REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: August 15, 2022

Agenda Item: 7D	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Second Public Hearing	Date: August 9, 2022
Subject: Second Public Hearing regarding the Development Agreement (DA) for the RL Bell Tract	Division: Legal

Main elements of the RL Bell Tract Development Agreement:

1. **Term:** The initial term of the DA is a 5-year term which begins on the date of execution of the DA by the City and the Developer. At the end of the initial 5-year term, if the Developer is not in default *and* the project is not yet completed *and* the Developer has diligently pursued development of the property, the Development Agreement shall automatically be extended for an additional 5-year term. Upon conclusion of the first extension term, the DA will automatically be extended again for an additional 5-year term under the same conditions for extension as referenced above.

2. **Density:** The concept plan shall provide for not more than 249 total residential units. All residential units shall not exceed the maximum height of 35 feet.

3. **Improvements to Water Tower Road:** The Developer shall improve a portion of Water Tower Road as indicated on Exhibit C which improvements shall begin on or before the issuance of the 50th building permit for residential units within the project and the improvements shall be completed on or before the issuance of the 100th building permit for residential units within the project. If the improvements are not completed, the City shall have no obligation to issue more than 100 building permits for residential units until the Water Tower Road improvements are completed and accepted by Horry County.

4. **Enhancement Fees:** The Developer shall pay an Enhancement Fee in the aggregate of $4,000 per residential unit as follows:
   $300 Park Enhancement Fee
   $1,100 Beachfront Parking Fee
   $2,600 Public Safety Fee

   The Developer also agrees that the Enhancement Fees shall be subject to an annual increase beginning on January 1, 2024 in an amount equal to the lesser of the CPI between the beginning and end of the most recent calendar year OR two percent (2%) per annum.

5. **Open Space:** The project shall contain not less than 20% open space which shall include protected wetlands, required buffers, ponds, amenity lots, green space, or other undeveloped acreage within the project.

6. **Maintenance and Mowing:** The Developer will mow the undeveloped property no less than eight times a year until the project is fully developed. Mowing shall occur between March 1 and November 30 of each year. Removal of any fallen trees on the undeveloped property will occur during the above referenced schedule.

7. **Jurisdictional and Non-jurisdictional Waters:** Within the project which are not mitigated, filled, or otherwise modified shall be surrounded by a water quality buffer of not less than 20' in width.

8. **Prohibition Against Conservation Easements:** The Developer agrees not to subject the property to a conservation easement or other restrictive covenant regarding any portion of the property shown as single homes or amenities on the approved concept plan.

9. **On-site Amenities:** The on-site amenities will include a swimming pool of not less than 2,500 square feet together with not less than 3,500 square feet of pool deck with a clubhouse and restrooms. Construction of the amenities will begin on or before the issuance of the 120th building permit for residential units and shall be completed with a CO prior to the issuance of a building permit for the 150th residential unit.

Recommended Action:
Allow comments from the public regarding the proposed Development Agreement

Reviewed by City Manager		Reviewed by City Attorney

Council Action:
Motion By_____ 2nd By_____ To_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

DEVELOPMENT AGREEMENT FOR RL BELL TRACT

THIS DEVELOPMENT AGREEMENT ("***Agreement***") is made and entered this ___ day of _____, 2022, by and between **PULTE HOME COMPANY, LLC**, a Michigan 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, R.L. Bell, Inc., a South Carolina corporation (the "***Owner***") is the legal owner of the Property hereinafter defined and have given permission to Developer, the equitable owner of the Property, 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 Five (5) 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 City, at the request of the Developer, has annexed the real property more particularly shown and depicted on the boundary survey attached hereto as **Exhibit "B"** (the "***Property***"), and simultaneously approved under a zoning district for the Property of R2-A under the ordinances of the City of North Myrtle Beach, together with this Agreement, on or about the ____ day of _____, 2022; and

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, and 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"**.

"***Concept Plan***" means that certain conceptual plan prepared by Developer, which conceptual plan is an illustration only, and is not required under the approved zoning ordinance, but is required for this Agreement, for purposes of showing general density, and to show responsibilities for off-site roadway improvements, and a copy of such Concept Plan being attached hereto as **Exhibit "C"**, again for illustration purposes only and not to represent any site plan or other approval submitted by the Developer or approved as required by the City.

"***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 Pulte Home Company, LLC, a Michigan 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; or (ii) seek injunctive relief to stop any such continuing Developer Default, or 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 Planned Development District 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.

"***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, a complete copy of which is attached hereto as **Exhibit "E"**, or further amended from time to time pursuant to this Agreement.

"***Owners Association***" means a legal entity formed by Developer pursuant to South Carolina statutes which is responsible for the enforcement of neighborhood 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: private drives and alleyways, common areas, neighborhood parks and recreational facilities, wetlands and storm water management systems.

"***Project***" means a master planned community to include single family detached lots, single family attached lots, and related amenities project envisioned by the Concept Plan and approved by the City pursuant to this Agreement and the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement.

"***Property***" means that tract of land shown and depicted on the boundary survey attached hereto as **Exhibit "B"**.

"Term" means the duration of this Agreement as set forth in Section 3 hereof.

"***Residential Unit***" means a residence within the Property, whether a single family lot (whether attached or detached), townhome, or any other residence for occupancy.

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 Concept 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***" on the Concept Plan to any person or entity so long as the same shall be restricted in use to "open space"; (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. USES AND DENSITY. 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 and the applicable approved Concept Plan shall provide for not more than 249 total Residential Units, at a maximum height not to exceed 35 feet for all single family attached or single family detached Residential Units.

8. 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.

9. INFRASTRUCTURE AND SERVICES. The City and 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.

A. Public Roads. All roads within the Project serving the single family lots shall be public roads. Private driveways and alleys may be allowed in limited circumstances, provided such driveways and alleys are constructed to City standards, are approved by the City Planning Commission as part of the subdivision plat approval process, and will be owned and maintained by a private Owners Association.

Notwithstanding the above provisions regarding public roads within the Project, the City and Developer acknowledge that, prior to acceptance by the City as a public road, Developer reserves the right to close portions of the roads within the Project which are adjacent to Developer's model homes and/or sales center, so as to preclude access to the general public. During such temporary road closures, the City may continue to access and use such roads for public purposes. Nothing herein shall be deemed to require that the City accept driveways, alleyways or other improvements which do not comply with the Complete Streets provisions of the City's Land Development Regulations.

In addition, the City and Developer acknowledge that Developer shall make certain off-site improvements to Water Tower Road, which will include intersection improvements for inbound and outbound turn lanes at S.C. Highway 90 and Water Tower Road and Two (2) separate entrances to the Project from Water Tower Road. The improvements to Water Tower Road shall be in accordance with the applicable standards of South Carolina Department of Highways, Horry County and the City, and upon standards, and following such improvements and acceptance by the

applicable governmental entity, Water Tower Road shall be deemed to have been completed in accordance with the terms of this Agreement. The proposed public roadway improvements within the Property shall be completed as a part of the subdivision plat approval process, and in accordance with subdivision regulations of the City for the respective phase of the Project, 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 Horry County with regards to Water Tower Road, including, but not limited to the issuance of any encroachment permits from Water Tower Road to any portion of the Property. The costs of platting, dedicating, conveying and recording such public roadway, shall be the sole expense of Developer.

Developer agrees that the improvements to Water Tower Road and/or S.C. Highway 90, are essential to the function of the Project, despite Water Tower Road being located in Horry County, and S.C. Highway 90 being a State roadway, the Developer agrees that such improvements to Water Tower Road and/or S.C. Highway 90 shall be commenced on or before the issuance of the 50th building permit for Residential Units within the Project, and that the improvements to Water Tower Road and/or S.C. Highway 90 will be completed and accepted by the applicable governmental entity, on or before the issuance of the 100th building permit for Residential Units within the Project. The parties acknowledge that, in the event the improvements to Water Tower Road are not completed and accepted by the applicable governmental entity, the City shall have no obligation to issue more than 100 building permits for Residential Units within the Project, unless or until the improvements to Water Tower Road are completed and accepted by the applicable governmental entity. The improvements to be made by Developer to Water Tower Road, which include Two (2) separate entrances to the Project in accordance with the City's Land Development Regulations, together with an all-weather surface emergency access from the Project to the boundary of Coates Road, also a roadway maintained by Horry County, as and if required by the City's Public Works Director, are shown on **Exhibit "D"** attached hereto (the "***Roadway Improvement Exhibit***").

B. Road Standards and Traffic Impact. With the exception of Water Tower Road, all public roads within the Project shall be constructed to City specifications. The exact location, alignment, and name of any public road within the Project, other than Water Tower Road and S.C. Highway 90, and encroachments from Water Tower Road, 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 until such roads are offered to, and accepted by, the City for public ownership and maintenance, other than Water Tower Road and S.C. Highway 90, which improvements are intended to be accepted by South Carolina Department of Highways and/or Horry County following completion, for the continued maintenance of Water Tower Road by Horry County. Upon final inspection by the City, the Developer shall provide a warranty period for all public roads dedicated to the City within the Project, pursuant to the City's Street Acceptance Policy in effect at the time of this Agreement.

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 9.B.

C. Storm Drainage System. All stormwater runoff, drainage, retention and treatment improvements within the Property shall be designed in accordance with the Code of Ordinances. All stormwater runoff and drainage system structural improvements, including culverts

and piped infrastructure, will be constructed by the Developer and dedicated to the City. Upon final inspection and acceptance by the City, the Developer shall provide a one-year warranty period for all drainage system structural improvements within the Project. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. Streetlights. Developer shall install or cause to be installed streetlights within the Project. To the extent that the City provides the same benefit to other similarly-situated neighborhoods within the City, the City shall contribute toward the monthly cost for each streetlight in an amount equal to the costs for the base street light fixture offered by the utility provider. The remaining monthly cost for each streetlight, including additional charges associated with an enhancement street light fixture, if any, shall be borne by the Developer and/or Owners Association.

K. 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.

L. 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. No additional public benefits shall be required of Developer to: (i) establish the amenity components of the Property; (ii) establish the signage and entry monumentation for the Property; and (iii) establish the signage and lighting standards for the Property provided, however, nothing contained herein shall be deemed or construed to restrict the City in the appropriate exercise of its eminent domain powers.

M. 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.

N. Ponds and Lakes. In accordance with Section 9.E above, the Developer shall install pond(s) or lake(s) as shown on the approved 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 Owner's Association for on-going maintenance following completion of the Project.

O. Prohibition Against Conservation Easements and Other Restrictions on the Property. 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 Concept 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.

P. Temporary Storm Drainage Maintenance. Developer will provide temporary storm drainage measures, which incorporate any existing storm drainage facilities located on the Property to the reasonable satisfaction of the Public Works Director for the City, such that prior to commencement of Development Work, the Property shall continue to maintain any existing storm drainage facilities until the storm drainage facilities which are a part of the Development Work for each respective Phase of the Project are complete, and the same are dedicated to the City.

Q. General Maintenance and Mowing. Developer must maintain the Property consistent with the Code of Ordinances of the City, provided that, at a minimum, Developer will mow the undeveloped Property no less than eight 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.

R. Recording of Agreement. In accordance with provisions of § 6-31-120, Code of Laws of South Carolina (1976) as amended Developer shall record this agreement within fourteen days of final approval by the City, at the second and final reading of City Council; in addition, the burdens and benefits hereunder shall inure to successors in interest to Developer.

10. 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.

11. ADDITIONAL FEES 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 shall be subject to an annual increase, beginning on January 1, 2024, 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) 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 $300 for each residential unit, paid at the time of issuance of each respective building permit.

(B) 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) 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 $2,600 for each residential unit within the Property, also paid at the time of issuance of each respective building permit.

(D) 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 Six (6) months, provided that following any such initial Six (6) month period, residential leases may be extended for periods of less than Six (6) months to the same tenant, provided such extensions are for successive periods of not less than Thirty (30) days. No sub-lease or assignment shall be permitted which would result in a party occupying a Residential Unit for a period of less than Six (6) months, the express intent of this provision being to prohibit short-term and/or overnight rentals.

(E) 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 the necessary and required permanent and perpetual easements necessary to facilitate such drainage from the Property.

(F) Developer recognizes that on-site amenities within the Project reduce the demand on the recreational services that must otherwise be provided by the City, and therefore Developer agrees that the on-site amenities for the Project will include (i) a swimming pool of not less than 2,500 square feet in size to accommodate the residents of the Project, together with not less than 3,500 square feet in pool deck, with a clubhouse and restrooms; and (ii) that such swimming pool, clubhouse and restrooms will be commenced on or before the date on which the 120th building permit for Residential Units within the Project is issued, and such swimming pool, clubhouse and restrooms will be completed and a certificate of occupancy issued prior to the date on which the 150th building permit for Residential Units within the Project is issued.

(G) 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 a 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.

(H) 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.

(I) 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 "***Prohibited Materials***").

12. 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.

13. 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.

14. 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.

15. 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.

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 personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582
Attention: City Manager

With a copy to:

Franklin G. Daniels, Esq.
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577

With a copy to:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582
Attention: City Attorney

And to the Developer at:

Pulte Home Company, LLC
_____
_____
Attention: Jeremy Bunner

With a copy to:

Robert S. Guyton, Esq.
Robert S. Guyton, P.C.
4605 B Oleander Drive, Suite 202
Myrtle Beach, SC 29577

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. Estoppel Certificate. The City or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing, within thirty (30) days of such written notice, that this Agreement is in full force and effect, that this Agreement has not been amended or modified, or if so amended, identifying the amendments, whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of

notice, or both, would constitute a default and, if so, specifying each such event.

C. 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.

D. 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.

E. Exhibits. All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

F. 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.

G. 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.

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

I. 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.

J. 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.

K. 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.

L. 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.

M. 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 site plan of the Project shown on the Concept Plan, subject to any Concept Plan Revisions as defined herein. 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:

WITNESSES:

PULTE HOME COMPANY, LLC, a Michigan limited liability company

_____
Witness #1

By: _____
Name: _____
Title : _____

_____
Witness #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____, as _____ of PULTE HOME COMPANY, LLC, a Michigan limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public
My Commission Expires:_____

[CITY SIGNATURE PAGE FOLLOWS]

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

_____
Witness #1

By: _____
Name: _____
Title: _____

_____
Witness #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this _____day of_____, 2022 by_____, the of the CITY OF NORTH MYRTLE BEACH. He or she personally appeared before me and is personally known to me.

_____
Notary Public
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"

Boundary Survey of Property

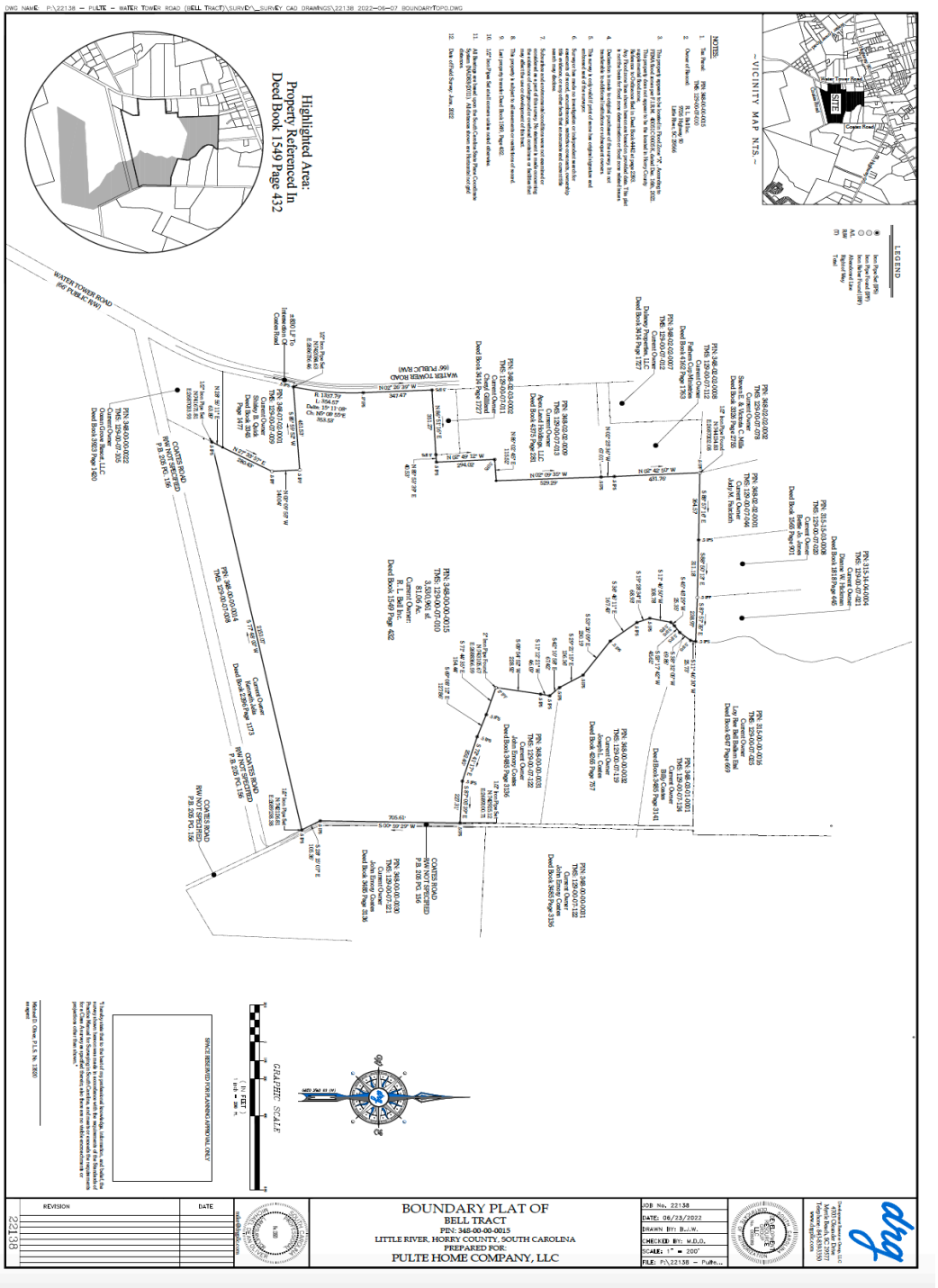

EXHIBIT “C”

Concept Plan

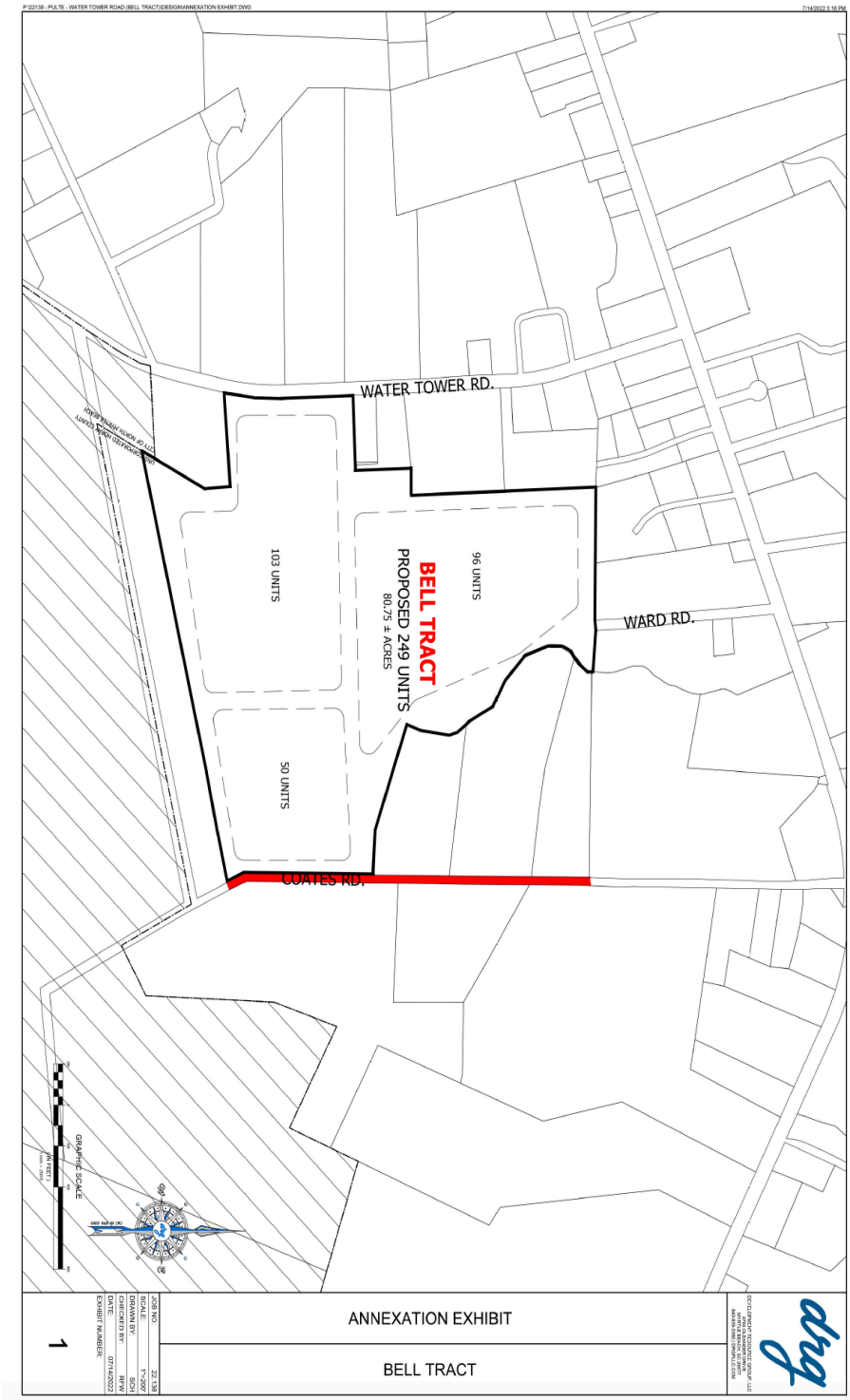

EXHIBIT “D”

Roadway Improvement Exhibit

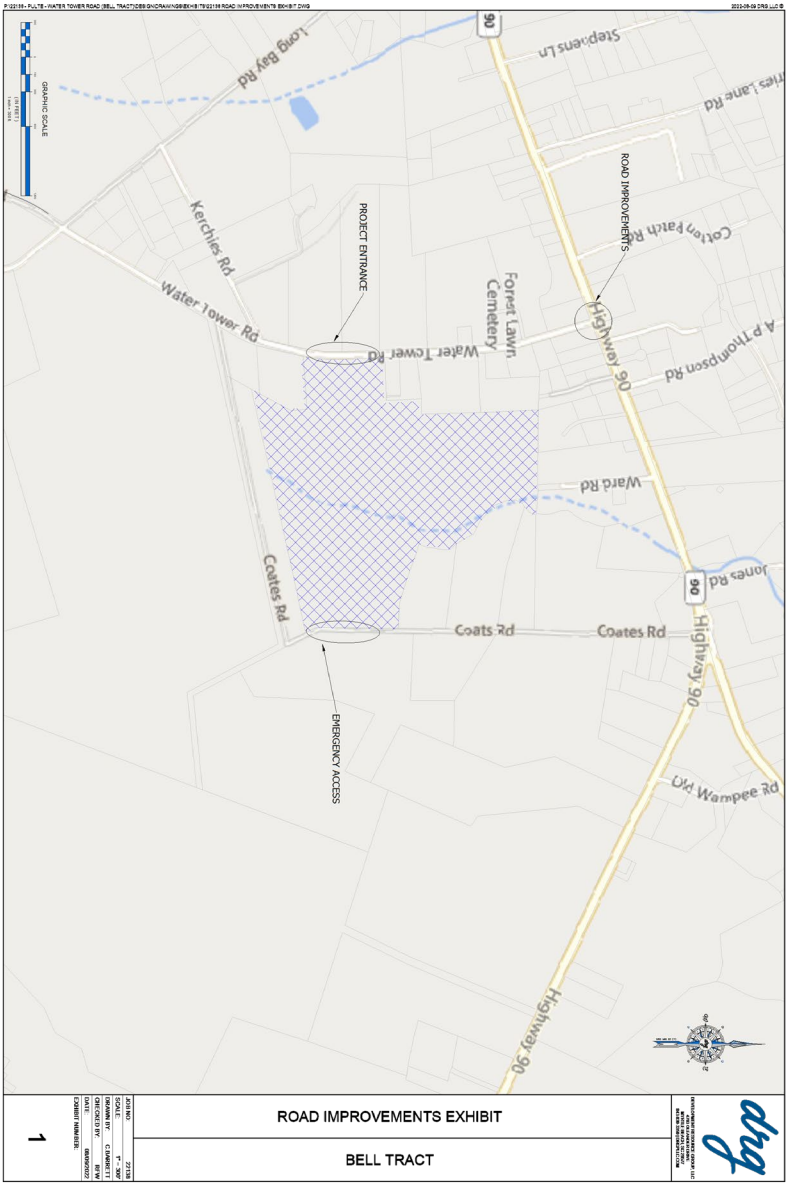

EXHIBIT "E"

Land Development Regulations

[TO BE ATTACHED]

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 Eighteen (18) months from approval of this Agreement to allow for design, permitting and mobilization. Approximately One-Third of the Project would be complete within Five (5) years of approval of this Agreement, with an additional Two-Thirds of the Project being completed in the subsequent Five (5) year period.

EXHIBIT "G"

Prohibited Materials and Building Elements

1. Porches and patios are encouraged and will be allowed up to 10' from the front property line.

2. All homes shall be clad in wood siding, cementious 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. Exterior brick walls shall use Flemish, English or other more intricate bond patterns, common bond being strictly prohibited.

5. Large expanses of blank walls on the front and rear elevations should be avoided.

6. Window sizing should be proportionate with the wall area where window is installed.