

Sponsored By: City Manager

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-08**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A THREE-YEAR LEASE AGREEMENT BETWEEN THE CITY OF MARATHON AND THE MIDDLE KEYS SAILING CLUB FOR THE USE OF THE END OF 33RD STREET FOR VARIOUS RECREATIONAL ACTIVITIES; AUTHORIZING THE CITY MANAGER TO SIGN THE LEASE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has engaged in continuing discussions with the Middle Keys Sailing Club concerning the leasing of the area adjacent to and just north of the 33rd street boat ramp to be used for recreational activities associated with teaching and enjoyment of sailing, kayaking and cruising; and

WHEREAS, the Middle Keys Sailing Club provides valuable resources to those who wish to learn more about sailing as well as to those who already know the craft, but wish to hone it along with like-minded individuals; and

WHEREAS, the City desires to enter into the lease agreement with the Middle Keys Sailing Club.

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

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

Section 2. The City Council authorizes the City Manager to sign the Lease Agreement between the City of Marathon and the Middle Keys Sailing Club, as attached in Exhibit A.

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, 2022.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

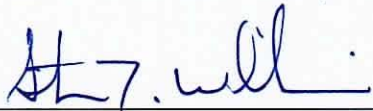
AYES: Zieg, Gonzalez, Cook, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

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:**



Steven Williams, City Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 3rd day of March, 2022 by and between **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, whose mailing address is 9805 Overseas Highway, Marathon, Florida 33050 ("Lessor") and the **Middle Keys Sailing Club**, whose mailing address is 825 33rd Street Marathon, FL 33050 ("Lessee").

EPK
3/3/22

RECITALS

1. Lessor owns the property described on Exhibit "A" attached hereto (the "Property"); and;
2. Lessee desires to lease from Lessor, and Lessor is willing to lease to Lessee the Property, in furtherance of such purposes of Lessee 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, Lessor and Lessee agree as follows:

ARTICLE 1. Demise; Term; Rent.

1.1 Lessor hereby leases to Lessee and Lessee hereby leases from Lessor for the Term (as hereinafter defined), the Property.

1.2 This Lease shall be for a term of three (3) years commencing on January 20, 2022 (the "Effective Date"), and terminating on January 19, 2025 (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 On or before the Termination Date, the Marathon City Manager shall review the Lease and have the option to renew the same for a period of three (3) additional years (the "Extension Term").

1.4 Lessee shall have the right to terminate this Lease for any reason upon ten (10) days written Notice (as defined below) delivered to Lessor. Upon the date set forth in such Notice, this Lease shall terminate, and the parties shall be relieved of all rights and obligations hereunder.

1.5 The rent shall be \$1.00 Dollars per month for each month during the Term of the Lease (the "Rent"), with the first month's Rent payable to Lessor on the Effective Date, and thereafter on the first day of each month.

1.6 Upon the expiration of the Term or any earlier expiration or termination of this Lease, Lessee shall quit and surrender to Lessor the Property in the condition required under this Lease, excepting ordinary wear and tear.

ARTICLE 2. Utilities.

2.1 Any and all utilities necessary for the use of the Property by Lessee, including, but not limited to, electricity, normal waste removal and water, shall be paid by Lessee to Lessor.

2.2 Lessee shall be responsible for the cost of pest control and shall maintain an orderly, clean site at all times material to this Lease.

2.3 Lessee shall not obstruct the flow of stormwater on site, nor the regular flow of traffic utilizing the boat ramp.

2.4 Lessee shall maintain an accessway along the boat ramp seawall to the docks behind the Property.

ARTICLE 3. Use; Certain Representations.

3.1 The Property shall be used for the purposes of sailing, kayaking, cruising, recreational activities and programs, and for such other purposes ancillary to the foregoing uses. Lessee shall be entitled to uninterrupted use of the Property at all times material to this Lease. Upon prior written notice to Lessee, Lessor may restrict the times and manner of operation of the Property for periods of known high-traffic events such as major holidays or mini-season.

3.2 Lessee shall maintain current and valid registration and licenses for all vehicles, trailers, and vessels on the Property at all times, and shall move any such vehicle, trailer or vessel upon request by the Lessor for purposes of repair and maintenance of the facility.

3.3 Should Lessee engage in any activity which requires proof of licensure or insurance, Lessee shall provide proof of any such documentation to Lessor upon request.

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

ARTICLE 4. Lessee's Property; Maintenance. Lessee shall have the right to install and maintain all equipment, furniture, furnishings, and other personal property necessary to conduct its business at the Property. All equipment, furniture, furnishings, and other personal property provided by Lessee or at Lessee's expense and any other movable property of Lessee shall be removed on or before the Termination Date or earlier termination of this Lease. Lessee shall be responsible for the maintenance and/or loss of any of Lessee's personal property, except for any

loss or damage caused by Lessor. During the Term of this Lease, Lessee shall maintain the Property in good order and condition.

ARTICLE 5. Lessor's Access to Demised Property. Lessee authorizes Lessor, his/her agents, employees and representatives to enter the Property upon 24 hours' notice and during normal business hours to inspect the Property to ensure Lessee is complying with the terms of this Lease provided that Lessor shall use its best efforts not to interfere with Lessee's use and occupancy of the Property.

ARTICLE 6. Quiet Enjoyment. Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Lessee may lawfully and quietly hold and enjoy the Property during the Term without hinderance, ejection, molestation, or interruption.

ARTICLE 7. Defaults; Conditional Limitations; Remedies. If either party is in default under this Lease for a period of either (a) fifteen (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) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which 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 the 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 8. Indemnification. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Lessee does hereby indemnify and hold harmless Lessor 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 Lessee's exercise of its rights under this Lease, except for any Claims arising due to the acts of Lessor. Subject to the limitations contained herein, Lessee does hereby indemnify Lessor from all third-party claims asserted against Lessor based upon either the grossly negligent or tortuous acts or omissions of Lessee, its agents, contractors, successors and assigns, in exercising or discharging Lessee's rights pursuant to this Lease.

ARTICLE 9. Assignment and Subletting. Lessee shall not sublet, assign, or otherwise transfer this Lease, or any part of Lessee's right, title, or interest therein or mortgage, pledge or otherwise encumber this Lease without Lessor's prior written consent.

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

ARTICLE 11. Ingress and Egress. Lessee, its agents, employees, invitees and guests shall have the non-exclusive right to ingress and egress to the Property twenty-four (24) hours per day, seven (7) days a week.

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 Lessor:

City of Marathon
George Garrett, City Manager
9805 Overseas Highway
Marathon, Florida 33050
(305) 289-4130

With a copy to:

Steve Williams
City Attorney
9805 Overseas Highway
Marathon, Florida 33050

If to Lessee:

Middle Keys Sailing Club
825 33rd Street
Marathon, Florida 33050

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 if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered or sent by overnight delivery service.

EPH
3/3/22

ARTICLE 13. Insurance.

13.1 Lessor shall secure and keep in force at all times during the Term insurance policies insuring the Property against loss of damage by fire or other casualty in an amount equal to its full insurable value.

13.2 Lessee, at its cost and expense, shall secure and maintain comprehensive general liability insurance with respect to injuries and death to persons and damage to property, written on the "occurrence" basis, naming Lessor an additional insured, with a combined limit of Three Hundred Thousand Dollars (\$300,000).

ARTICLE 14. Miscellaneous.

14.1 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.

14.2 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of the Lessor and Lessee and their respective legal representatives, successors, and assigns.

14.3 If any term, covenant, conditions 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.

14.4 No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall constitute a waiver of any subsequent breach of such covenant or condition or justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof.


14.5 The parties hereby waive trial by jury in any legal proceeding brought with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee or Lessee's use or occupancy of the Property.

14.6 Lessor cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Property, any improvements thereon, or any operations at the Property. Nothing in this Lease shall be deemed to create an affirmative duty of Lessor to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Lease on the respective dates under each signature.

LESSOR:

CITY OF MARATHON,
a Florida municipal corporation


By: 
George Garrett, City Manager
Date: 2/7/22

LESSEE:

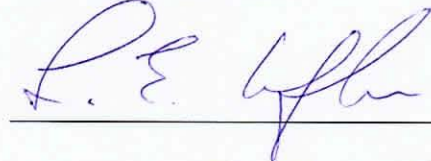
Middle Key Sailing,
By Betsy Prout Letter,

Print Name: Middle Key Sailing By Betsy Prout Letter,
Date: 3/3/22 chair

Attest:


Diane Clavier, City Clerk

Witnesses as to Lessee


Print Name: Frank E. Letter

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
THE CITY OF MARATHON ONLY:


Steve Williams, City Attorney

EXHIBIT "A"

**LEGAL DESCRIPTION OF PROPERTY AND VISUAL REPRESENTATION OF LAND
TO BE LEASED**

**9 66 32 KEY VACA PT LOT 1 33RD STREET BOAT RAMP AND 33RD STREET
RESTROOMS OR1682-444/45Q/C**

