

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-23**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A LEASE AGREEMENT WITH JOLLY ROGER TRAVEL PARK IN AN AMOUNT NOT TO EXCEED \$900 PER MONTH AND APPROPRIATING FUNDS; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") believes that a fire department presence in Grassy Key will further protect the public as well as structures in the area, and will improve the insurance services office (ISO) fire protection class rating, thereby reducing property owner's insurance premiums; and

WHEREAS, Jolly Roger Travel Park ("the Lessor") is willing to lease to the City units 9 and 10 located at 59275 Overseas Highway, Marathon, Florida, together with the right to locate certain fire equipment on the premises; and

WHEREAS, the City and the Lessor have negotiated a Lease Agreement, attached hereto as Exhibit A; and

WHEREAS, the lease term will begin on March 1, 2009 and will terminate on August 30, 2009, unless extended pursuant to the lease; and

WHEREAS, the City will pay to the Lessor lease payments of \$900.00 monthly, payable on the 1st day of each month; and

WHEREAS, the City Council wishes to approve the Lease Agreement and authorize the City Manager to execute the agreement and expend the funds required thereunder;

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

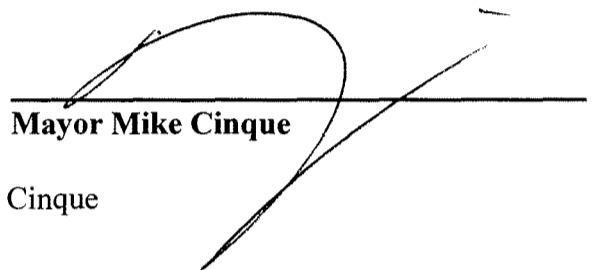
Section 2. The City Council hereby approves the lease agreement between the City of Marathon and Jolly Roger Travel Park for the use of units 9 and 10 and the parking of fire equipment, a copy of which lease agreement is attached hereto as Exhibit "A", together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney. The City Manager is authorized to execute the lease agreement on behalf of the City.

Section 3. The City Council hereby amends the City's annual budget to provide funding for the lease payments required by the Lease Agreement.

Section 4. 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 February, 2009.


THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

AYES: Snead, Vasil, Ramsay, Worthington, Cinque
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:



Jimmy Morales, City Attorney

RESIDENTIAL LEASE

This Residential Lease ("Lease"), made effective as of the 25 day of February, 2009 by and between the City of Marathon, Florida, a municipal corporation (the "Lessee") and the Jolly Roger Travel Park (the "Lessor"), each in consideration of the covenants and agreements to be performed by the other

WITNESSETH:

1. **Property and Term.** Lessor, in consideration of the rent hereinafter reserved and agreed to be paid by Lessee and of the covenants, agreements, terms and conditions hereinafter expressed and contained to be performed by Lessee, does hereby rent and lease unto Lessee, **Apartment Units 9 and 10 at the Jolly Roger Travel Park (the "Park") located at 59275 Overseas Highway, Marathon Florida 33050** (the "Premises").

Lessee, by its execution hereof, acknowledges that all of the items of personal property located on the Premises are in a good state of repair and clean condition. Lessee assumes full responsibility for said personal property and agrees to return the same to Lessor at the termination of this Lease in as good condition as said personal property was at the time of the commencement of the term of this Lease, ordinary wear and tear excepted.

The term ("Term") of this Lease shall be for a period of six (6) months and one week, beginning at 12:01 AM on the 1st day of March, 2009. Lessee and Lessor shall have the right to extend the term of this Lease for five (5) consecutive periods of six (6) months and one week each (the "Extension Periods") by providing notice of such extension to Lessor not less than thirty (30) days before the end of the Term or applicable Extension Period. Lessor shall have the right to terminate this Lease for cause upon ninety (90) days' prior written notice to Lessee. **[Hereinafter, all references to the Term shall be deemed to include any applicable Extension Periods.]**

2. **Rent.** Lessee shall pay Lessor as rent for the Premises during the Term of this Lease \$900.00 per month payable on the first day of each and every month without any prior demand therefor and without any deduction or setoff whatsoever, until all payments required hereof shall have been made in full. If the monthly payment of rent is not received by Lessor within seven (7) days from the date it is due, a late fee of five percent (5%) of such payment shall be payable to Lessor as additional rent. All rent due Lessor under this Lease shall be payable at the address of Lessor as provided to Lessee unless Lessor shall notify Lessee in writing of any change. Lessee shall document its tax exempt status under Section 212.08(6), Florida Statutes.

3. **Use.** Lessee will use the Premises only as a residence for City of Marathon Firefighters, and the actual individuals in occupancy may change from time to time so long as no party other than a City of Marathon Firefighter occupies the Premises. Lessee shall be permitted to maintain two Fire Rescue Vehicles on the Premises to be used for the express purpose of responding to Fire Rescue calls in the area of the Premises. Lessee agrees that any siren on these vehicles will not be used until such time as the vehicles have left the Premises en route to a call.

4. **Entry for Inspection, Repairs and Alterations.** Lessor shall have the right (but not the obligation) to enter the Premises for inspection, at reasonable hours, and with prior notice to Lessee and whenever necessary to make repairs and alterations to the Premises; should the need for such repairs be caused by Lessee or its invitees, Lessee shall be required to pay for same.

5. The Lessor is responsible for providing water and sewer service, storm drainage retention, and the optional installation of cable TV services, along with the Maintenance of Park facilities. All other services are on a fee-paid basis, and are the resident's sole responsibility. Lessee shall take garbage to be collected to the centrally located dumpster in the Park.

6. The Lessee agrees to abide by all Rules and Regulations of the Lessor, a copy of the current Rules and Regulations being attached hereto and being incorporated herein by reference. The parties hereto agree that said Rules and Regulations may be amended from time to

time, those amendments being responsible and necessary for the proper and efficient operation of the park and for the health, safety and welfare of the residents of the park. The parties hereto agree that the Rules and Regulations will not be changed without written notification to the Lessee at least ninety (90) days prior to implementation of such change, in accordance with procedures prescribed by Chapter 723, Florida Statutes.

7. Waivers. A waiver by Lessor of a breach of any covenant, agreement, term or condition to be fulfilled by Lessee under this Lease is not a waiver of a breach of any other covenant, agreement, term or condition of Lessee, or any subsequent breach of the same covenant, agreement, term or condition. A waiver by either of the Lessor or the Lessee shall not be binding on the other and shall only be effective if in writing.

8. Default.

(a) If Lessee fails to keep any of Lessee's agreements mentioned in the Lease, other than Lessee's agreement to pay rent, or if Lessee engages in objectionable conduct, or if the Premises are damaged because of negligence or misuse by Lessee, then, in any one or more of such events, Lessor may serve upon Lessee the seven day notice referred to in Section 83.56, Florida Statutes, and if such default of Lessee has not been cured and corrected or objectionable conduct stopped within the seven day period, then at the end of said seven days Lessor may at Lessor's option, either (i) terminate the Lease by serving upon Lessee a three day notice of Lessor's election to do so and upon the expiration of said three days the Lease shall terminate and Lessor shall retake possession of the Premises for Lessor's own account, or (ii) retake possession of the Premises for the account of Lessee who shall remain liable to Lessor; and in either event Lessee shall give up the Premises to Lessor.

(b) If Lessee shall make default in the payment of the rent, and such default shall continue three days after the giving of the written three day notice referred to in Section 83.56(3), Florida Statutes, Lessor may at Lessor's option, either (i) terminate the Lease, and retake possession of the Premises for Lessor's own account, or (ii) retake possession of the Premises for the account of Lessee, who shall remain liable to Lessor; and in either event Lessee shall give up the Premises to Lessor.

9. Quiet and Peaceful Enjoyment. Lessor covenants that upon performance of all the covenants, agreements, terms and conditions of this Lease by Lessee, that Lessee shall have the quiet and peaceable enjoyment of the Premises.

10. Redelivery of Premises. Lessee covenants and agrees to maintain and keep the Premises in a clean and sanitary condition, and Lessee shall keep the Premises and its contents in good condition and repair throughout the Term of this Lease. At the termination of this Lease, Lessee shall quit and deliver up the Premises to Lessor in the same condition as it was at the time of the commencement of the Term of this Lease, ordinary wear and tear and damage by the elements alone excepted.

11. Laws Governing. The parties hereto agree that the laws of the State of Florida will govern all disputes under this Lease, and determine all rights hereunder, both substantive and remedial.

12. Binding Effect. The covenants, agreements, terms and conditions herein contained shall apply to bind the heirs, legal representatives, successors and permitted assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

13. Amendment. No amendments or modifications of this Lease shall be effective unless in writing. This Lease supersedes all prior leases or agreements between the parties hereto.

14. Notice. Notice which either party desires to give to the other must be in writing; and it may be effected by personal delivery or by registered or certified mail. If notice is by personal delivery, it must be delivered to Lessor at the address furnished to Lessee; and for Lessee, to the Premises, either by personal delivery to Lessee, or to some member of Lessee's family, or by

leaving it on the Premises itself, or by placing it in the mailbox provided for the Premises. If notice is sent by registered or certified mail, it shall be deemed delivered when it shall have been deposited in the United States mail, registered or certified, addressed for Lessor to the address first stated above, and for Lessee to the Premises. Nothing herein contained shall be construed as forbidding Lessor from changing the place for giving notice by registered mail or by personal delivery, but no change shall be effective unless and until notice of the change shall have been given to Lessee by registered mail or by personal delivery in the manner just hereinabove prescribed.

15. Destruction of Premises.

(a) If the Premises are damaged or destroyed so that the enjoyment of the Premises is substantially impaired then the rent shall be proportionately paid up to time of the casualty and thenceforth shall cease until the date when the Premises have been repaired or restored by Lessor, provided, however, that in the event of such substantial impairment, Lessor shall have the right to terminate the term of the Lease by giving notice to Lessee of his exercise of such right destruction. If this notice is given, the term of the Lease shall terminate on the date specified in the notice, (which shall be not more than fifteen days after the giving of such notice), as fully and completely as if such date were the date set forth in the Lease for the termination of the Lease. If Lessor exercises the option to terminate the Lease, Lessee must immediately vacate the Premises. If Lessor has not given the notice of termination as herein provided, Lessor shall proceed to repair the Premises, and the Lease shall not terminate.

(b) If the Premises shall be partially damaged or partially destroyed, without substantial impairment of Lessee's enjoyment of the Premises, the damages shall be repaired by and at the expense of Lessor and the rent until such repairs are made shall be apportioned according to the part of the Premises which is usable by Lessee. Lessor shall not be liable for any inconvenience or annoyance to Lessee resulting in any way from such damage or the repair thereof.

16. Repair and Maintenance of Premises. Lessor may repair, at the expense of Lessee, all damage or injury to the Premises resulting from the misuse or negligence of Lessee, or other person on the Premises with Lessee's consent. The cost of such repairs shall be paid by Lessee to Lessor as additional rent within five days of rendition of Lessor's bill concerning such costs. There shall be no allowance to Lessee and no liability on the part of Lessor by reason of inconvenience or annoyance arising from the making of any repairs, alterations, additions or improvements to the Premises or any portion of the building in which the Premises are located.

17. Liens. Notwithstanding any provision of this Lease seemingly to the contrary, Lessee shall never, under any circumstances, have the power to subject the interests of Lessor in the Premises to any mechanics' or materialmen's liens or liens of any kind nor shall any provision in this Lease ever be construed as empowering Lessee to encumber or cause Lessee to, encumber the title or interest of Lessor as aforesaid.

18. Lease Not to be Recorded. This Lease may not be recorded and any attempt at recording this Lease shall immediately constitute a material default under the terms of this Lease.

19. Alterations to Premises. Lessee shall not make or cause to be made any alterations, additions or improvements without first obtaining Lessor's written approval, which approval shall be in the sole discretion of Lessor.

20. Captions and Section Numbers. The caption and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such section of this Lease nor in any way affect this Lease.

21. Accord and Satisfaction. No payment by Lessee or receipt by Lessor of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter be deemed an accord and satisfaction and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedies in this Lease provided.

22. Legal Expenses. In the event that it shall become necessary for Lessor to employ the services of an attorney to enforce any of its rights under this Lease, to collect any sums due it under this Lease or to remedy the breach of any covenant, agreement, term or condition of this Lease on the part of the Lessee to be kept or performed, Lessee shall pay to Lessor such reasonable fees and costs as shall be charged by Lessor's attorney for such services. Should suit be brought by either party to enforce the terms and conditions of this Lease, the prevailing party in such action shall be entitled to reimbursement of its reasonable attorneys' fees by the non-prevailing party.

23. Abandoned Property. All property, installations and additions required to be removed by Lessee at the end of the term which remain in the Premises after Lessee has vacated shall be considered abandoned by Lessee and, at the option of Lessor, may either be retained as Lessor's property or may be removed by Lessor at Lessee's expense.

24. Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease.

25. Submission of Lease. The submission of this Lease by Lessor to Lessee does not constitute an offer to lease on the part of Lessor. This Lease shall become effective as a lease upon execution and delivery by both Lessor and Lessee.

26. Subordination. This Lease and Lessee's interest hereunder are subordinate to any liens, mortgages or encumbrances now or hereafter placed on the Premises by Lessor, all advances made under any such liens, mortgages or encumbrances, any renewals or extensions of such liens, mortgages or encumbrances.

27. Interpretation. Should any of the provisions of this Lease require judicial interpretation, it is agreed by the parties hereto that the court interpreting or construing the same shall not apply a presumption that the terms of any such provision shall be more strictly construed against the party who itself or through its agent prepared the same, as all parties have participated in the preparation of the provisions of this Lease and that all terms were negotiable.

28. WAIVER OF TRIAL BY JURY. LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LEASE OR LESSEE'S USE AND OCCUPANCY OF THE PREMISES.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year written below.

Witnessed By:

Hellay Harrison
Diane Clavier

Debbie Dick
Mary Lois Jessup

LESSEE:

Clyde Burnett

Name: CLYDE BURNETT
CITY MANAGER

Date: 3/2/09

LESSOR:

Angela Hannah

Name: Angela Hannah

Date: 3-4-09