

CITY COUNCIL AGENDA STATEMENT



Meeting Date: September 10, 2019
To: Honorable Mayor and City Councilmembers
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Public Right-Of-Way Abandonment**, 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, Crain’s Subdivision, Grassy Key, Having Real Estate Number 00373870-000000. Nearest Mile Marker 58.

Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Flagler Street, Ocean, Crain’s Subdivision, Grassy Key. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicants will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.

Applicant: 76 Pelican, LLC
Agent: Thomas D. Wright
Request: To abandon a portion of the right-of-way at 57642 Overseas Highway.
Project Location: 57642 Overseas Highway, Cranes Subdivision, Grassy Key.
Legal Description: Crain’s Sub Plat Book 1, Page 51, Grassy Key, South Side of Flagler ST to Ocean PT Between Bks 53-58. (See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by 76 Pelican, LLC (Agent, Thomas D. Wright) for the abandonment of the City's right-of-way located on 57642 Overseas Highway, Crain's Subdivision Grassy Key. The applicant states they would like Council to abandon a portion of Flagler Street as shown in the location graphic above and in the survey of the area to be abandoned. The applicant states they will grant a utility easement to the City of Marathon and all utilities for current and future use.

Flagler Street, is a 30 foot wide platted road in Crain's Subdivision of Grassy Key (See Figures 2 & 3). Flagler Street traverses the width of Crain's Subdivision from approximately Kyle Avenue to the area across from Grassy Key RV Park landward of and contiguous to the Crain's Subdivision properties lying to the south of U.S. Highway 1. As platted, it is approximately 1.25 miles long. The road would appear to be a part of the U.S. Highway 1 Right-Of-Way as it is contiguous to and runs parallel with the state road. However, it is a part of the Crain's Subdivision plat. The majority of properties on the

Ocean side of U.S. 1 which are a part of Crain's subdivision have sought an abandonment previously or have occupied Flagler Street for more than thirty (30) years, particularly, the resorts.

Municipalities derive their power to vacate municipally owned rights-of-way from Section 166.042, Florida Statutes that provides that former Section 167.09, Florida Statutes (1972) remains effective. Former Section 167.09, Florida Statutes provides that municipalities may "...discontinue any public park, public square, street, avenue, highway or any other way..."

Section 26-3 (1) & (2) of the City Code (Ordinance 2015-08, not codified as of this date), restricts the City's authority to abandon rights-of-way, as provided by state law, by imposing the following conditions:

Section 26-3 General Provisions

(1) Approval of Abutting Property Owners

As part of the submittal process, documentation is required that there are no objections from abutting property owners. In the event that such an objection occurs, then the Petitioner may further petition to be heard by the City Council in a review which would require a super majority vote if approved.

(2) Access to Water.

No right of way, road, Street, or public access way giving access to any publicly accessible waters in the City of Marathon, Florida, shall be closed, vacated or abandoned unless:

- a. the City Council determines at a public hearing that the petitioner meets all of the review criteria of this Article; and
- b. only in those instances wherein the Petitioner(s) offers to trade or give to the City comparable land or lands for a right of way, road, street or public access way to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the City.

Analysis

Section 26-7 of the Code establishes criteria the City must consider when reviewing applications for right-of-way abandonment as follows:

Section 26-7 Review of Petition.

- (1) Review by Technical Review Committee - each petition shall be reviewed by the City and any governmental agency or City department deemed affected by the petitioner's request. Upon receipt of receipt of a complete and sufficient petition, the City shall distribute the petition to appropriate reviewing departments and agencies. Within thirty (30) days, the City will hold a meeting of the Technical Review Committee (TRC) meeting pursuant to Chapter 101, Article 4 of the City's Land Development Regulations (LDRs). Within fifteen (15) days of the date of the TRC meeting, a report of objections, recommendations, or conditions shall be forwarded to the

Petitioner for their review and action as may then be necessary. Within ninety (90) days of receipt of notification from the TRC the Petitioner shall comply with, agree and commit in writing to' the conditions, or disagree in writing to the conditions. Failure to respond to Notification from the TRC shall result in a recommendation to deny the petition to the City Council.

(2) Review Criteria - Upon review of the application, and prior to a public hearing before City Council the chairperson of the TRC shall submit to City Council a written report recommending approval, approval with conditions or denial of the proposed right-of-way abandonment. This report shall take into consideration the following criteria:

- a. Whether the proposed abandonment will adversely affect the operations and functions of the City;

Staff Assessment: The abandonment of this right-of-way will not adversely affect the functions of the City. Crain's Subdivision of Grassy Key was platted in 1908. Apparently, Flagler Street has never functioned for its platted purpose as a parallel access road. The subdivision began to develop in the 50s and 60s and then again with more intensity in the late 80's and 90s. During that period, Flagler Street has not been improved or used as a road.

The applicant has requested the abandonment in part because there are structural encroachments extending from their property onto the Flagler Street Right-Of-Way. They include a paver block driveway and a wall and fence. The current owner purchased the property in 2019. The encroachments from the applicants property have existed on Flagler Street since 1975 (See Figure 4).

Figure 4
Visible Encroachments in 1975



There are ninety-one (91) individual properties along the oceanfront shore of Crain's Subdivision (See Figure 5). Of these properties, sixty-one (61) are developed (See Figure 6). There are twenty-one (21) similar encroachments along Flagler Street, including the contiguous properties to the east and west. Of the twenty-one (21) encroachments, fifteen (15) involve structural encroachments (walls or buildings). The remaining six (6) encroachments involve landscape or parking encroachments (semi-circular driveways integral to the developed property). There is one area where a similar abandonment was granted in the past involving 19 contiguous properties on the ocean front shore of the subdivision. In addition, many of the improvements on properties adjoining Flagler Street have zero (0) or near zero front setbacks (See Figure 7).

Based on this portion of the analysis the Council should consider undertaking an abandonment of the entire Flagler Street Right-Of-Way (ROW) except for those two area of ROW which led to open water.

Figure 5
Crain's Subdivision of Grassy Key – Oceanfront Shoreline Properties



Figure 6
Crain's Subdivision of Grassy Key – Developed Oceanfront Shoreline Properties



Figure 7
 Crain's Subdivision of Grassy Key – Developed Oceanfront Shoreline Properties
 Structural Encroachments, Landscape & Drive Circle Encroachments, and Previous Abandonments



- b. Whether the proposed abandonment will adversely affect public access to and from the water;

Staff Assessment: Public access to water is not available from this section of Flagler Street. There, are two unnamed streets in Crain's Subdivision that lead from Flagler Street to open water on the ocean. One ocean access point lays fifteen lots away from the proposed abandonment. The second ocean access point lies at the northeastern end of the shoreline properties. Therefore this proposed abandonment will not adversely affect public access to and from the water (See Figure 8).

Figure 8
Right-Of-Way Providing Ocean Access



- c. Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within 300 feet of the right-of-way to be abandoned;

Staff Assessment: Vehicular and pedestrian traffic do not currently utilize Flagler Street Ocean; thus, Criterion #3 is rendered moot.

- d. Whether the proposed abandonment will adversely affect a public view corridor;

Staff Assessment: The property has been improved with a residential compound and a concrete block front wall since the 70s. No further disruption of the view corridor is possible.

- e. Whether the proposed abandonment will deprive other property owners of access to and from their property; and

Staff Assessment: The applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.

- f. Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

Staff Assessment: The applicant submitted non-objection letter from AT&T, Comcast, FKAA, and FKEC without objection.

Provided that the owners comply with the conditions stated above the abandonment would not interfere with the utility services being provided currently or in the future.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Approve the application for the abandonment of public right-of-way;
2. Approve the application for the abandonment of public right-of-way with conditions;
or
3. Deny the application for the abandonment of public right-of-way.

Based on the above criteria, City Staff is therefore forwarding a recommendation of **approval** of this application.

Stakeholders

The Planning Department held a Technical Review Committee meeting to receive input from all affected City departments. The Public Works Department requested that the applicant grant the City a utility easement for all existing and future utilities. Currently, there are no utilities within the requested area of abandonment. The applicant has indicated they agree to provide to the City an easement for existing and future utilities.

Consistency With Adopted Plans And Policies

In addition to the above discussion in the Analysis section, this application complies with the requirements of Chapter 26 of the City of Marathon City Code and with the requirements of the City of Marathon Comprehensive Plan. This application specifically complies with

comprehensive plan policies discouraging the abandonment of rights-of-way that provide public access to water bodies.

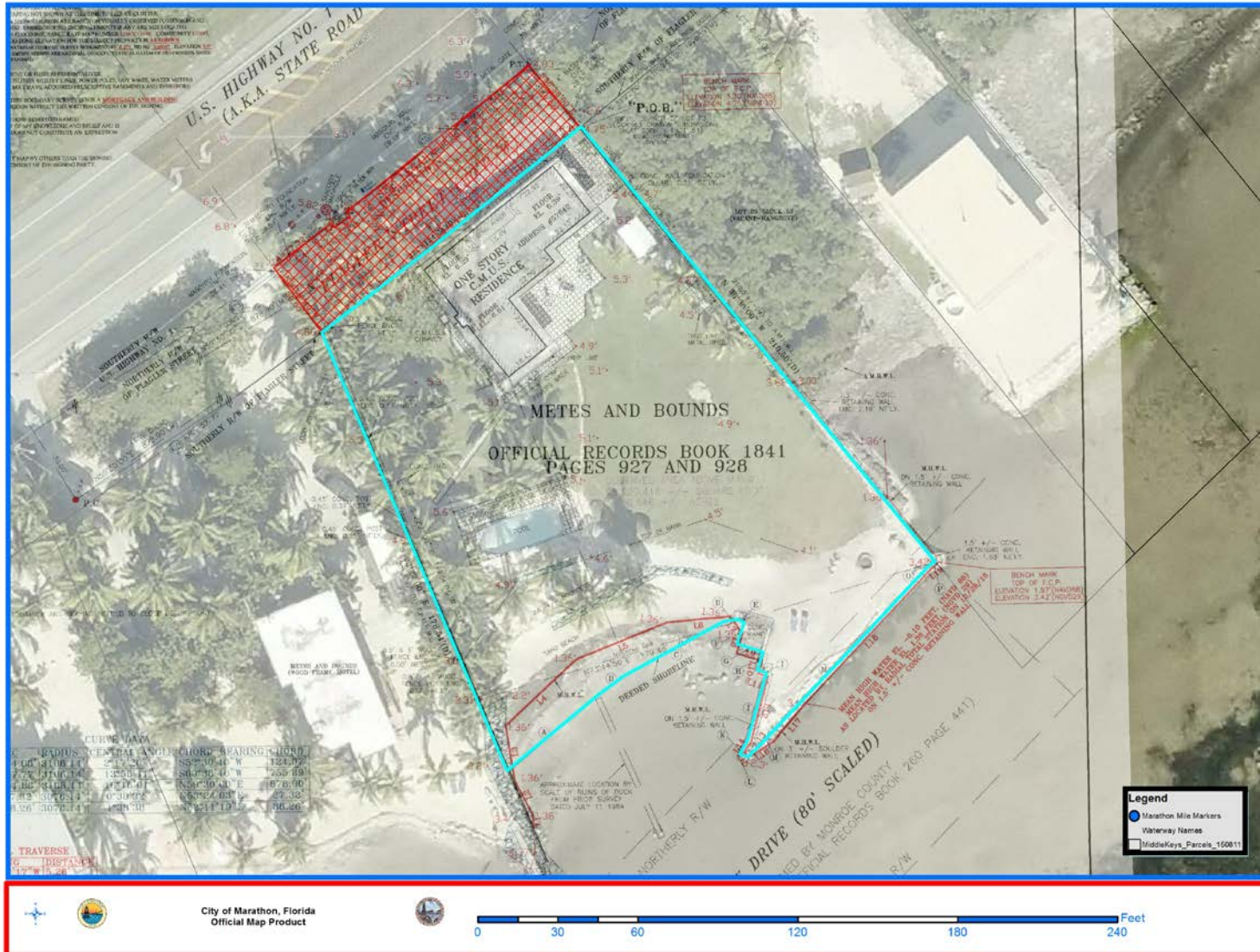
Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Flagler Street, Ocean, Crain's Subdivision, Grassy Key. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicant will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.

EXHIBIT A



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

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 10th day of September, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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

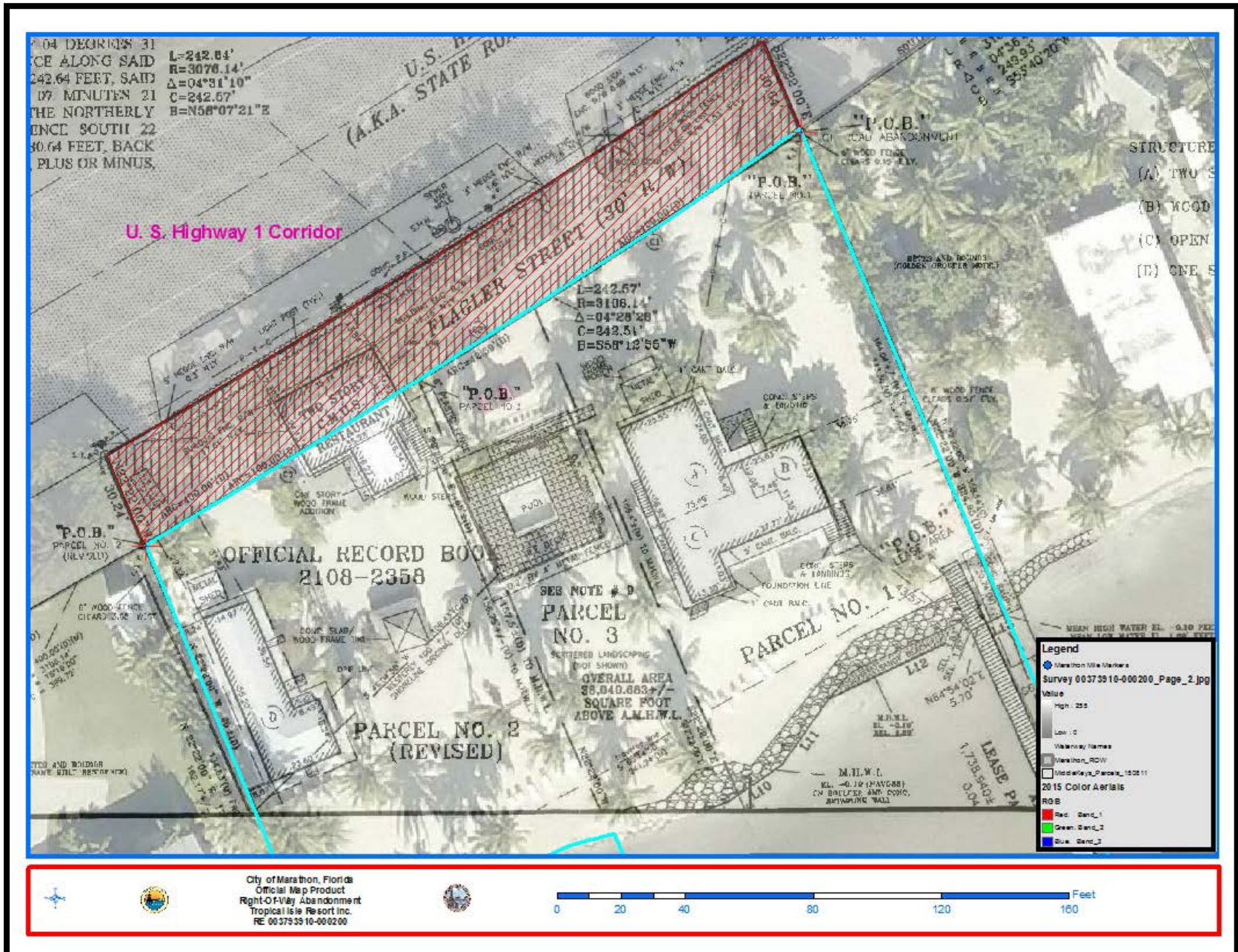


Exhibit B

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

**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 ____ day of _____, 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]

