

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2011-45**

**A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING WITH CONDITIONS THE REQUEST BY DIACO FARMERS GROUP, LLC, TO ABANDON A 120 FOOT PORTION OF PUBLIC RIGHT-OF-WAY LOCATED ON FLAGLER STREET CONTINGUOUS WITH PROPERTIES HAVING REAL ESTATE NOS. 00373650-000000 AND 0037366-000000; A PART OF CRAINS SUBDIVISION OF GRASSY KEY, GRASSY KEY; NEAREST MILE MARKER 58, MONROE COUNTY, FLORIDA, AS LEGALLY DESCRIBED IN EXHIBIT "A;" AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, there presently exists public right-of-way (R-O-W) within the City of Marathon, Florida, known as Flagler Street, within the bounds of Crain's Subdivision of Grassy Key, Grassy Key, nearest mile marker 58; and

**WHEREAS**, DIACO Farmer's Group, LLC is the owner of property nearest mile marker 58 that is adjacent to the R-O-W (the "Applicant") and requested that the City of Marathon, Florida (the "City"), in accordance with Section 26-1 of the City Code, abandon a 120 foot portion of the R-O-W contiguous with its property; and

**WHEREAS**, the City Council finds that the R-O-W is not needed and may be abandoned without adversely affecting the public interest; and

**WHEREAS**, a public hearing to vacate the R-O-W was held on June 14, 2011, and the City has determined that no federal, state or county rights-of-way are involved or affected, that the Applicant meets all of the requirements of the City Code for the abandonment of the R-O-W, and that granting the request for abandonment of the R-O-W, subject to conditions, will not be detrimental to the public health, safety and welfare of the City's residents and property owners.

**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.

**Section 2.** Pursuant to the request by the Applicant to vacate the R-O-W contiguous to its property, the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public to the R-O-W, as legally described on Exhibit "A", subject to the following condition:

- a. The Applicant shall convey and record a perpetual non-exclusive utility easement to the City and all utility providers on and under all of the abandoned R-

O-W. The form and content of the easement shall be approved by the City Attorney before recording.

**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 and the aforementioned easement 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 or the abandonment shall be null and void with no further action required by the City.

**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 R-O-Way not vacated by this Resolution.

**Section 5.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>TH</sup> DAY OF JUNE, 2011.**

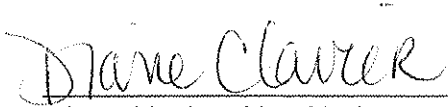
**THE CITY OF MARATHON, FLORIDA**



**Ginger Snead, Mayor**

AYES: Cinque, Keating, Ramsay, Worthington, Snead  
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:**



City Attorney

THIS INSTRUMENT WAS PREPARED BY, RECORD AND RETURN TO:

Robert E. Gallagher, Jr., Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.,  
150 West Flagler St., Suite 2200  
Miami, FL 33130

Doc# 1855105 10/18/2011 2:36PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1855105  
Bk# 2538 Pg# 1369

**DECLARATION OF NON-EXCLUSIVE IRREVOCABLE EASEMENT**

[Flagler Street]

**THE PARTIES**

This Declaration of a Non-Exclusive Irrevocable Easement (the "Declaration") is made and entered into as of August <sup>Set</sup> 4, 2011 by and between DIACO Farmer's Group, LLC, a Florida limited liability company, its successors and assigns (the "Grantor"), having an address of 12765 S.W. 99<sup>th</sup> Court, Miami, Florida 33176 and the City of Marathon, a Florida municipal corporation, its successors and assigns, having an address of 9805 Overseas Highway Marathon, Florida 33050 (the "Grantee").

**RECITALS**

A. WHEREAS, the Grantor obtained from the Grantee a vacation of a portion of Flagler Street located within the City of Marathon, all as specifically set forth in City Resolution 2011-45 (the "Resolution"); and

B. WHEREAS, the Resolution requires the Grantor to grant a perpetual utility easement to the Grantee and all utility providers in regard to the "Easement Parcel" (as hereinafter defined); and

C. WHEREAS, the Grantor is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a material part hereof which is referred to as Easement Parcel (the "Easement Parcel"); and

D. WHEREAS, the Grantor acknowledges the need for the Grantee to have the use of the Easement Parcel as a result of the Grantee having pursuant to the Resolution vacated the right-of-way located within the Easement Parcel by granting unto the Grantee and those companies or organizations providing utility services within the City of Marathon (the "Utility Providers") the right to install, construct, maintain, repair, remove utility services as more specifically set forth in this Declaration and for such other purposes as may reasonably be required by the Grantee and Utility Providers for the Easement Parcel.

CONSIDERATION

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

GRANT, TERMS, AGREEMENTS, COVENANTS AND CONDITIONS

1. Grant of Easement. Grantor hereby grants and conveys to Grantee and its successors and assigns and unto the Grantee's servants, agents, employees, guests, licensees, and to the Utility Providers, including but not by limitation, water, sanitary sewer, storm sewer, telephone, cable and gas, a perpetual non-exclusive easement over, across and under the Easement Parcel with full right of ingress and egress thereto. The easement herein granted is an easement appurtenant and is for the purpose of installing, constructing, maintaining, repairing, removing and replacing, as necessary, any and all utility services, including but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations and junction boxes for sewer, water, electric, telephone, gas and cable or any other communication service (the "Utility Services"). Grantee and the Utility Providers shall bear all costs of installation, maintenance, repair and replacement of the referenced items, unless the requirement to maintain, repair or replacement resulted from or is related to the Grantor's actions.

2. Grantor's Responsibilities. Grantor shall provide the Easement Parcel to the Grantee free and clear of any obstruction (other than currently existing encroachments as shown on the survey of J.P. Grimes attached as Exhibit A) and Grantor shall not construct, place or allow the placing or construction of any obstruction (other than reconstruction of existing improvements in the event of casualty loss within the same footprint and within the same height as presently exist) which will interfere with the Grantee's use of the Easement Parcel as granted hereunder. Other than Grantee's and the Utility Providers' obligation to bear the costs of installation, repair and maintain the items, as set forth and as limited in Section 1 above, the Grantor is solely responsible for all other expenses arising from or related to the Easement Parcel.

3. No Public Dedication. Nothing contained in this Declaration shall, in any way, be deemed or constitute a gift of or dedication of any portion of the Easement Parcel to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this grant of easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

4. Enforcement. The terms and conditions of this Declaration shall run with the Easement Parcel and shall inure to the benefit of and be enforceable by the Grantee and the Grantor, their respective legal representatives, successors and assigns, and the Grantee and the Grantor, each shall have a right of action to enforce by proceedings at law or in equity all conditions and covenants imposed by the provisions of this Declaration, or any amendment thereto, including the right to prevent the violation of such conditions and covenants and the right to recover actual damages for such violation (but not consequential or punitive damages).

5. Liens. Grantee shall not permit any construction lien or similar lien arising by reason of Grantee's work relating to the Easement Parcel to remain an encumbrance against the Easement Parcel. Grantee may bond over and contest the validity of any such mechanics lien in lieu of payment thereof.

6. No Waiver. Failure by either party to enforce any covenant, condition or restriction contained in this Declaration in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other covenant, condition or restriction.

7. Severability. Invalidation of any one or a portion of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

8. Attorney's Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

9. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly delivered when directed to the addressee as follows:

If to Grantee:           City of Marathon  
                                  9805 Overseas Highway  
                                  Marathon, Florida 33050  
                                  Attention: City Manager

With a copy to  
Grantee's Attorney: Stearns Weaver Miller Weissler  
                                  Alhadeff & Sitterson, P.A.  
                                  150 West Flagler Street, Ste. 2200  
                                  Miami, Florida 33130  
                                  Attention: John Herin, Esquire

If to Grantor:           DIACO Farmer's Group, LLC  
                                  12765 S.W. 99<sup>th</sup> Court  
                                  Miami, Florida 33176  
                                  Attn: Juan A. Colao, its Managing Member

With a copy to  
Grantor's Attorney: Thomas D. Wright, Esq.  
                                  9711 Overseas Highway  
                                  Marathon, Florida 33050-0309

Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand delivered, or (ii) sent by Federal Express or a comparable overnight mail service. Notice shall be deemed to have been given

upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

10. Authority and Capacity of Parties. The execution and delivery of this Declaration by the Grantor and Grantee are within the Grantor and Grantee's respective capacity and all requisite action has been taken to make this Declaration valid and binding on the Grantor and Grantee in accordance with its terms.

11. Captions. Captions used in this Declaration are for information purposes only and do not alter, modify or add to the terms of this Declaration.

12. Governing Law. This Declaration will be governed and interpreted pursuant to the laws of the State of Florida. Grantor and Grantee, their successors and assigns, shall perform all of their respective obligations under this Declaration in compliance with all applicable laws.

13. Modification/Entire Agreement. This Declaration may be modified only in a writing executed by the parties to this Declaration or their respective successors or assigns. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Waiver of Jury Trial. Grantor and Grantee hereby knowingly, voluntarily and intentionally, waive trial by jury in any action brought by one against the other in connection with any matter arising out of or in any way connected with this easement agreement. This waiver shall apply to any original claim, counterclaim, cross claim, or other claim of any kind asserted by either party in any such action. Neither party nor any representative of either party, including counsel, has represented to the other that it would not seek to enforce this waiver of right to jury trial in any such action. The parties acknowledge that the provisions of this section are a material inducement to their entering into this easement agreement.

**SIGNATURES APPEAR ON FOLLOWING PAGES**

[Multiple signature pages for Grantor; total of 5 separate signature pages.]

Witness as to Juan A. Colao :

[Signature]

Marta J. Putin

Print Name

Audrey Hernandez

Audrey Hernandez

Print Name

As to the Grantor

DIACO Farmer's Group, LLC  
A Florida limited liability company


[Signature] *MANAGING MEMBER*  
By: JUAN A. COLAO  
Its: Manager

Doc# 1855105  
Bk# 2538 Pg# 1373

STATE OF FLORIDA     )  
                                          )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 14 day of ~~August~~ <sup>Sept</sup>, 2011 by JUAN A. COLAO, as Manager of DIACO Farmer's Group, LLC, a Florida limited liability company, on behalf of the company, who is either personally known to me or produced a \_\_\_\_\_ as identification.

[Signature]  
Notary Public  
State of Florida at Large  
My Commission Expires:

 VIVIAN CHOU  
MY COMMISSION # DD 881098  
Expires August 16, 2013  
Bonded Thru Budget Notary Services

Witness to MARIO OBREGON:

[Signature]  
Marta J. Peltis

Print Name

Audrey Hernandez

Audrey Hernandez

Print Name

As to the Grantor

DIACO Farmer's Group, LLC  
A Florida limited liability company

[Signature] MANAGING MEMBER

By: MARIO OBREGON

Its: Manager

Doc# 1855105  
Bk# 2538 Pg# 1374

STATE OF FLORIDA )  
                                  )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Sept, 2011 by MARIO OBREGON, as Manager of DIACO Farmer's Group, LLC, a Florida limited liability company, on behalf of the company, who is either personally known to me or produced a \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

 VIVIAN CHOU  
MY COMMISSION # DD 881098  
EXPIRES: August 16, 2013  
Bonded Thru Budget Notary Services



Witness as to Alejandro Lopez :

[Signature]  
\_\_\_\_\_  
Martha J. Pulin  
Print Name

[Signature]  
\_\_\_\_\_  
Audrey Hernandez  
Print Name

As to the Grantor

DIACO Farmer's Group, LLC  
A Florida limited liability company


[Signature]  
\_\_\_\_\_  
By: ALEJANDRO LOPEZ  
Its: Manager MANAGING MEMBER

Doc# 1855105  
Bk# 2538 Pg# 1375

STATE OF FLORIDA        )  
                                          )  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Sept, 2011 by ALEJANDRO LOPEZ, as Manager of DIACO Farmer's Group, LLC, a Florida limited liability company, on behalf of the company, who is either personally known to me or produced a \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

 VIVIAN CHOU  
MY COMMISSION # DD 881098  
EXPIRES: August 16, 2013  
Bonded Thru Budget Notary Services

Witness as to Richard H. Gonzalez

[Signature]  
Scott J. Putin

Print Name

Audrey Hernandez  
Audrey Hernandez

Print Name

As to the Grantor

DIACO Farmer's Group, LLC  
A Florida limited liability company

By: RICHARD GONZALEZ  
Its: Manager


[Signature] MANAGING MEMBER

Doc# 1855105  
Bk# 2538 Pg# 1376

STATE OF FLORIDA     )  
                                          )  
COUNTY OF MIAMI-DAD )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August, 2011 by RICHARD GONZALEZ, as Manager of DIACO Farmer's Group, LLC, a Florida limited liability company, on behalf of the company, who is either personally known to me or produced a \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

 VIVIAN CHOU  
MY COMMISSION # DD 881098  
EXPIRES: August 16, 2013  
Bonded Thru Budget Notary Services

Witness as to Guillermo Helbig:

[Signature]  
\_\_\_\_\_  
María E. Petis  
\_\_\_\_\_  
Print Name

[Signature]  
\_\_\_\_\_  
Audrey Hernandez  
\_\_\_\_\_  
Print Name

As to the Grantor

DIACO Farmer's Group, LLC  
A Florida limited liability company

[Signature] MANAGING MEMBER  
\_\_\_\_\_  
By: GUILLERMO HELBIG

Doc# 1855105  
Bk# 2538 Pg# 1377

STATE OF FLORIDA     )  
                                          )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Sept, 2011 by GUILLERMO HELBIG, as Manager of DIACO Farmer's Group, LLC, a Florida limited liability company, on behalf of the company, who is either personally known to me or produced a \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:



VIVIAN CHOU  
MY COMMISSION # DD 881098  
EXPIRES: August 16, 2013  
Bonded Thru Budget Notary Services

Thomas D. Wright

Thomas D Wright

Print Name

Ann Hogan

Ann Hogan

Print Name

As to the Grantee:

City of Marathon, a Florida municipal corporation

By: Roger Hemstadt

Roger Hemstadt, City Manager

ROGER T. HEMSTADT

Doc# 1855105

Bk# 2538 Pg# 1378

STATE OF FLORIDA )

COUNTY OF MONROE )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of Sept, 2011 by Roger Hemstadt, City Manager of the City of Marathon, a Florida municipal corporation, on behalf of the City, who is either personally known to me or produced a \_\_\_\_\_ as identification.

Thomas D. Wright

Notary Public

State of Florida at Large

My Commission Expires:

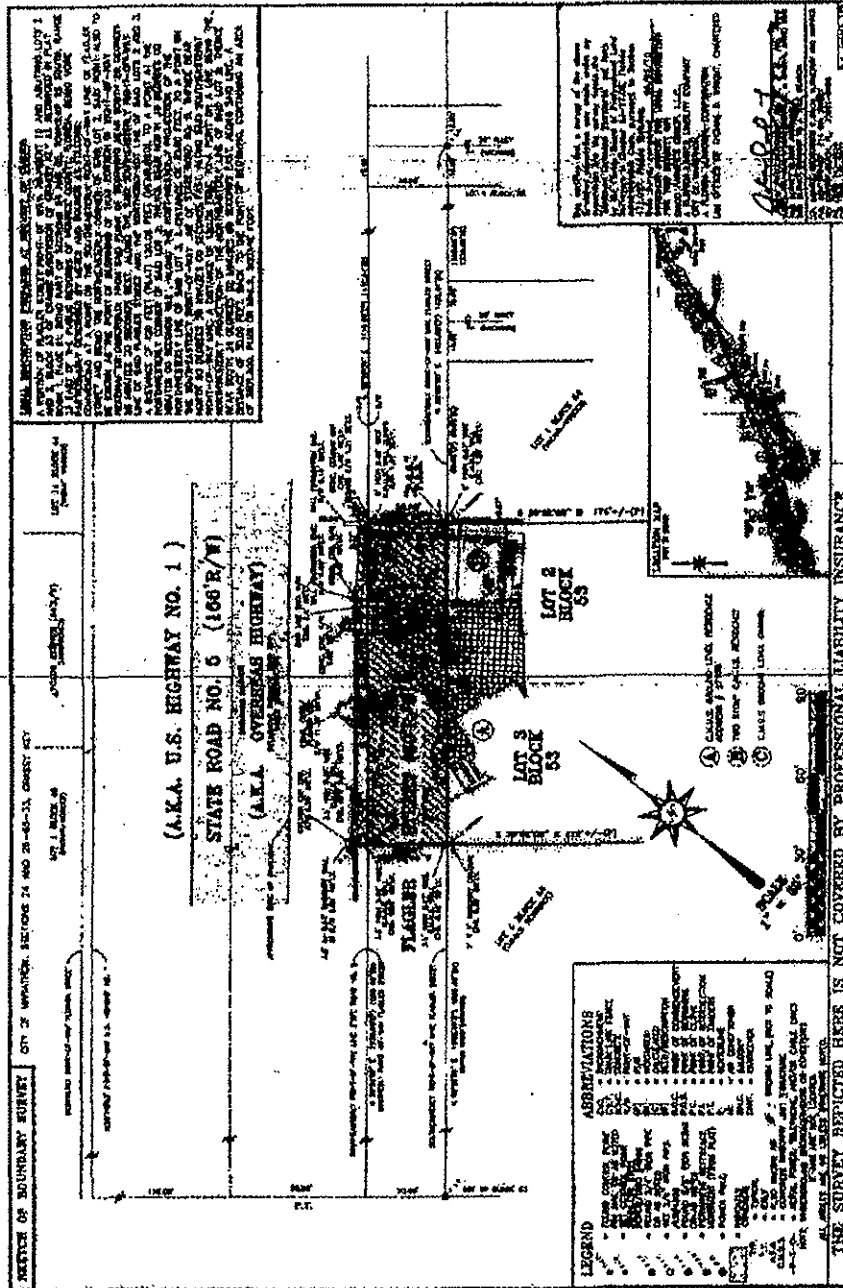
NOTARY PUBLIC-STATE OF FLORIDA  
Thomas D. Wright  
Commission # EE109052  
Expires: JULY 06, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

**EXHIBIT "A"**

**EASEMENT PARCEL**

See following page attached hereto  
and made a part hereof

Doc# 1855105  
Bk# 2538 Pg# 1379



MONROE COUNTY  
OFFICIAL RECORDS