

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-75**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING WITH CONDITIONS THE REQUEST OF BERNARD AND MARIEN SPINRAD TO ABANDON A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED ON FLAGLER STREET CONTIGUOUS TO THE PROPERTIES HAVING REAL ESTATE NOS. 00368310-00000 AND 00368320-000000; A PART OF CRAINS SUBDIVISION OF GRASSY KEY, GRASSY KEY; NEAREST MILE MARKER 58, MONROE COUNTY, FLORIDA, AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, there presently exists a public right-of-way within the City of Marathon, Florida, known as Flagler Street (the "R-O-W"), within the bounds of Crain's Subdivision of Grassy Key, Grassy Key, nearest mile marker 58; and

WHEREAS, Bernard Spinrad and Marien Spinrad (the "Applicants") have requested that the City of Marathon, Florida (the "City"), in accordance with Section 26-1 of the City Code, abandon a portion of the R-O-W contiguous with their property, with a post office address of 58414 Overseas Highway; and

WHEREAS, a public hearing to abandon the R-O-W was held on August 23, 2011, and the City has determined that no federal, state or county rights-of-way are involved or affected, and that granting the request to abandon the R-O-W, subject to conditions, is not detrimental to the public health, safety and welfare; and

WHEREAS, the City has determined the Applicants meet all of the requirements of Section 26-1 of the City Code for the abandonment of the R-O-W.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

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

Section 2. Pursuant to the request by the Applicants to abandon a portion of the R-O-W contiguous with their property the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public to the R-O-W, legally described on Exhibit "A", subject to the following condition:

- a. The Applicants must concurrently grant to the City and Utility Providers an irrevocable non-exclusive utility easement, the form and content of which shall be approved by the City Attorney, on and under all of the abandoned R-O-W. The Applicants shall be responsible for all costs incurred in recording the utility easement in the public records of Monroe County, Florida.

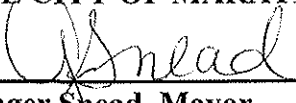
Section 3. The City Clerk shall forward a certified copy this Resolution to the Applicants, who shall be responsible for all costs incurred in recording it in the public records of Monroe County, Florida. The Applicants shall provide the City evidence of the recording of this Resolution and the utility 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 23rd DAY OF AUGUST, 2011.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Worthington, Ramsay, Keating, Snead
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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

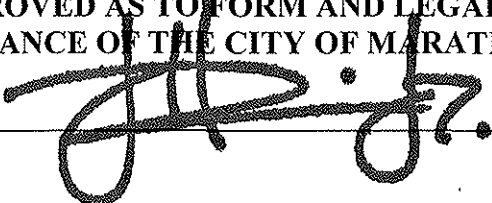
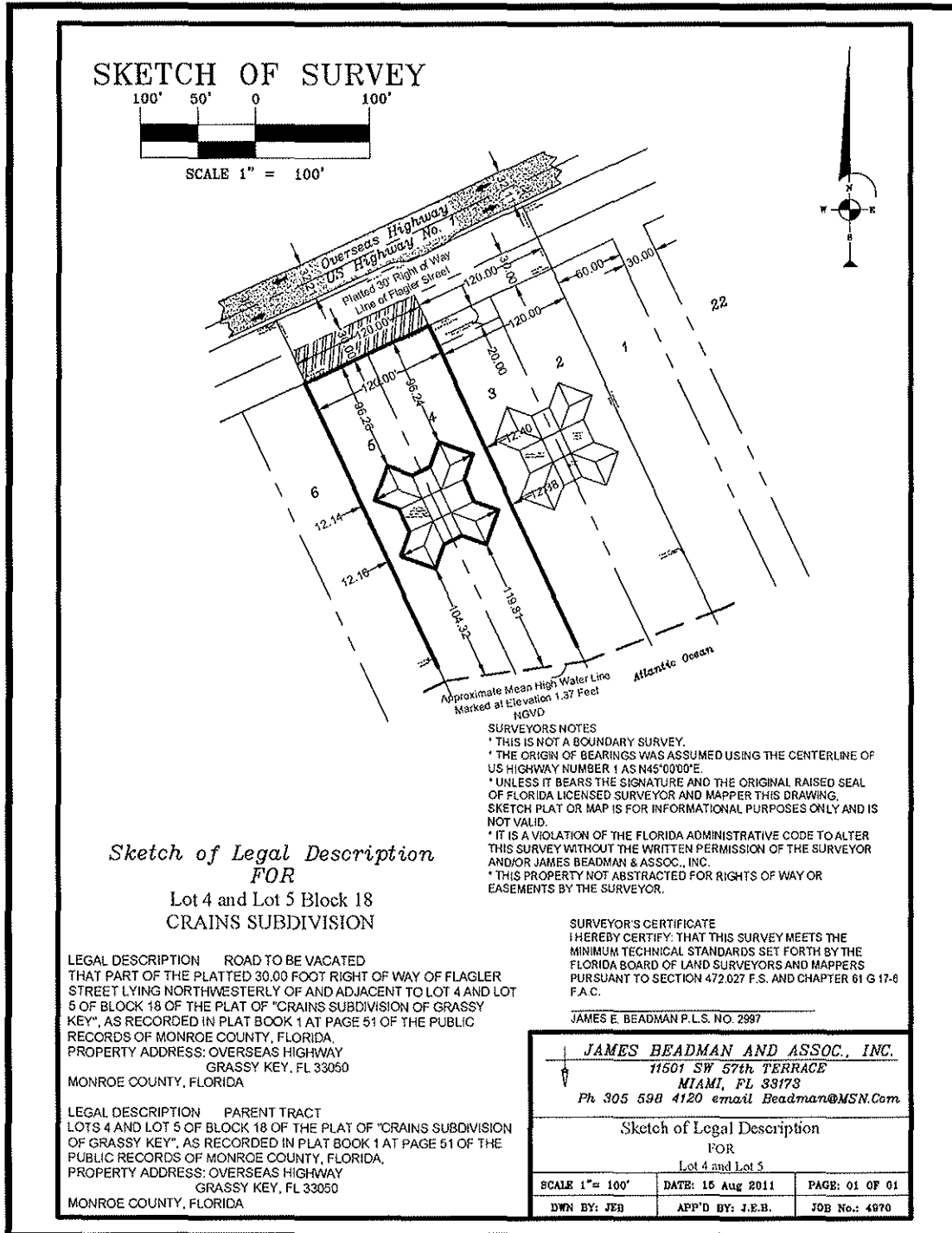


EXHIBIT A

Sketch & Description of Flagler Street ROW Boundary of
Contiguous Properties RE No.00368310-00000 and 00368320-000000



THIS INSTRUMENT WAS PREPARED BY, RECORD AND
RETURN TO:

Robert E. Gallagher, Jr., Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.,
150 West Flagler St., Suite 2200
Miami, Florida 33130

Doc# 1857897
Bk# 2541 Pg# 1671

DECLARATION OF NON-EXCLUSIVE IRREVOCABLE EASEMENT

[Portion of Flagler Street 00368310-000000 and 00368320-000000]

THE PARTIES

This Declaration of a Non-Exclusive Irrevocable Easement (the "Declaration") is made and entered into as of August 23rd, 2011 by and between Bernard Spinrad and Marien Spinrad, property owners, their successors and assigns collectively (the "Grantor"), having an address of 58418 Overseas Highway, Marathon, Florida, 33050 and the City of Marathon, a Florida municipal corporation, its successors and assigns, having an address of 9805 Overseas Highway Marathon, Florida 33050 (the "Grantee").

RECITALS

A. WHEREAS, the Grantor obtained from the Grantee a vacation of a portion of Flagler Street located within the City of Marathon, all as specifically set forth in City Resolution 2011-_____ (the "Resolution"); and

B. WHEREAS, the Resolution requires the Grantor to grant a perpetual utility easement to the Grantee and all utility providers in regard to the "Easement Parcel" (as hereinafter defined); and

C. WHEREAS, the Grantor is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a material part hereof which is referred to as Easement Parcel (the "Easement Parcel"); and

D. WHEREAS, the Grantor acknowledges the need for the Grantee to have the use of the Easement Parcel as a result of the Grantee having pursuant to the Resolution vacated the right-of-way located within the Easement Parcel by granting unto the Grantee the FCAA, FKEC, Comcast and those companies or organizations presently or hereinafter providing utility services within the City of Marathon (the "Utility Providers") the right to install, construct, maintain, repair,

remove utility services as more specifically set forth in this Declaration and for such other purposes as may reasonably be required by the Grantee and Utility Providers for the Easement Parcel.

CONSIDERATION

NOW, THEREFORE, 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 are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

GRANT, TERMS, AGREEMENTS, COVENANTS AND CONDITIONS

1. Grant of Easement. Grantor hereby grants and conveys to Grantee and its successors and assigns and unto the Grantee's servants, agents, employees, guests, licensees, and to the Utility Providers, including but not by limitation, water, sanitary sewer, storm sewer, telephone, cable and gas, a perpetual non-exclusive easement over, across and under the Easement Parcel with full right of ingress and egress thereto. The easement herein granted is an easement appurtenant and is for the purpose of installing, constructing, maintaining, repairing, removing and replacing, as necessary, any and all utility services, including but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations and junction boxes for sewer, water, electric, telephone, gas and cable or any other communication service (the "Utility Services"). Grantee and the Utility Providers shall bear all costs of installation, maintenance, repair and replacement of the referenced items, unless the requirement to maintain, repair or replacement resulted from or is related to the Grantor's actions.

2. Grantor's Responsibilities. Grantor shall provide the Easement Parcel to the Grantee free and clear of any obstruction and Grantor shall not construct, place or allow the placing or construction of any obstruction which will interfere with the Grantee's use of the Easement Parcel as granted hereunder. Grantor and Grantee each acknowledge that currently located within the Easement Parcel are "lateral sanitary sewer lines" (the "Lateral Lines") which provide for outflow of sanitary sewerage from the adjoining land owned by the Grantor to the main sanitary sewer line located in the Easement Parcel. Grantor acknowledges and agrees that the Grantor shall be responsible for the continued maintenance and repair to the Lateral Lines. Grantor should not construct or place any improvements on the Easement Parcel. Other than Grantee's and the Utility Providers' obligation to bear the costs of installation, repair and maintain the items, as set forth and as limited in Section 1 above, the Grantor is solely responsible for all other expenses arising from or related to the Easement Parcel.

3. No Public Dedication. Nothing contained in this Declaration shall, in any way, be deemed or constitute a gift of or dedication of any portion of the Easement Parcel to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this grant of easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

4. Enforcement. The terms and conditions of this Declaration shall run with the Easement Parcel and shall inure to the benefit of and be enforceable by the Grantee and the Grantor, their respective legal representatives, successors and assigns, and the Grantee and the

Grantor, each shall have a right of action to enforce by proceedings at law or in equity all conditions and covenants imposed by the provisions of this Declaration, or any amendment thereto, including the right to prevent the violation of such conditions and covenants and the right to recover actual damages for such violation (but not consequential or punitive damages).

5. Liens. Grantee shall not permit any construction lien or similar lien arising by reason of Grantee's work relating to the Easement Parcel to remain an encumbrance against the Easement Parcel. Grantee may bond over and contest the validity of any such mechanics lien in lieu of payment thereof.

6. No Waiver. Failure by either party to enforce any covenant, condition or restriction contained in this Declaration in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other covenant, condition or restriction.

7. Severability. Invalidation of any one or a portion of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

8. Attorney's Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

9. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly delivered when directed to the addressee as follows:

If to Grantee: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

With a copy to
Grantee's Attorney: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attention: John Herin, Esquire

If to Grantor: Bernard Spinard and Marien Spinard
58418 Overseas Highway
Marathon, Florida 33050

With a copy to _____
Grantor's Attorney: _____

Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand delivered, or (ii) sent by Federal Express or a comparable overnight mail service. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

10. Authority and Capacity of Parties. The execution and delivery of this Declaration by the Grantor and Grantee are within the Grantor and Grantee's respective capacity and all requisite action has been taken to make this Declaration valid and binding on the Grantor and Grantee in accordance with its terms.

11. Captions. Captions used in this Declaration are for information purposes only and do not alter, modify or add to the terms of this Declaration.

12. Governing Law. This Declaration will be governed and interpreted pursuant to the laws of the State of Florida. Grantor and Grantee, their successors and assigns, shall perform all of their respective obligations under this Declaration in compliance with all applicable laws.

13. Modification/Entire Agreement. This Declaration may be modified only in a writing executed by the parties to this Declaration or their respective successors or assigns. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Waiver of Jury Trial. Grantor and Grantee hereby knowingly, voluntarily and intentionally, waive trial by jury in any action brought by one against the other in connection with any matter arising out of or in any way connected with this easement agreement. This waiver shall apply to any original claim, counterclaim, cross claim, or other claim of any kind asserted by either party in any such action. Neither party nor any representative of either party, including counsel, has represented to the other that it would not seek to enforce this waiver of right to jury trial in any such action. The parties acknowledge that the provisions of this section are a material inducement to their entering into this easement agreement.

SIGNATURES APPEAR ON FOLLOWING PAGES

[Multiple signature pages for Grantor; total of 2 separate signature pages.]

Witness as to Irrevocable Easement

E. Mateo
Elizabeth Mateo

Print Name
[Signature]

Cora Davis
Print Name

As to the Grantor

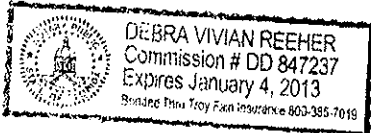
[Signature]
Bernard Spinard

[Signature]
Marien Spinard

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 21 day of SEP, 2011 by Bernard Spinard and Marien Spinard who are either personally known to me or produced a _____ as identification.

[Signature]
Notary Public
State of Florida at Large
My Commission Expires:



Witness as to IRREVOCABLE EASEMENT

As to the Grantee:

Libby Frazier

CITY OF MARATHON, A FLORIDA
MUNICIPAL CORPORATION

Libby Frazier
Print Name

By: [Signature]
Roger Hemstadt, City Manager

Ann Hogan

Ann Hogan
Print Name

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 21 day of Sept, 2011 by Roger Hemstadt, City Manager of the City of Marathon, a Florida municipal corporation, on behalf of the City, who is either personally known to me or produced a _____ as identification.

[Signature]

Notary Public
State of Florida at Large
My Commission Expires:



MONROE COUNTY
OFFICIAL RECORDS