

## DEVELOPER'S AGREEMENT

**THIS DEVELOPER'S AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF MAITLAND, FLORIDA**, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 1776 Independence Lane, Maitland, FL 32751, and **BAINBRIDGE COMMUNITIES ACQUISITION III, LLC**, a Florida LLC, and/or assigns, whose address is 12765 W. Forest Hill Boulevard, Suite 1307, Wellington, FL 33414 (hereinafter referred to as "Developer").

### RECITALS:

**WHEREAS**, City and Developer recognize the benefits of cooperation to develop a key area of City, as more particularly referenced herein; and

**WHEREAS**, City desires to support private sector development west of Interstate 4 which benefits the property owners and residents in that area, consistent with the Maitland Comprehensive Development Plan, 2030 ("CDP"); and

**WHEREAS**, Developer desires to develop the real property described in **Exhibit "A"**, (hereinafter referred to collectively as the "Subject Property") into a multifamily residential project containing up to 300 units, with related amenities (Collectively, the "Project Improvements") and, as a condition to proceeding with its analysis thereof, desires to receive assurances from City related to Developer's proposed development set forth herein, particularly with respect to access to the Subject Property; and

**WHEREAS**, the Developer desires to construct a new entrance road to the subject property and the City agrees that the extension of Fennell Street (the "Extension"), from its current terminus, through property lying adjacent to the Subject Property which is owned by the City and property which the City has a Perpetual Right-Of-Way Easement described in **Exhibit "B"** ("City Property") to the north property line of the Subject Property is the appropriate method to provide access to the Subject Property; and

**WHEREAS**, Developer warrants that it has contracted with the owners of record of the Subject Property; and

**WHEREAS**, as a requirement for its approvals of the Project Improvements and Extension, City will require Developer to undertake certain improvements including the relocation of a retention pond, the development of a neighborhood park and other improvements (the "Offsite Improvements") to certain property lying adjacent to the Subject Property; and

**WHEREAS**, Developer warrants that all liens and encumbrances affecting the Subject Property will be subordinate to this Development Agreement; and

**WHEREAS**, Developer hereby affirms and acknowledges that everything contracted for, negotiated with, granted to, acknowledged, affirmed, conveyed and set over to City herein by Developer, is done freely and voluntarily and in reliance upon City's representations and agreements set forth herein; and

**WHEREAS**, City is authorized by home-rule powers to enter into agreement regarding the development of property; and

**WHEREAS**, the Planning and Zoning Commission of the City, which also sits as the Local Planning Agency and the Land Development Regulation Commission, duly scheduled, advertised and held a public hearing on \_\_\_\_\_, 2016; and

**WHEREAS**, the Planning and Zoning Commission heard all persons desiring to speak for and against this Agreement and recommended at their meeting of \_\_\_\_\_, 2016, that the City Council approve this Agreement; and

**WHEREAS**, the Planning and Zoning Commission found this Agreement to be in substantial compliance with the MCDP; and

**WHEREAS**, the Maitland City Council duly scheduled, advertised and held a public meeting to consider said Agreement on \_\_\_\_\_, 2016, and heard all persons desiring to speak for and against this Agreement; and

**WHEREAS**, the Maitland City Council finds that this Agreement will promote the health, safety and welfare of its citizens.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable considerations, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals**. Each and all of the foregoing Recitals are declared to be true and correct and are incorporated herein by this reference. As used herein, the term “Developer” shall mean Bainbridge Communities Acquisition III, LLC, a Florida limited liability company, whose address is 12765 W. Forest Hill Boulevard, Suite 1307, Wellington, FL 33414, and its express successors and assigns. As used herein, the term “City” shall include the City of Maitland, a Florida municipal corporation, and its express successors and assigns. Developer and City, when referred to collectively, shall hereinafter be referred to as the “Parties.”

2. **Objectives of Agreement**. The Parties’ objectives, each of which is deemed material to the Parties’ decision to enter into this Agreement, include but are not limited to the following:

(a) City’s Objectives -

- To insure the construction of Project Improvements on the Subject Property, including site preparation, landscaping, infrastructure, and other improvements deemed necessary to finalize construction of the Subject Property, are consistent with final development plan requirements, and City and other applicable regulations and specifications, which consistency determinations are to be made by the City Manager or his designee; and
- To have Developer design and construct the Extension, through portions of the City Property and Right-of-Way Easement to Developer’s entrance to the Subject

Property (including relocation of all utilities along the right-of-way to underground and relocation of emergency gates); and

- To insure the Developer’s Conceptual Master Site Plan (the “Conceptual DMSPP”) and elevations, as depicted on **Exhibits “C” and “D”**, (the “Development Plan”), are substantially consistent with the CDP, applicable development regulations, and service levels adopted by City and all other applicable jurisdictions; and
- To insure all public infrastructure as depicted on the Development Plan, inclusive of the proposed Extension and park area, are constructed concurrent with development by delegating the construction to Developer; and
- To ensure maintenance of landscape islands and entry signs, as contemplated by Section 6(b) of this Agreement by the Developer.

(b) Developer’s Objectives -

- If determined to be feasible by Developer, to construct up to 300 multi-family residential units, with a maximum height of forty-seven feet (including roof elements and focal points not intended for human occupation); and
- To obtain from City a temporary construction easement to provide improvements for the neighborhood park area to be constructed in City Property (including the relocation of the retention pond located therein), and the Extension to the Subject Property; and
- To obtain sufficient right-of-way to widen and to extend Fennell Street from its current terminus to Tract C of the Development Plan to the entrance of the Subject Property; and
- To obtain approvals to construct the extension of Fennell Street from its terminus to the Subject Property.

These objectives are to be accomplished as set forth herein.

### 3. **Development Review for Subject Property.**

(a) At such time as Developer (or its permitted assignee) determines to proceed with the construction of the Project Improvements, Developer shall provide all information necessary and shall proceed with a Final Development Plan (final phase Planned Development) application, Site Plan Review application, Off-site Improvements and Development Plan.

(b) At such time as Developer (or its permitted assignee) determines to proceed with the construction of the Project Improvements, Developer shall comply with all applicable City approval requirements.

4. **Development of Subject Property.** Unless otherwise specifically permitted in this Agreement, Developer shall design and construct the Project Improvements on the Subject Property consistent with the approved Planned Development (“PD”) zoning district for the Subject Property. The buildings shall have a maximum height of forty-seven feet (including roof elements and focal points not intended for human occupation). Developer shall design and construct all Improvements, including but not limited to site preparation, utility relocation, site infrastructure, landscaping, buildings and amenities, and all other improvements deemed necessary to finalize construction of the Subject Property, substantially consistent with the approved the Conceptual DMSP. Construction shall be consistent with the Final Development Plan approval, City and other applicable regulations and specifications, which consistency determinations shall be made by the City Manager or his designee.

5. **Right-of-Way Dedication, Park Land and Storm Water Property.**

(a) Recognizing that a portion of the needed right-of-way for the Extension lies within the City Property, City agrees to dedicate the necessary right-of-way within the City for Developer to construct the Extension as illustrated in **Exhibit “C”**. To accomplish this, City shall execute a Right-of-Way deed upon completion of the roadway improvements and acceptance by the City. Developer shall provide all necessary survey and legal description information to complete this deed.

(b) To facilitate the Extension, Developer agrees to relocate the retention pond (the “Pond”) within City Property as shown on **Exhibit “C”**.

(c) City desires, and Developer agrees, to redesign and redevelop Tract C, through which the Extension is to be constructed, into a neighborhood park (the “Park”) for the surrounding neighborhoods. **Exhibit “E”**, Fees and Off-Site Construction Credits, attached hereto and incorporated herein by reference, outlines elements of the Park and the estimated costs for these elements, which costs shall be reduced from the required fee payments from Developer to City on an equivalent basis. To obtain approvals for the Park, Developer agrees to submit all information necessary to proceed with a Site Plan Review process. Upon approval, Developer shall construct the Offsite Improvements consistent with the approved plans.

(d) City has installed and owns emergency gates at the current terminus of Fennell Street. Developer agrees to relocate the emergency gates to the location depicted on **Exhibit “C”**.

6. **Conveyance of Easements to Developer.**

(a) The Parties agree that Developer shall design and construct all of the Offsite Improvements. To facilitate this, City shall provide a temporary construction easement to Developer for the time during which construction is required.

(b) Besides a temporary construction easement, City shall provide easements to accommodate two directional signs and two landscape islands at the entrance to the Subject Property, but physically located on the City Retention Tract, as illustrated in **Exhibit “C”**. In exchange for Signage and Landscape Easements, Developer agrees to maintain the easement areas to the same high quality as approved for installation in perpetuity.

7. **Construction of Extension, Retention Pond, and Park Elements.**

(a) With respect to the construction of the Offsite Improvements, including the Extension, Pond, and Park, Developer shall provide City detailed and complete specifications, construction schedule, and guaranteed cost proposal for the Offsite Improvements by July 31, 2016. Upon approval of the plans by City, City shall review the proposed costs and shall either approve the total cost or request clarification. If there is any dispute with respect to the cost proposal, which is not resolved within 30 days of the City's receipt, City, at its sole discretion, may choose to bid out the work to compare the cost proposal by Developer with the market. If City receives a lower cost estimate, Developer agrees to lower the cost proposal to match the lower cost estimate or allow the City to perform the work. If Developer chooses to perform the work, with cost proposal and schedule approved by City, then Developer shall provide City with a performance bond or letter of credit equal to 110% of the approved cost proposal for the Offsite Improvements. Upon completion of the work, Developer shall provide City with a performance bond or letter of credit equal to 10% of the construction costs as a maintenance guarantee valid for two years from the date of City approval and acceptance of the construction. Developer is responsible for compliance with applicable regulations and permit requirements for the construction of the Offsite Improvements if it elects to construct the same. City will sign required permit applications and any applicable requirements to receive permits. The Parties agree to execute a separate agreement for this construction project, consistent with standard City practices for public projects.

(b) Once the Extension receives a Certificate of Completion, the Developer will dedicate the roadway improvements to the City.

8. **Consistency with City's Comprehensive Development Plan.** City confirms the proposed Conceptual Development Plan is consistent with 2030 CDP, applicable development regulations, and service levels adopted by City and all other applicable jurisdictions.

9. **Obligation to Adhere to Requirements of Law.** Developer and City agree that each and their respective successors and assigns will be bound by the provisions of this Agreement, as well as all Federal, State and local laws, as the same may be amended or created from time to time. No clause or provision of this Agreement shall be construed or excuse the observance of any requirement of any law by Developer or by City. Failure of this Agreement to address a particular statutory requirement with respect to developer's agreements, permit, condition, term, or restriction shall not relieve Developer or City of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

10. **Covenants and Term/Assignability.**

(a) The conditions and covenants set forth herein shall be constructed as covenants running with the land, and shall be binding upon, and inuring to the benefit of, Developer and City, and their assigns and successors in interest but shall not be deemed to extend private rights to any person or entity other than the parties hereto and their successors and assigns. The Developer may assign this entire Agreement, including all obligations herein, to related entities or subsequent owners of the Subject Property. This Agreement shall be effective for a period five (5) years from the date of execution hereof. Notwithstanding the foregoing, if

the Developer has not begun construction on the Off-site Improvements within three (3) years of the effective date of this Agreement, then the City may terminate this Agreement upon written notice to the Developer.

(b) Any party to this Agreement or its successors or assigns may bring an action, in law or in equity, to enforce the provisions of this Agreement. The Parties specifically recognize that venue will be located in Orange County, Florida, for any action regarding this Agreement. The failure of any party to this Agreement to enforce any provision contained herein shall in no event be deemed a waiver of its rights to thereafter enforce the same, nor shall any liability attach to the said property for failure to enforce this Agreement. Once the property has been completed and all provisions herein satisfied, City and Developer shall terminate the Agreement by mutual written consent.

11. **Amendments.** This Agreement shall not be amended without the express written consent of the parties hereto or their respective successors and assigns.

12. **Gender, Number and Subtitles.** As used in this Agreement, the plural includes the singular, and the singular includes the plural. Use of one gender includes all genders. Subtitles for sections herein are used for ease in reading this Agreement, and the subtitles do not form a substantive part of this Agreement.

13. **Notice.** Any notice that may be extended by one party to the other pursuant to or as a result of this Agreement shall be extended by regular first-class mail of the United States of America, postage prepaid, or by hand-delivery as follows:

**To City:**

Sharon Anselmo, City Manager  
City of Maitland  
1776 Independence Lane  
Maitland, FL 32751

City Attorney  
Clifford B. Shepard, III  
Shepard, Filburn & Goodblatt, P.A.  
221 Northeast Ivanhoe Boulevard  
Suite 205  
Orlando, FL 32804  
Fax: 407-206-2021  
Tel: 407-206-2020

**To Developer:**

Bainbridge Communities Acquisition III, LLC,  
Attention: Bob Thollander  
12765 W. Forest Hill Boulevard  
Suite 1307  
Wellington, FL 33414

*With a copy to:* Bainbridge Communities Acquisition III, LLC,  
Attention: Burk Hedrick  
1060 Willa Springs Drive  
Winter Springs, FL 32708  
Tel: 407-960-6132

*With a copy to:* Rebecca Wilson  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 N. Eola Drive  
Orlando, Florida 32801  
Fax: 407-846-4444  
Tel: 407-418-6250

Any party to this Agreement may unilaterally re-designate the address of or person to whom notice is to be directed by giving prior written notice to the other party.

14. **Condemnation.** If, prior to obtaining all necessary permits and approvals to construct the Off-Site Improvements or the Project Improvements, all or any part of the Subject Property is subjected to a bona fide threat of condemnation by a body having the power of eminent domain or is taken by eminent domain or condemnation (or sale in lieu thereof), or if City and/or Developer has received written notice that any condemnation action or proceeding with respect to the Property is contemplated by a body having the power of eminent domain, each shall give the other immediate written notice of such threatened or contemplated condemnation or of such taking or sale, and each may, by written notice to the other, given within thirty (30) days after the receipt of such notice, elect to cancel this Agreement as it relates to the portion of the Subject Property affected by such condemnation. Further, City agrees not to use its powers of eminent domain in any way which would modify or alter the Development Plan, provided that this paragraph shall not abrogate City's police powers.

15. **Estoppel.** The City and Developer shall each execute and deliver to the other, within fifteen (15) days after any written request therefor by the other party, a certificate addressed as indicated by the requesting party and stating (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended in any respect; (iii) whether there are any existing defaults hereunder known to the party executing such certificate, and specifying the nature thereof, and (iv) such other matters as reasonably requested.

16. **Severability.** Invalidation of any word, clause, sentence, or section contained herein due to illegality, unconstitutionality, or for any other reason and as determined by a court of competent jurisdiction shall not act to cause this entire Agreement to be found to be invalid, illegal or unconstitutional, and said documents shall be read without such invalid, illegal or unconstitutional word, clause, sentence or section.

17. **Effective Date.** The "Effective Date" of this Agreement is the date when Notice of this Agreement is duly recorded in the Public Records of Orange County, Florida.

**IN WITNESS THEREOF**, the parties have set their hands and seals on the date first given above.

ATTEST

CITY OF MAITLAND, FLORIDA

\_\_\_\_\_  
**Maria Waldrop**, City Clerk

By: \_\_\_\_\_  
**Sharon Anselmo**, Interim City Manager

**BAINBRIDGE COMMUNITIES  
ACQUISITION III, LLC**

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

By: \_\_\_\_\_  
Thomas Keady, Vice President

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Sharon Anselmo, Interim City Manager of the City of Maitland, on behalf of the **CITY OF MAITLAND, FLORIDA**, a Florida municipal corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or Printed Name of Notary Public  
Notary Public of the State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ of **BAINBRIDGE COMMUNITIES ACQUISITION, LLC**, a Florida LLC, on behalf of the limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or Printed Name of Notary Public  
Notary Public of the State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## EXHIBIT "A"

### **Parcel I Legal:**

The Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , and the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  (less the North 433 feet of the East 460 feet thereof) of Section 34, Township 21 South, Range 29 East; less that portion platted as TWIN LAKE ESTATES, recorded in Plat Book X, Page 124, of the Public Records of Orange County, Florida.

Together with an easement for road purposes over the North 33 feet of the East 460 feet of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 34, Township 21 South, Range 29 East.

### **Parcel II Legal:**

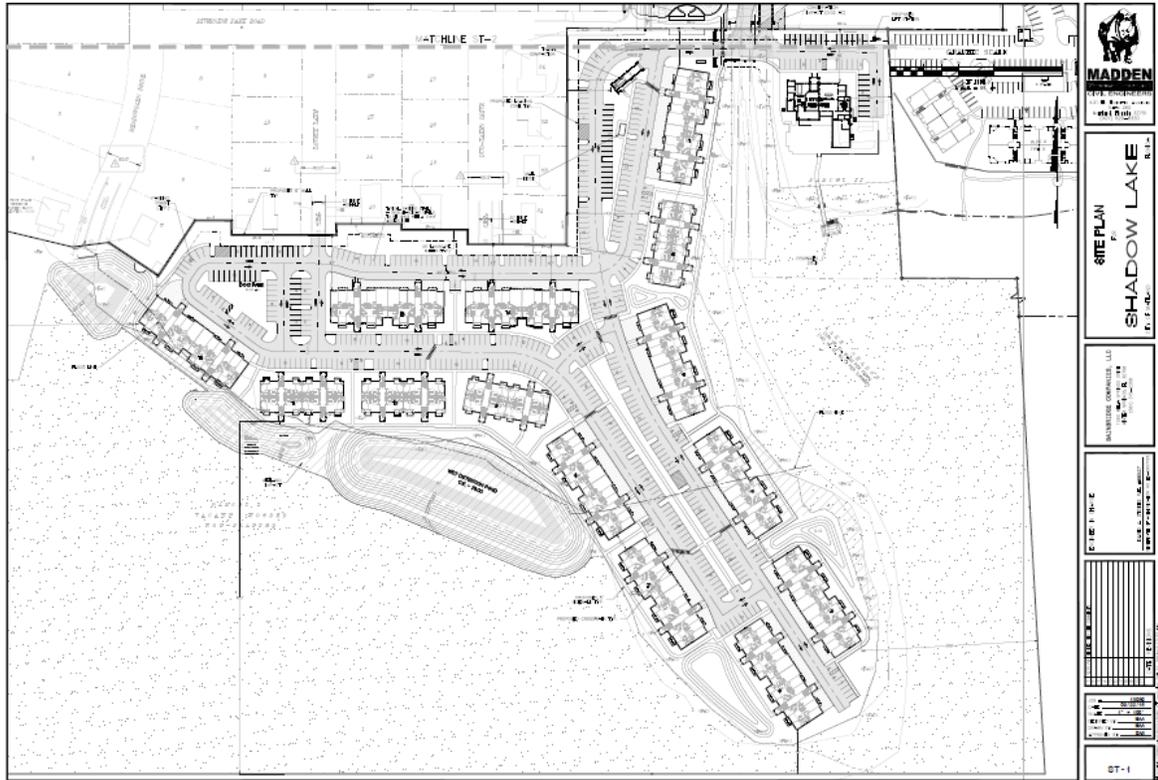
The West 260 feet of the North 433 feet of the East 460 feet of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 34, Township 21 South, Range 29 East; Orange County, Florida.

**EXHIBIT “B”**

**City Property**

Tract “C”, Stormwater Management Area of the Winfield Unit 1 Subdivision Plat, as recorded in Plat Book 34, Pages 77 through 81, inclusive, in the Public Records of Orange County, Florida.

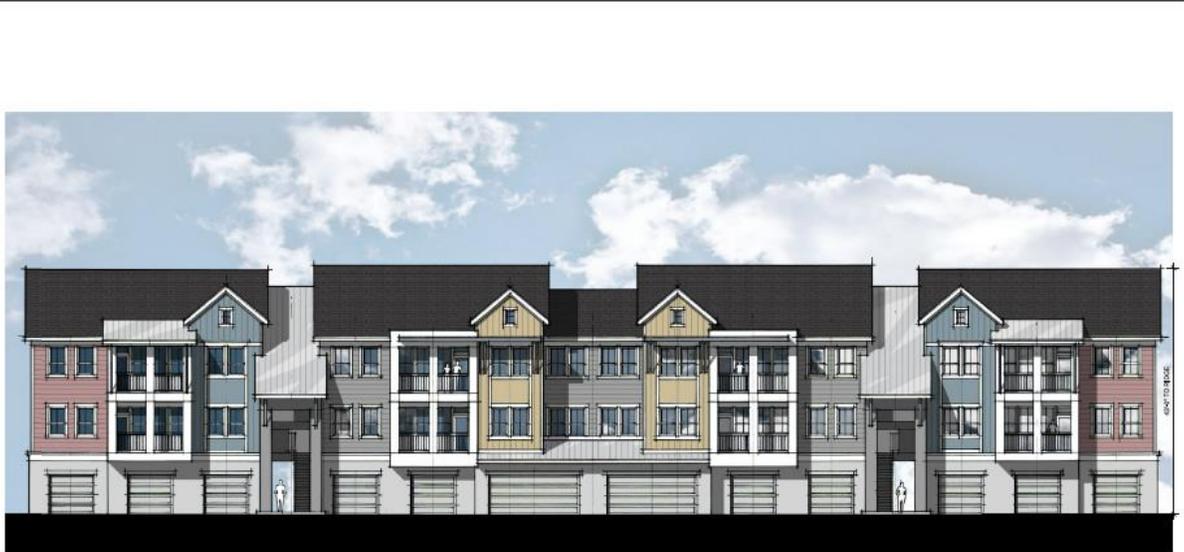
# EXHIBIT "C" Development Plan





**EXHIBIT "D"**  
**Conceptual Elevations**





BUILDING TYPE 2 FRONT ELEVATION

**BUILDING ELEVATION**  
2016-10-10

**SHADOW LAKE**  
MAITLAND, FLORIDA

**EXHIBIT "E"**  
**Fees and Off-Site Construction Credits**

Lake Shadow Apts - Entry Drive & Fennel Street Park Estimate

Code	Description	Off-Site Improv. Roadway	Off-Site Fennell Park
02-110	Permits - Misc	1,500	2,500
02-120	Site Work Testing	3,658	2,500
02-130	Site Work Surveying	10,000	0
02-135	Structural/Easement Surveying	0	2,500
02-140	Mobilization/General Conditions	2,500	2,500
02-150	Demolition	32,100	0
02-210	Clearing and Grubbing - Haul Off	3,000	5,000
02-220	Strip/Stockpile/Spread Topsoil	In 02-210	In 02-210
02-240	Erosion and Sediment Control	2,200	2,500
02-320	Cut and Fill	25,000	92,200
02-330	Import Fill	0	0
02-340	Haul from Site	0	0
02-350	Soil Problems (Demuck Allowance)	0	0
02-360	Lake Dewatering	0	25,000
02-370	Rough Grading	5,000	15,000
02-380	Finish Grading	5,000	15,000
02-410	Electrical Distribution (3 phase only)	0	0
02-420	Telephone Distribution	0	0
02-430	CATV/Satellite Distribution	0	0
02-440	Access Control Distribution	0	0
02-450	Gas Distribution	0	0
02-470	Site Signage	1,000	3,000
02-480	Signalization	0	0
02-490	Unique Site Conditions	0	0
02-510	Sanitary Sewer System	0	0
02-520	Lift Station	0	0
02-530	Force Main	38,477	0
02-540	Domestic Water System	34,937	0
02-550	Fire Line Water System	0	0
02-560	Back Flow Prevention	0	0
02-570	Water Meters	In 02-540	0
02-610	Storm Sewer System	64,032	0
02-620	Yard Drainage System	0	0
02-630	Roadway Underdrains	0	0
02-710	Asphalt Roadway System	76,700	0
02-730	Specialty Roadway System	6,095	0
02-740	Temporary Roads	3,125	0
02-750	Street Cleaning	0	0
02-760	Sidewalks and Site Concrete	0	63,800
02-770	Curb and Gutters	20,597	5,500
02-780	Pavement Marking/Striping	1,815	0
02-790	Asphalt Seal Coatings/Repairs	0	0
02-810	Pond Liner	0	0
02-820	Lake Fountains/Aquascapes	0	15,000

