

**AGREEMENT REGARDING CONSTRUCTION OF SIDEWALK AND VACATION
OF RIGHT-OF-WAY**

This Agreement Regarding Construction of Sidewalk and Vacation of Right-of-Way (“Agreement”) is made and entered into this _____ day of _____, 2017, by and between the **CITY OF VENICE**, Florida, a Florida municipal corporation, whose mailing address is 401 W. Venice Avenue, Venice, Florida 34285, hereinafter referred to as the “CITY,” and the **ALDEA MAR CONDOMINIUM ASSOCIATION, INC.**, a Florida not-for-profit corporation, whose mailing address is c/o Keys-Caldwell, 1162 Indian Hills Boulevard, Venice, Florida 34293, hereinafter referred to as “ALDEA MAR.”

WITNESSETH:

Whereas, Park Boulevard in the City of Venice is a public right-of-way (hereinafter, the “ROW”) of an inconsistent width, which is adjacent to property owned by the ALDEA MAR; and

Whereas, ALDEA MAR has constructed encroachments in the wider portion of the CITY’s ROW including, but not limited to a dumpster pad, parking area, and portions of buildings (the “Encroachments”) as shown on Exhibit “A” attached hereto; and

Whereas, ALDEA MAR and the CITY mutually desire to have a sidewalk constructed in the ROW on the west side of Park Boulevard, as show on Exhibit “B” (hereinafter, the “Sidewalk”); and

Whereas, the CITY has determined that having the ROW a consistent, narrower width would not be a detriment to the CITY subject to the Sidewalk being constructed; and

Whereas, ALDEA MAR has expressed its willingness to construct the Sidewalk at its expense in exchange for the CITY vacating a portion of the ROW such that the Encroachments will no longer encroach into the ROW; and

Whereas, the CITY and ALDEA MAR wish to enter into this Agreement in order to set forth their respective duties and responsibilities.

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the parties do hereby agree as follows:

- I. The recitals above are confirmed as true and correct and hereby made a part of this Agreement.

II. ALDEA MAR will be responsible for the following:

- A. Obtaining all necessary approvals and constructing the Sidewalk at its sole cost and expense as shown on Exhibit "B." In addition, ALDEA MAR shall upgrade its drainage system and driveway, including, but not limited to, the installation of culvert pipes, as shown on Exhibit "B." The Sidewalk and any other improvements contemplated herein shall be constructed by ALDEA MAR in accordance with all applicable CITY standards and are subject to the approval and acceptance of the CITY.
- B. Applying to the CITY to vacate a portion of the ROW, approximately 50' x 500', as shown on Exhibit "A" attached hereto. Any costs or fees associated with vacating this portion of the ROW in accordance with the CITY's standard process for right-of-way vacation shall be the sole responsibility of ALDEA MAR.
- C. Upon Vacation of the portion of the ROW as provided for in Section III.B. below, granting an easement to the CITY for any portion of the Sidewalk that is no longer within the public right-of-way.

III. The CITY will be responsible for the following:

- A. Coordinating with ALDEA MAR to facilitate any permits or approvals necessary for the construction of the Sidewalk and any other improvements to be constructed in the ROW as set forth in Section II.A.
- B. Upon ALDEA MAR's completion of the Sidewalk and other improvements as provided for in Section II.A., the CITY's approval and acceptance of same, and the ALDEA MAR's filing of a complete application to vacate the portion of the ROW as provided for in Section II.B. herein, the CITY shall timely process said application through the CITY's standard process for right-of-way vacation.

IV. ALDEA MAR shall procure and maintain, during the life of this Agreement, the insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY, placed with insurance carriers approved and licensed by the Florida Office of Insurance Regulation, and meet a minimum financial AM Best and Company rating of no less than A. No changes are to be made to these specifications without prior written specific approval by the CITY.

- A. Commercial General Liability insurance providing coverage for premises and operations including but not limited to bodily injury, property damage, contractual,

products and completed operations, collapse, underground and explosion, owner's and contractor's protection, contractual and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate.

B. Property insurance for all buildings and improvements on said property and for all risks of loss included in Fire and Common "Special Form" perils with limits no less than current replacement value of buildings and improvements. Coverage must also include windstorm and flood with limits no less than current replacement value of buildings and improvements. ALDEA MAR is responsible for full replacement cost, including any deductibles.

All policies required by this Agreement, unless specific approval is given by the CITY, are to be written on an occurrence basis and shall name the CITY, its Elected Officials, Officers, Agents, and Employees as additional insured as their interest may appear under this Agreement. Insurer(s) shall agree to waive all rights of subrogation against the CITY, its Elected Officials, Officers, Agents, and Employees.

Each insurance policy required by this Agreement shall:

1. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability; and
2. Be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the CITY'S Risk Manager.

The CITY shall retain the right to review, at any time, coverage form/policy, and amount of insurance.

The procuring of required policies of insurance shall not be construed to limit ALDEA MAR's liability nor to fulfill the indemnification provisions and requirements of this Agreement.

ALDEA MAR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not the CITY is an insured under the policy. Deductible levels should be acceptable to the CITY.

Certificates of Insurance evidencing Occurrence form coverage and conditions to this Agreement are to be furnished to the CITY'S Risk Manager, 401 West Venice

Avenue, Venice, FL 34285, ten (10) business days prior to commencement of any work under this Agreement and a minimum of thirty (30) calendar days prior to expiration of the insurance policy.

Notices of Claims associated with this Agreement shall be provided to ALDEA MAR's insurance company and the CITY's Risk Manager, as soon as practicable after notice to ALDEA MAR.

- V. ALDEA MAR is, and shall be, in the performance of all activities and work under this Agreement, an independent contractor, and not an employee, agent or servant of the CITY. ALDEA MAR has no authority or power to bind the CITY in any other agreement, promise or representation.
- VI. The CITY Engineer shall be the CITY's representative and the President of the ALDEA MAR shall be ALDEA MAR's representative regarding administration of this Agreement.
- VII. ALDEA MAR shall be responsible for any and all damages to public property, including any improvements, caused by any activities performed by ALDEA MAR, its agents, contractors, servants, employees, volunteers, licensees or invitees related to activities and work performed under this Agreement. ALDEA MAR further agrees to indemnify and hold harmless the CITY from all claims, loss, damage and expense arising from any act or omission of ALDEA MAR, its agents, contractors, servants, employees, volunteers, licensees or invitees related to activities and work performed under this Agreement.
- VIII. The laws of the State of Florida shall govern all provisions of this Agreement. Jurisdiction and venue for any dispute arising under this Agreement shall be proper in a court of competent jurisdiction located in Sarasota County, Florida. The prevailing party in any such action shall be entitled to collect from the other party its reasonable attorneys' fees, including paralegal fees and appellate attorneys' fees, and all costs incurred in prosecuting or defending any such action.
- IX. This Agreement shall not be modified or amended except in writing with the same degree of formality with which this Agreement is executed.
- X. Termination of Agreement. In the event either party defaults or otherwise violates any of the terms of this Agreement, the non-defaulting party shall give the defaulting party written notice of the default, and that such default shall be

corrected within ten (10) business days of the date of the written notice. In the event the defaulting party fails to correct the condition(s) of the default within the aforementioned timeframe or commence and diligently pursue cure, the non-defaulting party shall have all legal remedies available to it, including but not limited to, termination of this Agreement for cause.

- XI. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.
- XII. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- XIII. Pursuant to applicable Florida law, ALDEA MAR's records associated with this Agreement may be subject to Florida's public records laws, Section 119.01, Florida Statutes, et seq, as amended from time to time. ALDEA MAR shall comply with all public records obligations set forth in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such public records to the CITY at the conclusion of the Agreement.
- XIV. This Agreement sets forth the entire agreement between the parties and that there are no promises or understandings other than those stated herein.
- XV. This Agreement shall be effective as of the date of execution by both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

CITY OF VENICE, FLORIDA

Mayor

Date

Attest:

City Clerk

Approved as to form and correctness:

David P. Persson, City Attorney

ALDEA MAR CONDOMINIUM
ASSOCIATION, INC.

John E. Hartnett

President

Date *4/24/2017*

In the presence of

[Signature] *4/24/2017*

EXHIBIT A

Proposed ROW
Vacation Location

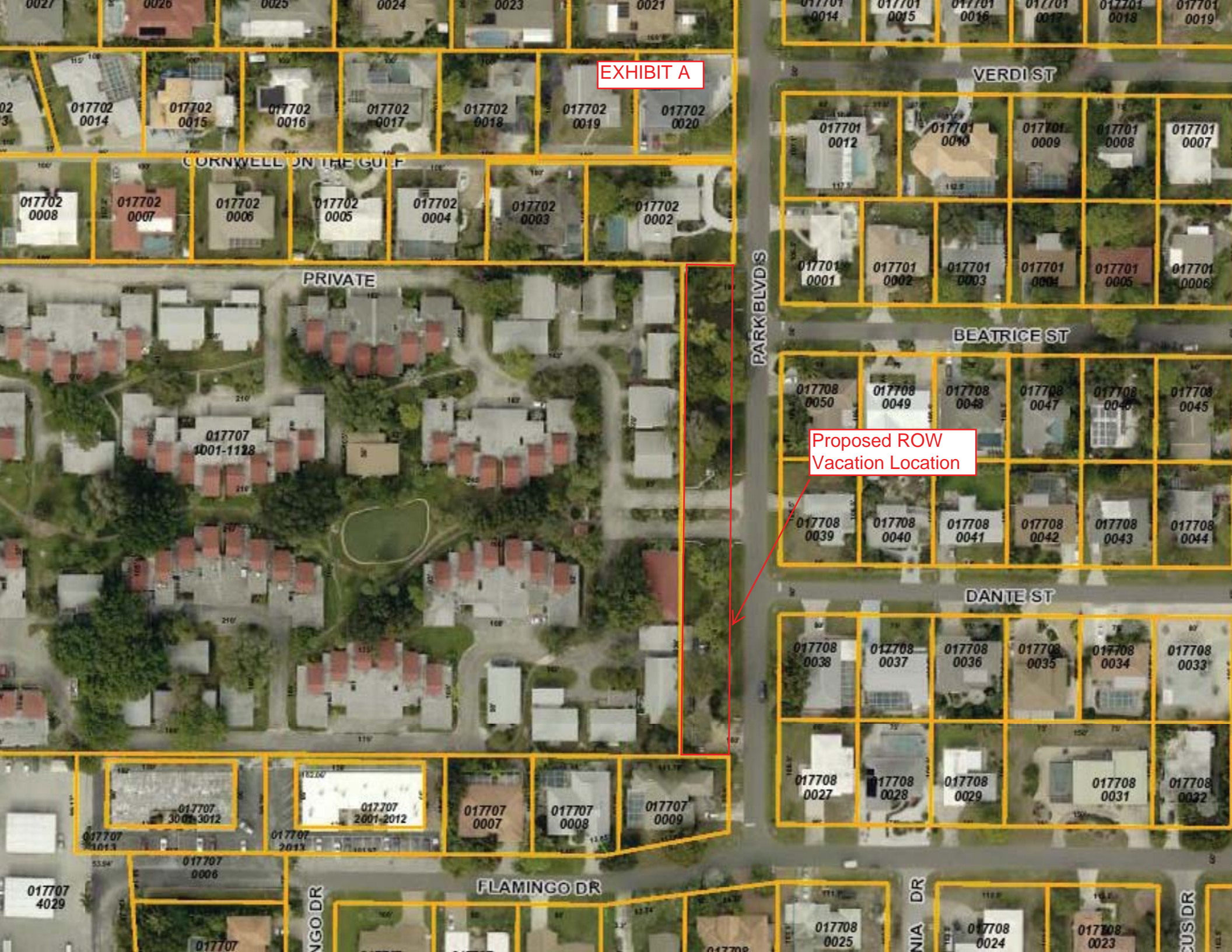
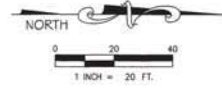


EXHIBIT B

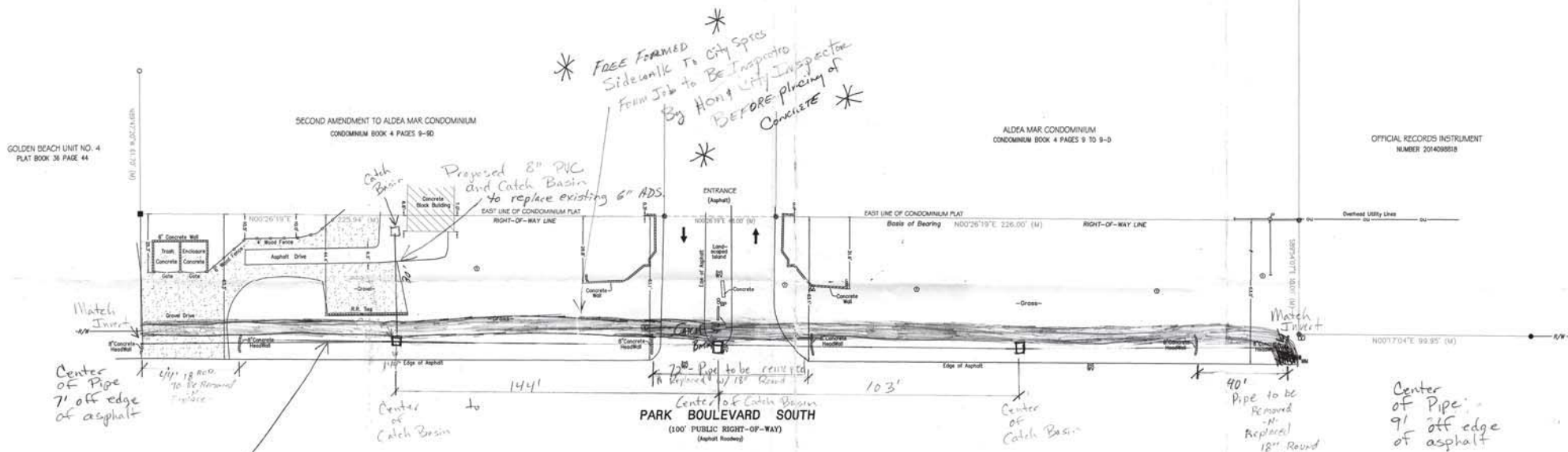


GOLDEN BEACH UNIT NO. 4
PLAT BOOK 38 PAGE 44

SECOND AMENDMENT TO ALDEA MAR CONDOMINIUM
CONDOMINIUM BOOK 4 PAGES 9-9D

ALDEA MAR CONDOMINIUM
CONDOMINIUM BOOK 4 PAGES 9 TO 9-D

OFFICIAL RECORDS INSTRUMENT
NUMBER 2014098818



Center of Pipe
7' off edge
of asphalt

Proposed run of
18" RCP Approx. 500'

3 Catch Basins
(Grate Elevations to be
no less than .25' and
no more than .150 below
edge of asphalt)
Inverts to be matched on
north and south ends

*All measurements are approximate

* FREE FORMED
Sidewalk To City Specs
From Job to Be Installed
By Home City Inspector
BEFORE placing of
CONCRETE *

* Approaches + Sidewalks
To BE To City
Specs.

Center of Pipe
9' off edge
of asphalt

SURVEYOR'S NOTES

1. THIS PLAT REPRESENTS A BOUNDARY SURVEY SHOWING VISIBLE IMPROVEMENTS OF THE DESCRIPTION INDICATED HEREON.
2. NO IMPROVEMENTS, OTHER THAN THOSE NOTED, ARE SHOWN ON THIS PLAT. IMPROVEMENTS SUCH AS, BUT NOT LIMITED TO, SUBSURFACE UTILITIES, FOUNDATIONS, LANDSCAPE FEATURES, ETC. ARE NOT SHOWN UNLESS OTHERWISE NOTED.
3. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. NEITHER BRIGHAM/ALLEN LAND SURVEYING NOR THIS SURVEYOR HAS PERFORMED A TITLE SEARCH TO DETERMINE ANY OWNERSHIP OR ENCUMBRANCES OF RECORD. THIS SURVEY IS SUBJECT TO ANY ENCUMBRANCES, RIGHTS OF WAY AND OTHER MATTERS OF RECORD, WHICH ARE NOT SHOWN AND ANY INFORMATION NOT SUPPLIED TO ME TO PERFECT THIS SURVEY.
4. GOVERNMENTAL LANDS, JURISDICTIONAL LANDS OR LANDS OF SPECIAL ENVIRONMENTAL CONCERN (SUCH AS WETLANDS SURFACE WATER PROTECTION AREA, LISTED SPECIES ETC.) ARE NOT SHOWN UNLESS OTHERWISE NOTED.
5. THIS SURVEY IS NOT INTENDED TO BE PROOF OF OWNERSHIP AND IS NOT A GUARANTEE OR WARRANTY OF OWNERSHIP OF ANY KIND, AND SURVEYOR ACCEPTS NO LIABILITY FOR ANY COURTS OR DAMAGES ARISING BY THE OMISSION, ERROR OF, OR LOSS OF OWNERSHIP OF ANY OR ALL OF THE LANDS SHOWN AND DESCRIBED ON THIS SURVEY.
6. BEARINGS SHOWN HEREON ARE ASSUMED AND REFER TO THE BEST RIGHT-OF-WAY LINE OF PARK BOULEVARD AS BEING N007°19'10"E BETWEEN THE TWO MONUMENTS DENOTING SAID LINE, AS SHOWN HEREON.

- ABBREVIATIONS:**
- DT = POINTED DISTANCE BEARING OR INFORMATION
 - M = MEASURED DISTANCE, BEARING OR ANGLE
 - C/L = CURVE NUMBER (VECTOR TO CURVE TABLE)
 - P.L.S. = PROFESSIONAL LAND SURVEYOR
 - L.B. = LICENSED BUSINESS
 - P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
 - P.C.P. = PERMANENT CONTROL POINT
 - P.R.M. = PERMANENT REFERENCE MONUMENT
 - P.M. = N/A, MANUFACTURED BY PARKER-HALON
 - R/W = RIGHT-OF-WAY
 - C/L = CENTER LINE
 - P/L = PROPERTY LINE

- LEGEND:**
- = FOUND CAP STAMPED 2909 OF 5/8" IRON ROD
 - = FOUND 1/2" IRON PIPE
 - ⊙ = FOUND 5/8" IRON ROD
 - ⊖ = SET CAP STAMPED PSM 8822 WITH 1/2" IRON ROD
 - = FOUND CONCRETE MONUMENT
 - ⊕ = TELECOMMUNICATION (PHONE, CABLE ECT.)
 - ⊖ = WATER VALVE
 - ⊖ = WELL
 - ⊖ = BACKFLOW PREVENTER
 - ⊖ = WATER METER
 - ⊖ = VERIZON UTILITY
 - L = GUY
 - ⊖ = POWER POLE

SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT A SURVEY WAS MADE THIS DAY OF THE PROPERTY AS DESCRIBED AND SHOWN HEREON, AND THAT THIS SURVEY AND SKETCH ARE ACCURATE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF, AND THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 32-17, FLORIDA ADMINISTRATIVE CODE, AND PURSUANT TO SECTION 472.07, FLORIDA STATUTES.

BY: *[Signature]*
Michael S. Allen
Registered Surveyor and Mapper No. 8822
State of Florida

DATE OF SURVEY: 01/11/16
UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS ORIGINAL SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

A SURVEY OF: PARK BOULEVARD SOUTH WEST RIGHT-OF-WAY
Prepared for: Keys-Caldwell, Inc.
Certified to: Keys-Caldwell, Inc.
Sketch No.: 545685 Scale: 1"=20'
Field Book: 16 Page: 18
Drawn By: PJA Checked By: MPA

Brigham/Allen Land Surveying
L.B. Number 7898

807 U.S. Highway 41 Bypass South
Suite E - Venice, Florida 34285
Phone: (941) 493-4430
Fax: (800) 447-7402
Email: brighamallensurveying@gmail.com

