



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

JEB BUSH
 Governor

THADDEUS L. COHEN, AIA
 Secretary

RECEIVED
 AUG 03 2005
 City Clerk

July 28, 2005

City of Marathon
 ATTN: Cindy Ecklund, Clerk
 10045-55 Overseas Highway
 Marathon FL 33050

Re: Resolution 2005-093 (Abandon a portion of Aviation Boulevard)


Dear Mrs. Ecklund:

The Department Field Office has received your request for a letter stating that the Department will not appeal the above resolution. The Department will not appeal this resolution pursuant to Section 380.07, Florida Statutes. While the Department will not appeal this resolution under its statutory authority, the development order is still subject to the local administrative appeal provisions.

The Department supports the removal and landscaping of the abandoned road. The siting configuration with two access points provides greater accident potential.

This letter is not intended to constitute, and shall not be construed as constituting, a verification of compliance with the Comprehensive Plan and Land Development Regulations, and shall not be relied upon as a precedent or a waiver of rights regarding any other development order.

Sincerely,

for 
 Rebecca Jetton, Administrator
 Florida Keys Area of Critical State Concern

c: Marathon Building Department
 Jim Rhyne, Coconut Cay Resort & Marina

2 5 5 5 SHUMARD OAK BOULEVARD • TALLAHASSEE , FLORIDA 32399-2100

Phone: (850) 488-8466/Suncom 278-8466 FAX: (850) 921-0781/Suncom 291-0781

Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
 2796 Overseas Highway, Suite 212
 Marathon, FL 33050-2227
 (850) 488-2100

COMMUNITY PLANNING
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 488-2255

EMERGENCY MANAGEMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 412-0060

HOUSING & COMMUNITY DEVELOPMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 488-7055

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-093**

**A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA,
APPROVING A REQUEST TO ABANDON A PORTION OF AVIATION
BOULEVARD, A PUBLIC RIGHT-OF-WAY, AS LEGALLY DESCRIBED
IN EXHIBIT "A"**

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, commonly known as Aviation Boulevard (the "Right-of-Way"); and

WHEREAS, Sapodilla Holdings, LLC (the "Applicant"), has requested that the City of Marathon, Florida (the "City"), in accordance with Section 16-1 of the City Code, abandon a portion of the Right-of-Way as legally described in the application on file with the City; and

WHEREAS, the City Council finds that only that portion of the Right-of-Way legally described on Exhibit "A" (the "Specified Right-of-Way") is not needed and may be abandoned without adversely affecting the public interest; and

WHEREAS, the Specified Right-of-Way lies wholly within the corporate boundaries of the City; and

WHEREAS, a public hearing to vacate the Specified Right-of-Way was held, and the City has determined that no federal, state or county rights-of-way are involved or affected, and that granting the request for abandonment of the Specified Right-of-Way will not be detrimental to the public health, safety and welfare; and

WHEREAS, the City has determined the Applicant meets all of the requirements of Section 16-1 of the City Code for the abandonment of the Specified Right-of-Way.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
MARATHON, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Pursuant to the request by the Applicant to vacate the Right-of-Way, the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public in and to the Specified Right-of-Way, as legally described on Exhibit "A", subject to the applicant conveying a utility easement (in a form acceptable to the City Attorney) to the City on and under a specified portion or all of the Right-of-Way, (the "Easement").

Section 3. The City Clerk shall forward a certified copy this Resolution to the Applicant, who shall be responsible for all costs incurred in recording this instrument in the public

records of Monroe County, Florida. The Applicant shall provide the City of evidence of the recording of this Resolution and the Easement within thirty (30) days of the effective date of this Resolution.

Section 4. The City reserves all rights to itself for the placement, operation and maintenance of all necessary City roads, structures and utilities including, but not limited to, stormwater and wastewater improvements and appurtenant facilities above and below that portion of the Right-of-Way not vacated by this Resolution.

Section 5. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 12th day of July, 2005.

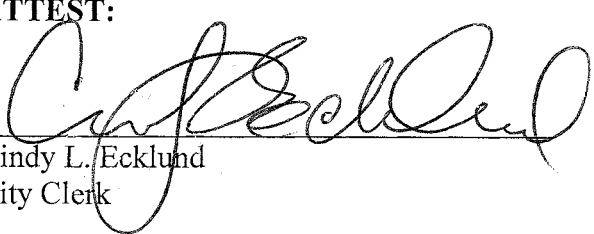
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney

EXHIBIT "A"

A Parcel of Land being a part of Aviation Boulevard as shown on the plat of "Schmitt Subdivision", as recorded in Plat Book 3, Page 151, and a part of the Southwest Quarter of the Southwest Quarter, Section 1, Township 66 South, Range 32 East, Key Vaca, Monroe County Florida and being more particularly described by metes and bounds as follows:

Commencing at the Permanent Reference Monument No. 20, at the intersection of the Northerly Right-of-Way line of Old State Highway 4A, as existing February 1, 1951, and the North/South Section Line between Sections 1 and 2, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida; thence North along said Section Line 1062.06 feet, to a point, 15.35 feet south of the permanent reference monument as shown on "MASTER PLAT OF NORTH MARATHON SHORES", as recorded in Plat book 2, page 170 of the public records of Monroe County, Florida; thence bear East 25.00 feet to a point on the West Right-of-Way line of Aviation Boulevard as shown on said Plat, said point to be known as the Point of Beginning of the Land hereinafter described; thence bear North 76.27 feet, along said Right-of-Way line, to a point at the northwesterly corner of Aviation Boulevard as shown on said plat; thence bear North $67^{\circ}51'00''$ East, along the Northerly Right-of-Way line 215.98 feet to a point which bears North $32^{\circ}53'49''$ West from the Northeasterly corner of an existing dock; thence bear South $32^{\circ}53'49''$ East, along a radial line, for a distance of 16.19 feet, to a pipe which lies on a 27.5 foot offset from the crown of the existing roadway, said pipe being on the arc of a curve having a radius point which bears South $32^{\circ}53'49''$ East, a distance of 462.50 feet; thence along said curve deflecting to the left for an arc distance of 235.27 feet, to a pipe, said arc having a central angle of $29^{\circ}08'46''$ and a chord which bears South $42^{\circ}31'48''$ West, a distance of 232.74 feet, said pipe also being A 27.5 foot offset from the crown of the existing roadway and said pipe also being South $62^{\circ}02'35''$ East, from the point of beginning; thence bear North $62^{\circ}02'35''$ West, along a radial line, for a distance of 58.27 feet, back to the POINT OF BEGINNING containing an area of 13,928.200 +/- square feet (0.320 acres more or less).

This instrument prepared by:

John R. Herin, Jr., Esq.,
Stearns Weaver Miller
Weissler Alhadeff Siterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 789-3200

After recording return to:

City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

UTILITY EASEMENT

THIS UTILITY EASEMENT (this "Easement") is made this _____, day of August, 2005, by **Sapodilla Holdings, LLC**, whose address is 7196 Overseas Hwy, Marathon, FL 33050 (hereinafter referred to as the "GRANTOR"), to and in favor of the **CITY OF MARATHON, a Florida municipal corporation**, having an address at 10045-55 Overseas Highway, Marathon, Florida 33050 (hereinafter referred to as the "GRANTEE").

RECITALS:

1. GRANTOR owns fee simple title to certain real property located in Monroe County, Florida, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").

2. GRANTOR has agreed to grant to GRANTEE a non-exclusive, perpetual utility easement as well as ingress and egress in, over, under, and upon the Property for the purpose of installing, constructing, maintaining, operating, repairing and replacing overhead and underground electric utility facilities, as well as lift stations, force mains, water lines, gravity sewers, storm drainage systems, gas lines and tanks, messages or communication, and all appurtenances relative to these facilities or systems, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and 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, the parties hereto do hereby agree as follows:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. Grant of Easement. GRANTOR does hereby grant and convey to the GRANTEE and its licensees, successors and assigns, the non-exclusive, perpetual right, power, privilege and easement to regularly or at any time and for any length of time to install, construct, maintain, operate, repair and replace overhead and underground electric utility facilities on the Property (including wires, poles, guys, raceways, cables, conduits and appurtenant equipment) as well as lift stations, force mains, water lines, gravity sewers, storm drainage systems, gas lines and tanks, messages or communication, and all appurtenances relative to these facilities or systems to be installed from time to time; with the right to alter, change the nature or physical characteristics or replace, relocate, reconstruct, improve, add to, enlarge and remove all or any such facilities in, upon, over, under, through, and across the Property along with all rights and privileges necessary or convenient for the full benefit and the use thereof for purposes described in this Easement. This Easement also includes the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the Easement and to operate the same for communications purposes; the right of ingress and egress to said Property at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the Property; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous tress or limbs outside of the Property which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said Property.

3. Warranties and Representations. GRANTOR does hereby covenant with the GRANTEE, that (a) it is lawfully seized and possessed of the Property; (b) it has good and lawful right to enter into this Easement and convey said Easement; (c) all applicable required authorizations, approvals or consents have been obtained and no other authorizations, approvals or consents are required to effectuate GRANTOR's execution and delivery of this Easement; and (d) it acknowledges that GRANTEE is materially relying on the representations as herein expressed.

4. Covenants Running with the Land. This Easement, and the rights and interests created herein shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

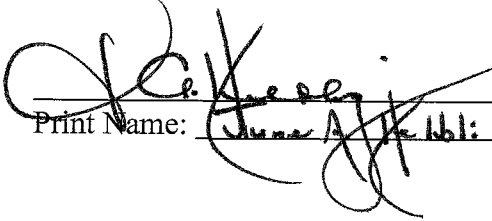
5. Miscellaneous. This Easement shall be construed under the laws of the State of Florida. GRANTOR shall, at its cost and expense, record this Easement and any amendments hereto in the Public Records of Monroe County, Florida. This Easement may assigned in whole or in part by the GRANTEE for use in connection with any of the purposes authorized herein. This Easement may only be modified, supplemented or revised in writing signed by both parties, or their successors or assigns, and any modification shall be effective only upon recordation in the Public Records of Monroe County, Florida.

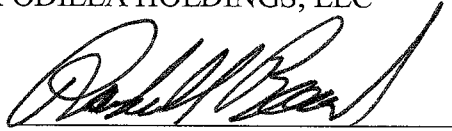
IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.

WITNESSES:

GRANTOR:

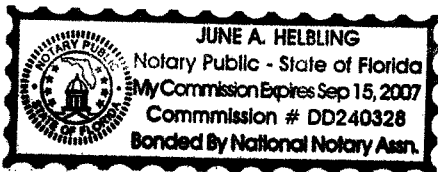
SAPODILLA HOLDINGS, LLC

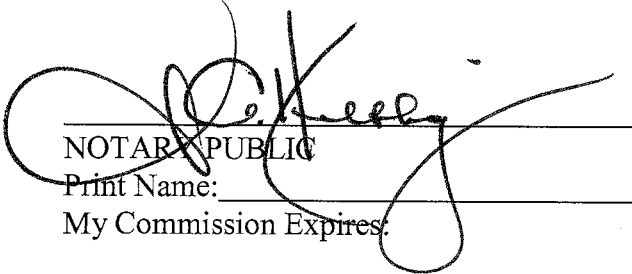

Print Name: June A. Helbling

By: 
Name: _____

STATE OF FLORIDA)
 SS:
COUNTY OF MONROE)

THIS IS TO CERTIFY, that on this 11th day of Aug, 2007, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Rendell Beard, a _____, who (check one) [] is personally known to me or [] produced _____ as identification.




NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____