

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: July 15, 2024

Agenda Item: 7F	Prepared by: Chris Noury, City Attorney	
Agenda Section: New Business: Ordinance. First Reading	Date: July 10, 2024	
Subject: Regarding the First Amendment to the Development Agreement for Bahama Island Phase II	Division: Legal	
<u>Background:</u> The Developers for the Bahama Island Phase II have proposed the following amendments to the Bahama Island Phase II Development Agreement: <i>Delete</i> section 10(E) of the current Development Agreement regarding certain off-site roadway improvements which required the consent of Horry County for which the County indicated it would NOT provide its consent to the proposed roadway improvements and <i>replace</i> with language that would require the Developer to: 1. Provide a left turn pocket (taper and storage) on Bowline Avenue for left turns into the Project. 2. Install a radio activated emergency gate within the existing ROW for C Versie Road as a secondary access to the project. Each of the improvements referenced above are located within the jurisdiction of North Myrtle Beach and <i>do not</i> require the approval of Horry County. In addition, the amendment requires the Developer to pay to the City \$300,000 at the time of application for the third building permit for the cost of the roadway improvements that were <i>not</i> approved by Horry County in the event these roadways are accepted by the City in the future for maintenance and control. <u>Recommended Action:</u> Approve or deny the proposed ordinance on first reading		
Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2nd By _____ To _____		

AN ORDINANCE

**AN ORDINANCE TO APPROVE THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR THE BAHAMA ISLAND PHASE II 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 SW INT 90 HOLDCO, LLC; SW INT 90 HOLDCO II, LLC; MYRTLE BEACH ZDGROUP, LLC; SW INT 90 HOLDCO III, LLC and SW INT 90 HOLDCO IV, LLC desire to enter into a First Amendment to the Development Agreement regarding the project identified as Bahama Island Phase II; and

WHEREAS, that certain document identified as the Development Agreement for Bahama Island Phase II, 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 First Amendment to the Development Agreement for Bahama Island Phase II 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 _____, 2024.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED:

City Manager

FIRST READING: 7.15.2024

SECOND READING: _____

ORDINANCE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **FIRST AMENDMENT TO DEVELOPMENT
AGREEMENT FOR BAHAMA ISLAND
PHASE II**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“*First Amendment*”) is made and entered this ____ day of _____, 2024, by and between SW INT 90 HOLDCO, LLC, a South Carolina limited liability company, SW INT 90 HOLDCO II, LLC, a South Carolina limited liability company, MYRTLE BEACH ZDGROUP, LLC, a South Carolina limited liability company, SW INT 90 HOLDCO III, LLC, a South Carolina limited liability company and SW INT 90 HOLDCO IV, LLC, a South Carolina limited liability company, their respective affiliates, subsidiaries, successors and assigns (collectively “*Developer*”), and the governmental authority of the CITY OF NORTH MYRTLE BEACH, a body politic under the laws of the State of South Carolina (“*City*”). Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings ascribed to them in the below-described Development Agreement, as hereby amended.

RECITALS:

WHEREAS, the City, and the above referenced parties comprising the Developer, entered into that certain Development Agreement for Bahama Island Phase II, dated August 31, 2023 and recorded September 22, 2023 in Deed Book 4726 at Page 494, in the Office of the Register of Deeds for Horry County, South Carolina (the “*Development Agreement*”); and

WHEREAS, the City and the Developer now desire to amend said Development Agreement in the manner set forth below.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, 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.
2. **AMENDMENT TO SECTION 10(E) OFF-SITE ROAD IMPROVEMENTS.** Section 10(E) of the Development Agreement set forth certain off-site roadway improvement requirements which required the consent and agreement of Horry County. Horry County, will not consent to the proposed off-site road improvements set forth in Section 10(E) of the Development Agreement, therefore the City and the Developer agree that Section 10(E) of the Development Agreement shall be deleted in its entirety, and replaced with the following:

“(E) **Off-Site Road Improvements.** As an obligation, subject to Section 3 of this First Amendment set forth below, the City and the Developer acknowledge that the City has required the Developer make certain off-site improvement to the roadways providing access to the Project from Sandridge Road, but within the jurisdiction of the City, and outside the jurisdiction of Horry County, and such improvements shall be made in accordance with the standards of the City, following the completion and acceptance of such improvements by the City, Developer shall be deemed to have completed such improvements in accordance with the terms of this First Amendment. Each of the Two (2)

off-site roadway improvements to be installed, which are located within the City, are attached to this First Amendment as **Exhibit “D-1”** pages 1-2, which shall be deemed to replace **Exhibit “D”** originally attached to the Agreement. The Two (2) off-site roadway improvements are as follows:

- (i) Provide a left turn pocket (taper and storage) on Bowline Avenue for left turns in to the Project, in accordance with the template attached hereto as **Exhibit “D-1”**.”
- (ii) Install a radio activated emergency gate within the existing right-of-way of C Versi Road, a roadway maintained by Horry County, as a secondary access to the Project, in accordance with the template and detail attached hereto as **Exhibit “D-1”**.”

3. **PRIOR OFF-SITE ROAD OBLIGATIONS.** Notwithstanding any other provision herein, the City and the Developer acknowledge and agree that those off-site roadway improvements originally set forth in Section 10(E) of the Development Agreement, while not approved by Horry County, may at some time in the future, be approved by the City if and when such roadways are accepted by the City for maintenance. Therefore, in lieu of making the previously proposed roadway improvements which were not accepted by Horry County, Developer shall pay to the City, at the time Developer applies for the Third (3rd) building permit within the Project, the sum of Three Hundred Thousand and No/100 (\$300,000.00) Dollars (the “**Roadway Improvement Contribution**”), which amount exceeds the engineer’s estimated costs of such off-site roadway improvements not approved by Horry County, and which Roadway Improvement Contribution may be used by the City, in the City’s sole discretion for improvement of roadways and related utilities within the corporate limits of the City.

4. **NO FURTHER AMENDMENT.** Except as specifically amended by this First Amendment, all of the terms and conditions of the Development Agreement shall remain in full force, unless and until amended in a writing signed by the City and the Developer.

5. **FORCE AND EFFECT.** If Developer has properly executed this First Amendment and delivered the same to the City for execution within Sixty (60) days following final approval of this First Amendment by the City, then this First Amendment shall be null and void and of no further force or effect.

[Individual Signature Pages Follow]

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

DEVELOPER:

WITNESSES:

SW INT 90 HOLDCO, LLC, a South Carolina limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

Notary Public for _____

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:

SW INT 90 HOLDCO II, LLC, a South Carolina limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO II, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

Notary Public for _____

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:

MYRTLE BEACH ZDGROUP, LLC, a
South Carolina limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, as _____ of MYRTLE BEACH ZDGROUP, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

Notary Public for _____

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:

SW INT 90 HOLDCO III, LLC, a South Carolina limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO III, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

Notary Public for _____

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:

SW INT 90 HOLDCO IV, LLC, a South Carolina limited liability company

Name: _____

By: _____

Name: _____

Title : _____

Name: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, as _____ of SW INT 90 HOLDCO IV, LLC, a South Carolina limited liability company. He or she personally appeared before me and is personally known to me.

Notary Public for _____

Name: _____

My Commission Expires: _____

[CITY SIGNATURE PAGE FOLLOWS]

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 _____, 2024 by _____, the of the CITY OF NORTH MYRTLE BEACH. He or she personally appeared before me and is personally known to me.

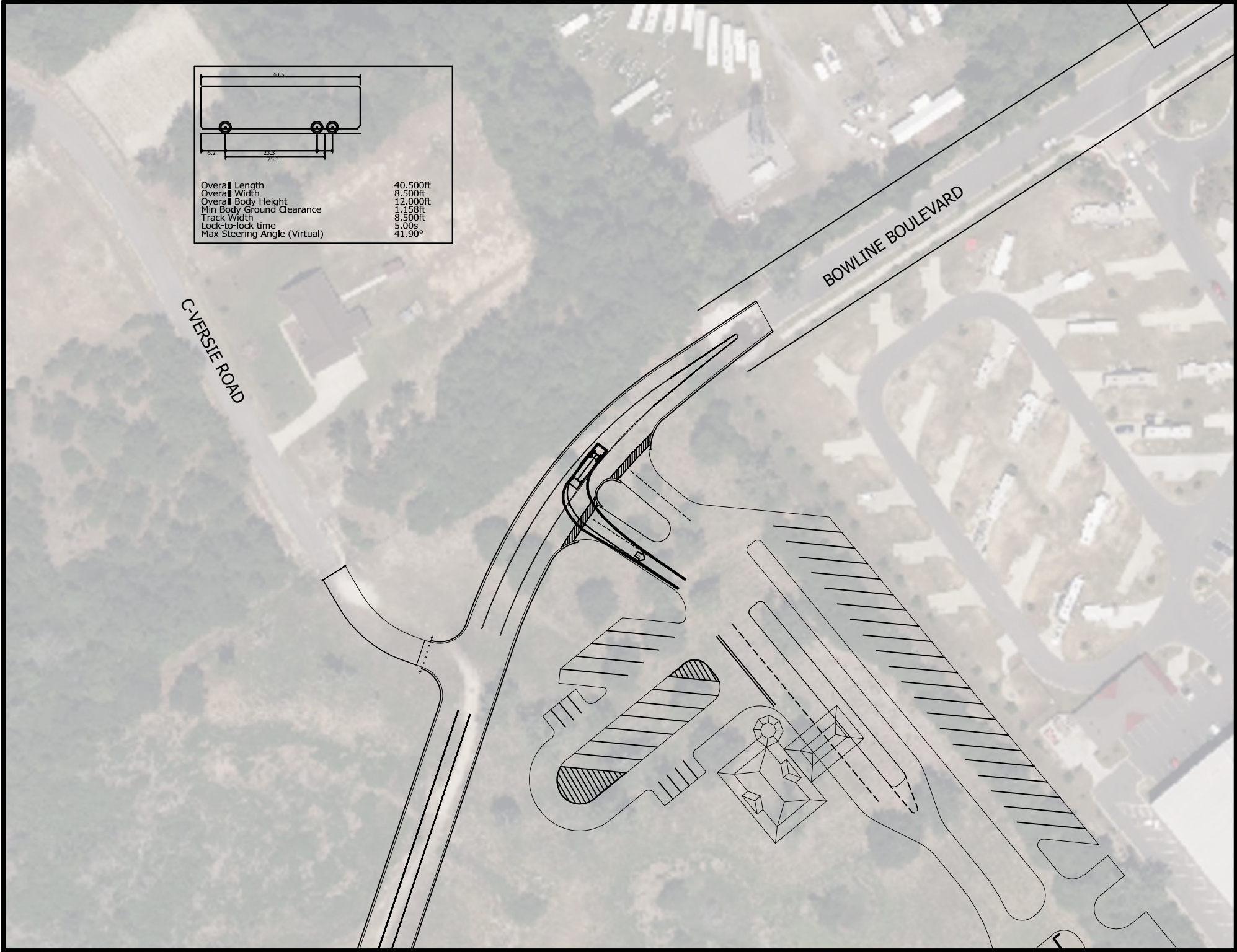
Notary Public for South Carolina

Name: _____

My Commission Expires: _____

EXHIBIT “D-1”
(Replaces Exhibit “D”)

2 Separate Off-Site Road Improvement Templates



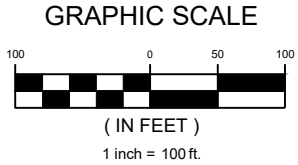
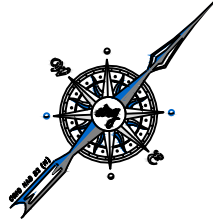
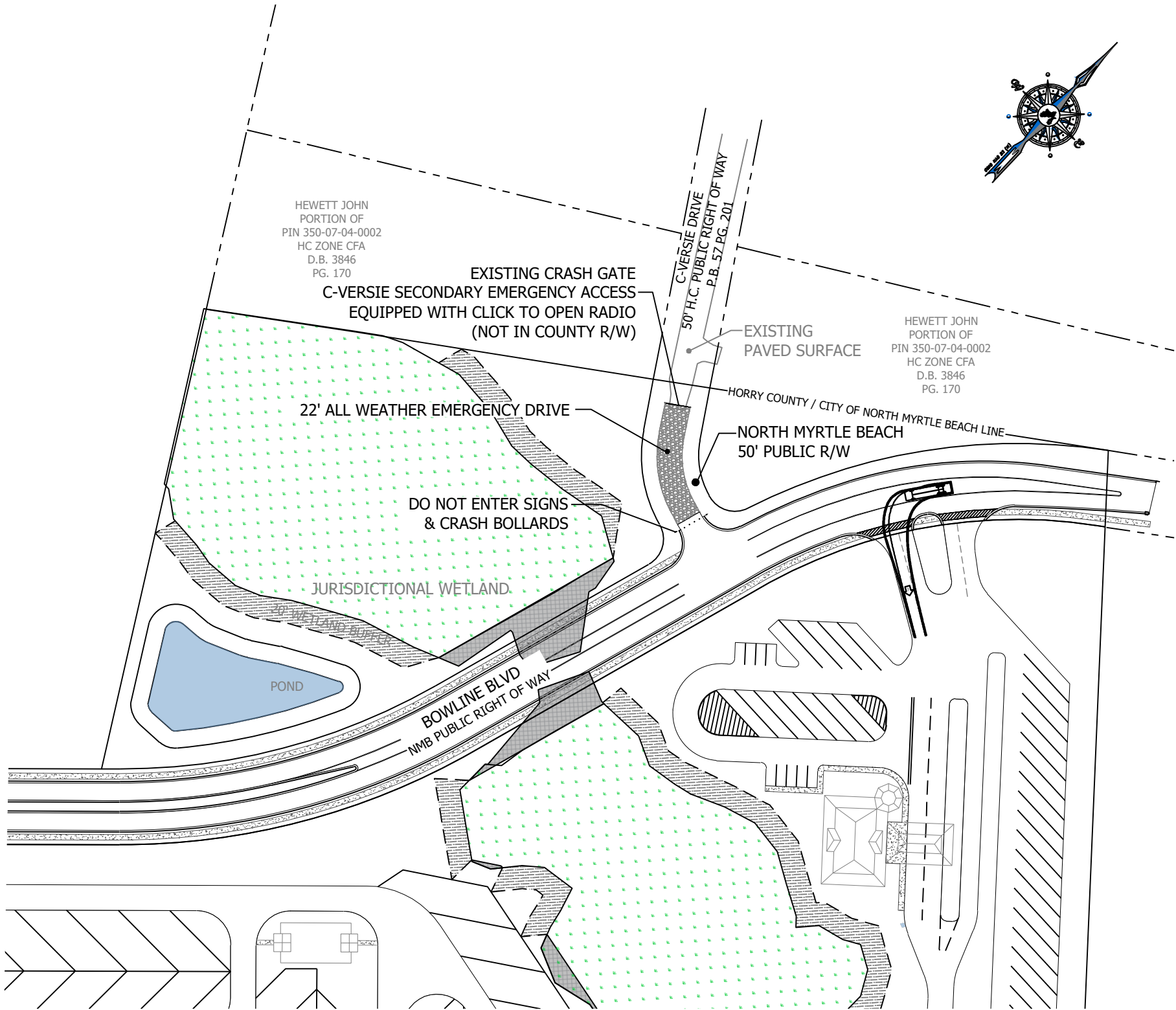
DEVELOPMENT RESOURCE GROUP, LLC
4703 OLEANDER DRIVE
MYRTLE BEACH, SC 29577
843-839-3350 | DRGPLLC.COM

IMPROVEMENTS
BOWLINE BOULEVARD / RESORT ENTRY

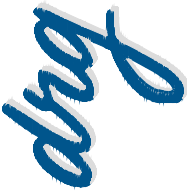
BAHAMA ISLAND

JOB NO:	22.108
SCALE:	1" = 100'
DRAWN BY:	PTH
DATE:	06/07/2024
EXHIBIT NUMBER:	

EXHIBIT
D-1



DEVELOPMENT RESOURCE GROUP, LLC
4703 OLEANDER DRIVE
MYRTLE BEACH, SC 29577
843-839-3350 | DRGPLLC.COM



ROAD IMPROVEMENTS

BAHAMA ISLAND

JOB NO: 22.108
SCALE: 1" = 100'
DRAWN BY: PTH
DATE: 07/11/2024
EXHIBIT NUMBER:

EXHIBIT
D-1