subjected to the PDD, for purposes of showing the density, site arrangement, and responsibilities for off-site roadway improvements, and a copy of such Master Site Plan being attached to the PDD.

**“Owners Association”** as used herein shall be deemed to mean a homeowners association to be formed by Developer for purposes of governing the Project, including the enforcement of restrictions and covenants, and for the maintenance and upkeep of any common areas and/or community infrastructure developed under this Agreement, but not accepted by the City for perpetual ownership and maintenance, to include but not be limited to: common areas wetlands and storm water management systems specifically conveyed to such Owners Association.

**“PDD”** means the Barefoot Resort & Golf Planned Development District, under the Code of Ordinances for the City, as amended.

**“Project”** means a neighborhood adjacent to the Barefoot Resort master planned community, which uses, homes sizes and densities are limited to Fifty Nine (59) single family detached lots in a single subdivision project in accordance with the requirements of the R-1 Zoning District of the City, as amended and approved by the City pursuant to this Agreement and the Code of Ordinances, under the jurisdiction of the Owners Association, as the same may be amended from time to time pursuant to this Agreement.

**“Property”** means collectively, the Lake Parcel and the Access Road Parcel.

**“Residential Unit”** means a detached single family home, within the Property, under the ordinances of the City, as the same may be amended.

**“Term”** means the duration of this Agreement as set forth in Section 3 hereof.

3. **TERM.** The Developer represents and warrants that the Property consists of a total of not less than 25 acres and not more than 250 acres of “highland” within the meaning given that term by the Act. The term of this Agreement shall commence on the date on which this Agreement is executed by the City and the Developer and shall terminate on the date which is Five (5) years from the date of execution. Notwithstanding such termination date, provided that the Developer is not in default (after being provided with notice and opportunity to cure as set forth below) of this Agreement, Developer has diligently pursued development of the Property, and the Project has not been completed, at the conclusion of the initial five-year term, the termination date of this Agreement

shall automatically be extended for One (1) additional Five (5) year term. At the conclusion of the initial Five (5) year extension of the Term, provided that the Developer is not in default (after being provided with notice and opportunity to cure as set forth below) of this Agreement, Developer has diligently pursued development of the Property, and the Project has not been completed, at the conclusion of the initial five-year extension of the Term, the termination date of this Agreement shall automatically be extended for a second and final additional Five (5) year term. Notwithstanding the terms and provisions in this Section or elsewhere in this Agreement to the contrary, if a court of competent jurisdiction hereafter determines that the length of the Term, or the provision for extension of the Term set forth above, exceeds the maximum term allowed under the Act and if all applicable judicial appeal periods have expired without such determination being overturned, then the Term of this Agreement relative to all or specific affected portions of the Property shall be reduced to the maximum permissible term under the Act, as determined by a court of competent jurisdiction.

4. **DEVELOPMENT OF THE PROPERTY.** The Property shall be developed in accordance with this Agreement, the Code of Ordinances, and other applicable land development regulations required by the City, State, and/or Federal Government. The City shall, throughout the Term, maintain or cause to be maintained a procedure for the processing of reviews as contemplated by this Agreement and the Code of Ordinances. The City shall review applications for development approval based on the development standards adopted as a part of the Code of Ordinances, unless such standards are superseded by the terms of this Agreement, in which case the terms of this Agreement shall govern.

5. **CONVEYANCES OF PROPERTY AND ASSIGNMENT OF DEVELOPMENT RIGHTS AND OBLIGATIONS.** The City agrees with Developer, for itself and its successors and assigns, including successor Developer(s), as follows:

(A) **Conveyance of Property.** In accordance with the Act, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors in interest and assigns of all parties hereto, except for Excluded Property, as such term is defined below. For the purposes of this Agreement, “*Excluded Property*” means property that is conveyed by the Developer to a third party and is: (i) a single-family residential lot for which a certificate of occupancy has been issued; (ii) a parcel for which certificates of occupancy have been issued and on which no additional residential structures can be built under local ordinances governing land development; (iii) any other type of lot for which a certificate of occupancy has been issued and which cannot be further subdivided into one or more unimproved lots or parcels under local ordinances governing land development; or (iv) a single-family residential lot which has been subdivided and platted and is not capable of further subdivision without the granting of a variance. Excluded Property shall at all times be subject to the Code of Ordinances of the City, and those incorporated in this Agreement. The conveyance by a Developer of Excluded Property shall not excuse that Developer from its obligation to provide infrastructure improvements within such Excluded Property in accordance with this Agreement.

(B) **Assignment of Development Rights and Obligations.** The Developer, or any subsequent developer, shall be entitled to assign and delegate the Development Rights and Obligations to a subsequent purchaser of all or any portion of the Property with the consent of the City, provided that such consent shall not be unreasonably withheld or delayed. The City understands that any such assignment or transfer by the Developer of the Development Rights and Obligations shall be non-recourse as to the assigning Developer. Upon the assignment or transfer by Developer

of the Development Rights and Obligations, then the assigning Developer shall not have any responsibility or liability under this Agreement. For purposes of this Section 5, the following activities on the part of Developer shall not be deemed “development of the Property”: (i) the filing of this Agreement, the Master Site Plan and the petitioning for or consenting to any amendment of this Agreement or the Code of Ordinances; (ii) the subdivision and conveyance of any portions of the Property to the City as contemplated under this Agreement; (iii) the subdivision and conveyance of the portion of the Property designated as “*Open Space*” or “*Vegetated Buffer*” on the Master Site Plan, or on Exhibit “E” attached hereto (the “*Vegetated Buffer Plan*”) to any person or entity so long as the same shall be restricted in use to “open space” or “buffer”; (iv) the subdivision and conveyance of portions of the Property, not to exceed in the aggregate one (1) acre, more or less, provided that such conveyances shall be deed-restricted to single-family residential use; (v) the conveyance of easements and portions of the Property for public utility purposes; (vi) the conveyance of portions of the Property to public entities in the case of any road realignments or grants of road rights of way; (vii) the marketing of the Property as contemplated under this Agreement; and (viii) any other activity which would not be deemed “development” under the Act.

6. **DEVELOPMENT SCHEDULE.** The Property shall be developed in accordance with the development schedule, attached as Exhibit “F” (the “*Development Schedule*”). Developer shall keep the City informed of its progress with respect to the Development Schedule as a part of the required Compliance Review process set forth in Section 13 below. Pursuant to the Act, the failure of the Developer to meet the development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to any change in economic conditions, the occurrence of an act of God (including natural disasters), an act of war, an act of terrorism, civil disturbance, strikes, lockouts, fire, flood, hurricane, unavoidable casualties, a health crisis which results in a limitation on business activities in the City extending for a period of more than Thirty (30) days, or any other cause or causes beyond the reasonable control of the Developer (collectively “*Force Majeure*”), and the Developer’s good faith efforts made to attain compliance with the development schedule. As further provided in the Act, if the Developer requests a modification of the dates set forth in the development agreement and is able to demonstrate that there is good cause to modify those dates, such modification shall not be unreasonably withheld or delayed by the City.

7. **EFFECT OF FUTURE LAWS.** Developer shall have vested rights to undertake development of any or all of the Property in accordance with the Code of Ordinances and the Land Development Regulations, as amended and in effect at the time of this Agreement, for the entirety of the Term. Future enactments of, or changes or amendments to the Code of Ordinances and the Land Development Regulations, which conflict with this Agreement shall apply to the Property only if permitted pursuant to the Act, and agreed to in writing by the Developer and the City. The parties specifically acknowledge that building moratoria or permit allocations enacted by the City during the Term of this Agreement or any adequate public facilities ordinance as may be adopted by the City shall not apply to the Property except as may be allowed by the Act or otherwise agreed to in writing by the Developer and the City.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, of any tax or fee of general application throughout the City, provided such fees are applied consistently and in the same manner to all single family properties within the City. Notwithstanding the above, the City may apply subsequently enacted laws to the Property only in accordance with the Act and this Agreement.

8. **INFRASTRUCTURE AND SERVICES.** The City and the Developer recognize that the majority of the direct costs associated with the development of the Property will be borne by the Developer. Subject to the conditions set forth herein, the parties make specific note of and acknowledge the following:

Notwithstanding the provisions referenced above, nothing in this Agreement shall preclude the City and Developer from entering into a separate utility agreement for cost-sharing of water transmission systems or sewer transmission systems when such agreement may be of mutual benefit to both parties. Nothing herein shall be construed as precluding the City from providing potable water to its residents in accordance with applicable provisions of laws.

Further, the Developer and the City acknowledge that the Lake Parcel, which is a portion of the Property, is presently located within the service area of Grand Strand Water & Sewer Authority (“*GSWS*”), and not within the service area of the City. Prior to the date of the approval of this Agreement, Developer has secured written authorization from GSWS allowing the City to specifically provide potable water and sanitary sewer service the Lake Parcel and the Residential Units to be constructed thereon, on terms and conditions that are acceptable to the City, in its sole discretion.

(A) **Public Roads.** All roads within the Project serving the Residential Units, upon dedication and acceptance by the City in accordance with the requirements of the City, shall be public roads, provided, however, that, in accordance with the Master Site Plan, the Developer will extend a public right-of-way, having a width of not less than Fifty (50’) feet, along the Northeastern boundary of the Project, from Marsh Glen Drive, and that the internal Project public rights-of-way shall have a width of not less than Fifty (50’) feet. In addition, the Developer shall install a single lane, paved surface multi-purpose path, for the exclusive use of the City, to provide access for the public and for City employees. All public roadways shall be constructed to City standards, will be approved by the City Planning Commission as part of the subdivision plat approval process, and, upon dedication and acceptance by the City, will be owned and maintained by the City, such that the Owners Association shall have no financial responsibility for the maintenance, repair and replacement of such public roads, including any reserves or maintenance bonds which may reasonably be required. The typical roadway section for the Fifty (50’) foot public right-of-way are shown on **Exhibit “J”** attached hereto (collectively the “*Roadway Sections*”). The Developer further agrees that the roads within the Project serving the Residential Units, as public roads, will not be gated.

(B) **Storm Drainage System.** All stormwater runoff, drainage, retention and treatment improvements within the Property shall be designed in accordance with the Code of Ordinances, except to the extent this Agreement requires compliance with a more extensive stormwater ordinance than the Code of Ordinances. All stormwater runoff and drainage system structural improvements, including culverts and piped infrastructure, will be constructed by the Developer in accordance with the Code of Ordinances, and upon acceptance by the City conveyed to and maintained by the City. Retention ponds, ditches and other stormwater retention and treatment areas will be constructed and maintained by the Developer and/or an Owners Association, as appropriate, and will not be accepted or maintained by the City.

(C) **Solid Waste and Recycling Collection.** The City shall provide solid waste and recycling collection services to the Property on the same basis as is provided to other residents

and businesses within the City. Payment for such services to the City by Developer, an Owners Association or each individual purchaser or owner of any portion of the Property is required in return for such service for each owner within the Property, and the City reserves the right to terminate or discontinue such service(s) to any owner of any portion of the Property until such payment(s) have been made.

(D) **Police Protection.** The City shall provide police protection services to the Property on the same basis as is provided to other residents and businesses within the City.

(E) **Fire Services.** The City shall provide fire services to the Property on the same basis as is provided to other residents and businesses within the City.

(F) **Emergency Medical Services.** The City shall provide emergency medical services to the Property, on the same basis as it provided to other residents and businesses within the City.

(G) **School Services.** The City neither provides nor is authorized by law to provide public education facilities or services. Such facilities and services are now provided by the Horry County School District. The person or entity, whether it be homebuilder or another assignee of Developer, who actually initiates the building permit shall be responsible for paying all impact fees levied by the School District for each Residential Unit constructed prior to the issuance of a certificate of occupancy.

(H) **Private Utility Services.** Private utility services, including electric, natural gas, and telecommunication services (including telephone, cable television, and internet/broadband) shall be provided to the site by the appropriate private utility providers based upon designated service areas. All utilities on the Property shall be located underground, and shall be placed in locations approved by the City so as to reduce or eliminate potential conflicts within utility rights-of-way.

(I) **Streetlights.** Developer shall install or cause to be installed streetlights within the Project. Upon installation, and acceptance of the public streets on which such streetlights are located within the Project, the City shall assume payment for the monthly electrical service, which the Developer or any applicable Owners Association shall be responsible for any expenses following installation which are related to enhancements of the type of fixture chosen by Developer if such fixture is not the standard street light typically installed by the City on public streets.

(J) **No Donation of Acreage for Sewer Plant Expansion.** The City shall not require, mandate or demand that, or condition approval(s) upon a requirement that the Developer donate, use, dedicate or sell to the City or any other party for public purposes any portion of the Property or any other property owned by the Developer or any affiliate of the Developer for sewer plant expansion by the City.

(K) **No Required Donations for Civic Purposes.** The City shall not require, mandate or demand that, or condition approval(s) upon a requirement that, the Developer donate, use, dedicate or sell to the City or any other party for public purposes any portions of the Property or any other property owned by the Developer (or any of the entities or parties comprising the Developer) or any affiliate of the Developer.

(L) **Easements.** Developer shall be responsible for obtaining, at Developer's cost, all easements, access rights, or other instruments that will enable the Developer to tie into current or future water and sewer infrastructure on adjacent properties.

(M) **Ponds and Lakes.** As an obligation, Developer shall install pond(s) or lake(s) as shown on the approved Master Site Plan for the Property. The City agrees to cooperate with the Developer in the permitting process for such pond(s) and lake(s), it being understood that the City will not accept maintenance responsibility or any other liability for such pond(s) and lake(s), and that such pond(s) and lake(s) shall either be maintained by the Developer or conveyed to an Owners Association for on-going maintenance following completion of the Project.

(N) **Wetlands and Streams.** As an obligation, in accordance with any applicable laws and regulations, the Owners Association shall, at the time of conveyance to the Owners Association of any wetlands and streams within the Project, assume the obligation of maintenance and control, which shall include, but not be limited to the removal of fallen trees and debris following a storm event, and for the removal and maintenance of any dams or other obstructions to naturally flowing water which is caused or created by beavers and beaver habitat.

(O) **Annexation of Additional Property.** As an obligation, Developer agrees that no additional property outside of the boundaries of the Lake Parcel shall be accessed by or through the Lake Parcel, by way of an easement, right-of-way or application for annexation or any other method within the control of Developer such that the boundaries of the corporate limits of the City are extended beyond the boundary of the Property.

9. **IMPACT FEES.** The Property shall be subject to all development impact fees imposed by the City at the time of this Agreement, or following the date of this Agreement, provided such fees are applied consistently and in the same manner to all similarly-situated property within the City limits. All such impact fees shall not be due and payable until an application of any person or entity for a building permit for the vertical development of any subdivided lot or portion of the Property. In particular, the Developer agrees that it shall not seek any exemptions for any portions of the Property from any current development impact fees (so long as such development impact fees are applied consistently and in the same manner to all similarly-situated property within the City limits) for any reason.

10. **ADDITIONAL FEES, OBLIGATIONS AND PUBLIC BENEFITS.** The Developer, and its respective successors and assigns agree that the then current owner of the Property or any portion thereof, shall pay to the City, the enhancement fees, as set forth below (collectively the "***Enhancement Fees***"). Developer further agrees that the Enhancement Fees, but specifically excluding the Prior Amendment Fees, shall be subject to an annual increase, beginning on January 1, 2026, in an amount equal to the lesser of (i) the increase in the Consumer Price Index, published by the U.S. Bureau of Labor Statistics ("***CPI***") between the beginning and end of the most recent calendar year; or (ii) Two (2%) percent per annum, which increase is intended to ensure that the Enhancement Fees continue to reflect the City's on-going increases in the costs of services provided. Developer will provide the Enhancements Fees, together any additional public benefits, as follows:

(A) **Park Enhancement Fee.** As a public benefit, for the Property, the Developer or the then current owner, shall pay to the City, as to each residential unit within the Property, a park

enhancement fee (the “*Park Enhancement Fee*”) in an amount equal to \$400 for each residential unit, paid at the time of issuance of each respective building permit.

(B) **Beachfront Parking Enhancement Fee.** As a public benefit, for the Property, the Developer, or the then current owner, shall pay to the City, as to each residential unit within the Property, a beach parking fee (the “*Beachfront Parking Enhancement Fee*”) in an amount equal to \$1,100 for each residential unit, also paid at the time of issuance of each respective building permit.

(C) **Public Safety Enhancement Fee.** As a public benefit, for the Property, the Developer, or the then current owner, shall pay to the City, as to each residential unit within the Property, a public safety enhancement fee (the “*Public Safety Enhancement Fee*”) in any amount equal to \$4,000 for each residential unit within the Property, also paid at the time of issuance of each respective building permit.

(D) **Uses, Lot Size, Home Size and Density.** As a public benefit, Development of the Property shall be determined in accordance with the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement, provided that the Property shall be restricted to not more than Fifty Nine (59) total single-family detached Residential Units, at a maximum height not to exceed 35 feet. Individual Lots shall not be less than 14,000 square feet, and shall have a front footage of not less than Eighty (80) feet. Individual single-family detached Residential Units shall not be less than 2,600 square feet of conditioned living space, and not less than 3,000 square feet under roof. In addition, all Residential Units within the Property shall be protected from fire by the installation of internal sprinkler systems, in accordance with the requirements for residential sprinkler systems within the City (the “*Required Sprinkler Systems*”), which systems are required in lieu of the installation of a secondary access entry to the Property. The City may withhold building permits for any Residential Unit which does not include the Required Sprinkler Systems.

(E) **Undisturbed and Supplemented Buffer.** As a public benefit, the Developer has agreed to restrict the use of certain portions of the Property as undisturbed vegetation, which undisturbed vegetation area is shown on the Vegetated Buffer Plan attached hereto as **Exhibit “E”**. For purposes of this Agreement, such Vegetated Buffer Plan depicts those portions of the Property to be subjected to restrictive covenants for the benefit of the City, which preclude the disturbance, including clearing, grading, trimming, logging, mining or otherwise removing the existing vegetation within such open space areas without the express written consent of the City, which consent may be withheld by the City in the City’s sole discretion.

(F) **Off-Site Road Improvements.** As an obligation, the City and Developer acknowledge that Developer shall make certain off-site improvements to Marsh Glen Drive, a public right-of-way, providing access to the Project, which will include a three (3) way stop, and street lighting to adequately light the area of the three (3) way stop (exclusive of any flashing lights, subject to the approval of the City’s Public Works Director), including a wall pack lighting system placed on the underside of the S. C. Highway 31 overpass at Marsh Glen Drive, in accordance with the applicable standards of the South Carolina Department of Transportation (“*SCDOT*”), and following such improvements and acceptance by the City and the SCDOT, respectively, such improvements shall be deemed to have been completed in accordance with the terms of this Agreement. The proposed roadway improvements within the Property and off-site on Marsh Glen Road shall be dedicated and conveyed, on acceptance by the City, and completed as a part of the subdivision plat approval process, and in accordance with subdivision regulations of the City for the Project, to the

extent the Project is developed in one or more phases, the respective portions of the roadways within each such phase of the Project shall be platted together with the Residential Units for the particular phase in which such roadway is located. Developer shall be responsible for satisfying the requirements of the City with regards to such roadways, including, but not limited to the issuance of any encroachment permits from such roadways to any portion of the Property, together with any necessary easements for storm drainage related to such roadways, as shown on **Exhibit “D”** (the “*Master Site Plan Exhibit*”). The costs of platting, dedicating, conveying and recording such public roadway, shall be the sole expense of Developer. All off-site road improvements as shown on the Master Site Plan Exhibit shall be bonded, in accordance with the City’s bonding requirements, or completed prior to the issuance of a building permit for vertical improvements upon the Lake Parcel.

(G) **Road Standards and Traffic Impact.** As an obligation, all roads within the Project shall be public and shall be constructed to City specifications. The exact location, alignment, and name of any public road within the Project, shall be subject to review and approval by the City Planning Commission as part of the subdivision platting process. The Developer shall be responsible for maintaining all public roads for a period of One (1) year following the date on which such roads are offered to, and accepted by, the City for public ownership and maintenance.

Notwithstanding any provision herein to the contrary, this Agreement does not obligate the City to expend any funds of the City or borrow any sums in connection with improvements to the roads subject to this Section 10.G.

(H) **Construction Traffic Hours.** The Developer shall limit all construction delivery traffic both to and from the Property by way of Marsh Glen Drive to the hours of 7:00 AM to 6:00 PM, Monday through Friday, and excepting any public holidays.

(I) **Sight Triangle.** The Access Roadway Parcel shall be improved in accordance with the vehicle sight triangle approved by the Public Works Director of the City.

(J) **Development Activity, Clearing and Grading.** As an obligation, Development Activity, Clearing and Grading, as defined in Article II and Article III of the Code of Ordinances, shall conform to the following:

(i) It is the desire of the Developer and the City that the impacts of Development Activity within the Property to areas outside of the Property be minimized, therefore initial clearing within the Property shall be limited to infrastructure for the Property, including roadways, water and sewer distribution and service lines, and storm drainage facilities in accordance with each phase.

(ii) Following the issuance of the initial permits associated with Clearing and Grading set forth in Section (i) above, subsequent permits may include any remaining portion of the infrastructure for the Property, including roadways, water and sewer distribution and service lines, and storm drainage facilities in the respective phase of the Property, shown on the preliminary plat.

(iii) Permits may be issued concurrently, as the Developer may have commenced, but not have completed the scope of one permit, prior to commencing additional phases of the Property for which an additional permit is required.

(iv) The above standards have been established so as to minimize the number of trips generated by construction vehicles, including and particularly high-capacity vehicles removing or delivering materials from or to the Property which are more disruptive to the existing communities surrounding the Property during Development Activities, including Clearing and Grading.

(K) **Prohibition Against Conservation Easements and Other Restrictions on the Property.** As a public benefit, Developer specifically covenants and agrees not to subject the Property to a conservation easement or other restrictive covenant, whereby any portion of the Property shown as single family homes or amenities on the approved Master Site Plan is restricted for future development of such portion of the Property, the same shall also constitute a Developer Default hereunder, provided that, for purposes of this Agreement any conveyance to the Owners Association shall not be deemed such an easement or restriction, and shall not constitute a Developer Default hereunder, and shall not be deemed a conservation easement or restrictive covenants prohibited by this provision. Notwithstanding the above restriction, the parties agree that, for purposes of this Agreement any conveyance by Developer of a portion of the Property which has been shown or depicted as common area, buffer, ponds, lakes, open spaces or the like to any Owners Association shall not be deemed such an easement or restriction, and shall not constitute a default by Developer, provided that such portion of the Property so conveyed, prior to the date of such conveyance to any Owners Association, has been clearly designated on a map or site plan submitted to the City, and approved by the City, as not being a portion of the Property to be developed for any residential or commercial use as a part of the development anticipated by this Agreement.

(L) **General Maintenance and Mowing.** As an obligation, Developer must maintain the portion of the Property located within Two Hundred (200) feet of Marsh Glen Drive consistent with the Code of Ordinances of the City, provided that, at a minimum, once any portion of the Property is cleared, Developer will thereafter mow the cleared but undeveloped Property no less than Eight (8) times per year until the Project is fully developed. The mowing shall occur in the periods between March 1 and November 30 of each calendar year. In addition, until the Project is fully developed, the Developer shall remove any fallen trees on the Property, such tree removal to occur during the same periods set out for mowing above. The Developer shall be given a reasonable period of time to be determined by the City Manager or his designee, to mow the Property and remove fallen trees on the Property in the event of a hurricane, rain event or other force majeure that prevents the Developer from complying with the mowing/maintenance schedule referenced above.

If the Developer fails to comply with the scheduled time frames for mowing and removal of fallen trees, as determined by the City Manager or his designee, then the City shall have the right to enter the Property for the purpose of mowing and removing any fallen trees, and the Developer shall reimburse the City for the costs of such mowing and/or tree removal in an amount equal to One Hundred (100%) percent of such the costs incurred by the City for mowing and/or tree removal. In the event Developer should fail to reimburse the City within Thirty (30) days of the date an invoice is delivery by the City to the Developer, the City may place a lien upon the Property, which lien shall be enforceable in the same manner as a property tax lien, which may only be satisfied by payment thereof, and the City may elect to withhold the issuance of any further building permits or certificates of occupancy for Residential Units within the Property until such time as the lien is paid in full.

(M) **Minimum Rental Term.** As a public benefit, Developer, or the then current owner of the Project agree that the minimum term of any rental agreement for Residential Units constructed upon the Property shall be One (1) year. Developer, its successors and assigns further

covenant and agree that the respective deed(s) for conveyance of any portion of the Property shall include a conspicuous notice that the real property being conveyed is restricted such that the minimum rental term for any portion of the Property shall not be less than One (1) year.

(N) **Stormwater and Drainage.** As an obligation, Developer shall provide stormwater conveyance and retention facilities sufficient in capacity to accommodate the storm water generated from the Property, and provide the City with evidence of (i) the necessary and required permanent and perpetual easements necessary to facilitate such drainage from the Property; (ii) the perpetual maintenance and operation of stormwater and drainage facilities shall be vested in an Owners Association pursuant to covenants recorded in the public records of Horry County, South Carolina; and (iii) and best management practices (“*BMPS*”) also recorded in the public records of Horry County, South Carolina. In addition, Developer agrees that, notwithstanding the stormwater ordinances included in the Code of Ordinances, the Developer will cause the stormwater system for the Property to be designed in accordance with the stormwater standards of Horry County, which require a Twenty (20.00%) percent reduction in peak discharge for the 100 year storm event, at the boundary location to which the retention pond drains. In the event the City adopts a stormwater ordinance as part of the Code of Ordinances whose requirements exceed those of Horry County prior to the issuance of a land disturbance permit for the Property, Developer shall confirm the design of the stormwater system for the Property to the Code of Ordinances rather than the stormwater ordinances of Horry County.

(O) **Jurisdictional and Non-Jurisdictional Waters.** As an obligation, Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States within the Project which are not mitigated, filled or otherwise modified, shall be surrounded by an undisturbed water quality buffer of not less than Twenty (20) feet in width. Developer will convey all Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States located within the Project to the Owner’s Association for maintenance and operation not later than the date on which the Project is complete.

(P) **Firewise Community.** As an obligation, development of the Project will address the requirements for “**Firewise Communities**” as to materials and conditions which are appropriate for the avoidance of fire hazards, which will include the avoidance of pine straw as a landscaping material, the use of fire resistant roofing materials and exterior wall materials, maintain exterior building surfaces to avoid vegetation or other “fuels”, incorporating landscaping materials that reduce the flammability of the site, and maintain adequate separations between the building and the property boundary, including the use of storm water retention as a fire buffer.

(Q) **Open Space Requirement.** As an obligation, Developer agrees that the Project shall incorporate not less than Twenty (20%) percent open space, which for purposes of this Agreement shall include protected wetlands, required buffers, ponds, lakes, amenity lots and parcels, open spaces, green space or other undeveloped acreage which is within the Project.

(R) **Approved Materials and Building Elements.** As an obligation, Developer further agrees that certain materials shall be prohibited for incorporation in the Residential Units or other buildings constructed as part of the Project, and those prohibited materials and encouraged building elements are set forth on **Exhibit “G”** attached hereto (the “*Approved Elements*”).

(S) **Transfer of Wetlands and Open Space.** As a public benefit, Developer

agrees to preserve and transfer for maintenance to the Owners Association, the wetlands and open spaces surrounding the Property.

(T) **Entry Vegetated Hedge Maintenance.** As a public benefit, Developer agrees to preserve the existing vegetation, and, in lieu of an earthen berm, which would require the removal of existing vegetation, to instead supplement the existing vegetation with an opaque shrub line extending from the Southeastern edge of the proposed entry roadway right-of-way, to the existing vegetation, a depth of approximately 30 feet, and having a height of not less than Eight (8) feet in height, at stabilization not later than Two (2) years following installation, and to also preserve and maintain a vegetated hedge, in addition to the existing vegetated buffer to remain undisturbed, in order to mitigate vehicle headlights, in the areas of the Property shown on **Exhibit “I”**, such exhibit also including a drawing depicting the dimensions of the earthen berm, shrub line and such vegetated hedge (the “*Hedge Detail*”).

(U) **Purchase Option.** As a public benefit, and as a condition to approval of this Agreement, Developer shall, simultaneously with the execution of this Agreement, deliver to the City, in recordable form, an option to purchase the Property, for a period of time beginning on the final approval of this Agreement by the City, and ending on the date which is Six (6) months later, at a purchase price of Three Million and No/100 (\$3,000,000.00) Dollars (the “*Purchase Option*”), which Purchase Option may be assigned by the City, in its discretion, to one or more entities or individuals designated by the City, such assignment being subject to written notice from the City to the Developer. In addition, the City shall be under no obligation to issue any permits for construction of the Project, including land disturbance permits, until such time as the City has exercised the Purchase Option, or the Purchase Option has expired by its own terms, whichever is first to occur.

(V) **On-Site Amenity.** As an obligation, Developer shall install, upon the Property, a private amenity for the benefit of the Residential Units within the Property, consisting of a swimming pool, pool deck and recreation lawn (collectively the “*On-Site Amenity*”), which On-Site Amenity is not required under the R-1 Zoning District under the Code of Ordinances, such On-Site Amenity to be completed prior to the date on which Twenty (20) building permits for Residential Units within the Property have been issued, and upon completion to be conveyed to the Owner’s Association for the benefit of all of the Residential Units.

(W) **Recording.** Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this Agreement shall be recorded in the public records of Horry County, South Carolina, on or before the date which is Fourteen (14) days following the Effective Date of this Agreement.

11. **PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE.** The City and Developer recognize that development can have negative as well as positive impacts. Specifically, the City considers the protection of the natural environment and nearby waters, and the preservation of the character and unique identity of the City, to be important goals. Developer shares this commitment and therefore agrees to abide by all provisions of federal, state and local laws and regulations for the handling of storm water.

12. **COMPLIANCE REVIEWS.** Developer, or its assigns, shall meet with the City, or its designee, at least once per year during the Term to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year as compared

to the Development Schedule. The City shall provide written notice to the Developer of the date for such compliance review not less than Five (5) business days in advance, provided such notice shall not be applicable to standard reviews and inspections otherwise performed by the City as to the improvement of the Property. The Developer must demonstrate good faith compliance with the terms of this Agreement. The Developer, or its designee, shall be required to provide such information as may reasonably be requested by the City. The Development Schedule attached to this Agreement is only a projection, and Developer's obligation at each respective Compliance Review shall be to reconcile the projected Development Schedule attached to this Agreement with the actual schedule of development for the Project at each respective Compliance Review. Failure to meet the Development Schedule attached to this Agreement shall not constitute a default hereunder.

13. **DEFAULTS.** Notwithstanding the provisions of Section 6 above, Developer shall continuously and diligently proceed with Development Work on the Property. Developer's failure to proceed with Development Work on the Property for a period of more than Six (6) months, other than as a result of Force Majeure, as defined in Section 6 above, shall constitute a default hereunder on the part of Developer. In the event of a default, the City shall provide written notice to Developer of such default, and Developer shall have a period of Thirty (30) days in which to cure a default by commencement of Development Work with regards to the next portion of the Property to be developed in accordance with phasing plan of the Project. The failure of the Developer to comply with the terms of this Agreement shall constitute a default, entitling the City to pursue such remedies as deemed appropriate, including withholding the issuance of building permits in accordance with the provisions of this Agreement, specific performance and the termination or modification of this Agreement in accordance with the Act; provided however no termination of this Agreement may be declared by the City absent its according the Developer the notice and opportunity to cure in accordance with the Act.

14. **MODIFICATION OF AGREEMENT.** This Agreement may be modified or amended only by the written agreement of the City and the Developer. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced except as otherwise provided in the Act.

15. **RESTRICTIVE COVENANTS.** The obligations and public benefits agreed to and accepted by Developer set forth in this Agreement (collectively the "***Restrictive Covenants***") shall survive and continue in full force and effect without regard to the termination of this Agreement for a period ending on the earlier of (i) Fifty (50) years after the Term of this Agreement; or (ii) such time as the parties hereto, or their respective successors and assigns, have recorded a fully executed and effective termination of the Restrictive Covenants in the Office of the Register of Deeds for Horry County. Developer further covenants and agrees that, to the extent the Property is encumbered by covenants, conditions and restrictions (the "***CCRs***"), whether administered by the Owners Association or not, such CCRs shall include the Restrictive Covenants, the effect of which shall be to extend the term of the Restrictive Covenants, the same thereafter running with the Property as continuing obligations, public benefits and restrictions.

16. **NOTICES.** Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in

writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by generally recognized nationwide overnight delivery service, signature required, on the date of such signature on behalf of the recipient, addressed as hereinafter provided. In addition to the required overnight notice above, as a courtesy, and not as official notice, an electronic mail copy shall also be provided to such recipient. All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

City of North Myrtle Beach  
1018 2<sup>nd</sup> Avenue South  
North Myrtle Beach, SC 29582  
Attention: City Manager  
Email: \_\_\_\_\_

With a copy to:

Franklin G. Daniels, Esq.  
Maynard Nexsen  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, SC 29577  
Email: [FDaniels@maynardnexsen.com](mailto:FDaniels@maynardnexsen.com)

With a copy to:

City of North Myrtle Beach  
1018 2<sup>nd</sup> Avenue South  
North Myrtle Beach, SC 29582  
Attention: City Attorney  
Email: [cpnoury@nmb.us](mailto:cpnoury@nmb.us)

And to the Developer at:

Blu Water Investments LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

Robert S. Guyton, Esq.  
Robert S. Guyton, P.C.  
4605 B Oleander Drive, Suite 202  
Myrtle Beach, SC 29577  
Email: [rsguyton@guytonlawfirm.com](mailto:rsguyton@guytonlawfirm.com)

17. **GENERAL.**

(A) **Subsequent Laws.** In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement (“*New Laws*”), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by Developer and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would

have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement.

(B) **Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between the City and the Developer relative to the Property and its development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

(C) **No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City or any Developer or to render such party liable in any manner for the debts or obligations of another party.

(D) **Exhibits.** All exhibits which are maps, sketches or drawings, attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full, provided, however, that such exhibits are not intended or approved as preliminary plats, final subdivision plats, or construction drawings, and are included herein only for purposes of illustration and reference

(E) **Construction.** The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

(F) **Transfer of Title.** Transfers of title to the Property, in whole or in part, may be made, at any time and to any person or entity, without the consent of the City.

(G) **Binding Effect.** The parties hereto agree that this Agreement shall be binding upon their respective successors and/or assigns.

(H) **Governing Law.** This Agreement shall be governed by the laws of the State of South Carolina, and the parties further agree that venue shall be proper, without regards to any conflict of law principals, in a court of competent jurisdiction in Horry County, or such other jurisdiction in South Carolina as is appropriate and necessary under the circumstances.

(I) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

(J) **Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict the City's right and power of eminent domain under the laws of the State of South Carolina.

(K) **No Third Party Beneficiaries.** The provisions of this Agreement may be enforced only by the City and the Developer. No other persons shall have any rights hereunder, unless specified in this Agreement.

(L) **Release of Developer.** Subject to Section 5.B, in the event of conveyance of all or a portion of the Property, the Developer shall be released from any obligations and liabilities with respect to this Agreement as to the portion of Property so transferred, and the transferee shall be substituted as the Developer under the Agreement as to the portion of the Property so transferred; provided, however, the transferee(s) of the one acre contemplated for subdivision and conveyance under Section 5.B shall not be deemed to succeed to any Development Rights and Obligation of Developer under this Agreement.

18. **DESCRIPTION OF LOCAL DEVELOPMENT PERMITS NEEDED.** The development of the Property shall be pursuant to this Agreement, the Land Development Regulations, and Code of Ordinances, as amended; provided, however, in the event of any conflict between this Agreement and the Land Development Regulations, and/or the Code of Ordinances, the provisions of this Agreement shall control. Necessary permits include, but may not be limited to, the following: building permits, zoning compliance permits, sign permits (permanent and temporary), temporary use permits, accessory use permits, driveway/encroachment/curb cut permits, clearing/grading permits, and land disturbance permits. Notwithstanding the foregoing, the City acknowledges that City Planning and Zoning Director or the City Planning Commission approval of plats will be given if any such plats are materially consistent with the Master Site Plan of the Project, subject to any Master Site Plan Revisions. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions. It is expressly understood and acknowledged by all parties to this Agreement that any portions of the Property donated or sold by any Developer to the City shall not be subject to any private declaration of restrictions or property owners association(s) created by any Developer for any subsequent subdivision of the Property.

19. **STATEMENT OF REQUIRED PROVISIONS.** In compliance with Section 6-31-60(A) of the Act, the Developer represents that this Agreement includes all of the specific mandatory provisions required by the Act, addressed elsewhere in this Agreement.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the day and year first above written.

DEVELOPER:

**BLU WATER INVESTMENTS LLC**, a Wyoming limited liability company

WITNESSES:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_ its \_\_\_\_\_ of BLU WATER INVESTMENTS LLC, a Wyoming limited liability company. He or she personally appeared before me and is personally known to me.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_

Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the day and year first above written.

CITY:

WITNESSES:

**CITY OF NORTH MYRTLE BEACH**

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF SOUTH CAROLINA     )

)

COUNTY OF HORRY             )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_ its \_\_\_\_\_ of the CITY OF NORTH MYRTLE BEACH. He or she personally appeared before me and is personally known to me.

\_\_\_\_\_  
Notary Public for South Carolina

Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**

South Carolina Local Government Development Agreement  
Act as Codified in Sections 6-31-10 through 6-31-160  
of the Code of Laws of South Carolina (1976), as amended

**EXHIBIT "B"**

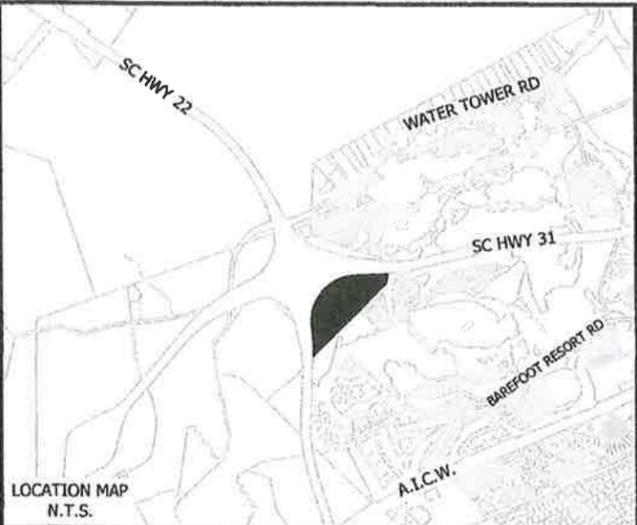
Map of Lake Parcel



**EXHIBIT "C"**

Map of Access Road Parcel

P:\22158 - BLU WATER INVESTMENTS - BAREFOOT LAKES ENTITLED DRAWINGS\22158\_2024-10-15 NMB ANNEX SITE EXHIBIT DWG



**SITE DATA:**

**OWNER:** BLU WATER INVESTMENTS, LLC

**PARCEL:** 359-00-00-0005 (Horry County, CFA)

**TOTAL AREA FOR ANNEXATION:** 58.3± ACRES  
**EXISTING POND AREA:** 19.8 ± ACRES

**PROPOSED ZONING (Sec. 23.18):** R-1  
**PROPOSED USE:** SINGLE FAMILY DWELLINGS

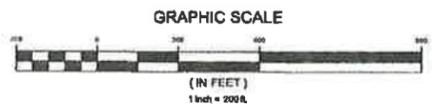
**ADJOINING RESIDENTIAL LOT BUFFER:** 125'

**DEVELOPMENT STANDARDS**

**MINIMUM LOT AREA:** 10,000 sq.ft.  
**MINIMUM LOT WIDTH:** 80'  
**MAXIMUM BUILDING HEIGHT:** 35'  
**MAXIMUM IMPERVIOUS SURFACE:** 40%

**SETBACKS**

**FRONT:** 25'  
**REAR:** 20'  
**SIDE:** 10'



**drq**

DEVELOPMENT RESOURCE GROUP, LLC  
 4783 OLEANDER DRIVE  
 MYRTLE BEACH, SC 29577  
 843-839-3350 | DRGPK.COM

**ANNEXATION MAP**  
**BAREFOOT LAKES**

**JOB NO:** 22.158  
**SCALE:** 1"=200'  
**DRAWN BY:** PTH  
**DATE:** 10/17/2024

**C**

**EXHIBIT “D”**

PDD Master Site Plan Exhibit

P:22155 - BLU WATER INVESTMENTS - BAREFOOT LAKES ENTITLEMENTS DESIGN DRAWINGS 2024-10-15 NMB ANNEX SITE EXHIBIT DWG



SC HIGHWAY 31  
RIGHT OF WAY

PIN: 359-00-00-0005  
Current Owner  
BLU WATER  
INVESTMENTS LLC  
1204 SUNSET FARMS RD  
WHITTIER, NC 28789  
Deed Book 4555  
Deed Page 2680

RIGHT OF WAY

EMERGENCY  
ALL WEATHER ACCESS

5' SIDEWALK

PUBLIC 50' R/W  
ENTRY ROAD

RIGHT OF WAY

24.00'

STRIPED CROSSWALK

R35.0'

3 WAY STOP

5.00'

20.00'

22.00'

50.00'

20.00'

32.50'

8' TALL HEDGE ROW  
ALONG ADJOINING LOTS

PIN: 359-15-02-0016  
TMS: 155-16-01-089  
Current Owner  
KEVIN G MCQUADE ETAL  
17 SUGAR MAPLE RD  
LEVITTOWN, NY 11756  
Deed Book 4255  
Deed Page 81

PIN: 359-15-02-0015  
TMS: 155-16-01-090  
Current Owner  
EDUARDO A & LAURA K  
SIMEON  
5700 SEABIRD CT  
N MYRTLE BEACH, SC  
29582  
Deed Book 2584  
Deed Page 663

EXISTING LANDSCAPE BERM

SEABIRD CT  
50' R/W

REMAINDER OF  
PIN: 359-15-02-0014  
Current Owner  
BLU WATER  
INVESTMENTS LLC  
1204 SUNSET FARMS RD  
WHITTIER, NC 28789  
Deed Book 4555  
Deed Page 2680

PIN: 359-15-02-0017  
TMS: 155-16-01-088  
Current Owner  
LAWRENCE M & JANICE O  
MURPHY  
5706 SEABIRD CT  
N MYRTLE BEACH, SC 29582  
Deed Book 2579  
Deed Page 1369

GRAPHIC SCALE



*drq*

PIN:  
TMS  
C  
4980 E  
N MYR

DEVELOPMENT RESOURCE GROUP, LLC  
1101 JOHNSON AVENUE, SUITE 300A  
MYRTLE BEACH, SC 29577  
843-829-3350 | DRGFLLC.COM

4980 BA  
N MYR

MASTER SITE PLAN

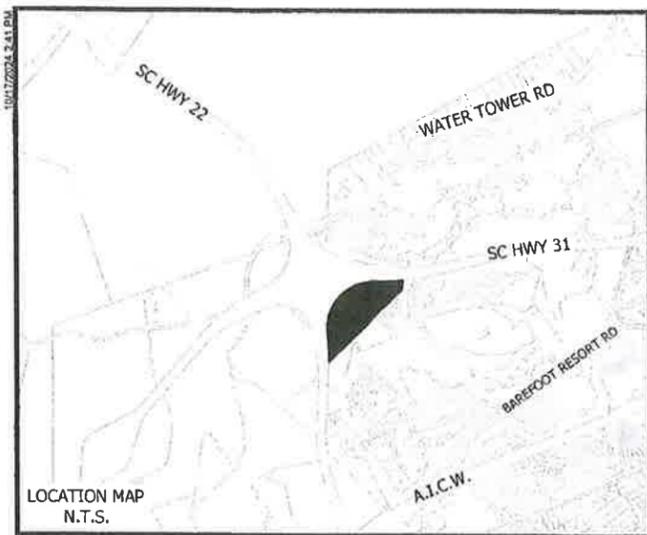
BAREFOOT LAKES

SCALE: 1"=20'  
DATE: 10/17/2024  
EXHIBIT NUMBER:

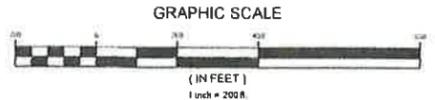
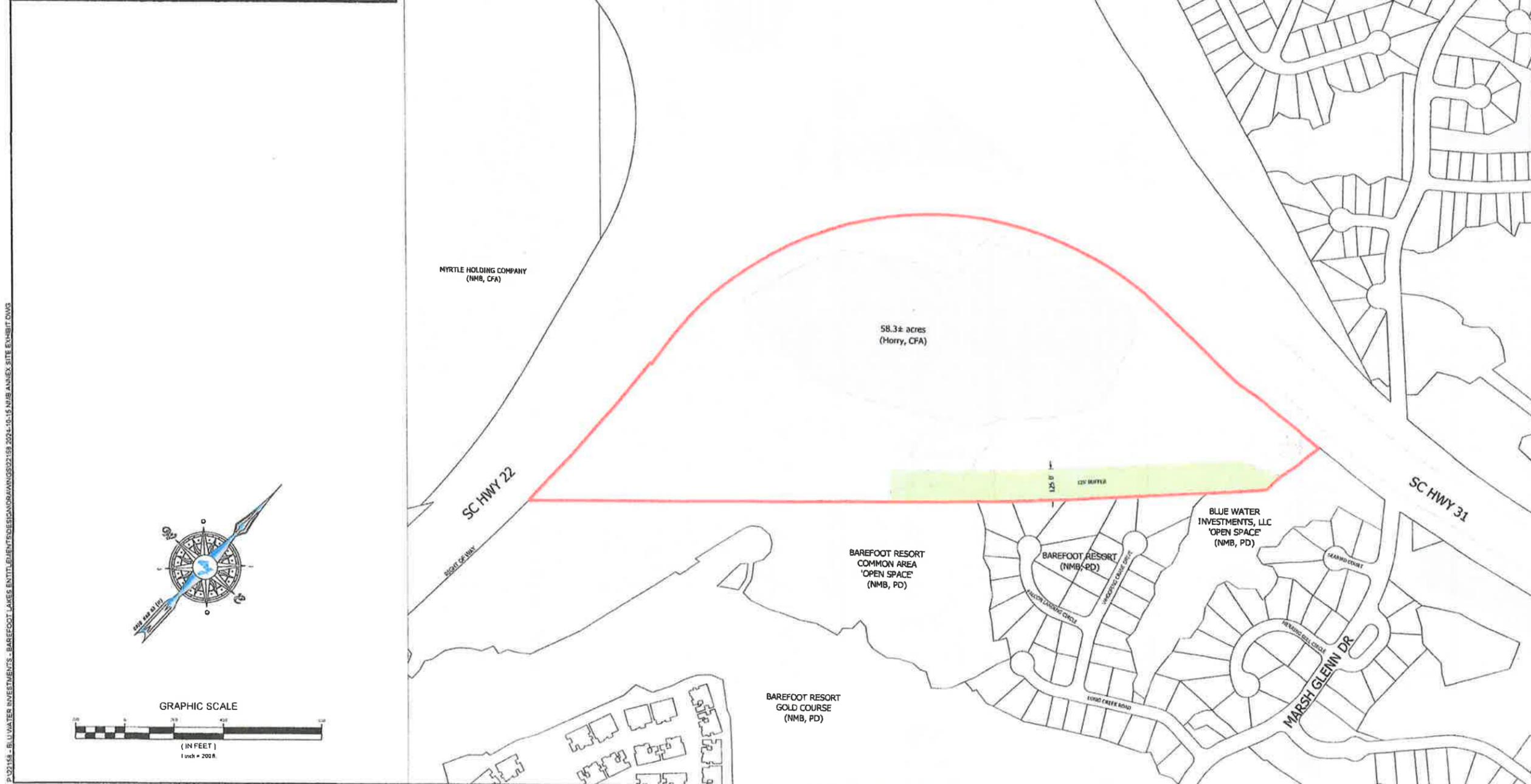
D

**EXHIBIT “E”**

Vegetated Buffer Exhibit Exhibit



DEVELOPMENT RESOURCE GROUP, LLC  
4703 OLEANDER DRIVE  
MYRTLE BEACH, SC 29577  
843-336-3355 | DRG@DRG.COM



BUFFER EXHIBIT  
BAREFOOT LAKES

JOB NO:	22.158
SCALE:	1"=200'
DRAWN BY:	PTH
DATE:	10/17/2024



P:\22158 - BLUE WATER INVESTMENTS - BAREFOOT LAKES ENTI\ENTIRE DESIGN AND DRAWINGS\2024\10\15 NMB ANNEX SITE EXHIBIT DWG

## **EXHIBIT “F”**

### **Development Schedule**

Construction will begin following receipt of permits from the City of North Myrtle Beach and from other regulatory bodies. The nature of this Project, together with the current economic conditions, prevents the Developer from providing exact dates for commencement of future phases or exact completion dates. Although the timing of completion of any particular Phase of the Project is subject to then current market demands, the Developer anticipates starting the installation of the infrastructure within a period of approximately Twenty-four (24) months from approval of this Agreement to allow for design, permitting and mobilization. The Project would be complete within Four (4) years of approval of this Agreement.

## **EXHIBIT "G"**

### Approved Materials and Building Elements

1. For Residential Units Porches and patios are required.
2. All Residential Units shall be clad in wood siding, Cementous fiberboard, brick or tabby.
3. Vinyl siding, metal siding, concrete block, fiberglass, plastic, asphalt siding, logs and other siding materials not set forth in Section 2 above, shall be strictly prohibited.
4. Large expanses of blank walls on the front and rear elevations should be avoided.
5. Window sizing should be proportionate with the wall area where window is installed.

**EXHIBIT “H”**

Intentionally Deleted

**EXHIBIT "I"**

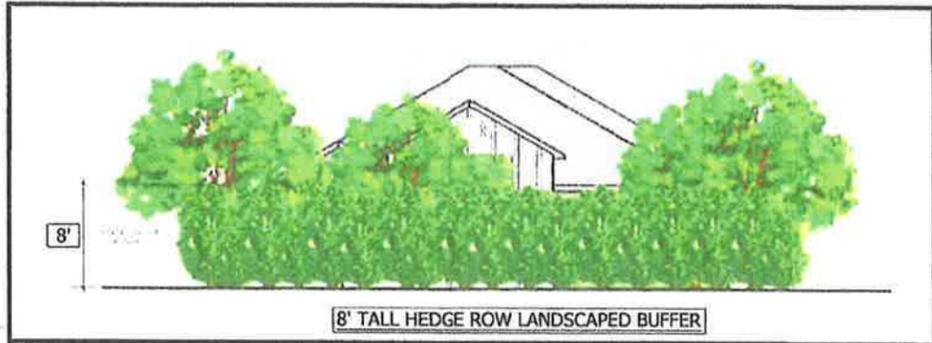
Vegetated Buffer Exhibit and Hedge Detail

10/17/2024 8:48 AM

P:\22155 - RLU WATER INVESTMENTS - BAREFOOT LAKES ENTITLEMENT\DESIGN\DRAWINGS\21.58 2024-10-15 NMB ANNEX SITE EXHIBIT.DWG



DEVELOPMENT RESOURCE GROUP, LLC  
1101 JOHNSON AVENUE, SUITE 500A  
MYRTLE BEACH, SC 29577  
643-839-3350 | DRGPLLC.COM



NOTE:  
NO INVASIVE SPECIES.  
NATIVE SPECIES PREFERRED.  
PLANTINGS TO BE 8' AT TIME OF PLANTING.

VEGETATIVE SUPPLEMENT EXHIBIT

BAREFOOT LAKES

SCALE: 1"=20'  
DATE: 10/17/2024  
EXHIBIT NUMBER:



**EXHIBIT “J”**

Roadway Section Exhibit

10/17/2024 8:54 AM

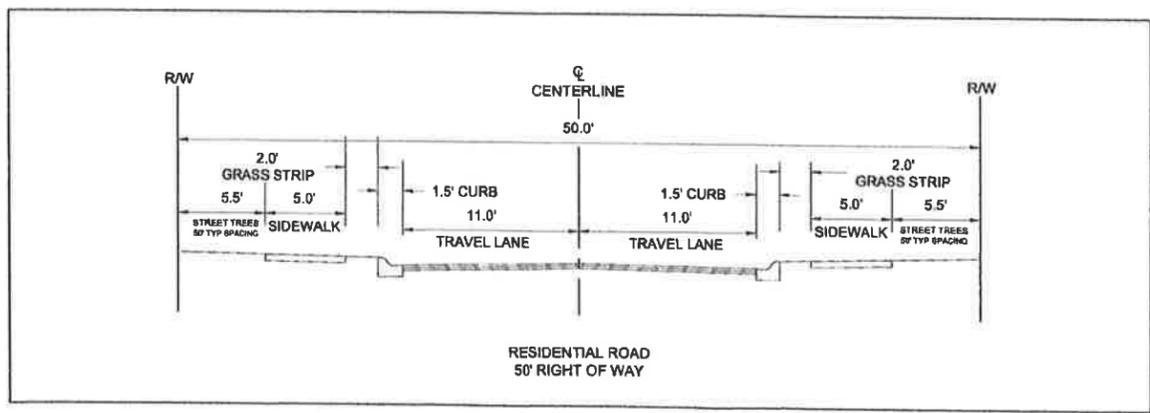
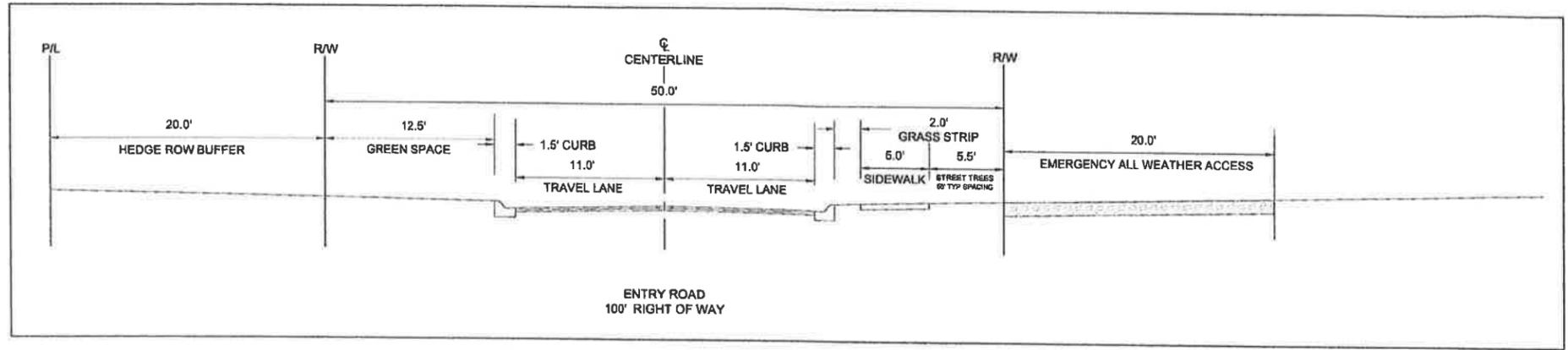
P:\2118 - BLU WATER INVESTMENTS - BAREFOOT LAKES ENTITLEMENT\DESIGN\DRAWINGS\2118\_2024-10-15 NMB ANNEX SITE EXHIBIT.DWG



DEVELOPMENT RESOURCE GROUP, LLC  
1101 JOHNSON AVENUE, SUITE 300A  
MYRTLE BEACH, SC 29577  
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ROADWAY SECTIONS

BAREFOOT LAKES



SCALE: 1"=5'

DATE: 10/17/2024

EXHIBIT NUMBER:

J