

Prepared by:
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, C-3018
Melbourne, Florida 32940
Justin Caron, Esquire Parcel ID Numbers: 24-37-26-CG-112-12; 24-37-26-CG-113-6

WESTGATE AGREEMENT
BETWEEN WESTGATE COCOA BEACH PIER, LLC,
THE CITY OF COCOA BEACH, AND
BREVARD COUNTY, FLORIDA

THIS AGREEMENT is hereby entered into on the ____ day of _____ 2024 by and between the following Parties: the WESTGATE COCOA BEACH PIER, LLC, a Florida limited liability company located at 9259 Point Cypress Drive, Orlando, Florida 32836 (hereinafter WESTGATE), the CITY OF COCOA BEACH, FLORIDA, a municipal corporation, 1600 Minutemen Causeway, Cocoa Beach, Florida (hereinafter CITY), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter the COUNTY).

RECITALS

WHEREAS, WESTGATE is the current owner of several parcels of real property fronting on the Atlantic Ocean and located in Brevard County, Florida, further described in Exhibit "A-1," (hereinafter collectively the PARCELS) and said parcels flank the north and south sides of the east end of Meade Avenue in Cocoa Beach, Florida; and

WHEREAS, WESTGATE is currently desirous of having a portion of Meade Avenue, Cocoa Beach, Florida vacated by the City of Cocoa Beach in order to consolidate their properties in order to construct a hotel resort complex (hereinafter the WESTGATE PROPOSAL); and

WHEREAS, COUNTY currently depends on access to the Atlantic Ocean beach from the east end of Meade Avenue (or across the WESTGATE's land, as permitted by Westgate) for its heavy equipment vehicles in order to conduct certain shore protection operations on a periodic basis on the North Side of the Cocoa Beach Pier; and

WHEREAS, COUNTY currently depends on access to the Atlantic Ocean from the east end of Pulsipher Avenue (or across the WESTGATE's land, as permitted by Westgate) for its heavy equipment vehicles in order to conduct certain beach renourishment operations on a periodic basis on the South Side of the Cocoa Beach Pier; and

WHEREAS, the CITY Charter section 6.03 provides that public access to the Atlantic Ocean shall not be reduced by vacating beach-access streets and this agreement is consistent therewith and insures such access; and

WHEREAS, the CITY has city-owned and regulated parking spaces adjacent to the Pier Property available to residents of County, the City and the public; and

WHEREAS, the COUNTY benefits from either maintaining or expanding the current number of public parking spaces and public restrooms adjacent to the Atlantic Ocean beaches, in that these are a factor in the amount of beach renourishment cost-share grants the COUNTY may receive from the State and Federal Government; and

WHEREAS, as a condition of the vacating a portion of Meade Avenue by the City of Cocoa Beach, the CITY has required the recording of an agreement between WESTGATE, the CITY and the COUNTY that addresses the vacating of Meade Avenue in terms of beach access, vehicle parking, public restroom access, as well as construction access, sand placement and other operations associated with the Brevard County Shore Protection Program including Army Corps of Engineers beach renourishment easements; and

WHEREAS, this agreement contemplates the City of Cocoa Beach granting all approvals for the WESTGATE project to be developed; and

WHEREAS, this agreement contemplates the effectiveness of Ordinance 1668, adopted March 17, 2022, (Exhibit C) which will vacate a portion of Meade Avenue in favor of WESTGATE; and,

WHEREAS, this agreement shall become effective simultaneously upon the City recording of Ordinance 1668 which contains certain stipulated conditions be met by the City, County, and Westgate; and

WHEREAS, all Parties are amenable to this Agreement to meet the CITY and COUNTY's concerns.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties agree and declare as follows:

1. Recitals. The recitals are true and correct and incorporated herein verbatim and made an integral part of this Agreement.
2. General Purpose. This Agreement is for the purpose of protecting the public access, public facilities, public use of the Atlantic Ocean and its beaches, and the access of governmental entities to the beach in order to conduct shore protection operations including, but not limited to, public safety beach restoration, renourishment, maintenance and monitoring, to the extent those entities are funded to do so. Upon execution of this Agreement, the COUNTY shall record this Agreement in the Official Public Records of Brevard County, Florida. The Agreement, its easements and covenants, shall be binding upon, and inure to the benefit of the Parties and their respective successors and assigns, in perpetuity. The Parties agree that this agreement is a covenant that touches and involves the land, and that the Parties intend for these covenants to run with the land. All references to each Party shall include the successors and assigns.

Exhibit A-2, current Composite Conceptual Site Plan, illustrates the approximate general locations of the beach renourishment construction access easement to be 20' running generally westerly to easterly on the north side of the building, the Resort parking garage, the public pedestrian walkway to the pier and beach which traverses the site generally from Meade Avenue under the new resort building directly to the Pier, and the Brevard County Shore Protection easement which is the north-south easement. Exhibit A-2 is not to scale. Prior to the Certificate of Occupancy referenced in Section 3, WESTGATE shall grant continuous and uninterrupted construction access to COUNTY which meets the minimum height and width requirements of the contemplated easement. The Parties acknowledge that during construction the exact location of this access may vary but at all times shall ensure said access meet the minimum requirements.

3. General Public Pedestrian Sidewalk Access Easement to the Beach. As a condition of COUNTY's agreement to WESTGATE's proposal, which includes vacating a portion of Meade Avenue, WESTGATE, its successors and assigns, does hereby provide the same amount of public beach access to the Atlantic Ocean's beach as was enjoyed by the public prior to the vacating of Meade Avenue, pursuant to the following easement:

WESTGATE, in consideration of One Dollar (\$1.00) and other valuable consideration paid, the receipt of which is acknowledged, commencing upon receipt of its certificate of occupancy for the hotel and resort so constructed from CITY, hereby grants unto the COUNTY, its successors and assigns, a perpetual public pedestrian sidewalk access easement, at a minimum of 15 feet wide, for the purposes of general public pedestrian access to the beach and other allied uses pertaining thereto, over, under, upon, above and through the lands shown on Exhibit A-2. Said lands shall be shown in an actual easement agreement which will be prepared and recorded simultaneously with the recordation of City Ordinance 1668 vacating Meade Avenue.

WESTGATE additionally hereby agrees to install signage indicating the easement area is open to the public. Any and all maintenance of the general public pedestrian easement area shall be the responsibility of the owner of the land over which the easement is located. Easement includes the right of ingress and egress onto the easement area as may be necessary for the full use and enjoyment of the easement area but WESTGATE shall not make any improvements within the easement area which will conflict or interfere with the easement granted herein. COUNTY, a political subdivision of the State of Florida, and its successors and assigns shall have and hold said easement. WESTGATE does covenant with COUNTY that it is lawfully seized and possessed of the lands above described and that it has a good and lawful right to convey it or any part thereof. Prior to the Certificate of Occupancy, WESTGATE shall grant continuous and uninterrupted construction access to COUNTY which meets the minimum height and width requirements of the contemplated easement. The Parties acknowledge that during construction the exact location of this access may vary but at all times shall ensure said access meet the minimum requirements.

4. Vehicle Parking Covenant. As a condition COUNTY's agreement to WESTGATE's proposal, which includes vacating a portion of Meade Avenue, WESTGATE, its successors and assigns, hereby covenant to provide at least a minimum of 50 parking spaces dedicated for use by the general public on its property, with signage clearly indicating there is public parking available. The purpose of said parking is to permit general public parking for access to the beach. See Exhibit A-2, current Composite Conceptual Site Plan, for approximate location.

5. Publicly Accessible Restrooms. The Parties acknowledge that the provision of publicly available restrooms assists the COUNTY in qualifying the COUNTY to receive state and federal funds for shore protection projects. As a condition of COUNTY's agreement to WESTGATE's proposal, which includes vacating a portion of Meade Avenue, WESTGATE, its successors and assigns hereby covenant that it will provide and maintain publicly accessible restrooms. Said public restrooms will include a minimum of at least one set of male, female, and family public restrooms for the purposes of providing restrooms for pedestrians accessing the beach and other allied uses.

6. Brevard County Shore Protection Project Beach Renourishment Easement. The Parties acknowledge that the public's ability to use the beach is a condition for the COUNTY to receive federal grant funds to assist COUNTY in the beach renourishment process. Concurrent with signing this agreement, WESTGATE shall execute, without further compensation, the PERPETUAL BEACH STORM DAMAGE REDUCTION EASEMENT, shown on Exhibit A-2 (current Composite Conceptual Site Plan) and attached as Exhibit " B."

7. Beach Renourishment Construction Access Easement in vicinity of vacated Meade Avenue.

The Parties acknowledge that the COUNTY's ability to renourish and maintain the beach depends upon practical access to the beach for heavy construction equipment to the north and south of the Cocoa Beach Pier.

WESTGATE, its successors and assigns, in consideration of One Dollar (\$1.00) and other valuable consideration paid, the receipt of which is acknowledged, commencing upon receipt of its certificate of occupancy from the CITY for the hotel and resort so constructed, hereby grants unto the COUNTY, its successors and assigns, a beach renourishment construction access easement for the purposes of providing the COUNTY access to the beach north of the pier in order to move heavy equipment on and off the beach adjacent to the Atlantic Beach north of the Cocoa Beach Pier to conduct shore protection operations and other allied uses pertaining thereto, over, under, upon, above on lands shown on Exhibit A-2 (current Composite Conceptual Site Plan). Said lands shall be shown in an actual easement agreement which will be prepared and recorded simultaneously with the recordation of City Ordinance 1668 vacating Meade Avenue.

WESTGATE, its successor and assigns, agrees to provide COUNTY with a minimum of 20-foot-wide flat beach renourishment construction access easement from Ridgewood Avenue, onto

the remaining stub of Meade Avenue, east to the Atlantic Ocean Beach, where the County's beach renourishment easement begins. Said easement area must have an obstruction free vertical clearance of a minimum of sixteen feet, and no permanent impediments or obstructions in the access route area. The route must be designed and maintained by WESTGATE in a manner that enables the COUNTY's heavy equipment to drive over and through the route to access the Atlantic Ocean Beach unimpeded. The width of this access route from Meade Avenue to the Atlantic Ocean Beach shall be covered in cement, asphalt or a crushed coquina stone or other similar material to provide a surface that can sustain the weight of heavy equipment passing over the route. Additionally, due to the narrow width of the access, the route shall not include any air conditioning units, utility poles or utility equipment obstructing the route, or any swales or other drainage structures that would impede heavy equipment from easily traversing the route. Additionally, the easement shall include the circle turnaround at the front of the hotel, and any portion of the drive aisle extending from the end of the public right-of-way of Meade Avenue that is privately owned. The easement must be a minimum of 20 feet wide, with a 16 foot vertical clearance, and permit heavy equipment to transverse from Meade Avenue with no obstructions.

The Parties agree that the current plan is that the County will back a tractor trailer onto Meade Avenue as close to the WESTGATE Hotel as is feasible, and unload its heavy equipment, which may include 15 foot wide tracked vehicles. The Hotel's overhang and circle must be high and wide enough for the 15 foot wide tracked vehicles to transverse successfully past the entrance and to the north of the building enroute to the ocean, as described above.

WESTGATE shall perform any and all maintenance of the beach renourishment construction access easement and shall be solely responsible for repairing, and all associated costs, any damage to the easement that occurs due to its use by COUNTY. WESTGATE shall promptly remove any and all obstructions or encroachment in the access easement that violate the restrictions above.

The Easement includes the right of ingress and egress onto the easement area as may be necessary for the full use and enjoyment of the easement area but WESTGATE shall not make any improvements within the easement area which will conflict or interfere with the easement granted herein. COUNTY, a political subdivision of the State of Florida, and its successors and assigns shall have and hold said easement. WESTGATE does covenant with COUNTY that it is lawfully seized and possessed of the lands above described and that it has a good and lawful right to convey it or any part thereof.

WESTGATE agrees and understands that the beach renourishment construction access easement may be used on a periodic basis by other public departments of the COUNTY and CITY as necessary to perform public functions such as emergency response, public safety, and conservation activities (for example: turtle monitoring).

If at any point, the WESTGATE authorizes, permits or installs a permanent impediment or obstruction in the access routes, upon written notice by COUNTY, WESTGATE shall promptly remove or have removed, the impediment or obstruction at WESTGATE's cost, to the satisfaction of COUNTY.

Upon final construction of the WESTGATE facility and recordation of Ordinance 1668 by the City of Cocoa Beach, WESTGATE will provide COUNTY with a surveyed legal description and sketch of the beach renourishment construction access easement and this agreement shall be rerecorded with the updated legal description. Said surveyed legal description must extend from the end of the remaining Meade Avenue to the Atlantic Ocean beach.

8. Pulsipher Avenue. The Parties agree and understand that COUNTY utilizes Pulsipher Avenue for access to the Atlantic Ocean beach. Neither the CITY nor WESTGATE shall obstruct or prevent the COUNTY'S use of this street in any manner.

9. Default Triggers and Remedies.

9.1 A Party is in default of this Agreement *if* the Party materially breaches any covenant contained in this Agreement and such breach has not been corrected or cured within thirty (30) days after written notice thereof.

9.2 Any party of this Agreement may at any time or from time to time proceed to protect and enforce all rights available to it under this Agreement by suit in equity, action at law, or by any other appropriate proceeding, whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations.

10. Term of Easement. This agreement shall run with the land and shall be binding upon, and shall inure to the benefit of the Parties, here, and their respective successors and assigns from the date last signed by the Parties, and shall continue in perpetuity. However, this agreement may be terminated (a) by mutual agreement of the COUNTY and the WESTGATE, or their successor(s) in interest.

11. Miscellaneous Provisions.

(a) This Agreement, including exhibits, riders, and/or addenda, if any, sets forth the entire agreement and understanding between the Parties. This Agreement shall not be modified except in writing and executed by all parties. This Agreement supersedes all prior agreements and negotiations respecting such matter. The Parties acknowledge that they fully reviewed this Agreement and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of the Agreement.

(b) In the event of any litigation between the Parties arising out of this Agreement, each Party will bear its own attorney's fees and costs. **BOTH PARTIES AGREE TO WAIVER OF ANY RIGHT**

TO TRIAL BY JURY AND HEREBY WAIVE A TRIAL BY JURY. The Parties agree that this Contract is governed by the laws of the State of Florida and venue for legal action brought under this Contract shall be in a court of competent jurisdiction in Brevard County, Florida.

(c) If any provision of this Agreement, or any portion thereof, or the application thereof to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) The Parties acknowledge that Florida has broad public disclosure laws, and that any written communications between the Parties, to include emails, email addresses, a copy of this Agreement, and any supporting documentation related to this Agreement are subject to public disclosure upon request pursuant to Chapter 119, Florida Statutes, unless otherwise exempt or confidential under Florida Statutes.

(e) Each Party, without further consideration, shall take such action, execute and deliver such documents as the other may reasonably request to correct or effectuate the purpose of this Contract.

(f) Each Party represents that it is possessed with all requisite lawful authority to enter into this Contract, and the individual executing this Contract is possessed with the authority to so sign and bind its respective Party.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement, by its duly authorized representatives, fully authorized by all required action to sign on behalf of and to bind each Party to the obligations here, on the day and year first above written.

1 Witness Signature

Printed Name of Witness

2 Witness Signature

Printed Name of Witness

WESTGATE COCOA BEACH PIER, LLC

James L. Gissy, Manager

(seal)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ (date) by James L. Gissy, Manager, of WESTGATE COCOA BEACH PIER, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced (type of identification) as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped
My Commission Expires: _____

IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed, this
__ day of ____, 2024.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

Jason Steele, Chair
As approved by the Board on ____, 2024

Signed, Sealed and delivered in the presence of:

1 Witness Signature

CITY OF COCOA BEACH

Printed Name of Witness

BY: _____

2 Witness Signature

Keith Capizzi, Mayor

Printed Name of Witness

(seal)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ (date) by Ben Malik, Mayor, of the City of Cocoa Beach, on behalf of the company, who is personally known to me or has produced (type of identification) as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped
My Commission Expires: _____

[EXHIBITS FOLLOW]

EXHIBIT "A-1" WESTGATE PARCELS

Owner: WestGate Cocoa Beach Pier LLC

Brevard County Property Appraiser Identification # 24-37-26-CG-112-12

DESCRIPTION

A parcel of land located in Section 26, Township 24 South, Range 37 East, Brevard County, Florida. Said parcel being more particularly described as follows:

BEGIN at the northwest corner of Lot 1, Block 113, AVON-BY-THE-SEA, Plat Book 3, Page 7 of the Public Records of Brevard County, Florida; thence South 89° 51' 56" East along the southerly right of way of Mead Avenue per said plat, 192.82 feet to a point on the southerly extension of the westerly boundary line of Lot 12, Block 112 per said plat; thence leaving said southerly right of way line, run North 11° 27' 59" East along said southerly extension of the westerly boundary line of Lot 12 a distance of 100.16 feet to a point on the northerly boundary line of said Lot 12, Block 112 per said plat; thence leaving the southerly extension of the westerly boundary line of said Lot 12, run South 89° 55' 42" East along the northerly boundary line of said Lot 12 a distance of 456.81 feet to a point on the Erosion Control Line, per Florida Department of Environmental Protection Mean High Water Survey File No. 2249; thence leaving the northerly boundary line of said Lot 12, run the following courses along said Erosion Control Line, South 09° 34' 48" West, 65.22 feet; thence South 09° 49' 51" West, 176.05 feet; thence South 07° 31' 45" West, 111.82 feet to a point on the northerly right of way line of Pulsipher Avenue per said plat; thence leaving said Erosion Control Line, run North 89° 51' 16" West along said northerly right of way line 615.40 feet to a point on the easterly right of way line of Ridgewood Avenue per said plat; thence leaving the northerly right of way line of said Pulsipher Avenue, run North 00° 19' 32" East along said easterly right of way line 249.94 feet to the POINT OF BEGINNING.

Said parcel contains 4.667 acres, more or less.

NOTES

1. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY.
2. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ELECTRONIC SIGNATURE AND SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER LISTED BELOW.
3. THE LAND DESCRIPTION HEREON WAS WRITTEN BY THIS SURVEYOR AT THE DIRECTION OF THE CLIENT.
4. BEARING SHOWN HERE ARE BASED ON THE SOUTHERLY RIGHT OF WAY LINE OF MEADE AVENUE AND BEING SOUTH 89° 51' 56" EAST. (ASSUMED)
5. THE EXISTING RIGHT OF WAY AREA OF OCEAN BLVD APPEARS TO BE VACATED. HOWEVER, THE UNDERSIGNED SURVEYOR WAS NOT PROVIDED ANY VACATION DOCUMENTATION, AND DOES NOT CERTIFY TO THE LEGAL STATUS OF OCEAN BOULEVARD.

CERTIFICATION

I HEREBY STATE THAT THIS SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; AND THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE FOR FLORIDA SURVEYORS AND MAPPERS, AS SET FORTH IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.



WM. DAVID McCrARY, JR, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 4853

DATE

SECTION 26, TOWNSHIP 24 SOUTH, RANGE 37 EAST - BREVARD COUNTY, FLORIDA



Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153

Vanasse Hangen Brustlin, Inc.

DRAWN BY: CAP CHECKED: WDM

PROJECT # 61920.01

DRAWING: Sk & Desc Overall.dwg

DRAWING DATE: 11/08/2021

SHEET 1 OF 2

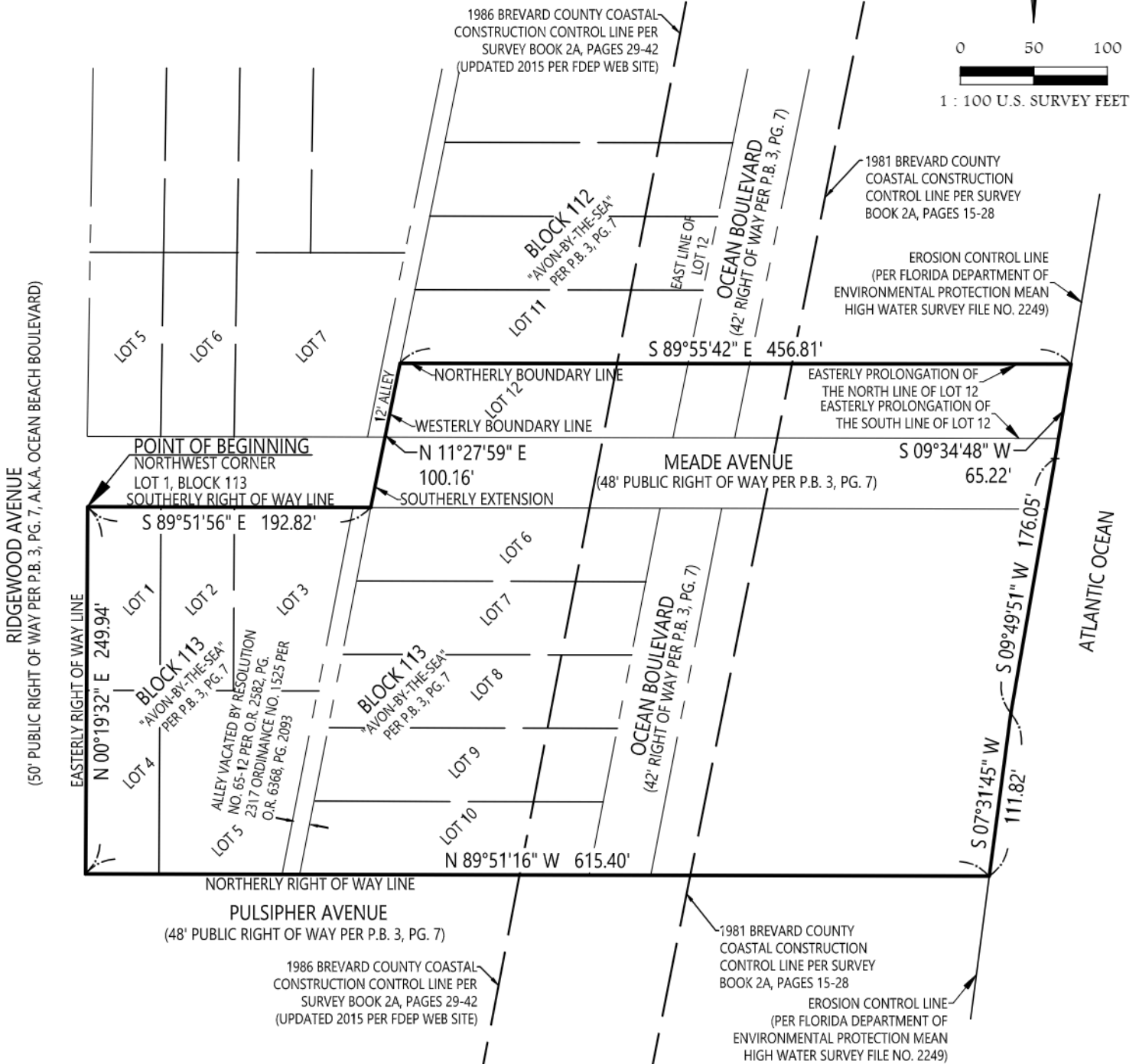
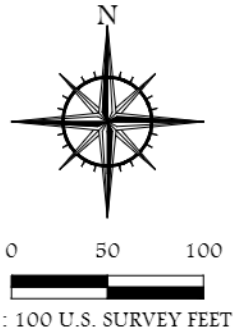
SKETCH & DESCRIPTION
Overall Parcel

ISSUED FOR:

WESTGATE COCOA BEACH PIER LLC

LEGEND

- A.K.A. = ALSO KNOWN AS
- O.R. = OFFICIAL RECORDS BOOK
- P.B. = PLAT BOOK
- P.G. = PAGE



SEE SHEET 1 OF 2 FOR DESCRIPTION, CERTIFICATION AND NOTES

SECTION 26, TOWNSHIP 24 SOUTH, RANGE 37 EAST - BREVARD COUNTY, FLORIDA



Landmark Center Two
 225 E. Robinson St., Suite 300
 Orlando, FL 32801
 407.839.4006 / FAX 407.839.4008
 Licensed Business # 7153

Vanasse Hangen Brustlin, Inc.

DRAWN BY: CAP	CHECKED: WDM
PROJECT # 61920.01	
DRAWING: Sk & Desc Overall.dwg	
DRAWING DATE: 11/08/2021	
SCALE: 1" = 100'	SHEET 2 OF 2

**SKETCH & DESCRIPTION
 Overall Parcel**

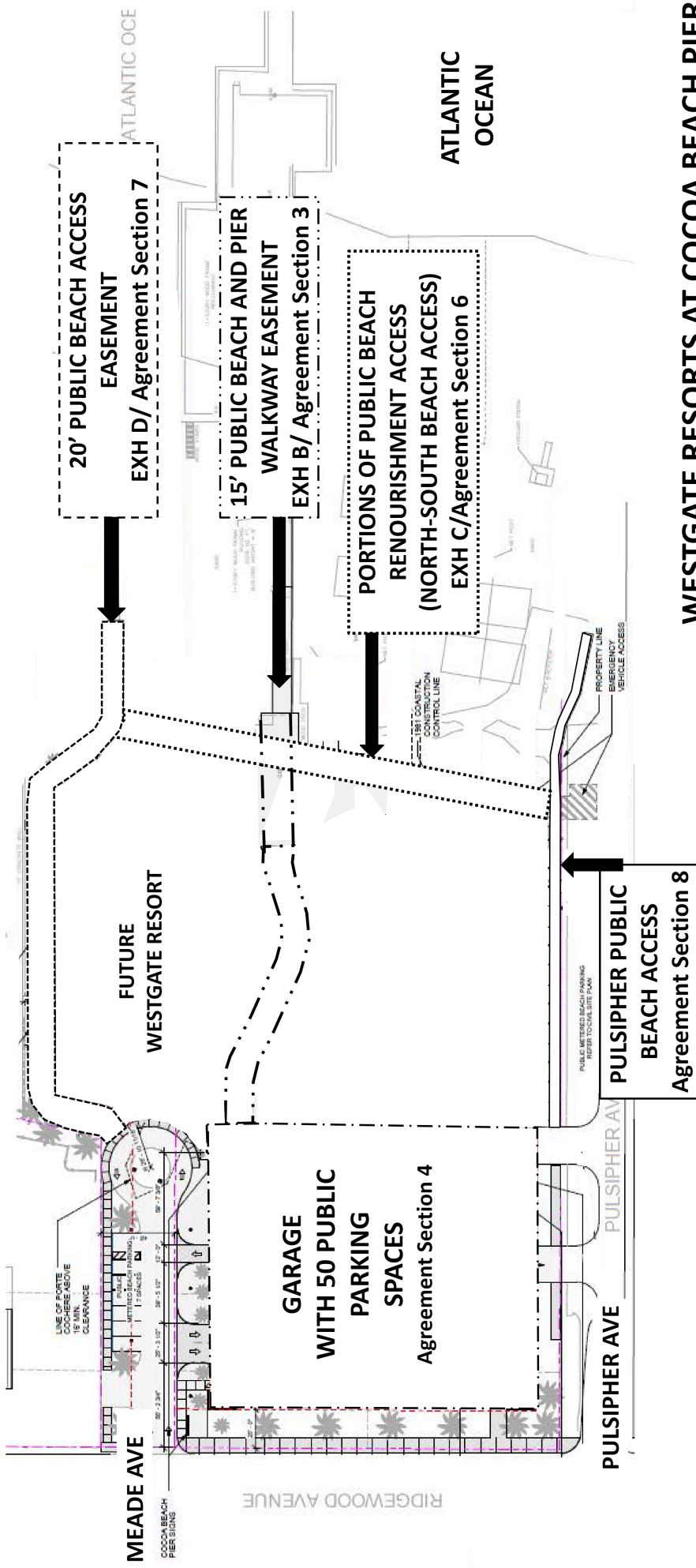
ISSUED FOR:

WESTGATE COCOA BEACH PIER LLC

EXHIBIT "A-2" WESTGATE COMPOSITE CONCEPTUAL EASEMENT SITE PLAN EXH A-2



COMPOSITE CONCEPTUAL EASEMENT SITE PLAN EXH A-2



**WESTGATE RESORTS AT COCOA BEACH PIER
CFI/WESTGATE RESORTS**

EXHIBIT "B"

Prepared by and return to:
Office of the County Attorney
2725 Judge Fran Jamieson Way
Bldg. C-308, Viera, Florida 32940
Parcel ID No.: 26-37-26-00-760

BREVARD COUNTY SHORE PROTECTION PROJECT
PERPETUAL BEACH STORM DAMAGE REDUCTION EASEMENT

GRANTOR: WESTGATE COCOA BEACH PIER, LLC, 401 MEADE AVENUE, COCOA BEACH
FLORIDA 32931

GRANTEE: BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a
political subdivision of the State of Florida
2725 Judge Fran Jamieson Way
Viera, Florida 32940

DATE: _____, 2024

In consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is acknowledged, Grantor grants to Grantee, its agents, successors and assigns, a perpetual and assignable easement and right-of-way in, on, over and across the land described herein for use by the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as "Board"), its representatives, agents, contractors and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the North-Reach Segment of the Brevard County, Florida, Shore Protection Project or beach renourishment project sponsored by the Board, together with the right of public use of, and access to, such shores by all on equal terms in a manner compatible with the authorized purpose of the project; to plant vegetation on said dunes and berms; to facilitate preservation of dunes and vegetation; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, reserving, however, to the Defendant(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any

applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the Board and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the Defendant(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

In WITNESS WHEREOF, Grantor has caused these presents to be executed on the date first above written.

Signed, sealed and delivered

In the presence of:

GRANTOR:

WESTGATE COCOA BEACH PIER, LLC

Witness:

James L. Gissy

Witness:

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on this ___ day of _____, (year), by (name of person) as (type of authority, e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed). Is personally known or produced (type of identification produced) as identification.

Notary Signature

SEAL

EXHIBIT B
BREVARD COUNTY SHORE PROTECTION PROJECT
PERPETUAL BEACH STORM DAMAGE REDUCTION EASEMENT
LEGAL DESCRIPTION

All of that land which lies east of the seaward-most occurrence of the plus 9 foot elevation contour as measured vertically from the National Geodetic Vertical Datum, of the land lying within the following parcel of real property:

A parcel of land located in Section 26, Township 24 South, Range 37 East, Brevard County, Florida. Said parcel being more particularly described as follows:

BEGIN at the northwest corner of Lot 1, Block 113, AVON-BY-THE-SEA, Plat Book 3, Page 7 of the Public Records of Brevard County, Florida; thence South 89° 51' 56" East along the southerly right of way of Mead Avenue per said plat, 192.82 feet to a point on the southerly extension of the westerly boundary line of Lot 12, Block 112 per said plat; thence leaving said southerly right of way line, run North 11° 27' 59" East along said southerly extension of the westerly boundary line of Lot 12 a distance of 100.16 feet to a point on the northerly boundary line of said Lot 12, Block 112 per said plat; thence leaving the southerly extension of the westerly boundary line of said Lot 12, run South 89° 55' 42" East along the northerly boundary line of said Lot 12 a distance of 456.81 feet to a point on the Erosion Control Line, per Florida Department of Environmental Protection Mean High Water Survey File No. 2249; thence leaving the northerly boundary line of said Lot 12, run the following courses along said Erosion Control Line, South 09° 34' 48" West, 65.22 feet; thence South 09° 49' 51" West, 176.05 feet; thence South 07° 31' 45" West, 111.82 feet to a point on the northerly right of way line of Pulsipher Avenue per said plat; thence leaving said Erosion Control Line, run North 89° 51' 16" West along said northerly right of way line 615.40 feet to a point on the easterly right of wayline of Ridgewood Avenue per said plat; thence leaving the northerly right of way line of said Pulsipher Avenue, run North 00° 19' 32" East along said easterly right of way line 249.94 feet to the POINT OF BEGINNING.

EXHIBIT C ORDINANCE 1668 VACATING MEADE AVENUE CITY OF COCOA BEACH, FLORIDA

EXHIBIT C TO WESTGATE/COUTY/CITY AGREEMENT

ORDINANCE NO. 1668

AN ORDINANCE OF THE CITY OF COCOA BEACH, FLORIDA, RELATED TO THE VACATION OF A PORTION OF MEADE AVENUE COMPRISING APPROXIMATELY .51 ACRES AS MORE PARTICULARLY DESCRIBED HEREIN; MAKING FINDINGS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, NON-CODIFICATION, AND EFFECTIVE DATE.

WHEREAS, the City of Cocoa Beach (the "City") is a municipality with municipal home rule powers established pursuant to Chapter 166 Florida Statutes; and

WHEREAS, the City has determined that it is necessary to vacate a portion of an existing right of way known as Meade Avenue in order to facilitate the development of a resort hotel in the Oceanside Redevelopment District with new public beach access, replacement of public parking spaces, upgraded utilities, improved stormwater, and restored dunes; and

WHEREAS, the City has determined that the project that will be facilitated by this vacation will implement a vital need in Cocoa Beach's economic development and redevelopment plans; and

WHEREAS, this Ordinance meets the criteria established by Chapter 166, Florida Statutes and pursuant to and in compliance with law, notice has been given to abutting property owners and to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of the public hearing to be held; and

WHEREAS, the City staff has provided for participation by the public in the process by providing information as requested and has also rendered its recommendations to the City Commission (the "City Commission") of the City of Cocoa Beach; and

WHEREAS, the City Commission has reviewed the proposed Ordinance and held an advertised public hearing at which the City Commission has provided for public participation in the process in accordance with the requirements of State Law.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCOA BEACH, FLORIDA:

SECTION 1. The foregoing "Whereas" clauses are hereby declared findings of fact, are true and correct, and are ratified and confirmed by the City Commission.

SECTION 2. The City Commission hereby vacates and abandons an approximate .51 acre portion of Meade Avenue as more particularly described in **Exhibit "A"**.

SECTION 3. All Ordinances or parts of Ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of any conflict.

SECTION 4. In the event that any portion of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 5. The provisions of this Ordinance shall not be codified.

SECTION 6. This Ordinance shall not become effective until each of the following has occurred and the City of Cocoa Beach has recorded in the public records of Brevard County, Florida, merely as a ministerial act, a document acknowledging that the following has occurred:

ORDINANCE NO. 1668

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- Recording of this Ordinance
- Recording of an agreement by and among the owner of the property abutting the portion of Meade Avenue being vacated (hereinafter "Owner"), the City of Cocoa Beach and Brevard County that addresses the vacation of Meade Avenue in terms of beach access, vehicle parking, public restroom access, construction access, sand placement and other operations associated with the Brevard County Shore Protection Program, that acknowledges an Army Corps of Engineers' approval as to revisions to the perpetual storm damage reduction project easement (beach renourishment easement); that acknowledges a perpetual construction access easement over Owner's property that will allow heavy construction vehicles practical access to the beach from both Meade Avenue (or on Owner's property and north of the pier) and on Pulsipher; and acknowledges the existence of a perpetual agreement to maintain publicly accessible restrooms and a minimum of 50 parking spaces dedicated to the public.
- Recording of a Development Agreement between the City of Cocoa Beach and the Owner which shall include at a minimum the following conditions:
 1. All applicable easements will be established for the continued function and maintenance of any public utility that continues to operate within the vacated area, whether in its current location or in a relocated location.
 2. Public Beach access to be provided in a relocated area adjacent to the Pier property and that acknowledges that such Public Beach access relocation meets the intent of Section 6.03 of the City Charter.
 3. All city-owned and regulated parking spaces will be relocated in such a manner as to maintain their participation in the City's parking program, and they will remain available to the general public in a manner similar to the existing spaces within the general area of the vacation of a portion of Meade Avenue.
 4. The property being vacated shall not be used in the density calculations for the proposed development on the adjacent properties.

Upon Motion by Commissioner Woulas, seconded by Commissioner Miller, this Ordinance was duly adopted at a Regular Meeting of the City Commission of the City of Cocoa Beach, Florida, held on the 17 day of March, 2022.

Ayes: 5
Nays: 0
Absent or Abstaining: 0

[Signature]
Ben Malik,
Mayor-Commissioner

ATTEST:

[Signature]
Loredana Kalaghchy, MMC, City Clerk

First Reading: 03-03-22
Date Posted: 03-04-22
Date Published: 03-03-22

Composite Exhibit A

DESCRIPTION

A portion of AVON-BY-THE SEA, according to the plat thereof as recorded in Plat Book 3, Page 67 of the Public Records of Brevard County, Florida. Said parcel being more particularly described as follows:

BEGIN at the northwest corner of Lot 6, Block 113 per said plat; thence North 11° 27' 59" East, 48.95 feet to a point on the northerly right of way line of Meade Avenue per said plat; thence along said northerly right of way line, South 89° 51' 56" East, 458.44 feet to a point on the Erosion Control Line, per Florida Department of Environmental Protection Mean High Water Survey File No. 2249; thence leaving said northerly right of way line, run the following courses along said Erosion Control Line, South 09° 34' 48" West, 13.82 feet; thence South 09° 49' 51" West, 34.87 feet to a point on the southerly right of way line of Meade Avenue per said plat; thence leaving said Erosion Control Line, run along said southerly right of way line, North 89° 51' 56" West, 459.04 feet to the POINT OF BEGINNING.

Said parcel contains 0.51 acres, more or less.

NOTES

1. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY.
2. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER LISTED BELOW.
3. THE LAND DESCRIPTION HEREON WAS WRITTEN BY THIS SURVEYOR AT THE DIRECTION OF THE CLIENT.
4. BEARING SHOWN HERE ARE BASED ON THE NORTHERLY RIGHT OF WAY LINE OF MEADE AVENUE AND BEING NORTH 10° 27' 09" EAST.

CERTIFICATION

I HEREBY STATE THAT THIS SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; AND THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE FOR FLORIDA SURVEYORS AND MAPPERS, AS SET FORTH IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.



McCrory, David

Digitally signed by McCrory, David
DN: CN="McCrory, David"
Reason: I have reviewed this document
Contact Info: DMcCrory@VHB.com
Date: 2021.11.16 17:19:06-0500

WM. DAVID MCCRARY, JR, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 4853

DATE

SECTION 26, TOWNSHIP 24 SOUTH, RANGE 37 EAST - BREVARD COUNTY, FLORIDA



Landmark Center Two
225 E. Robinson St., Suite 300
Orlando, FL 32801
407.839.4006 / FAX 407.839.4008
Licensed Business # 7153

Vanasse Hangen Brustlin, Inc.

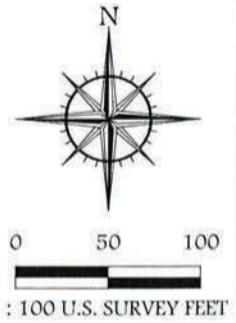
DRAWN BY: CAP	CHECKED: JLD
PROJECT # 61920.01	
DRAWING: ROW Vac NHW Sk & Desc.dwg	
DRAWING DATE: 05/19/2021	
SHEET 1 OF 2	

SKETCH & DESCRIPTION
Right of Way Vacation

ISSUED FOR:

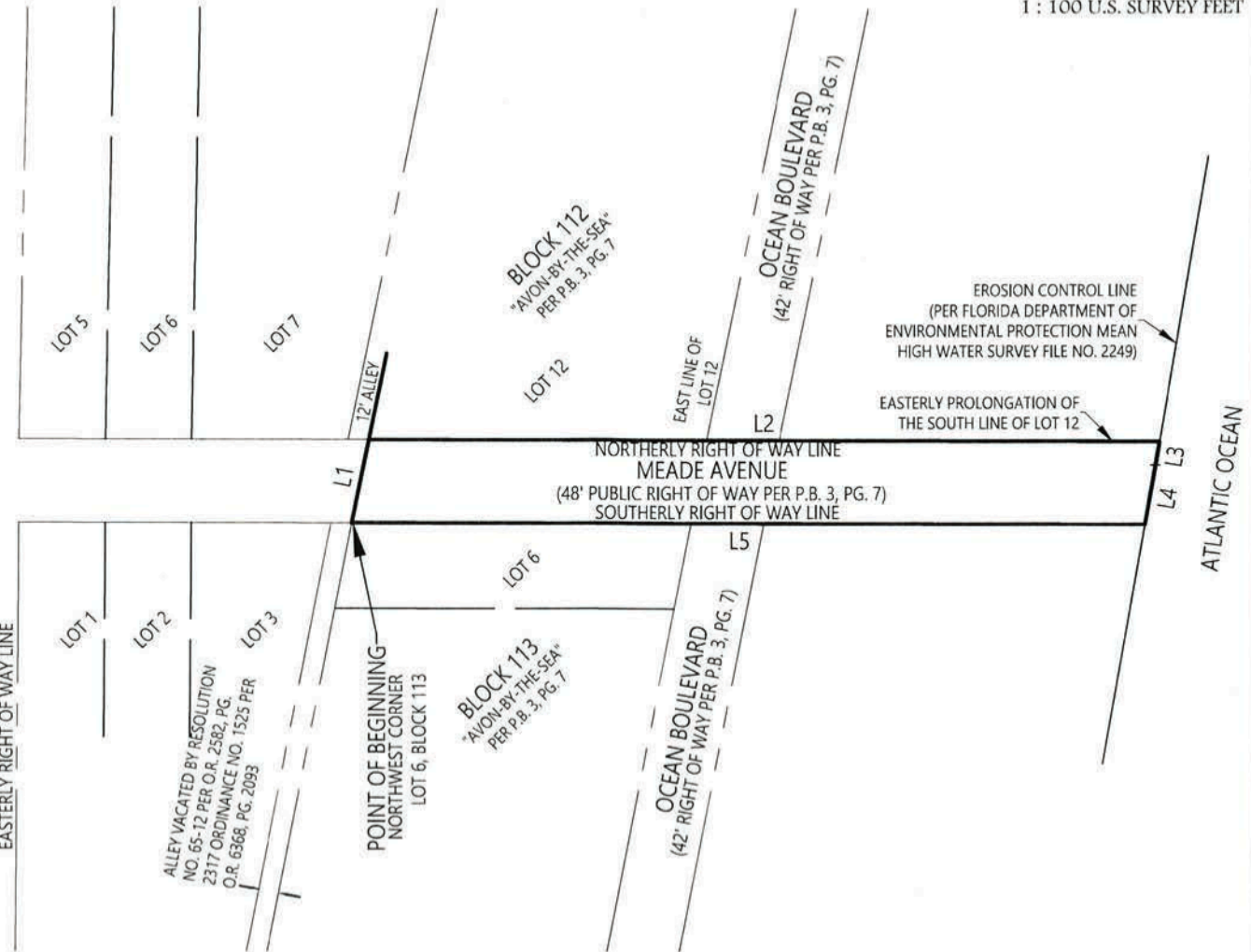
WESTGATE COCOA BEACH PIER LLC

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N 11°27'59" E	48.95'
L2	S 89°51'56" E	458.44'
L3	S 9°34'48" W	13.82'
L4	S 9°49'51" W	34.87'
L5	N 89°51'56" W	459.92'



RIDGEWOOD AVENUE
(50' PUBLIC RIGHT OF WAY PER P.B. 3, PG. 7, A.K.A. OCEAN BEACH BOULEVARD)

EASTERLY RIGHT OF WAY LINE



LEGEND

- A.K.A. = ALSO KNOWN AS
- O.R. = OFFICIAL RECORDS BOOK
- P.B. = PLAT BOOK
- P.G. = PAGE

SEE SHEET 1 OF 2 FOR DESCRIPTION, CERTIFICATION AND NOTES

SECTION 26, TOWNSHIP 24 SOUTH, RANGE 37 EAST - BREVARD COUNTY, FLORIDA



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DRAWN BY: CAP	CHECKED: JLD
PROJECT # 61920.01	
DRAWING: ROW Vac NHW Sk & Desc.dwg	
DRAWING DATE: 05/19/2021	
SCALE: 1" = 100'	SHEET 2 OF 2

**SKETCH & DESCRIPTION
Right of Way Vacation**

ISSUED FOR:

WESTGATE COCOA BEACH PIER LLC