REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: September 18, 2023

Agenda Item: 7F	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance, First Reading	Date: September 11, 2023
Subject: Amendment to the Barefoot Resort PDD Development Agreement creating Barefoot Lakes and to authorize the City Manager to sign the document on behalf of the City.	Division: Legal

Major provisions/terms of the Barefoot Lakes Development Agreement:

Duration of the Agreement: The duration of the agreement is for a term of 5 years with one automatic additional five-year term in the event the Developer is not in default.

Maximum Number of Dwelling Units: The agreement allows for a maximum of 84 single-family dwellings with a maximum height of 35 feet with a minimum of 1,600 square feet and not more than 2,000 square feet of conditioned living space.

Public Benefit: The Developer will make off-site improvements to Marsh Glenn Drive which will include a three (3) way stop, a flashing signal to warn oncoming traffic of the impending stop, street lighting to adequately light the area of the three-way stop which will include a wall pack lighting system placed on the underside of the Highway 31 overpass that crosses over Marsh Glenn Drive. The improvements shall be bonded or completed prior to the issuance of a building permit for vertical improvements on the Barefoot Lake parcel.

Fees: **Beachfront Parking Enhancement Fee: $1,100 per residential unit**
Fire Station Fee: $450 per residential unit
Water Extension Fee: $500 per residential unit
Sewer Extension Fee: $175 per residential unit
All fees are due upon issuance of building permit for each residential unit.

Barefoot Resort Service Enhancement Fee: A *private agreement* between the Developer and the Barefoot Master Association for the enhancement of amenities and services to the property owners who are members of the Master Association in the amount of $13,500 for each residential unit within the property. The City shall have *no* responsibility for the fee regarding collection, disbursement, demand payment for, confirm payment of, etc.

Other boilerplate provisions include:
Prohibition Against Conservation Easements.
General Maintenance and Mowing Obligation.
One year minimum rental agreement for residential units.
Construction traffic hours, to and from the site by way of Marsh Glenn Drive, shall be between 7:00 AM and 6:00 PM Monday through Friday and excepting public holidays.

Recommended Action:
Approve or deny the ordinance in first reading

Reviewed by City Manager		Reviewed by City Attorney

Council Action:
Motion By_____ 2nd By_____ To_____

AN ORDINANCE

AN ORDINANCE TO APRROVE THE DOCUMENT IDENTIFIED AS THE DEVELOPMENT AGREEMENT FOR BAREFOOT LAKES AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

WHEREAS, Blue Water Investments LLC and the Barefoot Resort Residential Owners Association, Inc. have prepared the attached document identified as the Development Agreement for Barefoot Lakes for City Council's approval.

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

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

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

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

DONE, RATIFIED AND PASSED, THIS _____ DAY OF_____, 2023.

ATTEST: _____
Mayor Marilyn Hatley

_____
City Clerk

APPROVED AS TO FORM:

_____ FIRST READING: 9.18.2023
City Attorney SECOND READING: _____

REVIEWED:

_____ ORDINANCE: _____
City Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

DEVELOPMENT AGREEMENT FOR BAREFOOT LAKES

THIS DEVELOPMENT AGREEMENT ("***Agreement***") is made and entered this ___ day of _____, 2023, by and among **BLU WATER INVESTMENTS LLC**, a Wyoming limited liability company, its affiliates, subsidiaries, successors and assigns ("***Developer***"), **BAREFOOT RESORT RESIDENTIAL OWNERS ASSOCIATION, INC.**, a South Carolina non-profit corporation ("***Master Association***"), and the governmental authority of the **CITY OF NORTH MYRTLE BEACH**, a body politic under the laws of the State of South Carolina ("***City***").

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

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

WHEREAS, Section 6-31-10(B)(6) of the Act, as defined below, also states that "[d]evelopment agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State"; and

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

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

WHEREAS, Developer is the legal owner of the real property identified as Horry County TMS/PIN No.: 142-00-01-225/359-00-00-0005, consisting of approximately 59.35 acres +/- (the "***Lake Parcel***"), which parcel has been annexed into the City, subjected to the Barefoot Declaration, as defined below, and zoned under the PDD, as defined below, and constitutes the real property upon which the Eighty Four (84) Residential Units, as defined herein, will be constructed; and

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

below, which Access Road Parcel constitutes the real property upon which the access roadway for the Eighty Four (84) Residential Units, as defined herein, and the balance of the real property, exclusive of the access roadway will be contributed to the Master Association; and

WHEREAS, Developer is the legal owner of the real property identified as Horry County TMS/PIN No.: 142-00-01-326/359-00-00-0004, consisting of approximately 11.64 acres +/- (the "***Open Space Parcel***"), which parcel is within the corporate limits of the City and is a part of the PDD, as defined below, previously subjected to the Barefoot Declaration, as defined below, and designated as wetlands/open space, which open space designation will continue, and which Open Space Parcel will be contributed to the Master Association; and

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

WHEREAS, the Master Association is the owner of various common areas and amenities within the Barefoot Resort & Golf Planned Development District, and is the entity empowered with the jurisdiction and management authority over certain residential areas within the Barefoot Resort & Golf Planned Development District; 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 Access Road Parcel and the Open Space Parcel, each of which are subject to this Agreement, are currently within the Barefoot Resort & Golf Planned Development District, but not subjected to the authority and governance of the Master Association, and are more particularly shown and depicted on **Exhibit "B-1"** attached hereto; and

WHEREAS, the City, at the request of the Developer, has annexed the Lake Parcel, which is more particularly shown and depicted on **Exhibit "B-2"** attached hereto, and simultaneously approved an amendment to the zoning district for the Barefoot Resort & Golf Planned Development District (the "***PDD***") to include the Lake Parcel, the Access Road Parcel and the Open Space Parcel, under the ordinances of the City of North Myrtle Beach, subjected each of said parcels to the Barefoot Declaration, together with this Agreement, on or about the ____ day of _____, 2023, the amendment to the PDD with regards to these parcels being recorded in the public records of Horry County, South Carolina in Deed Book _____ at Page _____; and

WHEREAS, the Developer has, simultaneously with the approval of this Agreement, subjected the Lake Parcel, the Access Road Parcel and the Open Space Parcel to the governance and jurisdiction of the Master Association, and the Master Association has agreed to accept, to the extent not already accepted, the Lake Parcel, the Access Road Parcel and the Open Space Parcel under the governance and jurisdiction of the Master Association; and

WHEREAS, the Master Association, as the party in interest for the Property following completion of the Project by Developer, has joined in this Agreement to ensure that any future amendments to this Agreement will require the consent and joinder of the Master Association; and

WHEREAS, this Agreement is intended to insure that the Project shall be limited in uses, home sizes and densities as state herein and within the PDD, and that any use outside of Eighty Four (84) detached single family Residential Units together with site improvements and open spaces including any roadways, utilities and sidewalks over parcel previously designated as wetland/open space under the PDD, as amended and planned and approved under the PDD and this Agreement would require a major amendment of the PDD, this Agreement and the consent of the Master Association to such amendments. No other uses of the real property which is the subject of this Agreement shall be allowed unless approved by the City, the Developer and the Master Association.

WHEREAS, this Agreement is being made and entered into among Developer, the Master Association and the City, under the terms of the Act, for the purpose of providing assurances to Developer that it may proceed with its development plan under the terms hereof, consistent with its annexation and approved zoning (as hereinafter defined) without encountering future changes in law which would materially affect the Developer's ability to develop the Property under its approved zoning, for the purposes of ensuring certain controls over the development of the Property for the benefit of the Master Association, 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"**.

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

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

"***Developer Default***" for purposes of this Agreement, Developer Default shall mean that (i)

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

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

"***Development Rights and Obligations***" means the rights, obligations, benefits and approvals of the Developer(s) under the 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 this Agreement is finally approved by the City following second reading of the ordinance approving this Agreement by the City Council of the City.

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

"***Land Development Regulations***" means the Land Development Regulations for the City, as amended and in effect as of the date hereof, which includes the Complete Streets Ordinance of the City, a complete copy of which is attached hereto as **Exhibit "E"**, or further amended from time to time pursuant to this Agreement.

"***Master Site Plan***" means that certain master site plan prepared by Developer, which Master Site Plan depicts the portion of the Property which was previously annexed into the City and subjected to the PDD, together with the portion of the Property which is being annexed into the City and also subjected to the Barefoot Declaration, and the PDD, for purposes of showing the density, site arrangement, and responsibilities for off-site roadway improvements, and a copy of such Master Site Plan being attached to the PDD.

"***Owners Association***" as used herein shall be deemed to mean "Neighborhood" as defined in the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties, recorded April 13, 2000, in Deed Book 2251 at Page 384, in the Office of the Register of Deeds for Horry County (the "***Barefoot Declaration***"). The Residential Units within the Property, which collectively form the Neighborhood referred to above, shall have the rights and obligations as each of the other single family homes or other neighborhoods which are subject to the Barefoot Declaration, but specifically excluding any rights and obligations which are applicable to any gated

community under the jurisdiction of the Barefoot Declaration. The Master Association 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: common areas wetlands and storm water management systems specifically conveyed to the Master Association.

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

"***Project***" means a neighborhood within the Barefoot Resort master planned community, which uses, homes sizes and densities are limited to Eighty Four (84) to single family detached lots in a single subdivision project as depicted by the Master Site Plan and approved by the City pursuant to this Agreement and the Code of Ordinances, under the jurisdiction of both the Owners Association, and the Master Association, as the same may be amended from time to time pursuant to this Agreement.

"***Property***" means collectively, the Lake Parcel, the Access Road Parcel and the Open Space Parcel, as more particularly shown and depicted on **Exhibit "B-1"** and **Exhibit "B-2"** attached hereto.

"Residential Unit" means a single family home, within the Property, as shown and depicted on the Master Site Plan, as the same may be amended.

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

3. **TERM**. The Developer represents and warrants that the Property consists of a total of not less than 25 acres and not more than 250 acres of "highland" within the meaning given that term by the Act. The term of this Agreement shall commence on the date on which this Agreement is executed by the City and the Developer and shall terminate on the date which is Five (5) years from the date of execution. Notwithstanding such termination date, provided that the Developer is not in default (after being provided with notice and opportunity to cure as set forth below) of this Agreement, Developer has diligently pursued development of the Property, and the Project has not been completed, at the conclusion of the initial five-year term, the termination date of this Agreement shall automatically be extended for One (1) additional Five (5) year term. At the conclusion of the initial Five (5) year extension of the Term, provided that the Developer is not in default (after being provided with notice and opportunity to cure as set forth below) of this Agreement, Developer has diligently pursued development of the Property, and the Project has not been completed, at the conclusion of the initial five-year extension of the Term, the termination date of this Agreement shall automatically be extended for a second and final additional Five (5) year term. Notwithstanding the terms and provisions in this Section or elsewhere in this Agreement to the contrary, if a court of competent jurisdiction hereafter determines that the length of the Term, or the provision for extension of the Term set forth above, exceeds the maximum term allowed under the Act and if all applicable judicial appeal periods have expired without such determination being overturned, then the Term of this Agreement relative to all or specific affected portions of the Property shall be reduced to the maximum permissible term under the Act, as determined by a court of competent jurisdiction.

4. **DEVELOPMENT OF THE PROPERTY**. The Property shall be developed in

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

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

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

(B) **Assignment of Development Rights and Obligations**. The Developer, or any subsequent developer, shall be entitled to assign and delegate the Development Rights and Obligations to a subsequent purchaser of all or any portion of the Property with the consent of the City, provided that such consent shall not be unreasonably withheld or delayed. The City understands that any such assignment or transfer by the Developer of the Development Rights and Obligations shall be non-recourse as to the assigning Developer. Upon the assignment or transfer by Developer of the Development Rights and Obligations, then the assigning Developer shall not have any responsibility or liability under this Agreement. For purposes of this Section 5, the following activities on the part of Developer shall not be deemed "development of the Property": (i) the filing of this Agreement, the Master Site Plan and the petitioning for or consenting to any amendment of this Agreement or the Code of Ordinances; (ii) the subdivision and conveyance of any portions of the Property to the City as contemplated under this Agreement; (iii) the subdivision and conveyance of the portion of the Property designated as "***Open Space***" on the Master Site 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, the Master Association 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.

Further, the Developer and the City acknowledge that the Lake Parcel, which is a portion of the Property, is presently located within the service area of Grand Strand Water & Sewer Authority ("***GSWS***"), and not within the service area of the City. Prior to the date of the approval of this Agreement, Developer has secured written authorization from GSWS allowing the City to

specifically provide potable water and sanitary sewer service the Lake Parcel and the Residential Units to be constructed thereon, on terms and conditions that are acceptable to the City, in its sole discretion.

(A) **Public Roads**. All roads within the Project serving the Residential Units, upon dedication and acceptance by the City in accordance with the requirements of the City, shall be public roads, provided, however, that, in accordance with the Master Site Plan, the Developer will extend a public right-of-way, having a width of not less than One Hundred (100') feet, along the Northeastern boundary of the Project, from Marsh Glen Drive, and that the internal Project public rights-of-way shall have a width of not less than Fifty (50') feet. All public roadways shall be constructed to City standards, will be approved by the City Planning Commission as part of the subdivision plat approval process, and, upon dedication and acceptance by the City, will be owned and maintained by the City, such that the Master Association shall have no financial responsibility for the maintenance, repair and replacement of such public roads, including any reserves or maintenance bonds which may reasonably be required. The typical roadway section for both the One Hundred (100') foot public right-of-way, and the Fifty (50') foot public right-of-way are shown on **Exhibit "J"** attached hereto (collectively the "***Roadway Sections***"). The Developer further agrees, for the benefit of Master Association, that the roads within the Project serving the Residential Units, as public roads, will not be gated.

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

(C) **Solid Waste and Recycling Collection**. The City shall provide solid waste and recycling collection services to the Property on the same basis as is provided to other residents and businesses within the City. Payment for such services to the City by Developer, an Owners Association or each individual purchaser or owner of any portion of the Property is required in return for such service for each owner within the Property, and the City reserves the right to terminate or discontinue such service(s) to any owner of any portion of the Property until such payment(s) have been made.

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

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

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

(G) **School Services**. The City neither provides nor is authorized by law to

provide public education facilities or services. Such facilities and services are now provided by the Horry County School District. The person or entity, whether it be homebuilder or another assignee of Developer, who actually initiates the building permit shall be responsible for paying all impact fees levied by the School District for each Residential Unit constructed prior to the issuance of a certificate of occupancy.

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

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

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

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

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

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

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

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

10. **ADDITIONAL FEES, OBLIGATIONS AND PUBLIC BENEFITS**. The Developer, and its respective successors and assigns agree that the then current owner of the Property or any portion thereof, shall pay to the City, the enhancement fees, as set forth below (collectively the "***Enhancement Fees***"). Developer further agrees that the Enhancement Fees, but specifically excluding the Prior Amendment Fees, shall be subject to an annual increase, beginning on January 1, 2025, 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) **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, to be paid at the time of issuance of the building permit for each such Residential Unit within the Property.

(B) **Barefoot Resort Service Enhancement Fee**. As a private agreement between the Master Association and the Developer, and as a benefit to the Master Association, for the Property, the Developer, or the then current owner, shall also pay to the Master Association, as a means to enhance the amenities and services available to the property owners who are members of the Master Association, as to each Residential Unit within the Property, a service enhancement fee (the "***Barefoot Resort Service Enhancement Fee***") in any amount equal to $13,900 for each Residential Unit within the Property, to be paid prior to the application of the building permit for each such Residential Unit within the Property, thereby lessening the amount of services to be provided by the City for such amenities and services. The Master Association agrees that, upon the payment of the Barefoot Resort Service Enhancement Fee, the funds received by the Master Association from the Developer will be "restricted", segregated and otherwise used only to enhance the amenities and services available to the owners of single-family residences which are members of the Master Association.

The Developer and the Master Association agree that the City shall have no responsibility with regards to the deposit, segregation, use or oversight of such Barefoot Resort Service Enhancement Fees, in any manner or to any degree whatsoever. The Developer and the Master Association further agree that, in the event a dispute arises between Developer and the Master Association with regards to this Agreement or any separate agreement between the Developer and the Master Association, that the City shall have no obligations with regards to such dispute, and that such dispute shall not constitute a default hereunder and that the City shall have no obligation to exercise any

of its rights provided herein, including, but not limited to the right to withhold building permits, unless and until a Developer Default shall have occurred under this Agreement.

The Master Association further agrees that, upon the payment of such Barefoot Resort Service Enhancement Fee for any respective Residential Unit, the Master Association shall issue an estoppel certificate, in a form reasonably acceptable to Developer (the "***Master Association Estoppel Certificate***"), and solely for the benefit of the Developer. Developer agrees solely for the benefit of the Master Association, and not as an obligation to the City, that, prior to the submittal of each building permit application for a Residential Unit, Developer shall have secured a Master Association Estoppel Certificate, provided however, that the Developer shall not present such Master Association Estoppel Certificate to the City, and the City shall not require such Master Association Estoppel Certificate at the time of each building permit application for a Residential Unit, this requirement being solely to confirm compliance by Developer with the private agreement between the Developer and the Master Association.

The parties acknowledge that the City shall have no role or responsibility to confirm, demand, collect, pay or disburse any Barefoot Resort Service Enhancement Fee, which shall be solely a private contractual arrangement between Developer and the Master Association, and the failure of Developer to obtain any such Master Association Estoppel Certificate shall not form the basis for the withholding of building permits by the City for any Residential Unit. Developer and the Master Association shall be free to enter into a private agreement, exclusive of the City, to amend the method and timing of both the Barefoot Resort Enhancement Fee and the issuance of any Master Association Estoppel Certificate in the discretion and by mutual agreement solely of Developer and the Master Association.

(C) **Prior Amendment Fees**. The City and the prior property owners within the PDD entered into that certain instrument amending the Development Agreement recorded March 22, 2000, in Deed Book 2244 at Page 922, in the Office of the Register of Deeds for Horry County, South Carolina, as amended (the "***Barefoot Resort Development Agreement***") entitled "Minor Amendments to the Modification to Development Agreement" dated August 1, 2003 and The Sewer and Water Extension Agreement dated August 2, 2003 (the "***Prior Amendment***"), which Prior Amendment provides, among other things for fees as follows: (a) Police/Fire Substation Fee in an amount equal to Four Hundred Fifty and No/100 ($450.00) Dollars per Density Unit (the "***Fire Station Fee***"); (b) a Water Extension Fee in an amount equal to Five Hundred and No/100 ($500.00) Dollars per Density Unit (the "***Water Extension Fee***"); and (c) a Sewer Extension Fee in an amount equal to One Hundred Seventy Five and No/100 ($175.00) Dollars per Density Unit (the "***Sewer Extension Fee***"), each of the Fire Station Fee, Water Extension Fee and Sewer Extension Fee to be paid to the City at the time of issuance of the building permit for each such Residential Unit within the Property Developer acknowledges and agrees that, as a public benefit, the Fire Station Fee, the Water Extension Fee and the Sewer Extension Fee are and shall also be applicable to the Property, and that, for purposes of this Amendment, Density Unit shall be deemed equivalent to the Residential Units otherwise described herein.

(D) **Uses, Lot Size, Home Size and Density**. As a public benefit, Development of the Property shall be determined in accordance with the Code of Ordinances, as the same may be amended from time to time pursuant to this Agreement, provided that the Property and the applicable approved Master Plan shall provide for not more than 84 total single-family detached Residential Units, at a maximum height not to exceed 35 feet. Individual Lots shall not be less than 7,250 square

feet, and the average Lot size for the Project shall not be less than 9,325 square feet. Individual single-family detached Residential Units shall not be less than 1,600 square feet of conditioned living space, and not less than 2,000 square feet under roof. Reference **Exhibit "M"** and **Exhibit "N"** included in the Exhibits to the PDD.

(E) **Off-Site Road Improvements**. As an obligation, the City and Developer acknowledge that Developer shall make certain off-site improvements to Marsh Glen Drive, a public right-of-way, providing access to the Project, which will include a three (3) way stop, and a flashing signal to warn oncoming traffic of the impending stop, street lighting to adequately light the area of the three (3) way stop, including a wall pack lighting system placed on the underside of the S. C. Highway 31 overpass at Marsh Glen Drive, in accordance with the applicable standards of the South Carolina Department of Transportation ("***SCDOT***"), and following such improvements and acceptance by the City and the SCDOT, respectively, such improvements shall be deemed to have been completed in accordance with the terms of this Agreement. The proposed roadway improvements within the Property and off-site on Marsh Glen Road shall be dedicated and conveyed, on acceptance by the City, and completed as a part of the subdivision plat approval process, and in accordance with subdivision regulations of the City for the Project, to the extent the Project is developed in one or more phases, the respective portions of the roadways within each such phase of the Project shall be platted together with the Residential Units for the particular phase in which such roadway is located. Developer shall be responsible for satisfying the requirements of the City with regards to such roadways, including, but not limited to the issuance of any encroachment permits from such roadways to any portion of the Property, together with any necessary easements for storm drainage related to such roadways, as shown on **Exhibit "D"** (the "***Roadway Improvement Exhibit***"). The costs of platting, dedicating, conveying and recording such public roadway, shall be the sole expense of Developer. All off-site road improvements as shown on the Roadway Improvement Exhibit shall be bonded, in accordance with the City's bonding requirements, or completed prior to the issuance of a building permit for vertical improvements upon the Lake Parcel.

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

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

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

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

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

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

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

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

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

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

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

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

(L) **Stormwater and Drainage**. As an obligation, Developer shall provide stormwater conveyance and retention facilities sufficient in capacity to accommodate the storm water generated from the Property, and provide the City with evidence of (i) the necessary and required permanent and perpetual easements necessary to facilitate such drainage from the Property; (ii) the perpetual maintenance and operation of stormwater and drainage facilities shall be vested in an Owners Association pursuant to covenants recorded in the public records of Horry County, South Carolina; and (iii) and best management practices ("***BMPS***") also recorded in the public records of Horry County, South Carolina.

(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 an undisturbed water quality buffer of not less than Twenty (20) feet in width. Developer will convey all Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States located within the Project to the Owner's Association for maintenance and operation not later than the date on which the Project is complete.

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

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

(P) **Approved Materials and Building Elements**. As an obligation, Developer further agrees that certain materials shall be prohibited for incorporation in the Residential Units or other buildings constructed as part of the Project, and those prohibited materials and encouraged

building elements are set forth on **Exhibit "G"** attached hereto (the "***Approved Elements***").

(Q) **Approved Builder**. As an obligation, Developer has designated Pulte Home Company, LLC ("***Pulte***") as the homebuilder for the Project. Any change in the designated homebuilder for the Project shall be deemed an amendment, requiring approval in accordance with the ordinances of the City.

(R) **Transfer of Wetlands and Open Space**. As a public benefit and a benefit to the Master Association, Developer agrees to preserve and transfer for maintenance to an Owners Association designated by the Master Association, the wetlands and open spaces surrounding the Property, together with the additional real property owned by Developer and located West of S.C. Highway 31, as shown on **Exhibit "H"** attached hereto (the "***Wetland and Open Space Transfer Exhibit***").

(S) **Entry Berm and Vegetated Hedge Maintenance**. As a public benefit and a benefit to the Master Association, Developer agrees to construct an earthen berm of not less than Four (4) feet in height, together with an opaque shrub line at the peak of such berm, of not less than Six (6) feet in height, at stabilization not later than Two (2) years following installation, and to also preserve and maintain a vegetated hedge, in order to mitigate vehicle headlights, in the areas of the Property shown on **Exhibit "I"**, such exhibit also including a drawing depicting the dimensions of the earthen berm, shrub line and such vegetated hedge (the "***Hedge Exhibit***").

(T) **Amendment to the Barefoot Declaration**. Developer and the Master Association acknowledge and agreement, that, as a condition to the approval of this Agreement, the Subject Property must be submitted to the Barefoot Declaration, providing jurisdiction over the Subject Property by the Master Association, and that such amendment shall be fully executed and a copy of such fully executed amendment delivered to the City, in a form suitable for recording, and the original delivered for recording in the public records of Horry County, South Carolina, on or before the recording of this Agreement in the public records of Horry County, South Carolina pursuant to Section 10(U) below.

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

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

12. **COMPLIANCE REVIEWS**. Developer, or its assigns, shall meet with the City, or its designee, at least once per year during the Term to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year as compared to the Development Schedule. The City shall provide written notice to the Developer of the date for such compliance review not less than Five (5) business days in advance, provided such notice shall

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

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

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

15. **RESTRICTIVE COVENANTS**. The obligations and public benefits agreed to and accepted by Developer set forth in this Agreement (collectively the "***Restrictive Covenants***") shall survive and continue in full force and effect without regard to the termination of this Agreement for a period ending on the earlier of (i) Fifty (50) years after the Term of this Agreement; or (ii) such time as the parties hereto, or their respective successors and assigns, have recorded a fully executed and effective termination of the Restrictive Covenants in the Office of the Register of Deeds for Horry County. Developer further covenants and agrees that, to the extent the Property is encumbered by covenants, conditions and restrictions (the "***CCRs***"), whether administered by the Master Association, 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.

16. **NOTICES**. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein

prescribed, and such notice or communication shall be deemed to have been given or made when communicated by generally recognized nationwide overnight delivery service, signature required, on the date of such signature on behalf of the recipient , addressed as hereinafter provided. In addition to the required overnight notice above, as a courtesy, and not as official notice, an electronic mail copy shall also be provided to such recipient. All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582
Attention: City Manager
Email: mgmahaney@nmb.us

With a copy to:

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

With a copy to:

City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582
Attention: City Attorney
Email: cpnoury@nmb.us

To the Master Association:

Barefoot Resort Residential Owners Association, Inc.
c/o Ponderosa Management, LLC
P.O. Box 1706
North Myrtle Beach, SC 29598
Attention: Kelly White
Email: kwhite@pm-llc.com

With a copy to:

Robert E. Lee, Esq.
P.O. Box 1096
Marion, SC 29571
Attention: Robert E. Lee, Esq.
Email: rel@reallawfirm.com

And to the Developer at:

Blu Water Investments LLC
_____
_____
Attention: _____
Email: _____

With a copy to:

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

17. **GENERAL**.

(A) **Subsequent Laws**. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("***New Laws***"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by Developer and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement.

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

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

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

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

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

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

(H) **Governing Law**. This Agreement shall be governed by the laws of the State

of South Carolina, and the parties further agree that venue shall be proper, without regards to any conflict of law principals, in a court of competent jurisdiction in Horry County, or such other jurisdiction in South Carolina as is appropriate and necessary under the circumstances.

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

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

(K) **No Third Party Beneficiaries**. The provisions of this Agreement may be enforced only by the City and the Developer, except to the extent that any such provision operates to the benefit of the Master Association, in which case the Master Association shall have the right to enforce such provision. No other persons shall have any rights hereunder, unless specified in this Agreement.

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

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

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

[Signature Pages Follow]

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

DEVELOPER:

WITNESSES:

BLU WATER INVESTMENTS LLC, a Wyoming limited liability company

_____
Name: _____

By: _____
Name: _____
Title : _____

_____
Name: _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by _____, as _____ of BLU WATER INVESTMENTS LLC, a Wyoming limited liability company. He or she personally appeared before me and is personally known to me.

_____
Notary Public
Name: _____
My Commission Expires: _____

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

DEVELOPER:

WITNESSES:

BAREFOOT RESORT RESIDENTIAL OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation

_____
Name: _____

_____
Name: _____

By: _____
Name: _____
Title : _____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by _____, as _____ of BAREFOOT RESORT RESIDENTIAL OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation. He or she personally appeared before me and is personally known to me.

_____
Notary Public
Name: _____
My Commission Expires: _____

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

CITY:

WITNESSES:

CITY OF NORTH MYRTLE BEACH

_____
Name: _____

By: _____
Name: _____
Title: _____

_____
Name: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this _____day of_____, 2023 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-1"

Map of Access Road Parcel and Open Space Parcel included in Exhibit Supplement

EXHIBIT "B-2"

Map of Lake Parcel included in Exhibit Supplement

EXHIBIT "C"

Intentionally Omitted

EXHIBIT "D"

Roadway Improvement Exhibit

EXHIBIT "E"

Land Development Regulations

EXHIBIT "F"

Development Schedule

Construction will begin following receipt of permits from the City of North Myrtle Beach and from other regulatory bodies. The nature of this Project, together with the current economic conditions, prevents the Developer from providing exact dates for commencement of future phases or exact completion dates. Although the timing of completion of any particular Phase of the Project is subject to then current market demands, the Developer anticipates starting the installation of the infrastructure within a period of approximately Twenty-four (24) months from approval of this Agreement to allow for design, permitting and mobilization. The Project would be complete within Five (5) years of approval of this Agreement.

EXHIBIT "G"

Approved Materials and Building Elements

1. For Residential Units Porches and patios are required.

2. All Residential Units shall be clad in wood siding, Cementous fiberboard, brick or tabby.

3. Vinyl siding, metal siding, concrete block, fiberglass, plastic, asphalt siding, logs and other siding materials not set forth in Section 2 above, shall be strictly prohibited.

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

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

EXHIBIT "H"

Wetland and Open Space Transfer Exhibit

EXHIBIT “I”

Hedge Exhibit

EXHIBIT "J"

Roadway Sections