

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-002**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, ACCEPTING AND APPROVING A GRANT OF
UTILITY EASEMENT BY THE GUIDANCE CLINIC OF THE MIDDLE
KEYS; AND AUTHORIZING IT'S RECORDING IN THE PUBLIC
RECORDS OF MONROE COUNTY, FLORIDA**

WHEREAS, the Guidance Clinic of the Middle Keys (the "Grantor") is the owner of property located within the City of Marathon, Florida (the "City"), more fully described on the Grant of Easement and Right of Use Agreement, a copy of which is attached hereto and made a part hereof (the "Grantor's Property"); and

WHEREAS, Pursuant to the Plat of CIANCETTE COMMERCIAL SUBDIVISION, recorded in Plat Book "A", at Pages 1137-1138, of the Public Records of Monroe County, Florida (the "Plat"), the south fifty (50) foot portion of the Grantor's Property was reserved for roadway, utility and stormwater management purposes. The Plat was recorded prior to the incorporation of the City and Monroe County, as the City's predecessor in interest under the Plat, did not enact the approving resolutions necessary to accept the dedication of the south 50-foot portion of the Grantor's Property for the purposes reserved on the Plat.

WHEREAS, the City has agreed to waive its right to enact the approving resolutions which would effect the dedication of the south 50-foot portion of the Grantor's Property for the purposes reserved on the Plat, in consideration of the grant of a fifteen (15)-foot utility easement over, across, under and through that portion of the Grantor's Property more fully described on the Grant of Easement and Right of Use Agreement, a copy of which is attached hereto and made a part hereof.

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

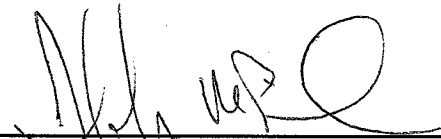
Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. The Grant of Easement and Right of Use Agreement, a copy of which is attached as Exhibit "1," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 11th day of January, 2005.


THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Cindy L. Ecklund,
City Clerk

(City Seal)

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



City Attorney

This Instrument Was Prepared By:

Patricia K. Green, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

Record and Return To:
Cindy L. Ecklund, City Clerk
The City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

GRANT OF EASEMENT AND RIGHT OF USE AGREEMENT
(Utility Easement)

This Grant of Easement and Right of Use Agreement (the "Agreement") is made and entered into as of the ___ day of _____, 2005, by and between GUIDANCE CLINIC OF THE MIDDLE KEYS, INC., a Florida corporation ("Grantor") having an address at _____, Marathon, FL _____, in favor of CITY OF MARATHON, a municipal corporation of the State of Florida ("Grantee"), having an address at 10045-055 Overseas Highway, Marathon, FL 33050.

RECITALS

A. Grantor is the owner of the property legally described on Exhibit "A" attached hereto and made a part hereof (the "Grantor's Property").

B. Pursuant to the Plat of CIANCETTE COMMERCIAL SUBDIVISION, recorded in Plat Book "A", at Pages 1137-1138, of the Public Records of Monroe County, Florida (the "Plat"), the south fifty (50) foot portion of the Grantor's Property was reserved for roadway, utility and stormwater management purposes. The Plat was recorded prior to the incorporation of the Grantee as a municipality. Monroe County, a political subdivision of the State of Florida (the "County"), as the Grantee's predecessor in interest under the Plat, did not enact the approving resolutions necessary to accept the dedication of the south 50-foot portion of the Grantor's Property for the purposes reserved on the Plat.

C. The Grantee has agreed to waive its right to enact the approving resolutions which would effect the dedication of the south 50-foot portion of the Grantor's Property for the purposes reserved on the Plat, in consideration of the grant of a fifteen (15)-foot utility easement over, across and through that portion of the Grantor's Property which is legally described on Exhibit "B" attached hereto and made a part hereof (the "Easement Area").

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.

2. Easement. Grantor hereby grants to Grantee, for the use and benefit of Grantee and its agents, contractors, successors and assigns, a nonexclusive easement for utility purposes only, including but not limited to electrical, wastewater and stormwater utilities, over, across, under and through the Easement Area. As used herein, "utility purposes" shall mean installation, maintenance, repair, replacement and any other matters and things that are lawful and that may be necessary or desirable in connection with any utility service that is provided to or by Grantee.

3. Maintenance. Grantor agrees, at its expense to maintain the surface of the Easement Area for the joint use thereof by the Grantor and Grantee in accordance with all applicable governmental requirements. Notwithstanding the foregoing, Grantee shall be responsible for any extraordinary maintenance or repair associated with damage or disturbance of the Easement Area that is occasioned by the act of Grantee, its contractors, agents or employees. Grantor shall be responsible for the payment of ad valorem real estate taxes on the Easement Area.

4. Relinquishment of Reservation in Plat. Grantee hereby relinquishes all rights accruing in Grantee's favor from the reservation or dedication of the south fifty 50-foot portion of the Grantor's Property for the roadway, utility and stormwater management purposes as set forth on the Plat.

5. Successors and Assigns. This Agreement shall bind, and the benefit thereof shall inure to, the respective successors and assigns of the parties hereto.

6. No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of the Easement Area to the general public or for the benefit of the general public whatsoever.

7. Enforcement. In the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms, covenants and conditions of this Agreement, the prevailing party in such litigation shall recover from the other party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

8. Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida.

9. Interpretation. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

11. Notices. All notices, demands, requests or other communications required or permitted to be given hereunder shall be deemed delivered and received upon actual receipt or refusal to receive same, and shall be made by United States certified or registered mail, return receipt requested or by hand delivery, and shall be addressed to the respective parties at the addresses set forth in the preamble to this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating in any manner to the subject matter of this Agreement. No prior agreement or understanding pertaining to same shall be valid or of any force or effect, and the covenants and agreements herein contained cannot be altered, changed or supplemented except in writing and signed by the parties hereto.

13. Severability. If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Agreement shall not be affected thereby and shall be legal, valid and enforceable.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first set forth above.

GRANTOR:

GUIDANCE CLINIC OF THE MIDDLE KEYS, INC., a Florida corporation

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MONROE)

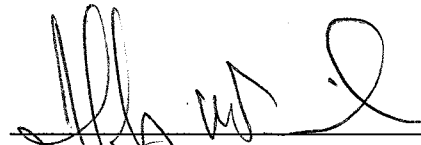
The foregoing instrument was acknowledged before me this _____ day of _____, 2005 by _____ as _____ of GUIDANCE CLINIC OF THE MIDDLE KEYS, INC., a Florida corporation.

He is: Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

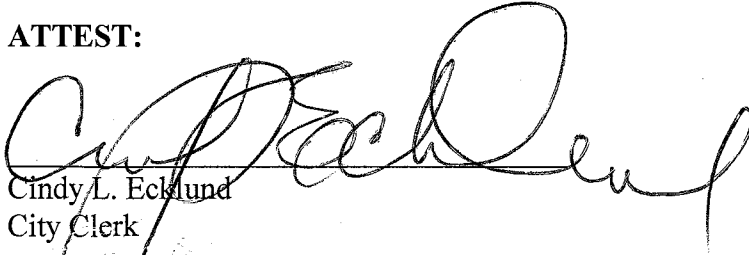
Print or Stamp Name:
Notary Public, State of Florida
Commission No.:
My Commission Expires:

THE CITY OF MARATHON, FLORIDA




Jeffrey M. Pinkus, Mayor

ATTEST:



Cindy L. Ecklund
City Clerk
(City Seal)

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



City Attorney

This Instrument Was Prepared By:

Patricia K. Green, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

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C. The Grantee has agreed to waive its right to enact the approving resolutions which would effect the dedication of the south 50-foot portion of the Grantor's Property for the purposes reserved on the Plat, in consideration of the grant of a fifteen (15)-foot utility easement over, across and through that portion of the Grantor's Property which is legally described on Exhibit "B" attached hereto and made a part hereof (the "Easement Area").

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2. Easement. Grantor hereby grants to Grantee, for the use and benefit of Grantee and its agents, contractors, successors and assigns, a nonexclusive easement for utility purposes only, including but not limited to electrical, wastewater and stormwater utilities, over, across, under and through the Easement Area. As used herein, "utility purposes" shall mean installation, maintenance, repair, replacement and any other matters and things that are lawful and that may be necessary or desirable in connection with any utility service that is provided to or by Grantee.

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6. No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of the Easement Area to the general public or for the benefit of the general public whatsoever.

7. Enforcement. In the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms, covenants and conditions of this Agreement, the prevailing party in such litigation shall recover from the other party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

8. Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first set forth above.

GRANTOR:

GUIDANCE CLINIC OF THE MIDDLE KEYS, INC., a Florida corporation

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF MONROE)

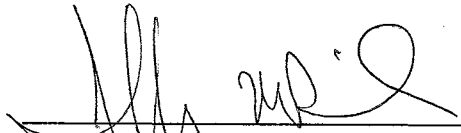
The foregoing instrument was acknowledged before me this _____ day of _____, 2005 by _____ as _____ of GUIDANCE CLINIC OF THE MIDDLE KEYS, INC., a Florida corporation.

He is: Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____


Print or Stamp Name:
Notary Public, State of Florida
Commission No.:
My Commission Expires:

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
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City Attorney