

**Example of Abandonment Ordinance with
Reversion Clause and Developer's
Agreement**

This instrument prepared by and return to:
City Attorney's Office
City of Vero Beach
Courthouse Box #40
P.O. Box 1389
Vero Beach, FL 32961-1389

ORDINANCE NO. 2012-____
(Application No. 2012-A/ROW-153)

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, ABANDONING THAT PORTION OF THE NORTH ONE-HALF OF GAYFEATHER LANE LYING EAST OF THE WEST 45 FEET OF LOT 15, BLOCK 2, WALTER KITCHING'S SUBDIVISION; PROVIDING FOR REVERSION UNDER CERTAIN CIRCUMSTANCES; RETAINING AN EASEMENT; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach is authorized, pursuant to section 2-373 of the Code of the City of Vero Beach, to abandon city-held interests in real property by the City Council adopting an ordinance declaring such interests abandoned; and

WHEREAS, abandonment has been requested as to interests the City has or may have in that certain public right-of-way identified as that portion of the north one-half of Gayfeather Lane lying east of the west 45 feet of lot 15, Block 2, Walter Kitching's Subdivision, said right of way being as more fully described and depicted in Exhibit A attached hereto and incorporated herein ("Gayfeather Abandoned Property"); and

WHEREAS, the Public Works Department of the City has determined that said right-of-way is no longer needed by the City or other interested parties for vehicular right-of-way use in consideration of improvements proposed to be constructed by the adjacent property owner, SJHW, LLC; however, an easement for public access, drainage, utility and other municipal purposes should be retained in the public interest; and,

WHEREAS, in consideration of improvements proposed to be constructed, SJHW, LLC, ("SJHW") has agreed to enter into a Memorandum of Understanding (MOU) with the City of

Vero Beach to perform certain obligations thereunder as outlined in said MOU, attached hereto and incorporated herein as Exhibit B.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1 – Adoption of “WHEREAS” clauses.

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein.

Section 2 – Abandonment of Right-of-Way.

Except as provided in Sections 3 and 4 below, the City of Vero Beach does hereby declare abandoned its right, title, and interest in the Gayfeather Abandoned Property.

Section 3 – Reverter.

The Gayfeather Abandoned Property shall automatically revert to the City and the abandonment shall be null and void upon repeal of this ordinance if any of the following conditions are not met by SJHW:

(1) An application for a building permit for at least one of the principal residential buildings shall be made within six months of the approval date of the Site Plan #SP-12-000003 (“Site Plan”) as submitted to the City; or

(2) The Certificates of Occupancy for all five principal residential buildings shall be obtained no later than two years from the approval date of the Site Plan.

Section 4 – Easement and Littoral Rights Retained.

The City of Vero Beach hereby retains an easement for public access, drainage, utility and other municipal purposes over the Gayfeather Abandoned Property and also retains littoral rights for that land lying east of said Gayfeather Abandoned Property.

Section 5 – Conflict and Severability.

In the event any portion of this Ordinance conflicts with any provision of the Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this Ordinance, the provisions of this Ordinance shall apply and supersede. If any provision of this Ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 6 – Effective Date.

This Ordinance shall become effective upon final adoption.

Section 7 – Codification.

The provisions of this Ordinance, being of limited scope and affect, shall not be codified in the Code of the City of Vero Beach.

This Ordinance was read for the first time on the ____ day of _____, 2012, and was advertised on the ____ day of _____, 2012, as being scheduled for a public hearing to be held on the ____ day of _____, 2012, at the conclusion of which hearing it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

- Mayor Pilar E. Turner _____
- Vice Mayor A. Craig Fletcher _____
- Councilmember Jay Kramer _____
- Councilmember Tracy M. Carroll _____
- Councilmember Richard Winger _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

By: _____
Pilar E. Turner
Mayor

[SEAL]

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____ 2012 on behalf of the City of Vero Beach, Florida by Pilar E. Turner, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. Both are personally known to me.

NOTARY PUBLIC
Commission No.:
My Commission Expires:

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Monte K. Falls
Public Works Director

EXHIBIT "A"
PROPERTY DESCRIPTION
ABANDONMENT OF RIGHT-OF-WAY #2012-A/ROW-0153
WALTER KITCHING'S SUBDIVISION

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Walter Kitching's Subdivision, as recorded in Plat Book 4, Page 5 of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County and being more particularly bounded and described as follows:

Commence at the southwest corner of Lot 15, Block 2, of said Walter Kitching's Subdivision;

Thence North $89^{\circ}49'16''$ east along the North right-of-way of Gayfeather Lane 50' right-of-way for a distance of 45.00 feet to the Point of Beginning;

Thence continue North $89^{\circ}45'00''$ East along said North right-of-way line for a distance of 226.70 feet to the East line of said Walter Kitching's Subdivision;

Thence South $11^{\circ}44'49''$ East along said East line for a distance of 25.52 feet to a point on the centerline of said Gayfeather Lane;

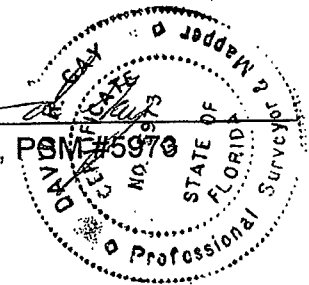
Thence South $89^{\circ}49'16''$ West along said centerline for a distance of 231.37 feet;

Thence North $01^{\circ}12'16''$ East for a distance of 25.00 feet to the Point of Beginning;

Containing 5,730 square feet more or less.

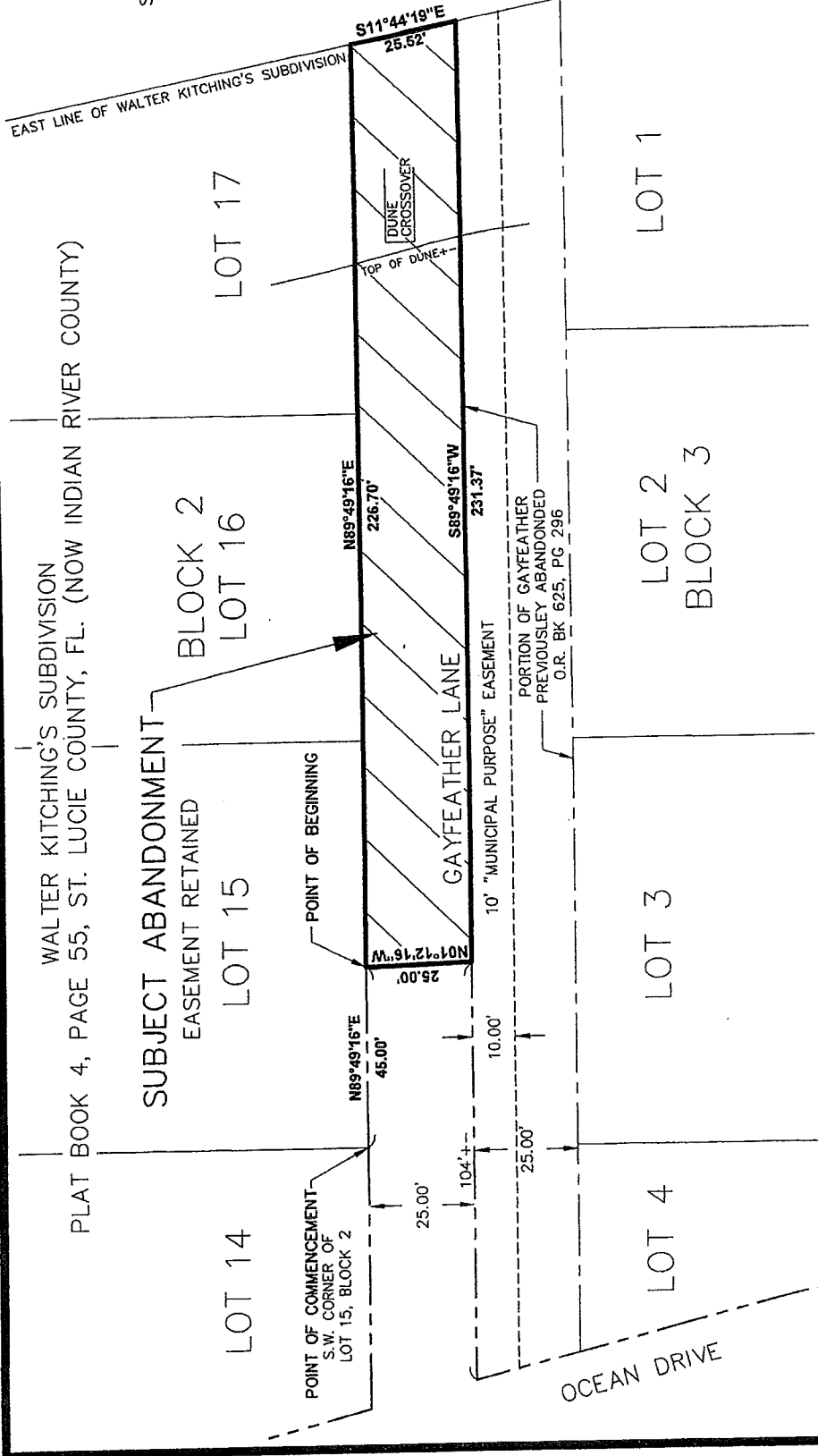
NOTE: The City of Vero Beach shall retain an easement for municipal purposes over the abandoned portion of Gayfeather Lane and also retain littoral rights for that land lying East of said abandonment.

David R. Gay, PSM #5970



SCALE 1" = 40'

ATLANTIC OCEAN



DAVID GAY, P.S. #5973
 R. GAY & MAPPING & SURVEYING
 STATE OF FLORIDA
 PROFESSIONAL SURVEYOR & MAPPER
 LICENSE #5973
 SHEET 2 OF 2

SURVEY INFORMATION SHOWN IS BASED ON A BOUNDARY SURVEY BY MERIDIAN LAND SURVEYORS JOB #99-036-15, DATED 6/27/12

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH		EXHIBIT "A"		REV. NO.	AUTHORIZED BY
DEPARTMENT OF PUBLIC WORKS		ABANDONMENT OF RIGHT OF WAY		DATE	DATE
SURVEY DIVISION		BLOCKS 2 AND 3, WALTER KITCHING'S S/D		DATE	DESCRIPTION
		DATE	CHKD BY	DATE	DESCRIPTION
		07/2012	BMM		DG

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF VERO BEACH, FLORIDA
AND
SJHW, LLC**

This Memorandum of Understanding (hereinafter "MOU") is executed on this _____ day of _____, 2012, by and between the City of Vero Beach, Florida, a Florida municipal corporation, whose mailing address is P. O. Box 1389, Vero Beach, FL 32961-1389 (hereinafter "City") and SJHW, LLC, whose mailing address is 1920 South Highway A1A, Vero Beach, FL 32963 (hereinafter "SJHW").

WITNESSETH

WHEREAS, SJHW as the owner of the real property more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "Property"), has requested that City abandon a portion of the north one-half of Gayfeather Lane more particularly described in Exhibit B attached hereto and incorporated herein (hereinafter "Gayfeather Abandoned Property"), and City is agreeable to such abandonment under the conditions herein contained; and

WHEREAS, SJHW, in connection with its development of the Property, has agreed that it and its successors and assigns (including an association promulgated for the operation of the Property) shall be obligated to improve and maintain that portion of the north side of Gayfeather Lane as shown on Exhibit B and further depicted on site plan #SP12-000003 (hereinafter "Site Plan") as submitted to City for the Property; and

WHEREAS, SJHW has agreed to certain conditions pertaining to the construction of improvements within the Gayfeather Abandoned Property and on the adjacent property on which they are now seeking site plan approval; and

WHEREAS, City desires assurances of performance of SJHW's obligations under the Site Plan and to complete the improvements to the Gayfeather Abandoned Property in consideration of the City's abandonment of such ROW.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The foregoing "Whereas" clauses are hereby adopted and incorporated herein.
2. SJHW shall improve and maintain that portion of the Gayfeather Abandoned Property more particularly described in Exhibits C and D (hereinafter "Landscape Plans"). Such improvements shall include:

(a) Reconstruction of the asphalt pavement by removing the asphalt and replacing it with a 15 foot wide brick paver walkway.

(b) Installation of landscaping substantially in accordance with the Landscape Plans while coordinating with the City to incorporate the existing sea grape trees located on the south side of the proposed walkway.

(c) Construction of bike racks at the east end of the improved walkway.

3. All improvements required under the terms of this MOU shall be completed and approved by the City Engineer, or designee, prior to issuance of a Certificate of Occupancy for any of the five principal dwelling units depicted on the Site Plan.

4. As a condition of City approval for the Site Plan, SJHW shall maintain a minimum 11 foot setback to the nearest principal building from the current north line of the Gayfeather Abandoned Property, a minimum 2 foot setback to all fences and walls, and a minimum 5 foot setback for all other accessory structures. However, landscaping and pedestrian access may be constructed without setback restrictions.

5. City shall retain an easement over the Gayfeather Abandoned Property for public access, drainage, utility, and other municipal purposes, such easement being more particularly described in Exhibit B.

6. The Gayfeather Abandoned Property shall automatically revert to City and its abandonment shall be null and void if any of the following conditions are not met by SJHW:

(a) An application for a building permit for at least one of the five principal residential buildings shall be made within six months of the approval date of the Site Plan; or

(b) The Certificates of Occupancy for all five principal residential buildings shall be obtained no later than two years from the approval date of the Site Plan.

7. Any notices given under this MOU shall be in writing and delivered to the following addresses:

If to City: City of Vero Beach
 1053 20th Place
 Post Office Box 1389
 Vero Beach, Florida 32961-1389
 Attention: City Manager

If to SJHW: SJHW, LLC
 1920 South Highway A1A
 Vero Beach, FL 32963

8. Miscellaneous provisions.

(a) This MOU shall be governed by and construed in accordance with the laws of the State of Florida. Venue for resolution of any dispute arising hereunder shall be in Indian River County, Florida.

(b) This MOU and all attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this MOU or its attachments will be binding on SJHW or City unless in writing and signed by them and made a part of this MOU by direct reference.

(c) In the event there arises between the parties any dispute or litigation over the terms and conditions of this MOU, each party shall be responsible for its own attorneys' fees and costs.

(d) The terms of this MOU shall be binding on the respective successors, representatives, agents, and assigns of the parties.

(e) SJHW shall not assign or transfer any part of this MOU without prior written consent of City, which shall be in City's sole discretion.

(f) This MOU may be executed in one or more counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.

(g) Both parties have had their legal counsel review, or have had the opportunity for legal counsel to review, this MOU.

9. Effective date.

This MOU shall be effective upon final adoption of Ordinance No. 2012-____ by the City Council of the City of Vero Beach.

SJHW, LLC (a Florida limited liability company)

WITNESS:

Sign: _____
Print: Harvey J. Wilson
Title: Managing Member

Sign: _____
Print: _____

[SEAL]

Sign: _____
Print: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Harvey J. Wilson, as Managing Member of SJHW, LLC, a Florida limited liability company. He is personally known to me or produced _____ as identification.

NOTARY PUBLIC

Sign: _____
Print: _____
State of Florida at Large
My Commission Number: _____
My Commission Expires: _____

WITNESS:

Sign: _____
Print: Simon L.K. Jenkins
Title: Managing Member

Sign: _____
Print: _____

[SEAL]

Sign: _____
Print: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Simon L.K. Jenkins, as Managing Member of SJHW, LLC, a Florida limited liability company. He is personally known to me or [] produced _____ as identification.

NOTARY PUBLIC

Sign: _____

Print: _____

State of Florida at Large

My Commission Number: _____

My Commission Expires: _____

(The remainder of this page is left blank intentionally.)

CITY OF VERO BEACH, FLORIDA

ATTEST:

VERO BEACH CITY COUNCIL

Tammy K. Vock
City Clerk

By: _____
Pilar E. Turner
Mayor

Date: _____

[SEAL]

Approved as to form and legal sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

Monte K. Falls
Public Works Director

Timothy J. McGarry, AICP
Planning and development Director

EXHIBIT "A"

Prepared by recording return to:

Steve B. Greenhut, Esq.
Stoneburner Berry Glocker Purcell & Greenhut, P.A.
841 Prudential Drive, Suite 1400
Jacksonville, Florida 32207

COPY

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is executed as of the day and year dated herein below, and is made effective as of the 6th day of December, 2011, between **SPECIAL SERVICES ASSET MANAGEMENT COMPANY**, an Illinois company, (the "Grantor"), whose address for purposes hereof is 100 South Charles Street, 3rd Floor, Baltimore, Maryland 21201, and **SJHW, LLC**, a Florida limited liability company, (the "Grantee"), whose address for purposes hereof is 183 Springline Drive, Vero Beach, Florida 32963.

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of Ten and No/100 dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee, its successors and assigns forever, the property located in Indian River County, Florida described on Exhibit "X" attached hereto (collectively, the "Real Property").

TOGETHER WITH all the tenements, hereditaments, easements and appurtenances thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD, the same in fee simple forever;

SUBJECT TO easements, covenants, instruments, restrictions and limitations of record, none of which shall be deemed to be re-imposed by this instrument; existing zoning ordinances and other restrictions as may be imposed by applicable governmental authority; matters which would be shown on a current survey; and taxes and assessments for the year 2012 and subsequent years, which are not yet due and payable; and

SUBJECT TO the matters described above, and those matters shown on Exhibit "Y" attached hereto (Permitted Exceptions), if any, Grantor specially warrants the title to the Real Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed under seal this Special Warranty Deed on the day and year set forth herein below, to be effective for conveyance under the terms hereof as of December 6, 2011

COPY
SPECIAL SERVICES ASSET MANAGEMENT COMPANY, an Illinois company
Printed Name: Nancy Melitsky By: Brian Heide
Brian Heide, Vice President

Karen M. Koch
Printed Name: KAREN M. KOCH

STATE OF MARYLAND
CITY OF BALTIMORE

The foregoing instrument was acknowledged before me this 5 day of December, 2011 by Brian Heide, the Vice President of **SPECIAL SERVICES ASSET MANAGEMENT COMPANY**, an Illinois company, on behalf of the company. He is personally known to me or has produced a State of Maryland Driver's License as identification.

SUZAN PEELE
NOTARY PUBLIC
CARROLL COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 23, 2014

Suzan Peele
(Print Name Suzan Peele)
NOTARY PUBLIC, State of Florida at
Large Maryland
Commission # _____
My Commission Expires: 11-23-14
Personally Known
or Produced I.D. _____
[check one of the above]
Type of Identification Produced _____

COPY

EXHIBIT "X" TO DEED

PARCEL 1

Lot 15 in Block 2 of WALTER KITCHING'S SUBDIVISION, according to the plat thereof, as recorded in Plat Book 4, Page 5, of the public records of Indian River County, Florida;

PARCEL 2

Lots 16 and 17 in Block 2 of WALTER KITCHING'S SUBDIVISION, according to the plat thereof, as recorded in Plat Book 4, Page 5, of the public records of Indian River County, Florida; said lands situate, lying and being in Indian River County, Florida,

and

Land lying between Lot 17 in Block 2 of WALTER KITCHING'S SUBDIVISION aforesaid, and the Atlantic Ocean, bounded on the North by the extension and prolongation of the North boundary line of said Lot 17, East to the ordinary highwater line of the Atlantic Ocean, and bounded on the South by the extension and prolongation of the South boundary line of Lot 17, East to the ordinary highwater mark of the Atlantic Ocean.

COPY

COPY

COPY

EXHIBIT "Y" TO DEED

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 2012 and subsequent years, which are not yet due and payable.
2. Easements, claims of easements, boundary line disputes, overlaps, encroachments or other matters not shown by the public records which would be disclosed by an accurate survey of the Land.
3. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
4. The rights, if any, of the public to use as a public beach or recreational area, any part of the land lying between the body of water abutting said land described in Schedule A and the natural line of vegetation, bluff, extreme high water line or other apparent boundary separating the publicly used area from the upland private area, and any right of access thereto.
5. Any claim to any portion of the Property which lies below the ordinary high water line of Atlantic Ocean and other adjacent waters, if any.
6. Any claim to any portion of the Property which is (a) submerged land or is (b) artificially filled in land, artificially exposed land, or any land accreted thereto, in what was formerly navigable waters.
7. Any claim by the United States government arising by reason of its control over navigable waters in the interest of navigation and commerce.
8. Coastal Construction set back line as established by Section 161.052 and Section 161.053, Florida Statutes.
9. Easements and other matters shown on plat recorded in Plat Book 4, Page 5, of the public records of St. Lucie County, Florida, now part of Indian River County, Florida.
10. Reservations unto the Trustees of the Internal Improvement Fund of the State of Florida, as contained in deed recorded in Deed Book 35, Page 120, of the public records of Indian River County, Florida.
11. Any outstanding assessments in favor of City of Vero Beach.

EXHIBIT "B"
PROPERTY DESCRIPTION
ABANDONMENT OF RIGHT-OF-WAY #2012-A/ROW-0153
MEMORANDUM OF UNDERSTANDING
WALTER KITCHING'S SUBDIVISION

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Walter Kitching's Subdivision, as recorded in Plat Book 4, Page 5 of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County and being more particularly bounded and described as follows:

Commence at the southwest corner of Lot 15, Block 2, of said Walter Kitching's Subdivision;

Thence North 89°49'16" east along the North right-of-way of Gayfeather Lane 50' right-of-way for a distance of 45.00 feet to the Point of Beginning;

Thence continue North 89°45'00" East along said North right-of-way line for a distance of 226.70 feet to the East line of said Walter Kitching's Subdivision;


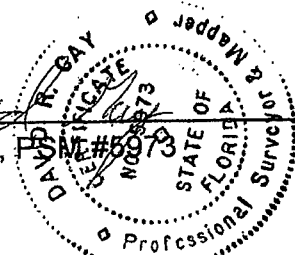
Thence South 11°44'49" East along said East line for a distance of 25.52 feet to a point on the centerline of said Gayfeather Lane;

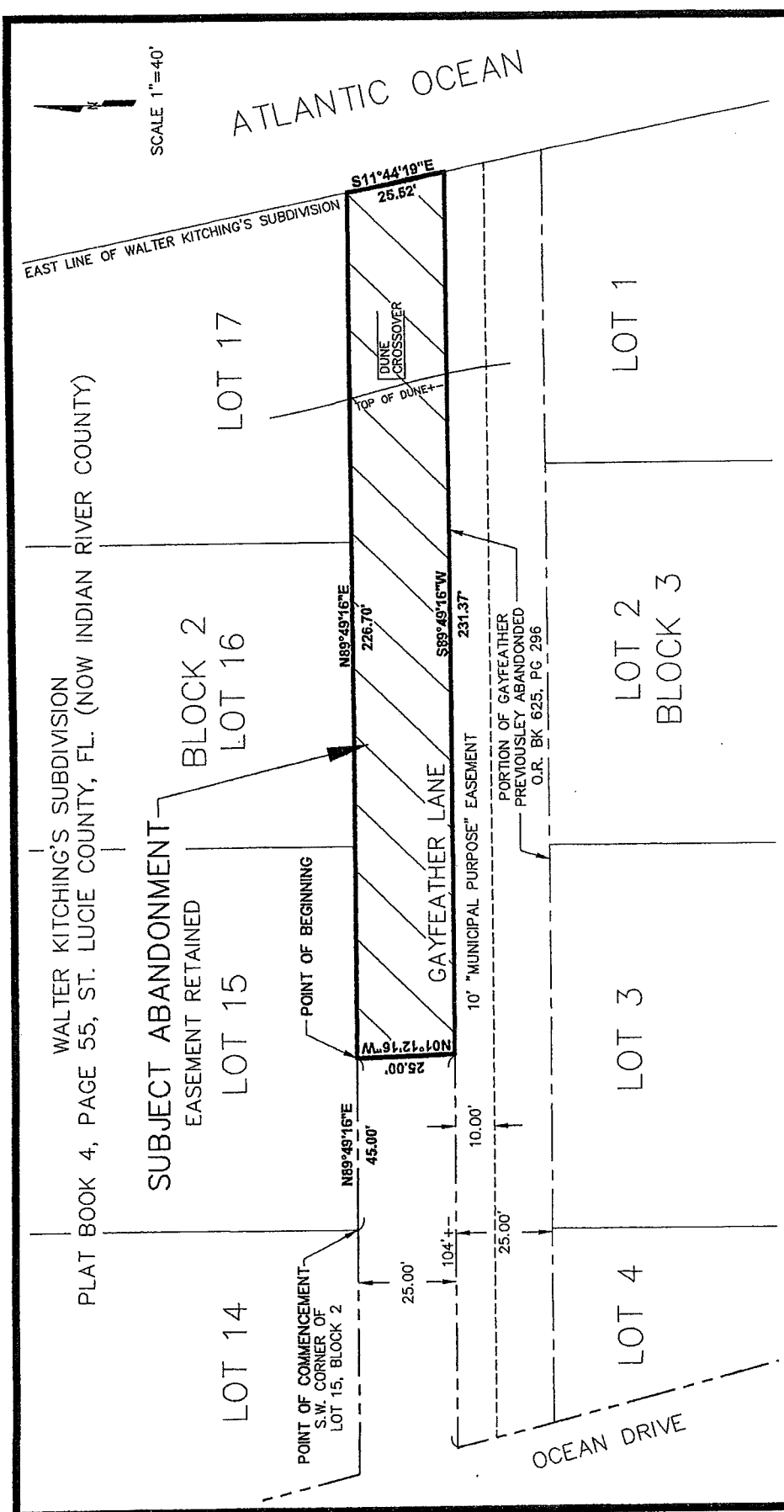
Thence South 89°49'16" West along said centerline for a distance of 231.37 feet;

Thence North 01°12'16" East for a distance of 25.00 feet to the Point of Beginning;

Containing 5,730 square feet more or less.

NOTE: The City of Vero Beach shall retain an easement for municipal purposes over the abandoned portion of Gayfeather Lane and also retain littoral rights for that land lying East of said abandonment.


David R. Gay, PSM #5973




SCALE 1"=40'

ATLANTIC OCEAN

EAST LINE OF WALTER KITCHING'S SUBDIVISION

WALTER KITCHING'S SUBDIVISION
PLAT BOOK 4, PAGE 55, ST. LUCIE COUNTY, FL. (NOW INDIAN RIVER COUNTY)

SUBJECT ABANDONMENT
EASEMENT RETAINED

BLOCK 2
LOT 16

LOT 15

LOT 14

LOT 17

POINT OF COMMENCEMENT
S.W. CORNER OF
LOT 15, BLOCK 2

POINT OF BEGINNING

N89°49'16"E
45.00'

N89°49'16"E
726.70'

S11°44'19"E
25.52'

101°12'16"W
25.00'

S89°49'16"W
231.37'

DUNE
CROSSOVER

104.4'

25.00'

10.00'

10' "MUNICIPAL PURPOSE" EASEMENT

TOP OF DUNE

GAYFEATHER LANE

PORTION OF GAYFEATHER
PREVIOUSLY ABANDONED
O.R. BK 625, PG 296

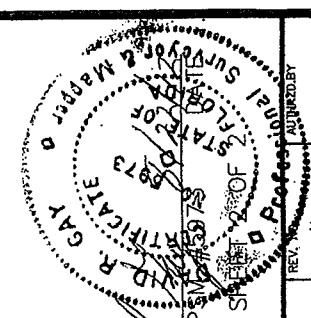
LOT 4

LOT 3

LOT 2
BLOCK 3

LOT 1

OCEAN DRIVE



DAVID GAY, P.S.M.

SURVEY INFORMATION SHOWN IS BASED ON A
BOUNDARY SURVEY BY MERIDIAN LAND SURVEYORS
JOB #99-036-15, DATED 6/27/12

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	EXHIBIT "B"		REV. AUTHORIZED BY
	CITY PROJECT NO. 2012-A/ROW-0153		DATE
SKETCH OF PROPERTY DESCRIPTION ABANDONMENT OF RIGHT OF WAY BLOCKS 2 AND 3, WALTER KITCHING'S S/D MEMORANDUM OF UNDERSTANDING		DATE	DESCRIPTION
		DRWN BY BMM	CHKD BY DC
		DATE 08/2012	DESCRIPTION

