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**2022-21 (2<sup>ND</sup> READING): TO CLOSE AND ABANDON A PORTION PORCHER DRIVE RIGHT-OF-WAY LOCATED AT 79<sup>TH</sup> AVENUE NORTH**

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**Applicant/Purpose:** Thomas W. Davis / to abandon a portion of Porcher Drive & combine with applicant's adjoining property; and facilitate an exchange of property located on 6<sup>th</sup> Ave. North and Maple Street also owned by Thomas W. Davis to the City.

**Brief:**

- Porcher Dr. is located perpendicular to 79<sup>th</sup> Avenue N. with subject portion located to the north of 79<sup>th</sup> Ave. N.
- Applicant owns the property to the east of the abandoned portion of Porcher Dr.
- Of the 80' ROW, the City will keep 15' of the ROW and abandoned 65' to adjoin with Thomas W. Davis property.
- In a separate action, the applicant also proposes to exchange property w/ the City:
  - Thomas W. Davis owns property along 6<sup>th</sup> Ave. N and Maple Street.
  - Thomas W. Davis wishes to exchange this property with the City for the abandoned portion of Porcher Dr.
- No changes since 1<sup>st</sup> reading.

**Issues:**

- City will need utility easements on current Porcher Dr. ROW
- The City intends to establish a parking lot and locate a pump station on the property at 6<sup>th</sup> North and Maple.

**Public Notification:**

- Normal meeting notification.

**Alternatives:**

- Modify the request.
- Deny the proposed ordinance.

**Financial Impact:** None.

**Manager's Recommendation:**

- I recommend 1<sup>st</sup> reading (4.12.22).
- I recommend approval (4.26.22).

**Attachment(s):** Proposed ordinance, exhibits.

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

TO CLOSE AND ABANDON A  
PORTION PORCHER DRIVE  
RIGHT-OF-WAY LOCATED AT  
79<sup>TH</sup> AVENUE NORTH

**WHEREAS**, City is the owner of that certain lot of land located at the northern end of Porcher Drive along 79th Avenue North in Myrtle Beach, SC, more fully shown and designated on that certain plat attached hereto as Exhibit A, (the "City Property");

**WHEREAS**, Thomas W. Davis is the fee simple owner of that certain lot at the intersection of 6th Avenue N. and Maple Street, SC, identified as Horry County tax map number 181-06-28-014 and more fully described on Exhibit B attached hereto (the "Davis Property"); and

**Whereas**, Waccamaw 234, LLC et al, has submitted a request to the City Council of the City of Myrtle Beach to close and abandon the portion of Porcher Drive located north of 79<sup>th</sup> Avenue North. After closure and abandonment, the right-of-way will be a combined with the adjoining parcel. Appropriate utility easements shall be retained or granted. Thomas W. Davis is an owner of Waccamaw 234, LLC.

**Whereas**, the Council finds that the 65' portion of the right-of-way is no longer needed, and that abandonment of the above right-of-way will benefit the public economy, and is in the best interests of the public; and

**Whereas**, Thomas W. Davis and the City desire to exchange property upon the terms and conditions described in the "Contract of Exchange of Property" attached as exhibit C.

**So therefore**, the Council declares the eastern 65' width of the 80' right-of-way at the northern end of the Porcher Drive right-of-way to be closed and abandoned.

The City Manager, the Assistant City Manager, the Chief Financial Officer, the City Attorney and the City Clerk, for and on behalf of the City, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effectuate the acquisition and transfer and the action of such officers consistent herewith is hereby fully authorized. All actions taken in the name of or on behalf of the City in connection with the property acquisition prior to the effective date of this Resolution are expressly ratified and confirmed.

This ordinance shall take effect only after second reading and upon the closing of the planned transfer of ownership of property referenced above as the Davis Property from Thomas W. Davis, current owner, to the City of Myrtle Beach.

ATTEST:

BRENDA BETHUNE, MAYOR

JENNIFER ADKINS, CITY CLERK

1<sup>st</sup> Reading: 4-12-2022

2<sup>nd</sup> Reading: 4-26-2022



## Exhibit B



1 Exhibit C

2  
3 **CONTRACT OF EXCHANGE OF PROPERTY**

4  
5 THIS CONTRACT OF SALE ("Contract") is made between Thomas W. Davis ("Davis") and The City  
6 of Myrtle Beach ("City") on \_\_\_\_\_, 2022. \_\_\_\_\_  
7

8 WHEREAS, Davis is the fee simple owner of that certain lot at the intersection of 6<sup>th</sup> Avenue N.  
9 and Maple Street, SC, identified as Horry County tax map number 181-06-28-014 and more fully  
10 described on Exhibit A attached hereto (the "Davis Property"); and  
11

12 WHEREAS, City is the owner of that certain lot of land located at the northern end of Porcher  
13 Drive along 79<sup>th</sup> Avenue North in Myrtle Beach, SC, more fully shown and designated on that certain plat  
14 attached hereto as Exhibit B, (the "City Property"); and  
15

16 WHEREAS, the property described on Exhibit A and Exhibit B attached hereto are sometimes  
17 referred to herein as the "Properties"; and  
18

19 WHEREAS, the current owner of each of the Properties is also sometimes herein referred to as  
20 the Grantor or Grantors, and the receiving party of each of the Properties is sometimes herein referred  
21 to as the Grantee or Grantees; and  
22

23 WHEREAS, Davis and the City desire to exchange property upon the terms and conditions  
24 described below.

25 **TERMS AND CONDITIONS**  
26  
27

28 1. Davis and the City shall exchange ownership interest in the properties  
29 described on Exhibit A and B attached hereto with no additional consideration being paid to  
30 the other.

31 2. Davis and City will furnish a marketable title in fee simple, free and clear of all  
32 liens and encumbrances to each other for their respective Properties except the following:  
33

34 a. Real estate taxes for the year in which the deed is delivered, which will be  
35 prorated at Closing as defined in Paragraph 9. The Grantee of each of the  
36 Properties will be responsible for roll-back taxes if applicable;



- 1
- 2           b.       Restrictions, covenants, conditions and easements applicable to the subdivision
- 3                   in which the Property is located and appearing of record;
- 4
- 5           c.       Owner assessments applicable to the subdivision in which the Properties are
- 6                   located or to the Properties, which will be prorated at Closing, as appropriate;
- 7
- 8           d.       Such zoning ordinances as may be applicable to the Properties.
- 9

10       David shall convey its property by full general warranty of title. City shall convey its property by

11       quit claim deed.<sup>1</sup>

12

13               A policy of title insurance or an attorney's certificate of title will be issued in connection

14       with this Contract, at Grantee's expense. Grantees must approve the exceptions contained in

15       the commitment for title insurance or preliminary attorney's certificate of title. Exceptions not

16       objected to in writing by the date set forth in Paragraph 15b of this Contract will be deemed

17       accepted by Grantee. In the event Grantee objects to matters of title (other than those set

18       forth above), Grantor may elect to correct such title matters, or in the event either of the

19       Grantors refuses to correct such matters, either party may declare this Contract null and void

20       with no further liability or obligations to either party.

21

22       3.       Each Grantor will pay for real estate transfer fees and preparation of the deed

23       conveying each of the Properties. The City shall be responsible for the cost of the survey

24       required to convey the City Property, otherwise, each Grantee will pay for any survey,

25       preparation of note and mortgage, if applicable, and the recording of the deed and mortgage,

26       as applicable. The cost of any title examination requested by either Grantee will be paid by such

27       respective Grantee. Each party will pay its own attorney's fees.

28

29       4.       If either Grantor is unable to convey marketable title in accordance with the

30       terms of this Contract, neither party will not be required to bring any action or proceeding, or

31       otherwise incur any expense, necessary to render the title marketable, but either party will

32       have the option of taking whatever title the other party may be able to convey, or either party

33       may rescind this Contract, in which event, this Contract will become null, void and of no further

34       force or effect.

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36       5.       Possession of the Property will be given to each party at the time of delivery of

37       the deeds.

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<sup>1</sup> Pursuant to S.C. Attorney General Opinion 1980 (1980 S.C. AG Lexis 124; [1980 WL 120913](#)) City legally must deed by quitclaim.

1  
2           6.     Subject to Paragraph 8, the deed, note and mortgage, if applicable, will be in the  
3 name of the appropriate Grantee.  
4

5           7.     This Contract may not be assigned or transferred by either party without the  
6 prior written consent of the other.  
7

8           8.     The closing ("Closing") will take place on or before March 31, 2022 at the offices  
9 of MacDonald & Hicks, P.A., or at such other place as the parties may agree on.  
10

11          9.     Davis and the City acknowledges that both has made, or waives, a personal  
12 inspection of the Property prior to the signing of this Contract.  
13

14                   **Time is of the essence** for all terms and conditions of this Contract.  
15

16          10.    The parties acknowledge that neither party is represented by a broker in this  
17 transaction. In the event a brokerage relationship exists between either party and a real estate  
18 agent at the time of closing, such party will be responsible for any commission to be paid at  
19 Closing.  
20

21          11.    This Contract will not be binding until the date last executed by both Davis and  
22 the City and both parties agree that receipt of a signed Contract by facsimile or by email will be  
23 the same as receipt of an original signed Contract.  
24

25          12.    This Contract supersedes all understandings and agreements between Davis  
26 and the City and constitutes the sole and entire agreement between them. No oral statements  
27 or representations whatsoever will be considered a part of this Contract. Any modifications  
28 must be in writing and acknowledged by Davis and the City. Davis and the City acknowledge  
29 that they have not received or relied on any statements or representations by either Broker or  
30 their agents that are not expressly stipulated in this Contract. The terms and conditions of this  
31 Contract will apply to and bind the heirs, executors, administrators, successors and permitted  
32 assigns of Davis and the City.  
33

34          13.    THIS CONTRACT IS CONTINGENT ON THE FOLLOWING ITEMS (In the event the  
35 contingencies are not satisfied or waived, this Contract will be terminated with no further  
36 liability or obligations to either party):  
37

38           a.     Davis and the City will have until 30 Days after Execution of Contract to  
39 determine that the Properties are suitable for their intended use. If Davis or the

1 City finds the Property to be unsuitable for its intended use, for any reason, the  
2 obligations of the parties to this Contract will be terminated. Both parties intend  
3 on determining that soil borings indicate stable foundation material, financing  
4 can be secured, site and environmental inspections are satisfactory, and water  
5 and sewer are available to the site.  
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- 7 b. Davis and the City will have until 21 Days After Due Diligence End to provide the  
8 other party written objections to exceptions contained in the commitment for  
9 title insurance or preliminary attorney's certificate of title.  
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11 14. Davis and the City will allow, its agents, consultants, contractors and  
12 subcontractors to enter the Properties to conduct or make any and all inspections and tests  
13 (Including, without limitation, soil and environmental assessments of the Property) as either  
14 party may, in their sole and absolute discretion, consider necessary or desirable. Provided, if  
15 this transaction does not close, each party will supply the other with all copies of reports done  
16 on the Properties subject to any transfer restrictions placed on such reports by the party  
17 preparing the reports for the parties. In addition, each party will indemnify the other against  
18 any liability from consultants, agents, contractors and subcontractors entering the Properties  
19 prior to Closing.  
20

21  
22 15. In the event Davis wishes to enter into a Section 1031 tax deferred exchange for  
23 the Property, or if the City wishes to enter into a tax deferred exchange with respect to  
24 property owned by the City in connection with this Contract, Davis and the City agree to  
25 cooperate with the each other in connection with such exchange, including the execution of  
26 such documents as may be reasonably necessary to effectuate the exchange; provided that: (a)  
27 the other party will not be obligated to delay the Closing, (b) all additional costs in connection  
28 with the exchange should be borne by the party whose property is exchanged, and (c) the other  
29 party will not be obligated to execute any note, contract, or other document providing for any  
30 personal liability which would survive the exchange. The other party will be indemnified and  
31 held harmless against the liability that arises or is claimed to have arisen because their  
32 acquisition of ownership of the exchange property.  
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**THIS IS A LEGALLY BINDING AGREEMENT. REAL ESTATE LICENSEES  
RECOMMEND OBTAINING LEGAL COUNSEL.**

City of Myrtle Beach

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Thomas W. Davis \_\_\_\_\_ Date