

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: August 15, 2022

Agenda Item: 6D	Prepared by: Chris Noury, City Attorney
Agenda Section: Unfinished Business: Ordinance. Second Reading	Date: August 9, 2022
Subject: An ordinance on second reading 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.

Enhancement Fee: The developer shall pay a fee in the amount of \$5,000 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. This fee includes \$300 for Park Enhancement, \$1,100 for Beachfront Parking, and \$3,600 for Public Safety.

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:

Approve the proposed ordinance on second reading

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:
Motion By _____ 2nd By _____ To _____

AN ORDINANCE

AN ORDINANCE TO APPROVE THE SEPARATE AND INDEPENDENT AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PARKWAY PDD REGARDING THE PROJECT IDENTIFIED AS WATERSIDE PHASE II AND PHASE III AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY OF NORTH MYRTLE BEACH.

WHEREAS, the City of North Myrtle Beach and Coterra Chestnut, LLC; Myrtle Holding Company, LLC; and Meritage Homes of the Carolinas, Inc. desire to enter into the Separate and Independent Amendment to the Master Development Agreement regarding the project identified as Waterside Phase II and Phase III within the Parkway PDD; and

WHEREAS, that certain document identified as the Separate and Independent Amendment to the Master Development Agreement (Waterside Phase II and Phase III), as agreed upon by the Parties, has been prepared and is presented to City Council for 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 Separate and Independent Amendment to the Master Development Agreement (Waterside Phase II and Phase III) is hereby approved.

Section 2: The City Manager is authorized to sign the above referenced document on behalf of the City of North Myrtle Beach.

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

DONE, RATIFIED AND PASSED THIS _____ DAY OF _____, 2022.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 6.20.2022

SECOND READING: 8.15.2022

REVIEWED:

City Manager

ORDINANCE: 22-28

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, the Development Agreement, unless deemed extended by executive order of the Governor of South Carolina, was executed on January 9, 2009, and expires on January 9, 2029; 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, and shall not be subject to this Agreement, without further amendment except by one or more separate and independent amendments for the respective portions of the remaining property owned by Coterra or the remaining property owned by Myrtle Holding which are not included in the Amended Site Plan Parcel or the Longbranch 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, Myrtle Holding, any successor property owner, including Developer, acknowledge and agree that the Amended Site Plan Parcel includes 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 (“**Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States**”) 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 Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States are filled or otherwise mitigated to no longer remain classified as Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States, all current and future owners of the Amended Site Plan Parcel agree that all on-site Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States 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 Jurisdictional and Non-Jurisdictional Waters of the State of South Carolina and the United States they surround shall be maintained in common ownership, shall remain natural except to the extent vegetation is mulched in accordance with applicable permits.

5. **Improvements Within the Amended Site Plan Parcel.** In accordance with the Continuing Encumbrance provision contained herein, Coterra and Myrtle Holding, or their respective successors 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 or any successor owner 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, which site will accommodate a parking area of not less than 7,641 square feet (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 or any successors owner 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 or any successor owner, the City bearing no expense in such conveyance.

(B) 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.

(C) 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 combined Henry Road and 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. For purposes of delineating which parcels and which developers are responsible for each portion of Long Branch Loop, **Exhibit "D"** is attached hereto, and made a part of this Agreement. Each adjoining development parcel with responsibility for road construction shall also be responsible for additional traffic improvements, including turn lanes, etc., by the same party having responsibility for said improvements, as determined during the subdivision plat approval process.

(D) 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.

6. **Additional Enhancement Fees and Public Benefits.** Coterra, Myrtle Holding and Developer, and their respective successors and assigns agree that the then current owner of the Amendment Site Plan Parcel shall pay to the City, the enhancement fees, as set forth below (collectively the "**Enhancement Fees**"). Developer further agrees that the Enhancement Fees shall be subject to annual increase, beginning on January 1, 2024, in an amount equal to the lesser of (i) the increase in the Consumer Price Index, published by the U.S. Bureau of Labor Statistics ("**CPI**") between the beginning and end of the most recent calendar year; or (ii) Two (2%) percent per annum, which increase is intend to ensure that the Enhancement Fees continue to reflect the City's on-going increases in the costs of services provided. Developer will provide the Enhancement Fees, together with any additional public benefits, as follows:

(A) For the Amended Site Plan Parcel, the Developer or the then current owner, shall pay to the City, as to each Residential Unit within the Amended Site Plan Parcel, a park enhancement fee (the "**Park Enhancement Fee**") in an amount equal to \$300 for each Residential Unit, paid at the time of issuance of each respective building permit.

(B) For the Amended Site Plan Parcel, the Developer, or the then current owner, shall pay to the City, as to each Residential Unit within the Amended Site Plan Parcel, a beach parking fee (the "**Beachfront Parking Enhancement Fee**") in an amount equal to \$1,100 for each Residential Unit, also paid at the time of issuance of each respective building permit.

(C) For the Amended Site Plan Parcel, the Developer, or the then current owner, shall pay to the City, as to each Residential Unit within the Amended Site Plan Parcel, a public safety enhancement fee (the "**Public Safety Enhancement Fee**") in any amount equal to \$2,600 for each

Residential Unit within the Amended Site Plan Parcel, also paid at the time of issuance of each respective building permit.

(D) Developer, or the then current owner of the Amended Site Plan Parcel agree that the minimum term of any rental agreement for Residential Units constructed upon the Amended Site Plan Parcel shall be Six (6) months, provided that following any such initial Six (6) month period, residential leases may be extended for periods of less than Six (6) months to the same tenant, provided such extensions are for successive periods of not less than Thirty (30) days. No sub-lease or assignment shall be permitted which would result in a party occupying a Residential Unit for a period of less than Six (6) months, the express intent of this provision being to prohibit short-term and/or overnight rentals.

(E) Notwithstanding any provision within the PDD, Developer agrees that the maximum density for the Amended Site Plan Parcel shall be Five Hundred Thirty (530) Residential Units, which represents a combination of single family attached units in Neighborhood 1, and single family detached units in Neighborhood 2 and Neighborhood 3.

7. **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 as Residential Units, is the same site plan incorporated in the PDD, as amended, is attached hereto as **Exhibit “B”** (collectively the “**Master Site Plan**”).

8. **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, Myrtle Holding and/or Developer, respectively.

9. **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)

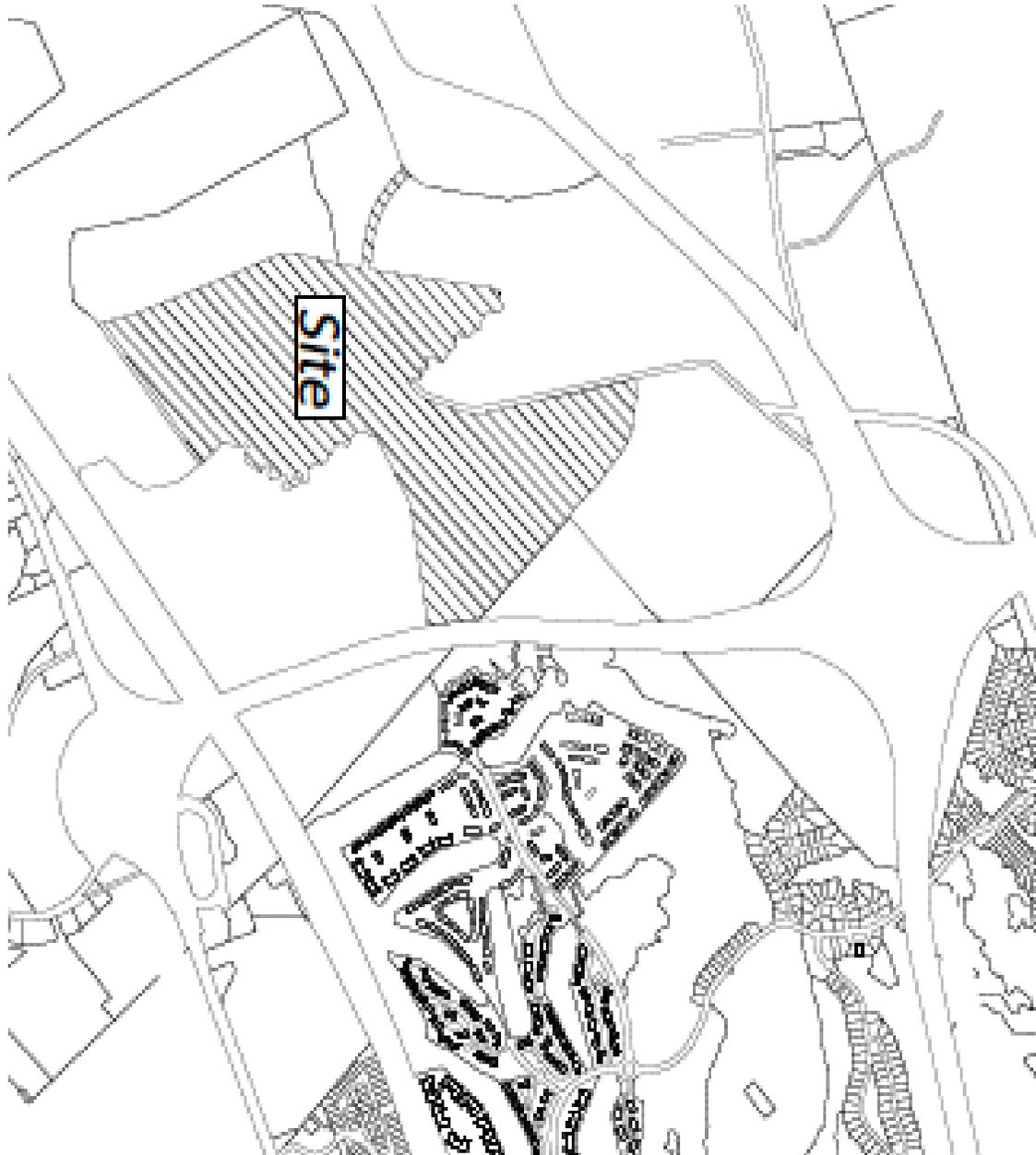


EXHIBIT "B-2"

Neighborhood 2 (Sycamore) Site Plan

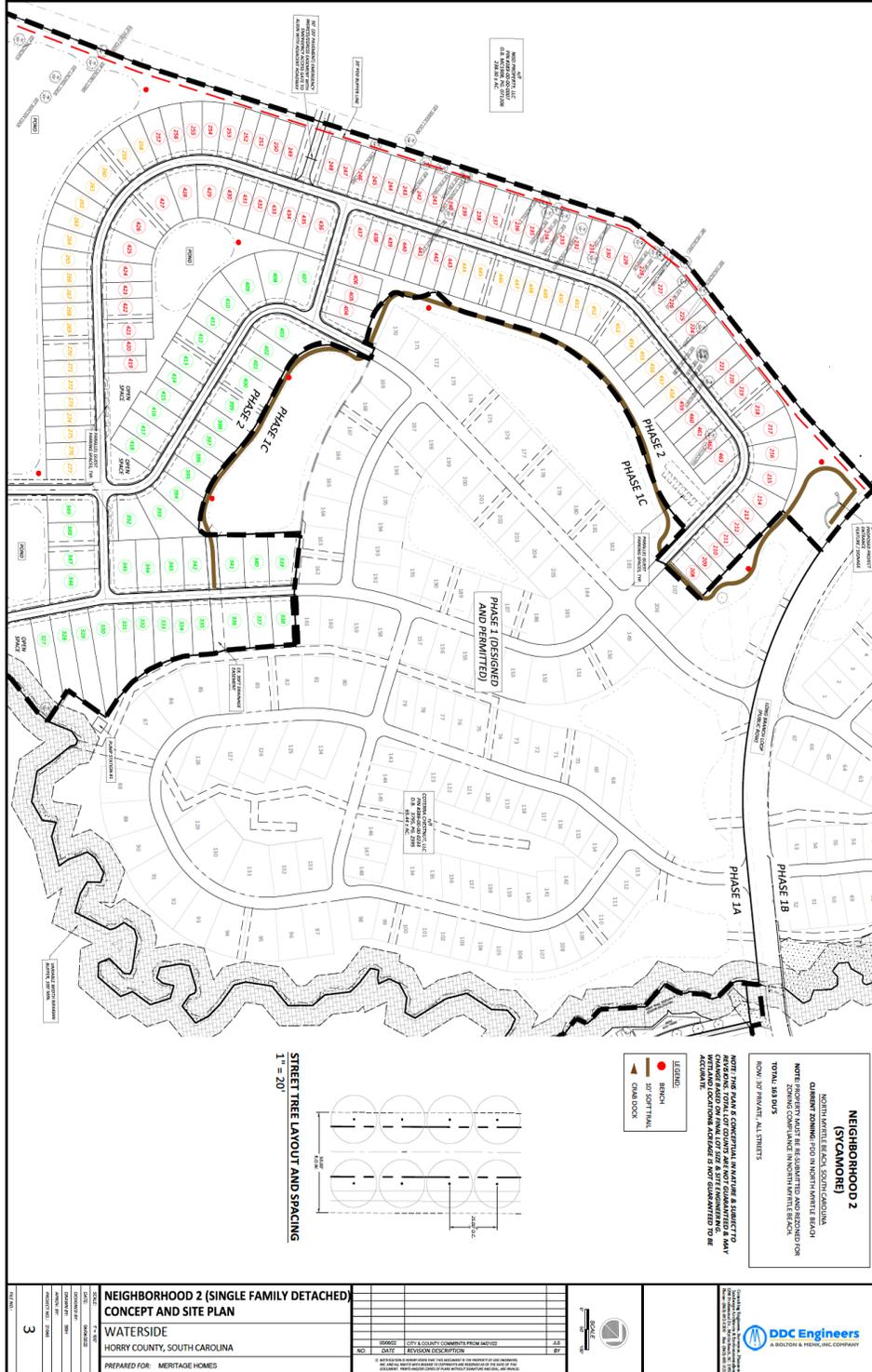


EXHIBIT "B-3"

Neighborhood 3 (Wax Myrtle) Site Plan

