

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-085**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING A LEASE AGREEMENT
WITH THE MARATHON JAYCEES, INC. FOR USE OF THE
JAYCEES BUILDING LOCATED ON 33RD STREET FOR THE
CITY'S SUMMER CAMP**

WHEREAS, the City of Marathon's ("City's") summer camp is scheduled to begin on Monday, June 6th, 2005; and end on Friday, July 22nd, 2005; and

WHEREAS, the Marathon Jaycees has agreed to permit the City to use its building on week days for the summer camp throughout the summer.

**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 are incorporated herein

Section 2. The agreement between the City of Marathon and the Marathon Jaycees for use of the building, a copy of which is attached as Exhibit "A", in substantially the same terms together with such 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 14th day of June, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
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 

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of the ____ day of June, 2005 by and between **MARATHON JAYCEES, INC.**, a Florida non-profit corporation, whose mailing address is 5800 Overseas Highway, Suite 40, Marathon, Florida 33050 ("Landlord") and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, whose mailing address is 10045-55 Overseas Highway, Marathon, Florida 33050 ("Tenant").

R E C I T A L S

1. Landlord is the sub-lessee pursuant to a Sublease Agreement between Landlord and the Greater Marathon Chamber of Commerce, Inc., as sub-lessor, of that certain improved real property known as the Marathon Jaycees Community Center and located at the street address of 33rd Gulf, Marathon, Florida, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Premises").

2. Tenant desires to lease from Landlord, and Landlord is willing to lease to Tenant the Premises, in furtherance of such purposes of Tenant and upon and subject to all terms, covenants, conditions and provisions set forth below.

NOW, THEREFORE, in consideration of the rents and agreements set forth herein, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

ARTICLE 1. Demise; Term; Rent.

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Term (as hereinafter defined), the Premises.

1.2 This Lease shall be for a term of approximately two months (2) months commencing on June 6, 2005 (the "Commencement Date"), and terminating on July 22, 2005 (the "Termination Date") (or on such earlier date as the Lease may otherwise expire or terminate in accordance with its terms). The term of this Lease shall hereinafter be referred to as the "Term."

1.3 Landlord acknowledges that during the Term of this Lease, Tenant is using the Premises as a youth summer camp and recreational programs and activities. Tenant shall have the right to terminate this Lease for any reason upon ten (10) days written Notice (as defined below) delivered to Landlord. Upon the date set forth in such Notice, this Lease shall terminate and the parties shall be relieved of all rights and obligations hereunder.

1.4 The rent shall be Eight Hundred Fifty Dollars (\$850.00) per month for each month during the Term of the Lease (the "Rent"), with the first month's Rent payable to Landlord on the Commencement Date, and thereafter on the first day of each month. Rent for the Extension Terms shall remain the same as during the Term.

1.5 Upon the expiration of the Term or any earlier expiration or termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in the condition required under this Lease, excepting ordinary wear and tear. Tenant shall paint the main hall within two weeks of the expiration of the lease.

ARTICLE 2. Utilities. Any and all utilities necessary for the use of the Premises by Tenant, including, but not limited to, electricity, normal waste removal and water, shall be paid by Tenant to Landlord. Tenant shall also be responsible for the cost of pest control and cleanup of the Premises.

ARTICLE 3. Use; Certain Representations.

3.1. The Premises shall be used for a youth summer camp, recreational activities and programs, and for such other purposes ancillary to the foregoing uses. Tenant shall be entitled to exclusive and uninterrupted use of the Premises on weekdays (Monday through Friday) of each week hereunder. Upon prior written notice to Tenant, Landlord may have use of the Premises on weekends (Saturday and Sunday) and on weekday (Monday through Friday) evenings after 6:00 p.m. Notwithstanding the foregoing, Landlord shall have continuous and uninterrupted access to the office and storage areas located on the Premises.

3.2. During the Term of this Lease, Landlord also grants Tenant unlimited access to parking spaces on the Premises for Tenant's employees, guests, invitees and visitors.

3.3 Landlord and Tenant acknowledge this Lease is a non-residential lease and is governed by Part I of Chapter 83, Florida Statutes. Landlord and Tenant acknowledge this Lease is not subject to the residential tenancy provisions of Florida Statutes.

ARTICLE 4. Tenant's Property; Maintenance. Tenant shall have the right to install and maintain all equipment, furniture, furnishings and other personal property necessary to conduct its business at the Premises. All equipment, furniture, furnishings and other personal property provided by Tenant or at Tenant's expense and any other movable property of Tenant shall be and remain the property of Tenant that shall be removed on or before the Termination Date or earlier termination of this Lease. Tenant shall be responsible for the maintenance and/or loss of any of Tenant's personal property, except for any loss or damage caused by Landlord. During the Term of this Lease, Tenant shall maintain the Premises in good order and condition. Tenants shall have the right, but not the obligation, in the event that it is necessary to accommodate handicapped persons, to make minor alterations or improvements to the Premises for the purpose of bringing the Premises into compliance with the Americans with Disabilities Act.

ARTICLE 5. Quiet Enjoyment. Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Tenant may lawfully and quietly hold and enjoy the Premises during the Term without hindrance, ejection, molestation, or interruption.

ARTICLE 6. Defaults; Conditional Limitations; Remedies. If either party is in default under this Agreement for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or

(b) 30 days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Lease. If the non-monetary default may not reasonably be cured within a 30-day period, this Lease may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default.

ARTICLE 7. Indemnification. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Tenant does hereby indemnify and hold harmless Landlord from and against any and all liabilities, damages, claims, costs or expenses whatsoever (including reasonable attorneys' fees and costs at both the trial and appellate levels) arising from Tenant's exercise of its rights under this Lease, except for any Claims arising due to the acts of Landlord. Subject to the limitations contained herein, Tenant does hereby indemnify Landlord from all third party claims asserted against Landlord based upon either the grossly negligent or tortuous acts or omissions of Tenant, its agents, contractors, successors and assigns, in exercising or discharging Tenant's rights pursuant to this Lease.

ARTICLE 8. Assignment and Subletting. Tenant shall not sublet assign or otherwise transfer this Lease, or any part of Tenant's right, title or interest therein or mortgage, pledge or otherwise encumber this Lease without Landlord's prior written consent.

ARTICLE 9. Damage; Restoration. If the Premises or any part thereof shall be damaged or destroyed by fire, flood or other casualty ("Damage") as to render the Premises or any part thereof untenantable by Tenant for a consecutive period of more than ten (10) days, Tenant may terminate this Lease by giving ten (10) days Notice to the Landlord.

ARTICLE 10. Ingress and Egress. Tenant, its agents, employees, invitees and guests shall have the non-exclusive right to ingress and egress to the Premises twenty four (24) hours per day, seven (7) days a week.

ARTICLE 11. Signs. Tenant, at its sole cost and expense, shall install or affix any and all necessary signs on or about the Property in locations mutually agreed to by the parties.

ARTICLE 12. Notices. All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Tenant:

Michael Puto
City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

With a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
Attn: John R. Herin, Jr., Esq.

If to Landlord:

Marathon Jaycees, Inc.
P.O. Box 500662
Marathon, Florida 33050
Attention: _____

Any Notice required by this Lease to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given only if delivered by hand, evidenced by written receipt; sent by certified mail, return receipt requested, postage and fees prepaid; or sent by overnight delivery service, evidenced by written receipt. A Notice sent by certified mail shall be deemed given as of the receipt date indicated on the return receipt. All other Notices shall be deemed given when received.

ARTICLE 13. Insurance. Tenant, at its cost, shall provide liability insurance coverage in the amount of One Million Dollars (\$1,000,000.00) during the Term of this Lease. Notwithstanding the foregoing, Landlord agrees that Tenant may self-insure against any loss or damage to its equipment, furniture, furnishings and other personal property or which could be covered by a comprehensive general public liability insurance policy. Landlord and Tenant agree that the insurance policy limits currently held by Tenant under the Florida Municipal Insurance Trust shall be maintained, at Tenant's expense, during the Term of this Lease. Landlord shall continue to maintain hazard and flood insurance for the Premises, including coverage for repair and replacement to the Premises.

ARTICLE 14. Miscellaneous.

14.1 In any proceeding which either party may prosecute to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party (as such parties are hereafter defined), including reasonable attorneys' fees.

14.2 This Lease shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

14.3 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and assigns.

14.4 This Agreement may be executed in several counterparts, each of which shall

constitute an original and all of which shall constitute the same agreement.

14.5 If any term, covenant, condition or provision of this Lease (or the application thereof to any circumstance or Person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby; and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Lease would prevent the accomplishment of the original intent of the agreement between the parties.

14.6 If applicable and in accordance with State Law, the following statement is hereby made: "RADON GAS": Radon is a natural occurring radioactive gas. When it has accumulated in a building in sufficient quantities, radon gas present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in the State. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

WITNESSES:

MARATHON JAYCEES, INC., a Florida not-for-profit corporation

Name: _____

By: William M. Daniel
Name: WILLIAM M. DANIEL
Title: VICE PRESIDENT

Name: _____

CITY OF MARATHON, FLORIDA, a Florida municipal corporation

Diane Clavier
Name: Diane Clavier

By: Michael Puto
Michael Puto, City Manager

Susan Thomas
Name: Susan Thomas

ATTEST:

[Signature]
City Clerk

APPROVED:

[Signature]
City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF PREMISES

A parcel of land in a part of Government Lot 1, Section 1, Township 66S, Range 32E, on Key Vaca, Marathon, Monroe County, Florida and being more particularly described by notes and bounds as follows:

Commencing at the intersection of the West Line of Government Lot 1, Section 9, Township 66S, Range 32E, and the northerly right-of-way of U.S. Highway No. 1 for a distance of 2729.49 feet to a point; thence at right angles and northwesterly for a distance of 200 feet to the point of beginning of the parcel of land hereinafter described; thence at right angles and southwesterly for a distance of 100 feet to a point, said point on the dividing line between the Marathon Chamber of Commerce property and the property of the U.S. Navy Pumping Plant; thence at right angles and northwesterly along said dividing line for a distance of 150 feet to a point; thence at right angles and northeasterly for a distance of 100 feet to a point; thence at right angles and southeasterly for a distance of 150 feet back to the point of beginning.