



Interoffice Memorandum

August 5, 2019

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" line.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
August 20, 2019 BCC Meeting
Westgate Resorts Wastewater Flow Monitoring Agreement
Contact Person: Andres Salcedo, P. E.,
Deputy Director, Utilities Department
407-254-9719**

The property owner, Westgate Resorts, LTD., is constructing a new commercial laundry facility at 2216 Directors Row. Wastewater capital charges for the property were determined based on flow estimates pursuant to subsection 37-5(b)(5)b of the Orange County Code.

The property owner has submitted a signed and sealed engineering study estimating wastewater flows and has agreed to enter into a Flow Monitoring Agreement with the Utilities Department.

The agreement provides for an initial 10-year period to monitor the wastewater discharges from the facility. The County may extend the monitoring period in the event of a material breach by the owner, as described in the agreement. During the term of the agreement, a monthly monitoring fee will be assessed and additional capital charges will be levied if the six-month average wastewater flow exceeds the signed and sealed engineering estimate at any time.

Orange County Attorney's Office and Risk Management staff have reviewed the document and find it acceptable as to form. Orange County Utilities staff recommends approval.

Action Requested: Approval and execution of Westgate Resorts Wastewater Flow Monitoring Agreement by and between Westgate Resorts, LTD. and Orange County for an initial 10-year period to monitor wastewater discharges from the facility.

District 6.

WESTGATE RESORTS WASTEWATER FLOW MONITORING AGREEMENT

THIS WESTGATE RESORTS WASTEWATER FLOW MONITORING AGREEMENT (the “**Agreement**”) is made and entered into as of the date later executed below by and between **Westgate Resorts, LTD.**, a Florida limited partnership (the “**Owner**”), whose address is 5601 Windhover Drive, Orlando, Florida 32819, and **Orange County**, a charter county and political subdivision of the State of Florida (the “**County**”), whose address is 201 South Rosalind Avenue, Orlando, Florida 32801. In this Agreement, the Owner and the County may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, Section 37-5, Orange County Code (the “**Code**”), provides for the assessment of wastewater capital charges for (a) new connections to the wastewater system and for (b) increased flows to the wastewater system due to altering the interior or use of a structure; and

WHEREAS, establishments that have wastewater flows in addition to flows associated with standard Orange County Factors, as described in subsection 37-5(b)(5)b., of the Code, must submit an estimate of wastewater flows, and actual flows may be subject to monitoring to verify the accuracy of the flow estimate; and

WHEREAS, wastewater capital charges for the Owner’s property described below have been determined based on flow estimates calculated pursuant to subsection 37-5(b)(5)b., of the Code; and

WHEREAS, pursuant to subsection 37-5(b)(1) of the Code, capital charges, and the right to service related thereto, are valid only for the property specified in the application for service; and the rights related to the capital charges may not be transferred or sold for use on any other property; and

WHEREAS, the Owner owns property located at 2216 Directors Row, Orlando, Florida 32809, which is located within unincorporated Orange County, as such property is more particularly described in **Exhibit “A”** attached to and incorporated in this Agreement by this reference (the “**Property**”); and

WHEREAS, the Property is located within the County’s wastewater service territory and, therefore, the County is the appropriate provider of wastewater service; and

WHEREAS, the Owner has an existing facility (the “**Facility**”) on the Property, which is more particularly shown on **Exhibit “B”** attached to and incorporated in this Agreement by this reference; and

WHEREAS, the Facility has an existing flow of 2.249 ERUs (the “**Existing Capacity Flow**”), which is equivalent to 506 gallons per day (“**gpd**”). The Existing Capacity Flow includes capacity purchased under Orange County Building Permit B18906589; and

WHEREAS, the Owner desires to install additional laundry equipment in the Facility under Orange County Building Permits B18905886 and B19900141, which will further increase the flow generated by the Facility; and

WHEREAS, the County responded to the Owner’s request for capacity information with a capacity letter dated January 17, 2019, stating the County has sufficient existing infrastructure to accept a maximum of 175 gallons per minute (“**gpm**”) peak hourly flow wastewater discharge (“**Peak Hourly Wastewater Flow**”); and

WHEREAS, the Owner submitted to the County an engineering study, signed and sealed by a professional engineer licensed in the State of Florida (the “**Engineering Study**”), estimating the operational wastewater flows associated with the additional laundry equipment to be 162.578 Equivalent Residential Units (“**ERUs**”), which is equivalent to 36,580 gpd (the “**Laundry Capacity Flow**”); and

WHEREAS, the Owner has (i) submitted to the County construction plans for approval (the “**Construction Plans**”), (ii) paid capital charges for the Laundry Capacity Flow, and (iii) obtained Orange County Building Permits B18905886 and B19900141; and

WHEREAS, the “**Current Capacity Flow**” is defined as the sum of the Existing Capacity Flow and the Laundry Capacity Flow, which equates to a total of 164.827 ERUs and is equivalent to 37,086 gpd associated with the Facility.

NOW, THEREFORE, in consideration of fees and charges specified in this Agreement, the covenants contained in this Agreement, and other good and valuable consideration, the receipt of which is acknowledged, the County and the Owner agree as follows:

SECTION 1. Recitals. The above Recitals are true and correct, and are incorporated in and form a material part of this Agreement.

SECTION 2. Purchased Capacity Remains with the Property. Pursuant to Section 37-5 of the Code, wastewater capacity may only be purchased for the property specified in the application for service, and may not be transferred to another property. Accordingly, all wastewater capacity purchased by the Owner for the Facility is

purchased on behalf of the Property, runs with the Property, and may not be transferred to any other property.

SECTION 3. Current Capacity Flow.

- a. Based upon the Existing Capacity Flow and the Engineering Study, the flow associated with the Property is 37,086 gpd on the day this Agreement is executed. Thereafter, the Current Capacity Flow is equal to 37,086 gpd, plus the flow associated with any additional wastewater capacity purchased for the Property after the execution of this Agreement.
- b. The wastewater discharge from the Property must not exceed the Peak Hourly Wastewater Flow.

SECTION 4. Metering, Fees and Compliance.

- a. The Owner shall ensure that the existing potable water meters remain unobstructed for both the County and the Orlando Utilities Commission (“OUC”) meter readings and inspections, since this project is located within the OUC water service area.
- b. A monthly monitoring fee, per the Board of County Commissioners’ applicable rate resolutions, as amended from time to time, will be assessed and billed to the Owner.
- c. No changes to the Property use, water and wastewater plumbing, or utility mains that may increase the wastewater flows for the Property from the Current Capacity Flow may be made by the Owner without prior review, inspection, and written approval of the County.
- d. Wastewater flow will be monitored by the County, using OUC water meter readings. Based on the Engineering Study, in order to account for evaporative losses, the wastewater flow will equal 90% of the metered water flow.
- e. The Owner must allow the County access to the Property, at any time upon reasonable notice, to (a) inspect the wastewater plumbing; and (b) conduct monitoring tests, including, but not limited to, tests of usage and flows.
- f. For the term of the Agreement, monitoring for compliance with the Current Capacity Flow will be based on a six-month rolling average of wastewater flow. The “**Billing Period Wastewater Flow**” shall equal the volume (in gallons) of water consumption for the billing period, multiplied by a factor of 0.90 and divided by the number of days in that billing period. The County will calculate the volume for each billing period as the

difference between the beginning and ending readings of all meters for the Property.

- i. If any Billing Period Wastewater Flow exceeds the Current Capacity Flow, the County may issue a written warning to the Owner notifying them of the exceedance.
- ii. If, at any time, the six-month average Billing Period Wastewater Flow exceeds the Current Capacity Flow, the Owner shall purchase additional wastewater capacity in an amount calculated by the difference between the six-month average Billing Period Wastewater Flow and the Current Capacity Flow. The cost of wastewater capacity will be calculated using the applicable Orange County wastewater capital charge at the time of purchase.
- iii. If additional wastewater capacity is purchased, as described in subsection 4.f.ii. above, and at a later date a six-month average Billing Period Wastewater Flow exceeds the cumulative Current Capacity Flow, the Owner must purchase additional wastewater capacity from the County as described in subsection 4.f.ii. above.
- iv. The Owner shall pay to the County within 30 days any additional wastewater capital charges that may be due and owing for the Property. If the additional charges assessed are not paid within 30 days from the date of notice from the County that additional capital charges are due and owed, the County may draw on the Balance, as defined in and required pursuant to Section 5 below.
- v. The Owner's failure to provide monthly payment including, but not limited to, capital charges (if any), past due charges, related service charges, deposits, applicable utility or public service taxes, or current usage charges may result in the interruption of water and wastewater services to the Property.

SECTION 5. ERUs Purchased; Deposit.

- a. In anticipation of this Agreement, the Owner, has made a deposit for the purchase of additional wastewater capacity in the amount of \$815,978.98 (the "**Deposit**"), which represents 150% of the Laundry Capacity Flow based on the current value of one ERU. The actual number of ERUs purchased shall be calculated at the time the ERUs are needed pursuant to Section 4 hereinabove. Subsequent to the Effective Date of this Agreement, the Owner may apply for a refund of \$542,480.96, which

represents two-thirds of the Deposit less 20% of the capital charges associated with the Existing Capacity (the “**Refund**”). The Owner relinquishes all rights to a refund of any unused portion of the Deposit if an application for a refund is not made within 180 days of the Effective Date of this Agreement.

- b. The County may draw upon the remaining balance after the Refund (the “**Balance**”) if additional wastewater capital charges are not paid as described in subsection 4.f.iv. of this Agreement. The Balance must be maintained at 20% of the sum of the Deposit and the capital charges associated with the Current Capacity Flow, which is equivalent to \$273,498.02, as of the Effective Date of this Agreement. The Owner’s failure to maintain the minimum required balance may result in the interruption of water and wastewater services to the Property.
- c. The Owner may apply for a refund of the unused portion of the Balance upon termination of this Agreement. The Owner shall not have any right to interest on the Deposit or Balance. The Owner relinquishes all rights to a refund of any unused portion of the Balance if an application for a refund is not made within 180 days of termination of this Agreement.

SECTION 6. Indemnification of the County. To the fullest extent permitted by law, the Owner assumes liability for, and will indemnify, defend and hold harmless the County and its respective officials, officers, employees, and agents from and against all liability (including negligence and strict liability), claims, suits, actions, and losses for personal injury, property damage, or financial loss including attorneys’ fees and costs (as specified in Section 16 below) arising at any time from any aspect of this Agreement, other than claims and losses arising from the negligence of the County, its employees or agents. Nothing contained herein shall constitute a waiver of the County’s sovereign immunity or the provisions of Section 768.28, Florida Statutes.

SECTION 7. Monitoring. The County may initiate monitoring on the date the Facility receives its Certificate of Occupancy or on the Effective Date of this Agreement, whichever is later, and will continue for a period of 10 years (the “**Monitoring Period**”), unless sooner terminated pursuant to Section 12 below. In the event of a material breach of this Agreement by the Owner, the County may extend the Monitoring Period for a period not to exceed 10 years from the date of the breach following written notice to the Owner of the breach of this Agreement, and provided that the Owner has not cured such breach within 30 days following the date of the notice. For purposes of this Agreement, “**material breach**” shall mean (a) the failure of the Owner to pay or cause to be paid any amounts due hereunder, following notice and ability to cure such non-payment; or (b) any failure of the Owner to provide the County (or its representatives) reasonable access to the meter to allow the County to monitor compliance with this Agreement; or (c) any breach of subsection 4.c. above or Section 9 below.

SECTION 8. Term of Agreement. The initial term of this Agreement is for 10 years from the date that the County begins monitoring the Property pursuant to Section 7 above. The term may be extended pursuant to Section 7 above, or terminated sooner pursuant to Section 12 below.

SECTION 9. Sale of Property. Except as provided in this Section 9, the Owner's right to sell or transfer the Property, or any portion of its ownership or leasehold interest in the Property, is not restricted by this Agreement; provided, however, that the Owner shall provide the County with 60 days prior notice of the sale or transfer of the Property, or any portion thereof. Provided further that at the time of the closing of the sale or transfer of all or any portion of the Property, the successor party(s) in ownership shall execute an acknowledgment and agreement whereby the successor party acknowledges the existence of this Agreement and agrees to be bound by the terms of this Agreement. The agreement and acknowledgment signed by the successor party must be delivered to the County within 30 days after the date of such sale or transfer. If the successor party does not provide the County an acknowledgement binding the successor party to the terms of this Agreement as specified above, the Owner will be in breach of this Agreement, and the County will have the right to collect the balance of any outstanding capital charges from the Owner and immediately thereafter terminate this Agreement. Capital charges run with the Property, as stated in Section 2 above.

SECTION 10. Limitation on Assignment. If, pursuant to Section 9 above, the Owner sells, transfers, or assigns all or any portion of its ownership or leasehold interest in the Property or any portion thereof, then the Owner shall assign this Agreement *pro tanto*, and shall cause the transferee to assume to the same extent the rights and obligations of the Owner. Without the express written consent of the County, the Owner may not assign its interests in this Agreement to another person or entity.

SECTION 11. Recording. The Parties agree that an executed copy of this Agreement, including the Exhibits, will be recorded by the Owner at the Owner's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement run with the land.

SECTION 12. Termination. Notwithstanding anything to the contrary, this Agreement may be terminated upon written mutual consent of the Owner and the County for which notice shall be provided in accordance with Section 13 below. The County may terminate this Agreement and the provision of wastewater service to the Property as set forth herein due to any material breach (as defined in Section 7 above) of this Agreement, after providing the Owner notice of the breach, or anticipated breach, and providing the Owner 30 days to cure the breach or anticipated breach. Notwithstanding anything to the contrary in this Section 12, the County does not have a duty to provide the Owner a time to cure a breach of Section 9 of this Agreement.

SECTION 13. Notice. Any notice required or allowed to be delivered hereunder must be in writing and be deemed to be delivered when (a) hand-delivered to the official designated in this Section 13; (b) delivered when such notice is sent by

Federal Express or other nationally recognized overnight courier service; or (c) received when such notice is sent by the United States mail, postage prepaid, certified mail, return receipt requested, all to be addressed to a party at the address set forth opposite the party's name below, or such other address as the party shall have specified by written notice to the other party delivered in accordance therewith.

If to the County: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attention: Assistant Manager, Utilities Customer Service

With copy to: Orange County Administrator's Office
Orange County Administration Building
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801-3527

If to the Owner: Westgate Resorts, LTD.
5601 Windhover Drive
Orlando, Florida 32819-7936
Attn: David Siegel

With copy to: Tom Sparks
2216 Directors Row
Orlando, Florida 32809-6236
Attn: Sr. V.P. of Resort Operations

SECTION 14. Governing Law. The Parties agree that the Parties entered into this Agreement in the State of Florida. This Agreement and its provisions are to be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction.

SECTION 15. Jurisdiction. Any legal proceeding of any nature brought by either Party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, must be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The Parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant to this Agreement and expressly waive all rights to trial by jury for any matters arising under this Agreement.

SECTION 16. Attorneys' Fees and Costs. If either Party files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions contained in this Agreement, each Party will be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable to the other Party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

SECTION 17. Headings. The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only, and will not affect the construction or interpretation hereof.

SECTION 18. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability will not affect the other parts of this Agreement if the rights and obligations of the Parties and if the intention of the Parties can continue to be effective. To that end, this Agreement is declared severable.

SECTION 19. No Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties to this Agreement and no rights or cause of action may accrue upon or by reason of this Agreement, to or for the benefit of, any third party not a formal party to this Agreement.

SECTION 20. Entire Agreement. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

SECTION 21. Amendment. This Agreement may not be amended unless the amendment is in writing and approved by the County and the Owner.

SECTION 22. Effective Date. The Effective Date of this Agreement shall be the date of the recording of this Agreement in the Public Records of Orange County.

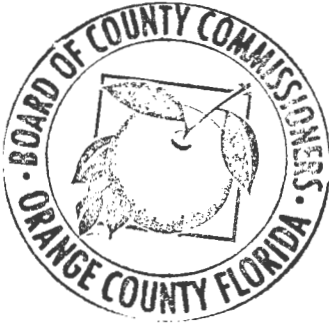
SECTION 23. Liability. Notwithstanding anything to the contrary in this Agreement, in the event the Owner fails to meet its obligations under this Agreement, the County may pursue its remedies from the following sources in the following order: (i) the Deposit or Balance and then, (ii) the Owner.

SECTION 24. Land Use Approvals. This Agreement does not grant or assure or indicate any future grant of any land use, zoning, subdivision, density, or development approvals, permissions, or rights with respect to the Property, including the Facility, or any other property or land referred to in this Agreement.

SECTION 25. Non-Waiver. The failure of either Party to insist on the other Party's compliance with its obligations under this Agreement in any one or more

instances will not operate to release the other Party from its duties to comply with its obligations in all other instances.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Bryan W. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 20 Aug 19

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jessica Vaupel*
for Deputy Clerk

Printed Name: Jessica Vaupel

OWNER: Westgate Resorts, LTD., a Florida limited partnership

By: Westgate Resorts, Inc., a Florida corporation, its General Partner

By: [Signature]
David A. Siegel
President

Date: July 18, 2019

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: RICHARD J SWINEN

Signature: [Signature]

Printed Name: Michelle Bramlett

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 18 day of July, 2019, by David A. Siegel as President of Westgate Resorts, Inc., a Florida corporation, the General Partner of Westgate Resorts, LTD., a Florida limited partnership, on behalf of said entities, who [] is personally known to me or [] has produced _____ as identification.

(Notary Seal)

[Signature]
Notary Public

Maria E Santiago
Name Printed or Stamped



MARIA E SANTIAGO
Commission # GG 133160
Expires October 31, 2021
Bonded Thru Budget Notary Services

My Commission Expires: 10.31.21

EXHIBIT A

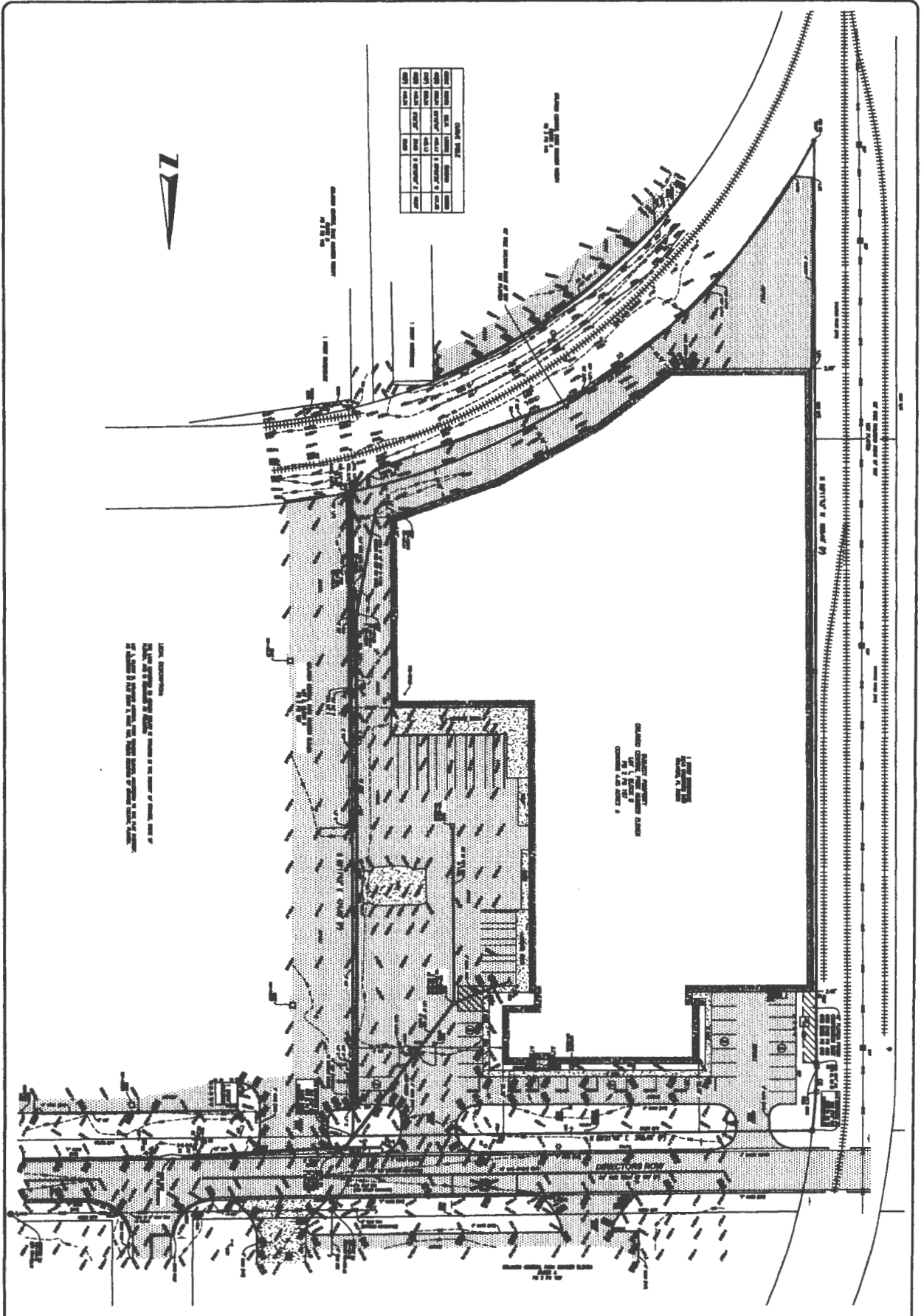
**WESTGATE LAUNDRY
2216 DIRECTORS ROW
ORANGE COUNTY, FL 32809**

PROPERTY LEGAL DESCRIPTION:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF FLORIDA,
AND IS DESCRIBED AS FOLLOWS:

LOT 1, BLOCK B, ORLANDO CENTRAL PARK NUMBER ELEVEN, ACCORDING TO THE PLAT THEREOF, AS
RECORDED IN PLAT BOOK 2, PAGE 107, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

EXHIBIT B



PAGE B1 OF 1

<p>Drawn by: OAM Checked by: OAM Field Date: 11/28/18 Scale: N.T.S.</p>	<p>On the Mark Surveying, LLC LB 7931 143 Mosher Boulevard Sanford, Florida 32771 Phone: (321) 630-4378 Email: OTMSurveying@gmail.com</p>	<p>2216 Directors Row Orange County, Florida</p>	<p>Boundary and Partial Topographic Survey</p>	<table border="1"> <thead> <tr> <th>Item</th> <th>Revision</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1</td> <td>11/28/18</td> </tr> <tr> <td>2</td> <td>1</td> <td>11/28/18</td> </tr> <tr> <td>3</td> <td>1</td> <td>11/28/18</td> </tr> <tr> <td>4</td> <td>1</td> <td>11/28/18</td> </tr> <tr> <td>5</td> <td>1</td> <td>11/28/18</td> </tr> </tbody> </table>	Item	Revision	Date	1	1	11/28/18	2	1	11/28/18	3	1	11/28/18	4	1	11/28/18	5	1	11/28/18
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