

**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-141**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST TO THE CITY COUNCIL OF THE CITY OF MARATHON BY JIM GOFF TO ABANDON A PORTION OF THE PUBLIC RIGHT-OF-WAY LOCATED AT 99TH STREET, OCEAN, IN MARATHON, DESCRIBED AS LOT 12, CORAL COLONY SUBDIVISION, KEY VACA, PLAT BOOK 3, PAGE 122, NEAREST MILE MARKER 52.5, MONROE COUNTY, FLORIDA, AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 99th Street, Ocean, Described As Lot 12, Coral Colony, Key Vaca, Plat Book 3, Page 122 Nearest Mile Marker 52.5, Monroe County, Florida and as particularly described in the attached survey (Exhibit "A"); and

WHEREAS, Kendall Industrial Center, LLC (Agent Jim Goff) has requested that the City of Marathon, Florida (the "City"), in accordance with Section 26-1 of the City Code, abandon the Right-of-Way; and

WHEREAS, the City Council finds that the Right-of-Way is not needed and may be abandoned without adversely affecting the public interest; and

WHEREAS, the Right-of-Way lies wholly within the corporate boundaries of the City and within the City's ownership and authority to abandon; and

WHEREAS, a public hearing to vacate the Right-of-Way was held on April 14, 2015 and was denied in request for the Planning Department to readdress the Right-of-Way Ordinance,

WHEREAS, a second public hearing to vacate the Right-of-Way was held on December 8, 2015 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 Right-of-Way subject to conditions will not be detrimental to the public health, safety and welfare; and

WHEREAS, the City has determined the Applicant's request meets all of the requirements of Section 26-1 of the City Code for the abandonment of the Right-of-Way.

WHEREAS, THE City Council has made the following findings of fact pursuant to Section 26-16 of the Code of the City of Marathon:

- a) The abandonment of this right-of-way will not adversely affect the operations and functions of the City because with a grant of utility easement to continue maintenance of its sewer facilities, City operations within the Ocean Drive Right-Of-Way will not be adversely affected.
- b) Public access to water is not possible through this Right-Of-Way and therefore there is no impact to public access to the water.
- c) There will no adverse affect on surrounding traffic circulation or patterns.
- d) The abandonment will not adversely affect a public view corridor.
- e) The applicant owns both properties affected properties at the end of 99th ST. However, both properties will retain access on this road to the individual residences and each will be provided continued access through an access agreement so no property owner is deprived of access to and to their property in the event of a sale of one or the other properties.
- f) The proposed abandonment will not interfere with utility services being provided, or unreasonably affect any utility easement on the condition that the property owner shall grant FKEC a 10 ft. by 60 ft. utility easement along and parallel to the existing west right-of-way line of 99th Street in front of Lot 12.

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 they and all conditions required of Applicants are hereby incorporated as if fully stated herein.

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 Right-of-Way, as legally described on Exhibit "A", subject to the following conditions:

- (1) The Applicant will convey a utility easement to all utilities on, under, or over the 99th Street Right-of Way described in Exhibit "B. to be provided by applicant.
- (2) The Applicant will create a cross access easement guaranteeing access for all purposes to both properties which are affected by this abandonment.
- (3) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.
- (4) The property owner shall grant FKEC a 10 ft. by 60 ft. utility easement along and parallel to the existing west right-of-way line of 99th Street in front of Lot 12, Coral Colony Subdivision. See Exhibit C to be provided by applicant.

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 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. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF DECEMBER, 2015.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin
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:



David Migut, City Attorney

RIGHT OF WAY

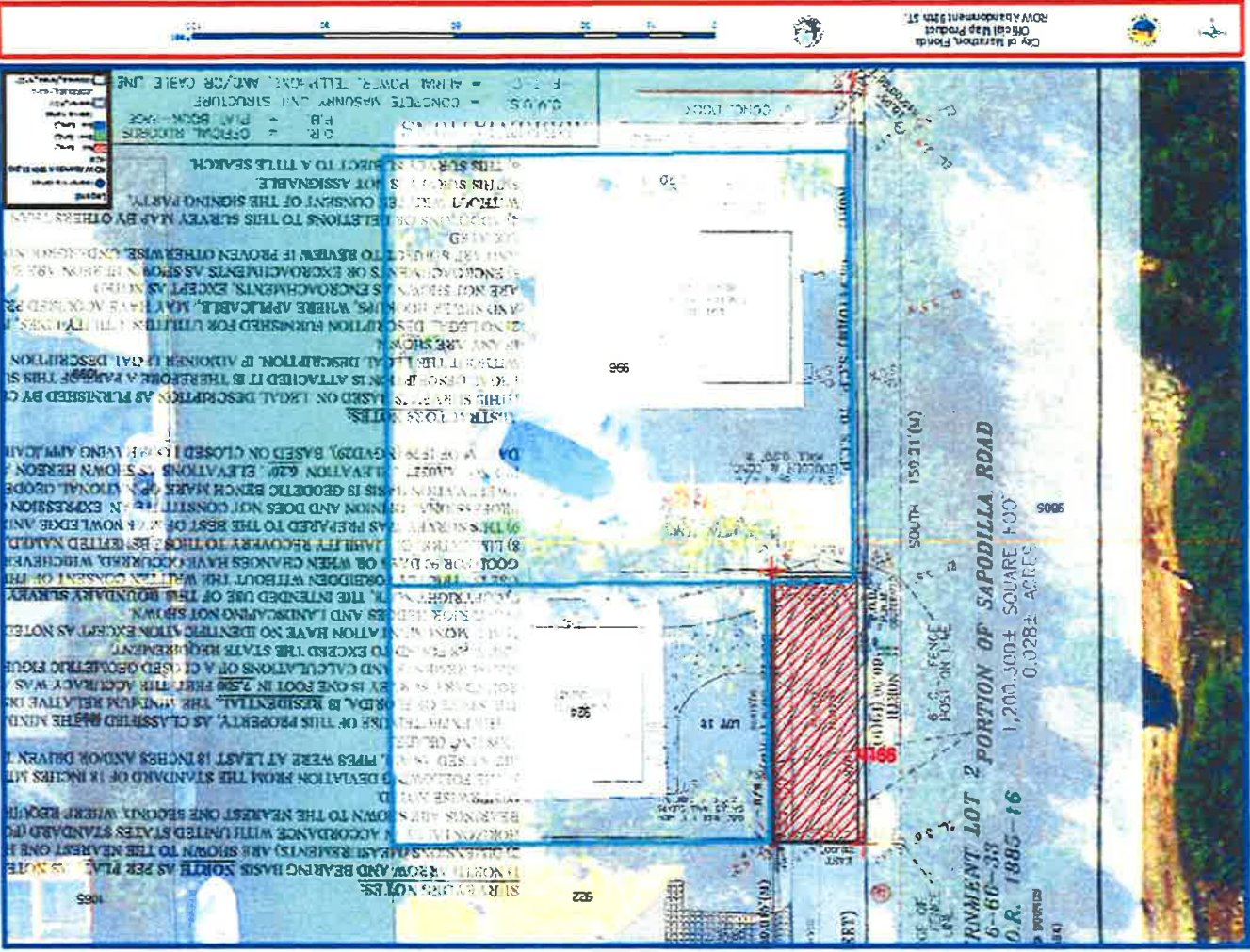


Exhibit B

Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation

UTILITY EASEMENT

This Agreement made this 26th day of February 2016 between the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, FL 33050 and Kendall Industrial Center LLC, by its Managing Member Jim Goff, of 924 and 996 99th Street, Marathon, Florida, agree as follows;

1. Kendall Industrial Center LLC hereby grants to the City of Marathon an easement, in perpetuity over and under the portion of 99th Street in Marathon, Florida abandoned by the City and conveyed to Kendall Industrial Center LLC as more particularly described in **Exhibit A** attached hereto.
2. The sole and exclusive purpose of this easement is to allow the City of Marathon, its successors or assigns, the right to install, repair, maintain, alter and operate sewers, storm drains and related appurtenant equipment in, into, upon, over, across, and under a strip of land as more particularly described in **Exhibit A** attached hereto.
3. The cost of repairs and maintenance to be undertaken or performed under this agreement as necessary or advisable for the purposes set forth herein, shall be at the sole cost of the City of Marathon which shall hold Kendall Industrial Center LLC, its successors and assigns, harmless solely for any negligent acts of the City of Marathon or its successors and assigns, arising out of, relating to, or connected with this Easement Agreement.
4. Kendall Industrial Center LLC, its successors and assigns, reserves the right to use the proposed easement strip for purposes which will not interfere with the City's enjoyment of the rights hereby granted; provided that the City shall not erect or construct any building or other structure, or create any other obstruction on the strip or take any action that would diminish or substantially reduce the value of the property here encumbered.

5. This easement is superior and paramount to the rights of any of the parties hereto and the servient estate so created is a covenant that shall run with the land.
6. The City shall have the right to terminate this easement at any time after it has given Kendall Industrial Center LLC, its successors and assigns, ninety days written notice of its intention to do so.

In witness whereof, the parties hereto have executed this easement agreement at
 Marathon, Monroe County, Florida on the date indicated herein.

Witness Chun Dogram
Hillary Palmer
 Witness

[Signature]
 for the City of Marathon by its City Manager
2/21/16
 Date

Witness [Signature]
Mari Martin-Vegue
 Witness

[Signature]
 Jim Goff, Managing Member of Kendall
 Industrial Center LLC
2-25-16
 Date

STATE OF FLORIDA
 COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 25th day of February, 2016 by
 Jim Goff, Managing Member of Kendall Industrial Center LLC
 _____, who is personally known to me or who has produced _____ as
 identification, and who did/did not take an oath.



Mari Martin-Vegue
 COMMISSION # FF185477
 EXPIRES: December 28, 2018
 WWW.AARONOTARY.COM
 NOTARY PUBLIC, STATE OF FLORIDA
 Printed Name: Mari Martin-Vegue
 My Commission Expires:

STATE OF FLORIDA
 COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 26th day of February, 2016 by
Charles Lindsay, the City Manager of the City of Marathon, Florida who is personally known to me or
 who has produced n/a as identification, and who did/did not take an oath.

Hillary Palmer
 NOTARY PUBLIC, STATE OF FLORIDA
 Printed Name: Hillary Palmer
 My Commission Expires:

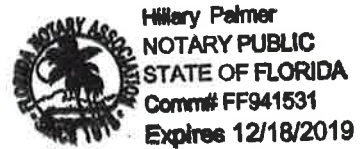


Exhibit C

Copy – Original to be Provided by Applicant

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WHEREAS, the City has determined the Applicant's request meets all of the requirements of Section 26-1 of the City Code for the abandonment of the Right-of-Way.

WHEREAS, THE City Council has made the following findings of fact pursuant to Section 26-16 of the Code of the City of Marathon:

I certify this document to be a true and correct
copy of the original.

Diane Clavier
Diane Clavier, City Clerk
City of Marathon

3-1-16
Date

- a) The abandonment of this right-of-way will not adversely affect the operations and functions of the City because with a grant of utility easement to continue maintenance of its sewer facilities, City operations within the Ocean Drive Right-Of-Way will not be adversely affected.
- b) Public access to water is not possible through this Right-Of-Way and therefore there is no impact to public access to the water.
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Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF DECEMBER, 2015.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin
NOES: None
ABSENT: None
ABSTAIN: None

Doc# 2066091
Bk# 2784 Pgm 2067

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:



David Migut, City Attorney

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- 5. This easement is superior and paramount to the rights of any of the parties hereto and the servient estate so created is a covenant that shall run with the land.
- 6. The City shall have the right to terminate this easement at any time after it has given Kendall Industrial Center LLC, its successors and assigns, ninety days written notice of its intention to do so.

In witness whereof, the parties hereto have executed this easement agreement at Marathon, Monroe County, Florida on the date indicated herein.

Witness Anna Hogan
 Witness Hillary Palmer

[Signature]
 for the City of Marathon by its City Manager
2/26/16
 Date

Witness [Signature]
 Witness Mari Martin Vegu

[Signature]
 Jim Goff, Managing Member of Kendall Industrial Center LLC
2-25-16
 Date

STATE OF FLORIDA
 COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 25th day of February, 2016 by Jim Goff, Managing Member of Kendall Industrial Center LLC _____, who is personally known to me or who has produced _____ as identification, and who did/did not take an oath.



Mari Martin-Vegue
 COMMISSION # FF185477
 EXPIRES: December 28, 2018
 www.aaronnotary.com
 Printed Name: Mari Martin-Vegue
 My Commission Expires:

STATE OF FLORIDA
 COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 26th day of February, 2016 by Charles Lindsay, the City Manager of the City of Marathon, Florida who is personally known to me or who has produced N/A as identification, and who did/did not take an oath.

Hillary Palmer
 NOTARY PUBLIC, STATE OF FLORIDA
 Printed Name: Hillary Palmer
 My Commission Expires:

MONROE COUNTY
 OFFICIAL RECORDS

