

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: June 20, 2022

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| Agenda Item: 7F | Prepared by: Chris Noury, City Attorney |
| Agenda Section: New Business: Public Hearing | Date: June 16, 2022 |
| Subject: Second Public Hearing regarding the Separate and Independent Amendment to the Parkway PDD Development Agreement regarding Waterside | Division: Legal |

Background:

Riparian Trailhead Site: Within 90 days of the effective date of the Agreement, the developer shall convey to the City a parcel comprised of approximately one-half of an acre (100% of which shall be upland acres) as a trailhead for the riparian buffer.

Beach Access Parking Fee: The developer shall pay a fee in the amount of \$1,100 for each residential unit for Neighborhoods 1, 2, and 3 (Rosewood, Sycamore, and Wax Myrtle, respectively) to be paid at the time of issuance of a building permit.

Park Enhancement Fee: The developer shall pay a fee in the amount of \$300 for each residential unit for Neighborhoods 1,2 and 3 (Rosewood, Sycamore, and Wax Myrtle, respectively) to be paid at the time of issuance of a building permit.

Amenity Centers: Construction for the onsite amenity center shall begin prior to the date of issuance of a building permit for the 200th residential unit (whether single-family detached or single-family attached) and shall be completed prior to issuance of the Certificate of Occupancy for the 250th residential unit.

Construction of the amenity center for the single-family section of the development shall begin prior to the issuance of building permit for the 140th single-family dwelling unit and completed prior to the issuance of a building permit for the 160th single-family dwelling unit.

Improvements to Long Branch Loop: The developer shall improve the entire section of Long Branch Loop which adjoins Waterside Phase 1, Phase 2, and Phase 3 at the developer's expense and upon completion will dedicate and convey the same to the City as a public roadway.

Recommended Action:

Allow comments from the public regarding the proposed amendment

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|--------------------------|--|---------------------------|
| Reviewed by City Manager | | Reviewed by City Attorney |
|--------------------------|--|---------------------------|

Council Action:
Motion By _____ 2nd By _____ To _____

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

**SEPARATE AND INDEPENDENT
AMENDMENT TO THE MASTER
DEVELOPMENT AGREEMENT
(Waterside Phase 2 & Phase 3)**

THIS SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this "Agreement") entered into by and among the **CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA** (the "City"), a South Carolina municipal corporation, **COTERRA CHESTNUT, LLC**, a South Carolina limited liability company ("Coterra") **MYRTLE HOLDING COMPANY, LLC**, a South Carolina limited liability company ("Myrtle Holding") and **MERITAGE HOMES OF THE CAROLINAS, INC.**, an Arizona corporation ("Developer").

RECITALS:

WHEREAS, the City, Henry Road, Reach 9, LLC, a South Carolina limited liability company ("Reach 9"), Apache Properties, LLC, a South Carolina limited liability company ("Apache"), RW Hills, LLC, a South Carolina limited liability company ("RW"), CW Hills, LLC, a South Carolina limited liability company ("CW"), JW Holiday Family, LLC, a South Carolina limited liability company ("Holiday"), Myrtle Beach National Company ("MB National"), Seashore Farms, LLC, a South Carolina limited liability company ("Seashore") and LL Chestnut, LLC, a purported South Carolina limited liability company ("LL Chestnut") entered into that certain Master Development Agreement, dated January 9, 2009, recorded January 20, 2009 in Deed Book 3382 at Page 3357, and re-recorded in Deed Book 3383 at Page 1662 to include signature pages, all in the public records of Horry County, South Carolina (the "Master Development Agreement"); and

WHEREAS, the Master Development Agreement as amended, by the City and the then current owners of all of the Land which is subject to the Master Development Agreement, by that certain First Amendment to Master Development Agreement, dated March 23, 2020 and effective December 16, 2019, recorded March 24, 2020 in Deed Book 4298 at Page 2823 to include all signature pages, in the public records of Horry County, South Carolina (the "First Master Amendment"), which First Master Amendment provided, among other things, for the negotiation by and between the City and any of the then current Landowners, of amendments to certain public benefits agreed to by the City and the Landowners, at the time of any proposed amendment to the Master Site Plan, or the PDD, by and individual Landowner, which amendments would be separate and independent of any other amendments, and applicable only to the portions of the Land owned by the Landowner, or its successors and assigns, proposing such amendment to the Master Site Plan or the PDD, which separate and independent amendment would be evidenced by a written amendment; and

WHEREAS, the Master Development Agreement and the First Master Amendment are hereinafter sometimes collectively referred to as the "Development Agreement"; and

WHEREAS, as a result of a scrivener’s error, LL Chestnut, which was never organized as a South Carolina limited liability company, and did not appear in the chain of title for any of the properties subject to the Master Development Agreement, should have instead been referred to as J.B. Chestnut Limited Liability Company, a South Carolina limited liability company (“**JB Chestnut**”), which was the owner of record of the tract referred to in the Master Development Agreement as the “LL Chestnut Tract”; and

WHEREAS, Coterra is successor in title to a portion of the real property subjected to the Master Development Agreement owned by Reach 9, the Seashore Farms and the JB Chestnut; and

WHEREAS, Myrtle Holding is successor in title to a portion of the real property subjected to the Master Development Agreement owned by Reach 9; and

WHEREAS, Developer is the owner of a portion of the real property formerly owned Coterra, which is also subject to the Master Development Agreement, hereinafter referred to as “**Waterside Phase I**”; and

WHEREAS, Coterra and Myrtle Holding, acting together with Developer, have proposed an amendment to the Master Site Plan and the PDD (collectively the “**PDD Amendment**”), for the remaining real property subject to the Master Development Agreement which is owned by Coterra, and a portion of the real property owned by Myrtle Holdings which is owned by Coterra and a portion of the real property owned by Apache, East of S.C. Highway 31, within the PDD, consisting of Three (3) separate neighborhoods, referred to as “**Neighborhood**”, “**Neighborhood 2 (Sycamore)**” and “**Neighborhood 3 (Wax Myrtle)**”, which together form Phase 2 and Phase 3 of Waterside, and an unrecorded map of Neighborhood 1, Neighborhood 2 and Neighborhood 3 is attached hereto as **Exhibit “A”** (the “**Amended Site Plan Parcel**”) which PDD Amendment is approved by the City simultaneously with the approval of this Agreement; and

WHEREAS, in addition, within the Amended Site Plan Parcel, the PDD has previously created a riparian corridor of approximately 100’ in width, within which lies the channel of Long Branch, and within which the City intends to create a pedestrian trail (the “**Long Branch Riparian Trail**”), the alignment of the channel of Long Branch having shifted as a result of erosion, and therefore Coterra and Myrtle Holding have proposed an alignment of the Long Branch Riparian Trail, and to further reserve for the benefit of the City, a 100% upland acreage parcel with all weather parking surfaces, over a portion of the Amended Site Plan Parcel, to form the basis of a pedestrian connection to the Long Branch Riparian Trail within the Amended Site Plan Parcel of the PDD (the “**Long Branch Riparian Trailhead Site**”), as defined in Section 4(A) below, in order to assure connectivity of the paths within the PDD to the riparian buffer along Long Branch, extending to the Atlantic Intracoastal Waterway, the alignment of which is shown on **Exhibit “C”** attached hereto; and

WHEREAS, any portion of the real property owned by Myrtle Holding within the PDD which is not included in the Amended Site Plan Parcel, or the Long Branch Riparian Trailhead Site shall remain subject to the terms and provisions set forth in the Master Development Agreement, as amended by the First Master Amendment, shall not be subject to this Agreement, without further amendment except by one or more separate and independent amendments for the portions of the

Henry Road Tract or the Apache Tract which are not included in the Amended Site Plan Parcel or the Riparian Trailhead Site;

WHEREAS, the Parties now desire to enter into a separate and independent amendment to the Development Agreement, in order to specify certain fees and obligations imposed by the City pursuant to the Development Agreement, as amended, which would only be applicable to the Amendment Site Plan Parcel portion of the PDD, in the manner set forth below.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein, and the sum of Five and No/100 (\$5.00) Dollars, to each party by the other paid, the parties agree as follows:

1. **Continuing Encumbrance.** Despite any change in ownership and/or the configuration and boundaries of the various tracts subjected to the Development Agreement, as amended, and the Exhibits to the Development Agreement, previously subjected to the Development Agreement, as amended, by this Agreement, except as hereby expressly amended or supplemented, shall remain in full force and effect. Notwithstanding any change in ownership and/or the configuration or boundaries of the real property owned by Coterra and the real property owned by Myrtle Holding which is subject to the Development Agreement, as amended, and the Exhibits attached to the Development Agreement, including the obligations regarding the Traffic Circle, which was dedicated as a public road as of August 2021, whether previously and currently encumbered by the Development Agreement, as amended by this Agreement, except as hereby expressly amended or supplemented, all terms and provisions of the Development Agreement relating to the real property owned by Coterra and the real property owned by Myrtle Holding which is included in the Amended Site Plan Parcel, or the Long Branch Riparian Trailhead Site, shall remain in full force and effect (the “**Continuing Encumbrance**”).
2. **Amendment to Section 2.13.** In accordance with the Continuing Encumbrance provision contained herein and solely with respect to the Amended Site Plan Parcel, Section 2.13 of the Development Agreement, as amended, is further amended to acknowledge the Traffic Circle, as defined in Section 2.13, has been dedicated as a public road as of August 2021.
3. **Party Obligations Run with the Land/Cross Default by Owner of Multiple Parcels.** For purposes of this Agreement, the obligations hereunder shall run with the land, such that the owner of the portion of the real property which is subject to any particularly provisions hereof shall be obligated to fulfill such obligations. Further to the extent that any owner of real property which is subject to the terms and conditions of this Agreement owns more than One (1) parcel of real property which is subject to the terms and conditions of this Agreement, a default under the obligations with regards to any one of such parcels of real property shall also constitute a default with regards to any of the other parcels of real property also owned by such owner. Provided, however, that no owner of any portion of the real property which is subject to this Agreement shall be responsible for the obligations of any other owner, or accountable to the City or the other owners for the obligations of any other owner.
4. **Wetland/Wetland Buffer Maintenance.** In accordance with the Continuing Encumbrance provision contained herein, Coterra and Myrtle Holding acknowledge and agree that the Amended Site Plan Parcel includes one or more jurisdictional wetlands which are located adjacent to Water

Tower Road, or connect to Water Tower Road by way of the Long Branch Riparian Trail. Unless and until such wetlands are filled or otherwise mitigated to no longer remain classified as jurisdictional wetlands, Coterra and Myrtle Holding agree that all on-site wetlands shall be surrounded with a water quality buffer having an averaged width of 20-feet, within which no building shall occur. These buffer areas and the wetlands they surround shall be maintained in common ownership, shall remain natural except to the extent vegetation is mulched in accordance with applicable permits.

4. **Improvements Within the Amended Site Plan Parcel.** In accordance with the Continuing Encumbrance provision contained herein, Coterra and Myrtle Holding, or their respective successor in title to the Amended Site Plan Parcel only, as a condition to the improvement of the Amended Site Plan Parcel, shall, at the expense of the owner of the Amended Site Plan Parcel:

(A) Coterra shall convey to the City, within Ninety (90) days of the Effective Date of this Amendment, a trailhead site of approximately One-Half (1/2) acre in size, consisting of 100% upland acres, free of jurisdictional wetlands, in fee simple adjacent to the designated amenity parcel within the Amended Site Plan Parcel, to form the basis of a pedestrian connection to the previously reserved easement in favor of the City to the Long Branch Riparian Trail continuing to its outfall at the Atlantic Intracoastal Waterway, within the PDD (the “**Long Branch Riparian Trailhead Site**”), in order to assure connectivity of the paths within the PDD to the riparian buffer along Long Branch, extending to the Atlantic Intracoastal Waterway, the configuration of which is shown on **Exhibit “C”** attached hereto. To the extent the Long Branch Riparian Trail should require further documentation, Coterra shall, within Ninety (90) days of the Effective Date of this Amendment, grant to the City, and record in the public records of Horry County, South Carolina, a perpetual easement for the Long Branch Riparian Trail. Further the costs of surveying, platting, recording and conveying the Long Branch Riparian Trailhead Site, or the Long Branch Riparian Trail, shall be the sole expense of Coterra, the City bearing no expense in such conveyance.

(B) For the Neighborhood 1 (Rosewood), Neighborhood 2 (Sycamore) and Neighborhood 3 (Wax Myrtle) portion of the Amended Site Plan Parcel The Developer shall pay to the City, as to each respective Neighborhood, a park enhancement fee in an amount equal to \$300 for each residential unit within the respective Neighborhood, paid at the time of each respective building permit, and a beach parking fee in any amount equal to \$1,100 for each residential unit within the respective Neighborhood also paid at the time of each respective building permit.

(C) For the portion of the Amended Site Plan Parcel which is the subject of this Agreement, the on-site amenity, as shown on the Amended Site Plan Parcel, shall be commenced prior to the date on which the building permit is issued for the 200th home, whether single family detached or single family attached, within the Amended Site Plan Parcel, and such on-site amenity shall be completed prior to the date on which the certificate of occupancy is issued for the 250th home within the Amended Site Plan Parcel, whether single family detached or single family attached.

(D) Developer shall improve the entire section of Long Branch Loop which adjoins Waterside Phase 1, Phase 2 and Phase 3, at Developer’s expense, and upon completion, dedicate and convey the same to the City as a public roadway. The entire Long Branch Loop corridor shall be 100’ in width, the initial section being comprised of a 66’ right-of-way, with

easements on each side to complete the 100' corridor, and the section being approved as a part of this Amendment being a 100' right-of-way.

(E) Pursuant to Title 6, Chapter 31, Section 120 of the Code of Laws for the State of South Carolina, this Agreement shall be recorded in the public records of Horry County, South Carolina, on or before the date which is Fourteen (14) days following the date on which the City Council of the City approves this Agreement at second and final reading.

5. **Master Site Plan.** The master site plan for the Amended Site Plan Parcel, which includes each of the Site Plans for Neighborhood 1 (Rosewood), Neighborhood 2 (Sycamore), Neighborhood 3 (Wax Myrtle) and the amenity parcel, together with the open spaces, common areas and other portions of the Amended Site Plan Parcel which are not being developed a residential units, is the same site plan incorporated in the PDD, as amended, is attached hereto as **Exhibit “B”** (collectively the “**Master Site Plan**”).

6. **Independent Amendment.** In accordance with the Continuing Encumbrance provision contained herein, this Separate and Independent Amendment to Master Development Agreement is intended to be applicable only to the Amended Site Plan Parcel and the Long Branch Riparian Trailhead Site, and shall not be deemed applicable to any other portion of the Land which is subject to the Development Agreement, as amended, or to any other Landowner within the PDD, who is not a successor or assign of Coterra and/or Myrtle Holding, respectively.

8. **No Further Amendment.** In accordance with the Continuing Encumbrance provision contained herein, except as specifically amended by this Separate and Independent Amendment to Master Development Agreement all of the terms and conditions of the Development Agreement as amended, shall remain in full force, unless and until amended in a writing signed by all of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement the date below their respective signatures.

[Individual signature pages follow for each of the Parties]

EXHIBIT "A"

Map of Amended Site Plan Parcel
(Real Property owned by Coterra and a Portion of the Real Property owned by Myrtle Holding)

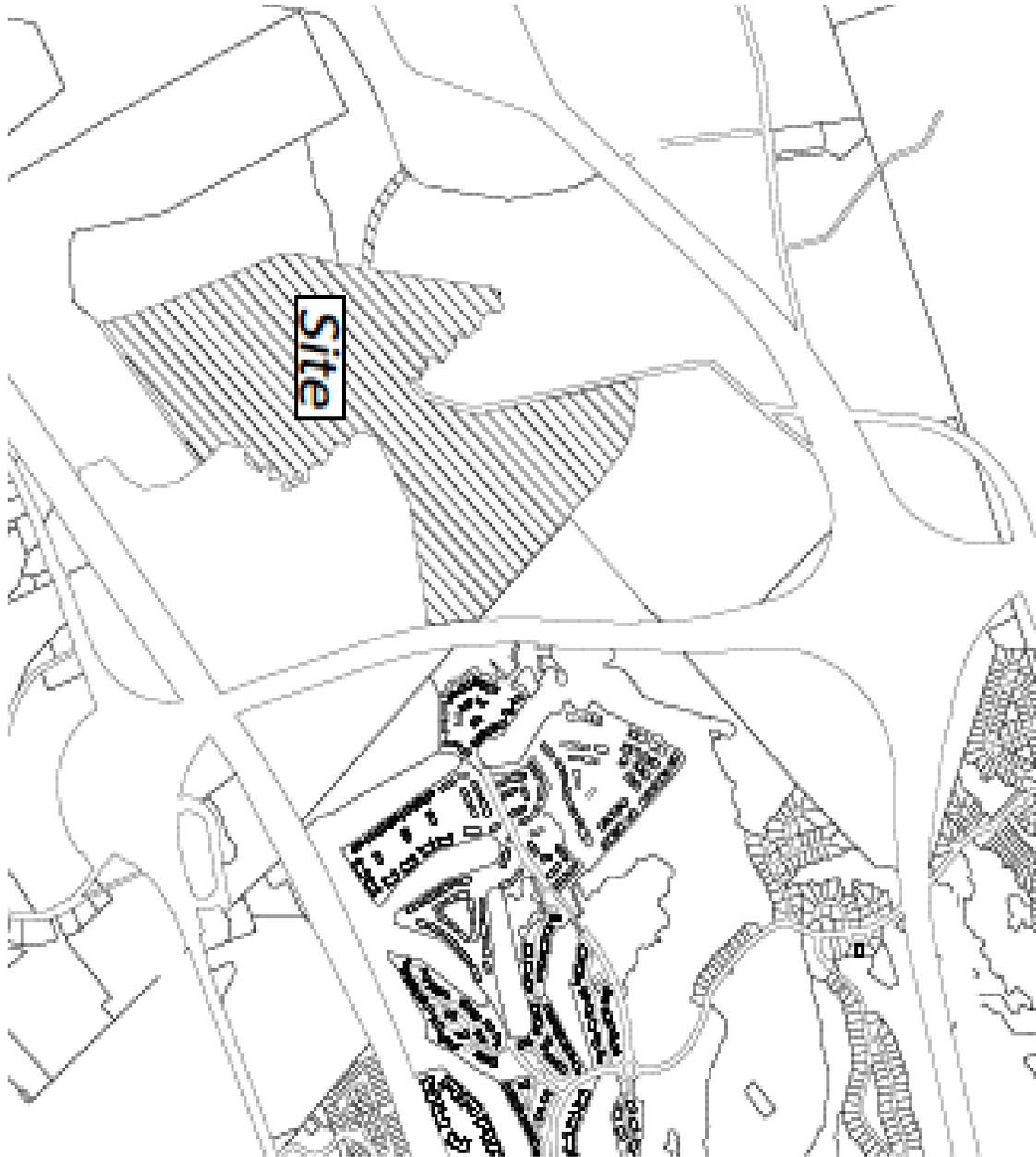


EXHIBIT "B"

Master Site Plan for Amended Site Plan Parcel

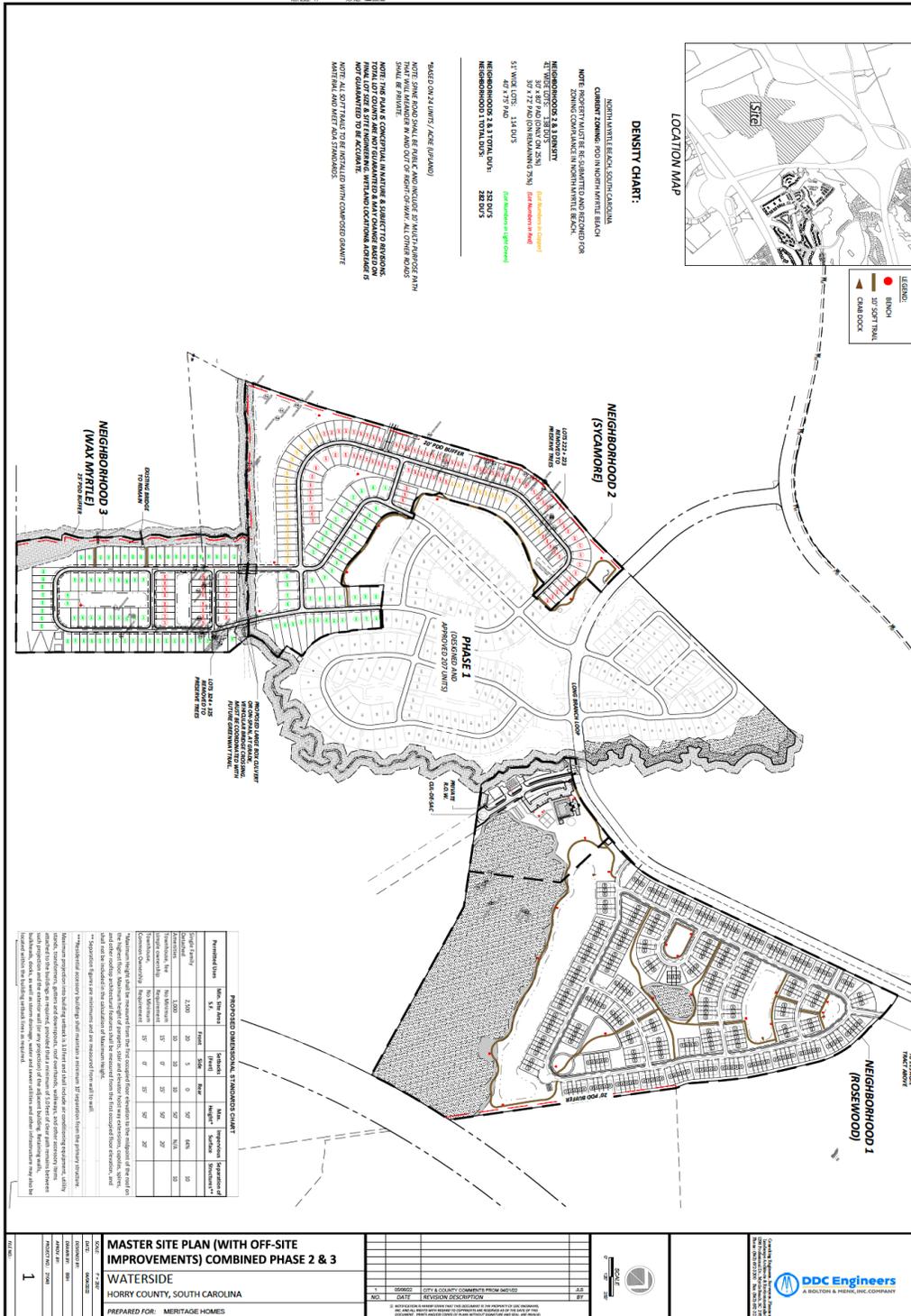


EXHIBIT "B-1"

Neighborhood 1 (Rosewood) Site Plan

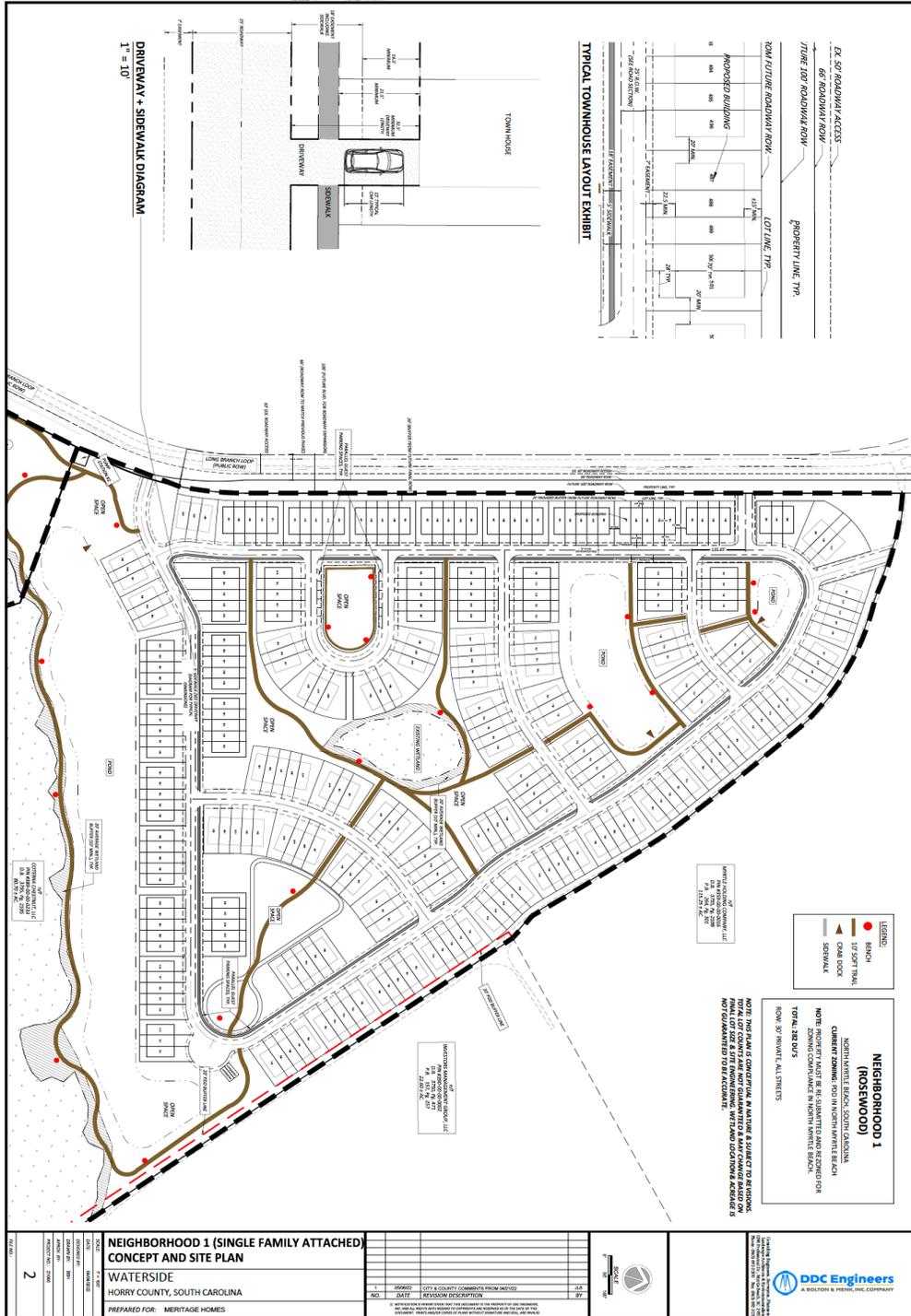


EXHIBIT "B-2"

Neighborhood 2 (Sycamore) Site Plan

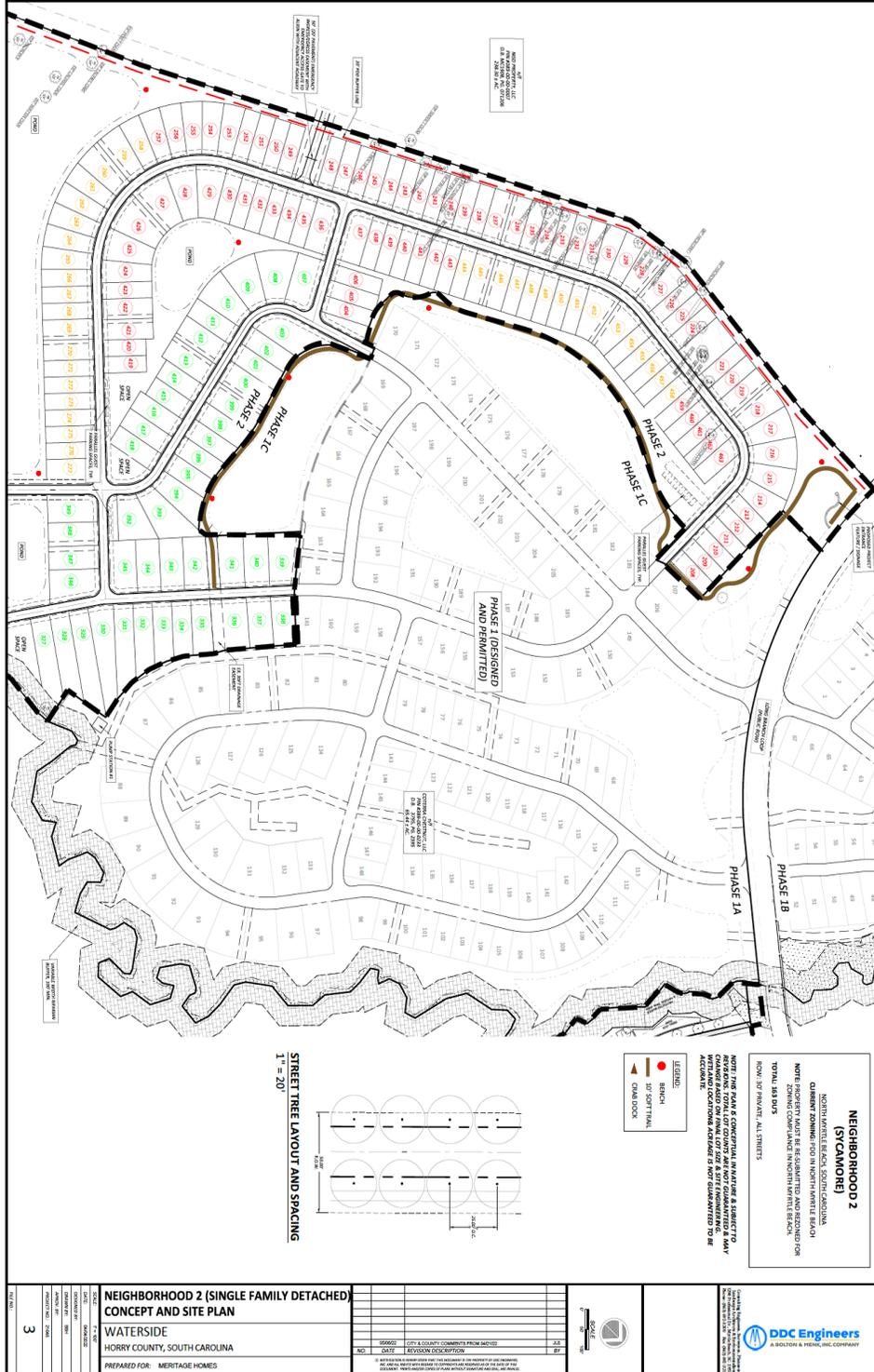


EXHIBIT "B-3"

Neighborhood 3 (Wax Myrtle) Site Plan

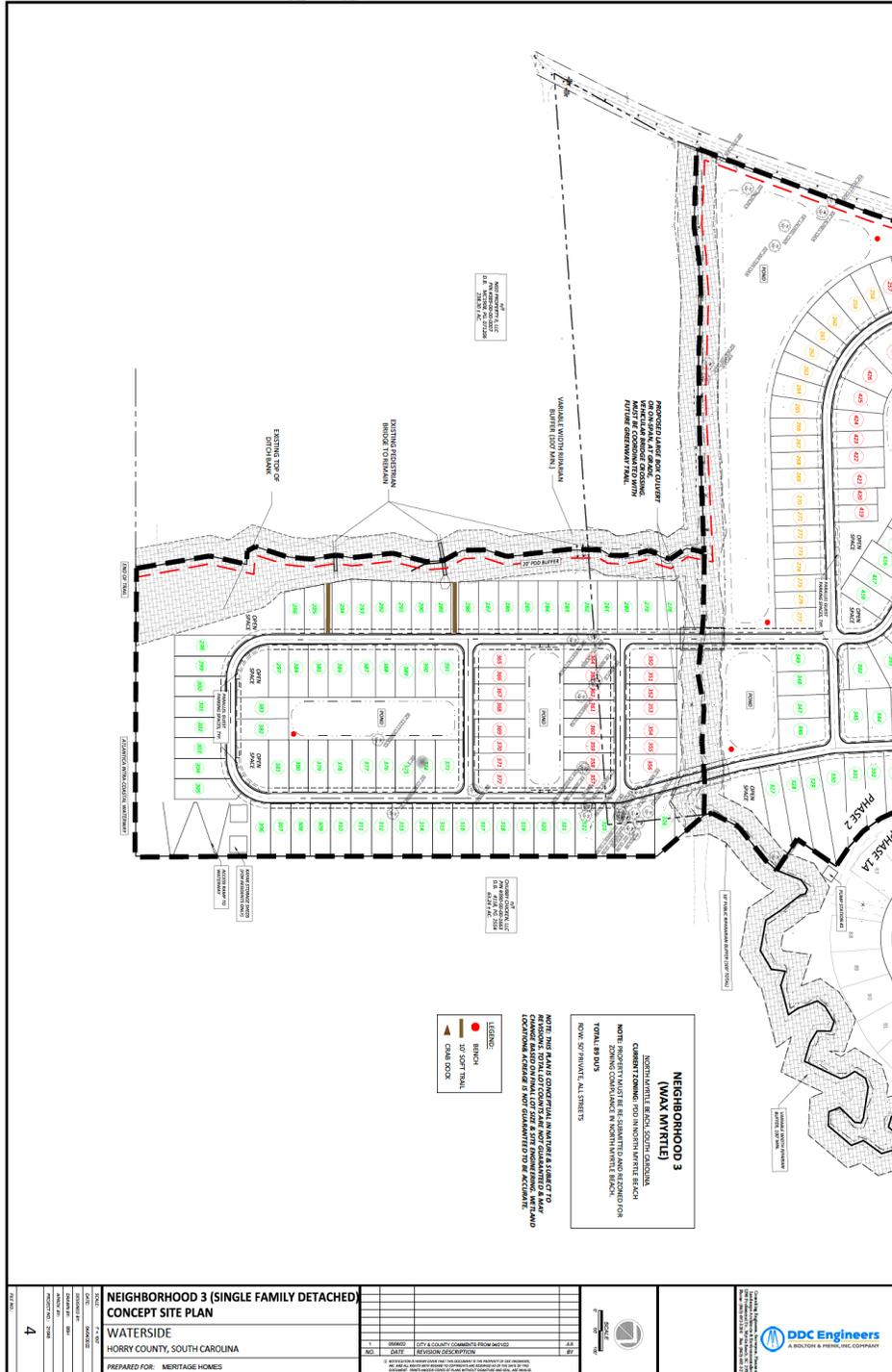


EXHIBIT "C"

Location and Dimensions for Long Branch Riparian Trailhead Site Location

