

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-100**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST TO THE CITY COUNCIL OF THE CITY OF MARATHON BY 76 PELICAN, LLC TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED AT 57642 OVERSEAS HIGHWAY, KNOWN AS FLAGLER STREET, DESCRIBED AS BEING ADJACENT TO AND CONTIGUOUS WITH PART OF GOVERNMENT LOT 5 BETWEEN BLOCKS 53 TO 58, CRAINS SUBDIVISION, GRASSY KEY, HAVING REAL ESTATE NUMBER 00373870-000000. NEAREST MILE MARKER 58; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 57642 Overseas Highway, Described As Crains Subdivision, Plat book 1, Page 51, South Side of Flagler Street to Ocean PT Between Blocks 53-58, Grassy Key, Nearest Mile Marker 58, Monroe County, Florida and as particularly described in the attached survey (Exhibit "A"); and

WHEREAS, 76 Pelican, LLC (Agent Thomas D. Wright) 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 September 10, 2019 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 26-9 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.
- 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 applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.
- f) The proposed abandonment will not interfere with utility services being provided, or unreasonably affect any utility easement.

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 Flagler Street Right-of Way described in Exhibit "B."
- (2) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.
- (3) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.


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 OCTOBER, 2019.


THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

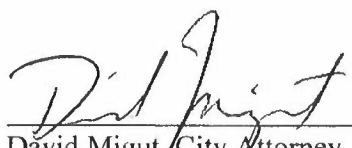
ATTEST:



Diane Clavier, City Clerk

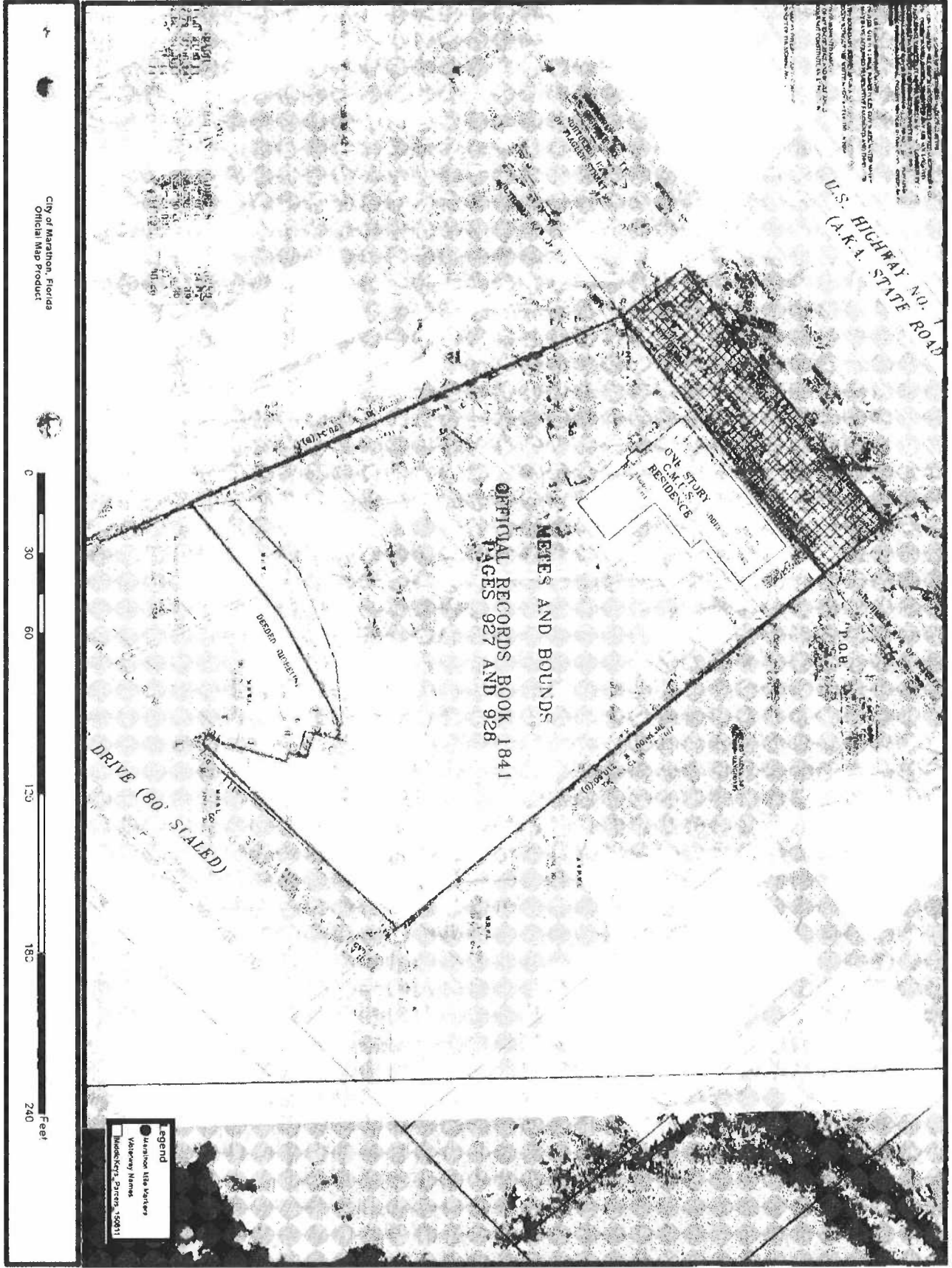
(City Seal)

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



David Migut, City Attorney

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



City of Marathon, Florida
Official Map Product

0 30 60 120 180 240 Feet

Legend

- Jurisdiction Water
- ▬ Waterway Names
- ▬ IndexKey: Green, 150811

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

Doc # 2245320 Bk# 2995 Pg# 1177 Electronically Recorded 11/20/2019 at 11:29 AM Pages 3
Filed and Recorded in Official Records of MONROE COUNTY KEVIN MADOK
Electronically REC: \$27.00 Deed Doc Stamp \$0.00

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

George Garrett
CITY OF MARATHON
PLANNING DIRECTOR
9805 Overseas Hwy
Marathon, FL 33050
(305) 289-4100

Folio No. DP2019-0124

UTILITY EASEMENT

THIS UTILITY EASEMENT (this "Easement") is made this 27 day of October, 2019, by **76 Pelican, LLC**, whose address is **57642 Overseas Highway**, Marathon, Florida 33050 (hereinafter referred to as the "GRANTOR"), to and in favor of the **CITY OF MARATHON, a Florida municipal corporation**, having an address at 9805 Overseas Highway, Marathon, Florida 33050 (hereinafter referred to as the "GRANTEE").

RECITALS:

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").

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 utility facilities on the Property, 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) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them. 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.

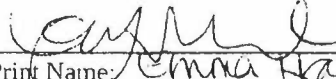
5. Miscellaneous. This Easement shall be construed under the laws of the State of Florida. GRANTOR shall, at its cost and expense, record this Easement and any amendments hereto in the Public Records of Monroe County, Florida. This Easement may assigned in whole or in part by the GRANTEE for use in connection 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.

[Acknowledgments on following page]

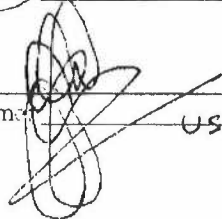
IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.

WITNESSES:

GRANTOR:

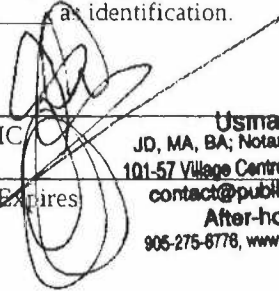

Print Name: EMMA HAJNIK


Print Name: Karen Serbinski
Managing member


Print Name: USMAN ALI HANNAN

CITY OF TORONTO in the)
Regional Municipality of)
METROPOLITAN TORONTO)

THIS IS TO CERTIFY, that on this 24th day of October, 2019, before me, an officer duly authorized to take acknowledgements in the jurisdiction aforesaid, personally appeared Karen Serbinski, who is personally known to me or produced ONTARIO DRIVER'S LICENSE as identification.


NOTARY PUBLIC
Print Name: Usman Ali Hannan
My Commission Expires JD, MA, BA; Notary Public, Oath Commissioner
101-57 Village Centre Pl, Mississauga, ON, Canada
contact@publicnotarymississauga.com
After-hour Notary Public
905-275-8778, www.publicnotarymississauga.com

My Commission Does Not Expire, As
I am a Good Standing Ontario Lawyer
I Did Not Give Any Legal Advice or Service

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

George Garrett
CITY OF MARATHON
PLANNING DIRECTOR
9805 Overseas Hwy
Marathon, FL 33050
(305) 289-4100

Folio No. DP2019-0124

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THIS UTILITY EASEMENT (this "Easement") is made this 24 day of October, 2019, by **76 Pelican, LLC**, whose address is **57642 Overseas Highway**, Marathon, Florida 33050 (hereinafter referred to as the "GRANTOR"), to and in favor of the **CITY OF MARATHON, a Florida municipal corporation**, having an address at 9805 Overseas Highway, Marathon, Florida 33050 (hereinafter referred to as the "GRANTEE").

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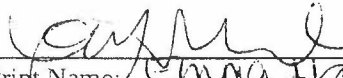
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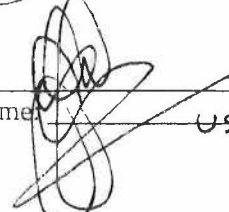
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WITNESSES:

GRANTOR:

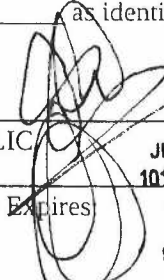

Print Name: EMMA HAJNIK


Print Name: Karen Serbinski
Managing member


Print Name: USMAN ALI HANNAN

CITY OF TORONTO in the)
Regional Municipality of)
METROPOLITAN TORONTO)

THIS IS TO CERTIFY, that on this 24th day of October, 2019, before me, an officer duly authorized to take acknowledgements in the jurisdiction aforesaid, personally appeared Karen Serbinski, who is personally known to me or produced ONTARIO DRIVER'S LICENSE as identification.


NOTARY PUBLIC
Print Name: Usman Ali Hannan
My Commission Expires 101-57 Village Centre Pl, Mississauga, ON, Canada
contact@publicnotarymississauga.com
After-hour Notary Public
905-275-8778, www.publicnotarymississauga.com

My Commission Does Not Expire, As
I am a Good Standing Ontario Lawyer
in this Matter.
I Did Not Give Any Legal Advice or Service