

Sponsored by: Worthington

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2007-104**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, FLORIDA, APPROVING AN AMENDED AND RESTATED  
LEASE WITH THE MARATHON YACHT CLUB; AND PROVIDING AN  
EFFECTIVE DATE**

**WHEREAS**, on September 20, 1982, the Marathon Chamber of Commerce (the "MCC"), as lessor, and the Lessee, as lessee, had entered into that certain Lease (the "Land Lease") pursuant to which the MCC had leased to the Lessee that certain property described in Exhibit A attached hereto (the "Premises"); and

**WHEREAS**, on March 15, 2000, Monroe County (the "County"), as lessor, and the Lessee, as lessee, had entered into that certain Lease (the "Bay Bottom Lease") pursuant to which the County had leased to the Lessee the bay bottoms adjoining the Premises and extending to the adjacent channels (the "Bay Bottom"); and

**WHEREAS**, the Lessor is now the owner in fee simple of the Premises and the Bay Bottom;  
and

**WHEREAS**, the Lessor and the Lessee wish to amend the Bay Bottom lease, and agree to certain terms and conditions of the lease of the Premises and the Bay Bottom.

**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.** The City Council authorizes approval of the amended and restated lease with the Marathon Yacht Club, Exhibit "A" as attached.

**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 24th day of July, 2007.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Christopher M. Bull, Mayor

AYES: Vasil, Cinque, Worthington, Tempest, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

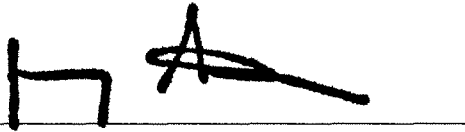
**ATTEST:**



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

## **MARATHON YACHT CLUB BAY BOTTOM LEASE**

LEASE, made this 24th day of August, 2007, by and between the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, hereinafter called Lessor, and the **MARATHON YACHT CLUB**, a Florida not-for-profit corporation, hereinafter called Lessee.

**WHEREAS**, pursuant to that certain Lease dated September 20, 1982, Lessor (as successor-in-interest to the Marathon Chamber of Commerce) currently leases to Lessee that certain real property described as the "Land Parcel" on Exhibit "A" attached hereto (the "Land Lease"); and

**WHEREAS**, pursuant to the certain Yacht Club Lease, dated March 15, 2000, Lessor (as successor-in-interest to the Board of County Commissioners of Monroe County) currently leases to Lessee that certain real property described as the "Bay Bottom Parcel" on Exhibit "A" attached hereto (the "Existing Bay Bottom Lease");

**NOW THEREFORE**, in consideration of the mutual covenants herein expressed, Lessor hereby leases to Lessee all rights that may be owned by Lessor in the Bay Bottom Parcel described in attached Exhibit "A" and extending to the adjacent channels (collectively, the "Property"), subject to any riparian rights pertaining to the adjacent property owners and subject further to the following conditions:

1. **TERM**: The term of this Lease shall run concurrent with the Land Lease and shall expire on August 31, 2052, unless extended by agreement. This Lease shall substitute for and replace in its entirety the Existing Bay Bottom Lease.
2. **RENT**: The Lessee shall pay Lessor the sum of \$2,600.00 ("Base Rent") for this Lease. The Base Rent shall be adjusted annually to reflect the Consumer Price Index (CPI) change for goods and services in South Florida. The Base Rent shall be paid on the first day of January of each year of the term of the Lease including 2052.
3. **SUBLEASE OR ASSIGNMENT**: Lessee shall not sublet or assign any portion of the premises without the prior written consent of Lessor.
4. **REGULATIONS**: Lessee shall promptly comply with all applicable federal, state, county, and City laws, statues, ordinances, and regulations pertaining to the use or occupancy of the premises and shall not permit any part thereof to be used so as to constitute a nuisance, or for any illegal or immoral purpose.
5. **DAMAGES**: Lessee waives and releases Lessor from all claims for damages due to injury to the persons or property of Lessee's employees, clients, customers, guests, agents, or servants resulting from any incident which occurs on or in the premises. During the term of this Lease, Lessee shall indemnify and save Lessor harmless from and against, and shall reimburse Lessor for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments

and expenses which may be imposed upon or incurred or paid by or asserted against Lessor by reason of or in connection with Lessee's control and operation of the entire yacht club property (Land Parcel and Bay Bottom Parcel).

6. **RETURN OF PREMISES:** At the end of the term herein or any extensions thereof, Lessee shall return the premises and any improvements thereto to Lessor in as good condition as when first leased, normal wear and tear excepted, and shall commit no waste during the term of this Lease.
7. **REIMBURSEMENT OF TAXES:** The Lessee agrees to reimburse the Lessor for all back real estate taxes paid by the Lessor on the entire yacht club property (Land Parcel and Bay Bottom Parcel) in the following manner: Reimbursement will be paid to the Lessor on or before June 1st of each of the next five (5) years for the total of all back taxes previously paid by the Lessor. Twenty percent (20% - 1/5th) of the total of the back taxes will be paid each of the five (5) years plus five percent (5%) interest compounded annually (and commencing on the date this Lease is executed by both parties) on the unpaid balance until all back taxes are reimbursed. Exhibit B hereto sets forth the principal amount of back real estate taxes due and a calculation of interest amounts under various scenarios. The Lessee agrees to reimburse the Lessor, by March 31<sup>st</sup> in the year due, for all future annual real estate taxes on the yacht club property during the term of this Lease.
8. **WASTEWATER CONNECTION FEES AND SERVICES:** The Lessee agrees to be responsible for all wastewater connection fees and services provided to the yacht club property during the term of this Lease.
9. **UNFORSEEN EXPENSES:** During the term of this Lease, the Lessee shall be solely responsible for any and all normal and usual expenses incurred in connection with the Leased properties. The Lessee shall be solely responsible for all costs incurred by Lessee or which are sought to be imposed on Lessor in connection with the leased properties and no costs of any kind shall be passed on to the taxpayers by either Lessor or Lessee.
10. **BAY BOTTOM DESCRIPTION:** Lessor and Lessee agree that the bay bottom description has been amended so as to reduce the area of bay bottom subject to the jurisdiction of this Lease.
11. **LIABILITY INURANCE:** The Lessee agrees, during the term of this Lease, to maintain comprehensive general public liability insurance on the entire yacht club property (Land Parcel and Bay Bottom Parcel) and include the Lessor as an additional insured to the limit of not less than \$2,000,000 in respect of bodily injury, not less that \$2,000,000 in respect of any one accident, and \$1,000,000 for property damage.
12. **RIGHT OF FIRST REFUSAL:** If the Lessor at any time during the term of

the Lessee desires to sell the Lessee's leased properties pursuant to a bona fide offer from a third party purchaser, the Lessee shall have a right to purchase the property on the same terms and conditions set forth in such bona fide offer. The Lessee shall have sixty (60) days from the date it receives the offer to exercise this right of first refusal, and shall have the same time to close as that time stated in the bona fide offer. If the Lessee fails to close such purchase in the designated time period, the Lessor shall be free to sell the property to such third party purchaser. In that event, the third party purchaser and the Lessee shall abide by all the terms and conditions set forth in the land and bay bottom leases until the leases expire on August 31, 2052 unless extended by agreement. Lessee shall not have a right of first refusal under this section if Lessee is in default for non payment of Base Rent, Taxes or Unforeseen Expenses under this Lease.

13. **DEFAULT:** If any one or more of the following events (herein sometimes called "Events of Default") shall happen, then and in any such event, Lessor at any time thereafter may give notice to Lessee specifying such Events of Default and stating that this Lease shall expire and terminate on the date specified in such notice, which date shall be at least thirty (30) days after the giving of such notice, and on the date specified in such notice this Lease shall expire and terminate and all rights of Lessee under this Lease shall expire and terminate:

1. If default is made in the due and punctual payment in any sums or charges payable by Lessee hereunder, when and as the same shall become due and payable, and such default shall continue for a period of 30 days after such sum shall be due and payable;
2. If default is made by Lessee in the performance of any of the terms or conditions contained in this Lease, and such default shall continue for a period of 30 days after notice thereof; or
3. If the Land Lease shall terminate for whatever reason.

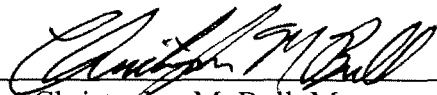
In the event of termination of this Lease, the Lessor may sue for any unpaid Base Rent, Taxes, Unforeseen Expenses or other items that accrued prior to the date of termination. The City shall not be entitled to sue for damages for lost future rents.

14. **TERMINATION:**

- (a) Should Lessee cease to exist or discontinue operating the Marathon Yacht Club for four (4) consecutive years for any reason, then each of the Land Lease and this Lease shall terminate at the end of the four (4) years, or earlier if agreed between the parties, and the leased property shall revert to Lessor and Lessor may dispossess Lessee, and remove Lessee and all other persons and property from the leased property.
- (b) The Land Lease is hereby deemed to be amended and modified to include the provisions of this Section 14.

IN WITNESS WHEREOF, the parties hereto have signed this instrument on the 24th day of August 2007.

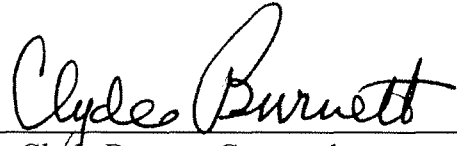
**CITY OF MARATHON**

By:   
Christopher M. Bull, Mayor

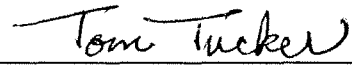
(Seal)

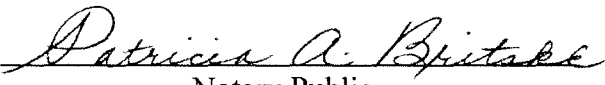
Attest:   
Clerk

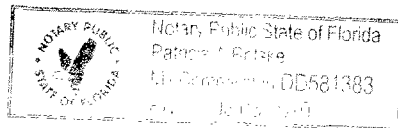
**MARATHON YACHT CLUB**

By:   
Clyde Burnett, Commodore

(Seal)

Attest:   
Tom Tucker, Treasurer

  
Notary Public



## EXHIBIT A

### MARATHON YACHT CLUB LEASE AGREEMENT

(Legal Description)

#### LAND PARCEL

A parcel of land in Government Lot 3, Section 10, Township 66 South, Range 32 East, Monroe County, Florida, being a portion of the "Greater Marathon Chamber of Commerce Site" as described in the attached legal description, said parcel of land being more particularly described as follows:

COMMENCE at the intersection of the East line of Government Lot 3 of Section 10, Township 66 South, Range 32 East and the centerline of U. S. Highway No. 1 (State Road No 5); thence S 74 degrees 20 minutes W along said centerline of U. S. Highway No 1 for 2642.55 feet; thence N 15 degrees 40 minutes W for 50.00 feet to an intersection with the Northerly right-of-way line of said U. S. Highway No. 1; thence S 74 degrees 20 minutes W along-said Northerly right-of-way line for 200.00 feet; thence N 15 degrees 40 minutes W for 440.00 feet; thence N 74 degrees 20 minutes E for 84.00 feet to the Point of Beginning of the hereinafter described parcel of land; thence S 74 degrees 20 minutes W along the last described line for 84.00 feet; thence N 15 degrees 40 minutes W for 111 feet more or less to the mean high water line along the Northeasterly shore of the existing yacht basin; thence meander northwesterly along said mean high water line and along the southwesterly face of the existing concrete dock for 300 feet more or less to the Northerly terminus of said concrete dock; thence N 74 degrees 20 minutes E for 84 feet more or less to an intersection with a line bearing N 15 degrees 40 minutes W from the Point of Beginning; thence S 15 degrees 40 minutes E along said line for 411 feet more or less to the Point of Beginning

#### SUBMERGED LAND PARCEL

All the riparian rights and submerged lands in Lot 1, Section 9, Township 66 South, Range 32 East, adjoining the above described land and extending there from to the adjacent channels, as previously transferred from the Florida East Coast Railway Company to the OVERSEAS ROAD AND TOLL BRIDGE DISTRICT, a political subdivision of the State of Florida by Indenture dated November 9, 1936 and recorded in Monroe County Records in Deed Book G-6, pages 46-55, and thereafter conveyed to Monroe County by warranty deed dated September 4, 1954, recorded in the Official Records of Monroe County in OR Book 15, pages 374 through 376; all of the foregoing being bounded on the north by the westerly projection of the northerly line of the above described Greater Marathon Chamber of Commerce Site.

EXHIBIT B

Scenario 1 - If first payment made 6/1/08

<u>Date of Lease Execution</u>	<u>Rate</u>	<u>Back Balance Due</u>	<u>Each payment (20%)</u>	<u>Int Amt if Paid on</u>	<u>Interest Amount Due</u>	<u>Total Payment due</u>
8/24/2007	5%	\$ 54,309.91	\$ 10,861.98	6/1/2008	\$ 2,098.00	\$ 12,959.98
8/24/2007	5%	\$ 43,447.93	\$ 10,861.98	6/1/2009	\$ 2,172.40	\$ 13,034.38
8/24/2007	5%	\$ 32,585.95	\$ 10,861.98	6/1/2010	\$ 1,629.30	\$ 12,491.28
8/24/2007	5%	\$ 21,723.97	\$ 10,861.98	6/1/2011	\$ 1,086.20	\$ 11,948.18
8/24/2007	5%	\$ 10,861.99	\$ 10,861.99	6/1/2012	\$ 544.59	\$ 11,406.58
		<b>\$ 54,309.91</b>			<b>\$ 7,530.48</b>	<b>\$ 61,840.39</b>

Scenario 2 - If first payment made at lease execution 8/24/07

<u>Date of Lease Execution</u>	<u>Rate</u>	<u>Back Balance Due</u>	<u>Each payment (20%)</u>	<u>Int Amt if Paid on</u>	<u>Interest Amount Due</u>	<u>Total Payment due</u>
8/24/2007	5%	\$ 54,309.91	\$ 10,861.98	8/24/2007	\$ -	\$ 10,861.98
8/24/2007	5%	\$ 43,447.93	\$ 10,861.98	6/1/2009	\$ 3,850.80	\$ 14,712.78
8/24/2007	5%	\$ 32,585.95	\$ 10,861.98	6/1/2010	\$ 1,629.30	\$ 12,491.28
8/24/2007	5%	\$ 21,723.97	\$ 10,861.98	6/1/2011	\$ 1,086.20	\$ 11,948.18
8/24/2007	5%	\$ 10,861.99	\$ 10,861.99	6/1/2012	\$ 544.59	\$ 11,406.58
		<b>\$ 54,309.91</b>			<b>\$ 7,110.88</b>	<b>\$ 61,420.79</b>

Scenario 3 - If payment in full is made on 8/24/07 at lease execution, ZERO interest is due, only the balance of \$54,309.91



EXHIBIT B (cont.)

Scenario 4 - If payments are made any dates other than 8/24/07 or 6/1 of each year as outlined above.

			<b>Per diem Interest on Each balance</b>		
8/24/2007	5%	\$ 54,309.91	8/25/2007	\$ 7.44	Interest per day when balance is \$54,309.91
8/24/2007	5%	\$ 43,447.93	8/25/2007	\$ 5.95	Interest per day when balance is \$43,447.93
8/24/2007	5%	\$ 32,585.95	8/25/2007	\$ 4.46	Interest per day when balance is \$32,585.95
8/24/2007	5%	\$ 21,723.97	8/25/2007	\$ 2.98	Interest per day when balance is \$21,723.97
8/24/2007	5%	\$ 10,861.99	8/25/2007	\$ 1.49	Interest per day when balance is \$10,861.99