REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: October 3, 2022

Agenda Item: 7G	Prepared for: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: September 28, 2022
Subject: Regarding the Lauret Associates Tract Development Agreement (DA) and authorize the City Manager to sign the document on behalf of the City	Division: Legal

Main elements of the Lauret Associates 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 546 total residential units. All residential units shall not exceed the maximum height of 35 feet.

3. **Off-Site Road Improvements:** Currently, in lieu of the payment of the Park Enhancement Fee, the Beachfront Parking Enhancement Fee, and the Public Safety Enhancement Fee, the City has elected to require the Developer to improve a portion of Long Bay Road as indicated on Exhibit C which, improvements including design, permitting, and construction at the developer's sole expenses, shall be complete on or before the date which is Twenty-Four (24) months following the Effective Date of the agreement. The City may, at its discretion, elect to improve Long Bay Road prior to the Developer improving Long Bay Road. In that event, the City shall reimburse the Developer's documented third-party costs incurred for design and permitting of Long Bay Road and in lieu of such obligation, the Developer shall instead pay the Park Enhancement Fee of $300 per residential unit, the Beachfront Parking Fee of $1,100 per residential unit, and the Public Safety Enhancement Fee of $3,600 per residential unit.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **Rental Agreements:** Minimum term of any rental agreement shall be 6 months, provided that following any such initial 6-month period, residential leases may be extended for periods of less than 6 months to the same tenant, provided such extensions are for successive periods of not less than 30 days.

Recommended Action:
Approve or deny the proposed ordinance on first reading

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 LAURET ASSOCIATES TRACT

THIS DEVELOPMENT AGREEMENT ("***Agreement***") is made and entered this ___ day of _____, 2022, by and between **BEAZER HOMES, LLC** a Delaware 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, Lauret Associates, LLC, a South Carolina limited liability company (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, together with **Exhibit "C"** attached hereto, to show responsibilities for off-site roadway improvements, and a copy of such Concept Plan being attached hereto as **Exhibit "D"**, 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 Beazer Homes, LLC, a Delaware 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.

"***Effective Date***" means the date on which the last of the parties has executed this Agreement.

"***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, townhome, condominium, duplex 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 again be automatically 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. **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 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 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.

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 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 sewage treatment to its residents in accordance with applicable provisions of laws.

(A) **Public Roads**. As an obligation, all roads within the Project serving the Residential Units 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.

(B) **Storm Drainage System**. As an obligation, 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.

(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 a Residential Unit within the Property is required in return for such service for each owner of any Residential Unit within the Property, and the City reserves the right to terminate or discontinue such service(s) to any owner of any Residential Unit within 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**. As an obligation, 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, if any, including additional charges associated with an enhancement street light fixture, if any, shall be borne by the Developer and/or Owners Association.

(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. 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.

(L) **Easements**. As an obligation, 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 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) **Temporary Storm Drainage Maintenance**. As an obligation, 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.

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 OBLIGATIONS, 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 Enhancement 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 $300 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 $3,600 for each residential unit within the Property, also paid at the time of issuance of each respective building permit.

(D) **Uses 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 and the applicable approved Concept Plan shall provide for not more than 546 total Residential Units, at a maximum height not to exceed 35 feet for all single family attached or single family detached Residential Units, the parties acknowledging that 546 total Residential Units shall require not less than Three (3) separate entrances to the Property.

(E) **Off-Site Road Improvements**. The City and Developer acknowledge that, in lieu of the payment of the Park Enhancement Fee, Beachfront Parking Enhancement Fee and Public Safety Enhancement Fee, set forth above, the City has elected to require Developer to instead be obligated to improve Long Bay Road, an existing public roadway a portion of which abuts the boundary of the Property, which roadway is maintained by Horry County, extending from the existing boundary of the Property to the intersection of Long Bay Road and Water Lilly Road, thereby providing an alternative route to and from the Property other than Water Tower Road, together with additional off-site traffic improvements which may be required for the Project. The improvement of Long Bay Road, including design, permitting and construction at Developer's sole expenses, shall be complete on or before the date which is Twenty Four (24) months following the Effective Date of this Agreement. The improvement of Long Bay Road will include road widening at the entrance Property, together with turn lanes and not less than Three (3) separate entrances to the Property, all such improvements to be in accordance with the standards of Horry County, and upon completion and acceptance of Long Bay Road by Horry County, Long Bay Road shall be deemed to have been completed in accordance with the terms of this Agreement. The area of responsibility for Long Bay Road is shown on **Exhibit "C"** attached hereto (the "***Roadway***

Improvement Exhibit"). Developer shall be responsible for satisfying the requirements of Horry County with regards to Long Bay Road, including, but not limited to the issuance of any encroachment permits from Long Bay 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 improvement of Long Bay Road is essential to the function of the Project, despite Long Bay Road being located in Horry County, and therefore Developer agrees that the improvement of Long Bay Road, including design, permitting and construction at Developer's sole expenses, shall be complete on or before the date which is Twenty Four (24) months following the Effective Date of this Agreement, the parties further acknowledge that, in the event Long Bay Road is not completed and accepted by Horry County on or before the date which is Twenty Four (24) months following the Effective Date of this Agreement, the City shall have no obligation to issue more than 150 building permits for Residential Units within the Project, unless or until Long Bay Road is completed and accepted by Horry County.

Developer and the City further agree that the City, in its sole discretion, may elect to improve Long Bay Road, prior to Developer improving Long Bay Road, and, in the event the City should elect to improve Long Bay Road at the expense of the City, the City shall reimburse Developer's documented third party costs incurred for design and permitting of Long Bay Road, and Developer shall thereafter be relieved of the obligation to improve Long Bay Road, and in lieu of such obligation shall instead pay the Park Enhancement Fee, Beachfront Parking Fee and Public Safety Enhancement Fee, in full, in accordance with Section 10(A), 10(B) and 10(C) above, respectively, and the above option of the City to withhold building permits for Residential Units within the Project unless and until Long Bay Road is completed and accepted by Horry County shall not longer be applicable.

(F) **Road Standards and Traffic Impact**. As an obligation, with the exception of Long Bay 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 Long Bay Road and encroachments from Long Bay 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 Long Bay Road, which improvements are intended to be accepted by Horry County following completion, for the continued maintenance of Long Bay 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 10.F.

(G) **Development Activity, Clearing and Grading**. As an obligation, Development Activity, Clearing and Grading, as defined in Article II and Article II 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.

(H) **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 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.

(I) **General Maintenance and Mowing**. As an obligation, 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 delivered 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 for Residential Units within the Property.

(J) **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 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.

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

(L) **On-Site Amenity**. As a public benefit, 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.

(M) **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 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.

(N) **Open Space Requirement**. As a public benefit, 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.

(O) **Prohibited Materials**. As a public benefit, 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***").

(P) **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 date on which the City enters into this Agreement. The burdens of the development agreement are binding upon, and benefits of the agreement shall inure to, all successors in interest to the parties to the

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. **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:
Beazer Homes, LLC
_____
_____
Attention: _____

With a copy to:
Robert S. Guyton, Esq.
Robert S. Guyton, P.C.
4605 B Oleander Drive, Suite 202
Myrtle Beach, SC 29577

16. **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.

17. **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.

18. **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 an 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.

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:

BEAZER HOMES, LLC, a Delaware 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 BEAZER HOMES, LLC, a Delaware 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

South Carolina Code of Laws
Unannotated

Title 6 - Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions

CHAPTER 31

South Carolina Local Government Development Agreement Act

SECTION 6-31-10. Short title; legislative findings and intent; authorization for development agreements; provisions are supplemental to those extant.

(A) This chapter may be cited as the "South Carolina Local Government Development Agreement Act".

(B)(1) The General Assembly finds: The 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.

(2) Assurance to a developer that upon receipt of its development permits it may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, reduces the economic costs of development, allows for the orderly planning of public facilities and services, and allows for the equitable allocation of the cost of public services.

(3) Because the development approval process involves the expenditure of considerable sums of money, predictability encourages the maximum efficient utilization of resources at the least economic cost to the public.

(4) Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on and off-site infrastructure and other improvements. These public benefits may be negotiated in return for the vesting of development rights for a specific period.

(5) Land planning and development involve review and action by multiple governmental agencies. The use of development agreements may facilitate the cooperation and coordination of the requirements and needs of the various governmental agencies having jurisdiction over land development.

(6) Development 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.

(C) It is the intent of the General Assembly to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

(D) This intent is effected by authorizing the appropriate local governments and agencies to enter into development agreements with developers, subject to the procedures and requirements of this chapter.

(E) This chapter must be regarded as supplemental and additional to the powers conferred upon local governments and other government agencies by other laws and must not be regarded as in derogation of any powers existing on the effective date of this chapter.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-20. Definitions.

As used in this chapter:

(1) "Comprehensive plan" means the master plan adopted pursuant to Sections 6-7-510, et seq., 5-23-490, et seq., or 4-27-600 and the official map adopted pursuant to Section 6-7-1210, et seq.

(2) "Developer" means a person, including a governmental agency or redevelopment authority created pursuant to the provisions of the Military Facilities Redevelopment Law, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) "Development" means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels. "Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) "Development permit" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of local government having the effect of permitting the development of property.

(5) "Governing body" means the county council of a county, the city council of a municipality, the governing body of a consolidated political subdivision, or any other chief governing body of a unit of local government, however designated.

(6) "Land development regulations" means ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes a local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of property.

(7) "Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules adopted by a local government affecting the development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications, except as provided in Section 6-31-140 (A).

(8) "Property" means all real property subject to land use regulation by a local government and includes the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as a part of real property.

(9) "Local government" means any county, municipality, special district, or governmental entity of the State, county, municipality, or region established pursuant to law which exercises regulatory authority over, and grants development permits for land development or which provides public facilities.

(10) "Local planning commission" means any planning commission established pursuant to Sections 4-27-510, 5-23-410, or 6-7-320.

(11) "Person" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, state agency, or any legal entity.

(12) "Public facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

HISTORY: 1993 Act No. 150, Section 1; 1994 Act No. 462, Section 3.

SECTION 6-31-30. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.

A local government may establish procedures and requirements, as provided in this chapter, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a county or municipality by the adoption of an ordinance.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-40. Developed property must contain certain number of acres of highland; permissible durations of agreements for differing amounts of highland content.

A local government may enter into a development agreement with a developer for the development of property as provided in this chapter provided the property contains twenty-five acres or more of highland. Development agreements involving property containing no more than two hundred fifty acres of highland shall be for a term not to exceed five years. Development agreements involving property containing one thousand acres or less of highland but more than two hundred fifty acres of highland shall be for a term not to exceed ten years. Development agreements involving property containing two thousand acres or less of highland but more than one thousand acres of highland shall be for a term not to exceed twenty years. Development agreements involving property containing more than two thousand acres and development agreements with a developer which is a redevelopment authority created pursuant to the provisions of the Military Facilities Redevelopment Law, regardless of the number of acres of property involved, may be for such term as the local government and the developer shall elect.

HISTORY: 1993 Act No. 150, Section 1; 1994 Act No. 462, Section 4.

SECTION 6-31-50. Public hearings; notice and publication.

(A) Before entering into a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, the public hearing may be held by the local planning commission.

(B)(1) Notice of intent to consider a development agreement must be advertised in a newspaper of general circulation in the county where the local government is located. If more than one hearing is to be held, the day, time, and place at which the second public hearing will be held must be announced at the first public hearing.

(2) The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

(C) In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-60. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(A) A development agreement must include:

(1) a legal description of the property subject to the agreement and the names of its legal and equitable property owners;

(2) the duration of the agreement. However, the parties are not precluded from extending the termination date by mutual agreement or from entering into subsequent development agreements;

(3) the development uses permitted on the property, including population densities and building intensities and height;

(4) a description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;

(5) a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the development agreement;

(6) a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the 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;

(7) a finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;

(8) a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and

(9) a description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(B) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule including commencement dates and interim completion dates at no greater than five year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to Section 6-31-90, but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. If the developer requests a modification in the dates as set forth in the agreement and is able to demonstrate and establish that there is good cause to modify those dates, those dates must be modified by the local government. A major modification of the agreement may occur only after public notice and a public hearing by the local government.

(C) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(D) The development agreement also may cover any other matter not inconsistent with this chapter not prohibited by law.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-70. Agreement and development must be consistent with local government comprehensive plan and land development regulations.

A development agreement and authorized development must be consistent with the local government's comprehensive plan and land development regulations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-80. Law in effect at time of agreement governs development; exceptions.

(A) Subject to the provisions of Section 6-31-140 and unless otherwise provided by the development agreement, the laws applicable to development of the property subject to a development agreement, are those in force at the time of execution of the agreement.

(B) Subject to the provisions of Section 6-31-140, a local government may apply subsequently adopted laws to a development that is subject to a development agreement only if the local government has held a public hearing and determined:

(1) the laws are not in conflict with the laws governing the development agreement and do not prevent the development set forth in the development agreement;

(2) they are essential to the public health, safety, or welfare and the laws expressly state that they apply to a development that is subject to a development agreement;

(3) the laws are specifically anticipated and provided for in the development agreement;

(4) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement which changes, if not addressed by the local government, would pose a serious threat to the public health, safety, or welfare; or

(5) the development agreement is based on substantially and materially inaccurate information supplied by the developer.

(C) This section does not abrogate any rights preserved by Section 6-31-140 herein or that may vest pursuant to common law or otherwise in the absence of a development agreement.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-90. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(A) Procedures established pursuant to Section 6-31-40 must include a provision for requiring periodic review by the zoning administrator, or, if the local government has no zoning administrator, by an appropriate officer of the local government, at least every twelve months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(B) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(C) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, that the local government has first given the developer the opportunity:

(1) to rebut the finding and determination; or

(2) to consent to amend the development agreement to meet the concerns of the local government with respect to the findings and determinations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-100. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-110. Validity and duration of agreement entered into prior to incorporation or annexation of affected area; subsequent modification or suspension by municipality.

(A) Except as otherwise provided in Section 6-31-130 and subject to the provisions of Section 6-31-140, if a newly-incorporated municipality or newly-annexed area comprises territory that was formerly unincorporated, any development agreement entered into by a local government before the effective date of the incorporation or annexation remains valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The parties to the development agreement and the municipality may agree that the development agreement remains valid for more than eight years; provided, that the longer period may not exceed fifteen years from the effective date of the incorporation or annexation. The parties to the development agreement and the municipality have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the unincorporated territory of the county.

(B) After incorporation or annexation the municipality may modify or suspend the provisions of the development agreement if the municipality determines that the failure of the municipality to do so would place the residents of the territory subject to the development agreement, or the residents of the municipality, or both, in a condition dangerous to their health or safety, or both.

(C) This section applies to any development agreement which meets all of the following:

(1) the application for the development agreement is submitted to the local government operating within the unincorporated territory before the date that the first signature was affixed to the petition for incorporation or annexation or the adoption of an annexation resolution pursuant to Chapter 1 or 3 of Title 5; and

(2) the local government operating within the unincorporated territory enters into the development agreement with the developer before the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election before the date that the municipality orders the annexation.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-120. Developer to record agreement within fourteen days; burdens and benefits inure to successors in interest.

Within fourteen days after a local government enters into a development agreement, the developer shall record the agreement with the register of mesne conveyance or clerk of court in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-130. Agreement to be modified or suspended to comply with later-enacted state or federal laws or regulations.

In the event state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, the provisions of the agreement must be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-140. Rights, duties, and privileges of gas and electricity suppliers, and of municipalities with respect to providing same, not affected; no extraterritorial powers.

(A) The provisions of this act are not intended nor may they be construed in any way to alter or amend in any way the rights, duties, and privileges of suppliers of electricity or natural gas or of municipalities with reference to the provision of electricity or gas service, including, but not limited to, the generation, transmission, distribution, or provision of electricity at wholesale, retail or in any other capacity.

(B) This chapter is not intended to grant to local governments or agencies any authority over property lying beyond their corporate limits.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-145. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply at the time of the obligation to incur such debt becomes enforceable against the local government with any applicable constitutional and statutory procedures for the approval of this debt.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-150. Invalidity of all or part of Section 6-31-140 invalidates chapter.

If Section 6-31-140 or any provision therein or the application of any provision therein is held invalid, the invalidity applies to this chapter in its entirety, to any and all provisions of the chapter, and the application of this chapter or any provision of this chapter, and to this end the provisions of Section 6-31-140 of this chapter are not severable.

HISTORY: 1993 Act No. 150, Section 1.

SECTION 6-31-160. Agreement may not contravene or supersede building, housing, electrical, plumbing, or gas code; compliance with such code if subsequently enacted.

Notwithstanding any other provision of law, a development agreement adopted pursuant to this chapter must comply with any building, housing, electrical, plumbing, and gas codes subsequently adopted by the governing body of a municipality or county as authorized by Chapter 9 of Title 6. Such development agreement may not include provisions which supersede or contravene the requirements of any building, housing, electrical, plumbing, and gas codes adopted by the governing body of a municipality or county.

HISTORY: 1993 Act No. 150, Section 1.

EXHIBIT "B"

Boundary Survey of Property

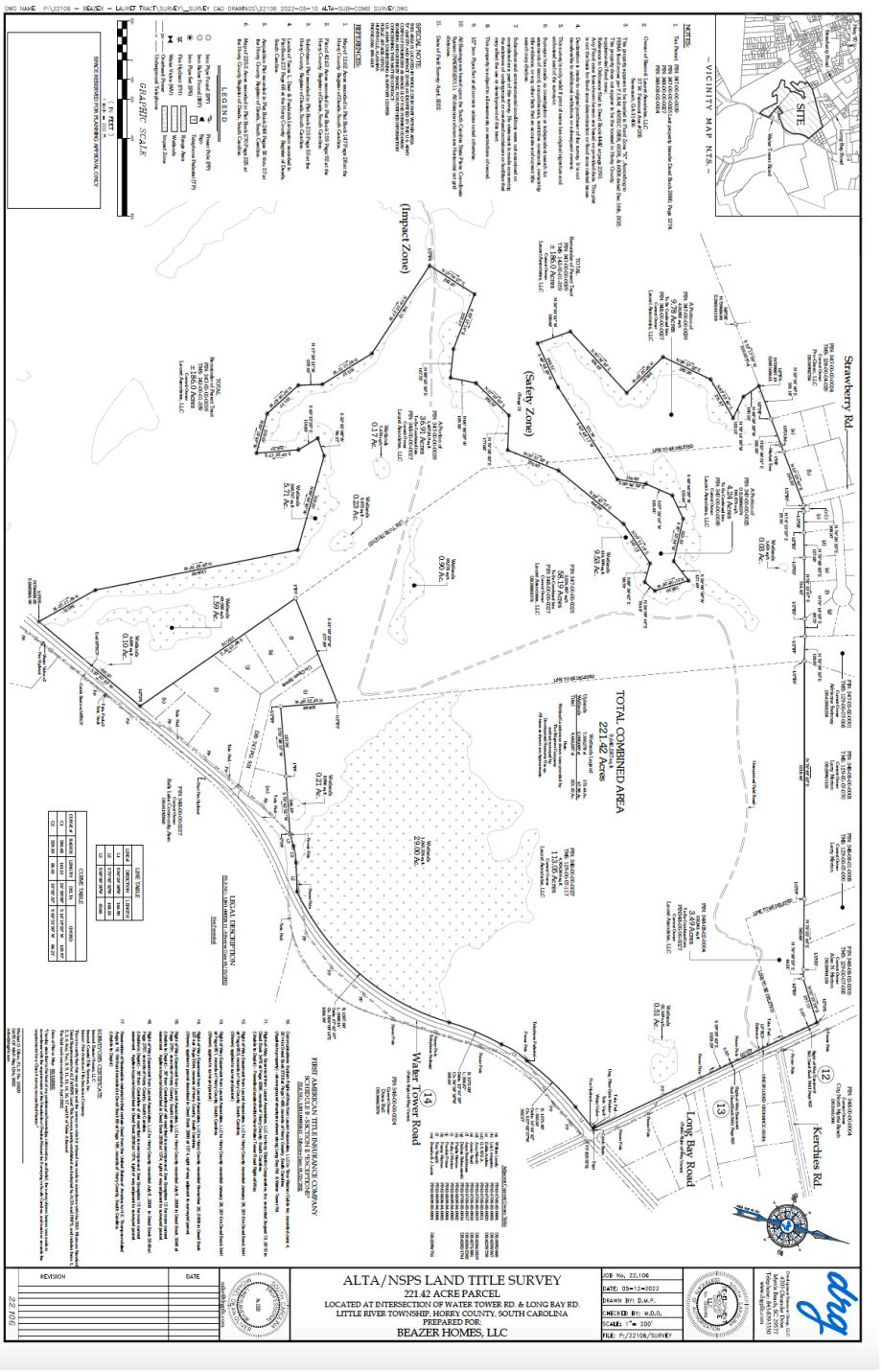

EXHIBIT "C"

Roadway Responsibility Exhibit

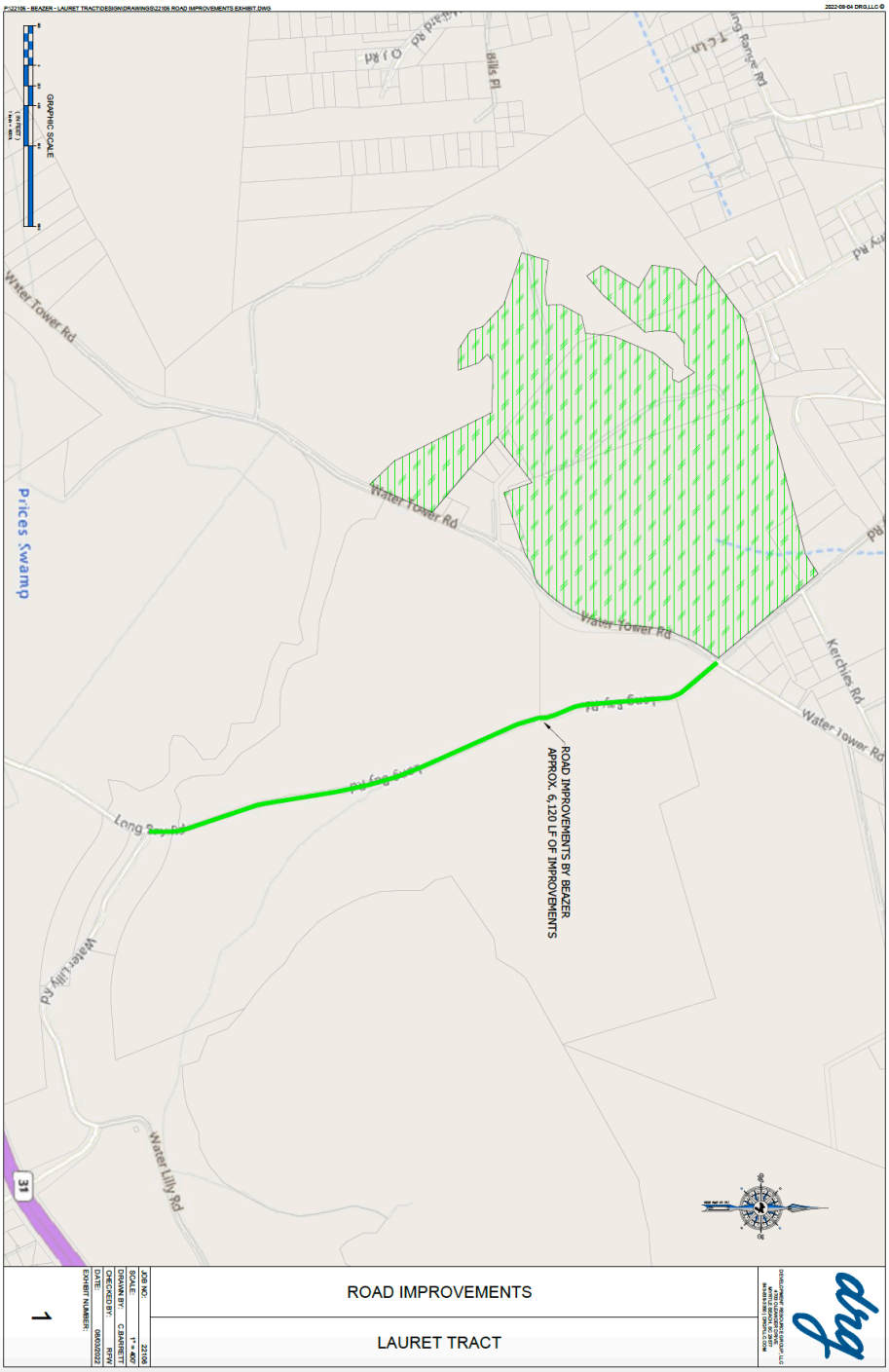

EXHIBIT "D"

Concept Plan

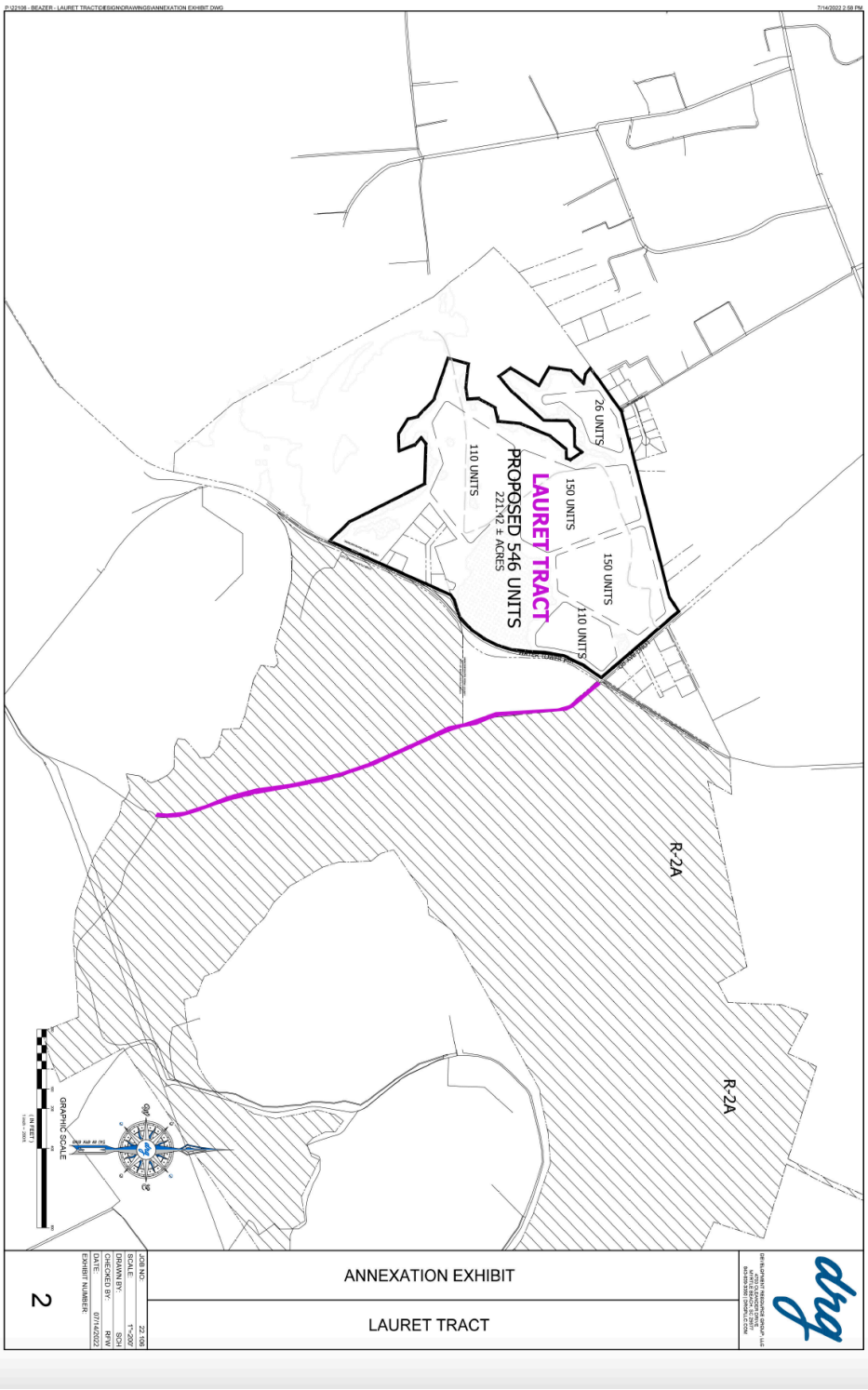

EXHIBIT "E"

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 a period of approximately Twenty Four (24) months from approval of this Agreement for design, permitting and installation of initial required infrastructure, and that 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.