

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-11**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AND PIGEON KEY FOUNDATION FOR A TERM OF THIRTY YEARS WITH REVIEW OF LEASE IN THREE-YEAR INCREMENTS; PROVIDING FOR TERM, RENT, UTILITY CONSIDERATIONS, USE PROVISIONS AND RESTRICTIONS; PROVIDING FOR LESSOR AND LESSEE RESPONSIBILITIES; PROVIDING FOR INDEMNIFICATION AND INSURANCE REQUIREMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon purchased the 7 Mile Marina property in December of 2021; and

WHEREAS, management of the property has come under the Enterprise Fund identified as the City Marina budget; and

WHEREAS, the intent has been to reestablish the marina slips at the site and to renovate the existing building for future marina, not-for-profit, and City Marina functions; and

WHEREAS, it was understood that an initial tenant on property would be the Pigeon Key Foundation utilizing the site as a staging area for ticket sales, a gift shop to assist in the funding this not-for-profit organization, and as a point of debarkation for the Pigeon Key train which will take visitors to Pigeon Key; and

WHEREAS, the attached Lease identifies the area of the Lease, the rental cost of the lease, and the responsibilities on behalf of both parties; and

WHEREAS, the Lease acknowledges that the initial scope of the Lease will only include parking area, parking spaces, and a location for a small ticket sales building; and

WHEREAS, ultimately, as the City renovates the interior of the building on the property and Pigeon Key is allowed to occupy it, the terms of the Lease will change in consideration of the additional spatial commitments on the part of the City to Pigeon Key Foundation; and

WHEREAS, the Lease requires typical insurances and indemnification and provides for extensions and termination; and

WHEREAS, the Lease comports with the terms of a recent Florida Communities Trust grant which assists in offsetting the cost of acquisition of the property; and

WHEREAS, this Lease is considered to be in the best interest of the City and its citizens and serves the health, safety, and welfare of the city,

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 hereby authorizes the City Manager to enter into the Lease Agreement, attached as Attachment "A," with Pigeon Key Foundation and to sign any necessary documents thereto.

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 10th DAY OF JANUARY 2023.

THE CITY OF MARATHON, FLORIDA



Mayor Luis Gonzalez

AYES: Gonzalez, Still, Matlock, Landry, Smith
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clayier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



Steven T. Williams, City Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 11 day of January, 2023 by and between **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, whose mailing address is 9805 Overseas Highway, Marathon, Florida 33050 ("Lessor") and the **PIGEON KEY FOUNDATION, INC.**, whose mailing address is 5800 Overseas Hwy. #17, Marathon, Florida 33050 ("Lessee").

RECITALS

1. Lessor owns the property located at 1090-1098 Overseas Highway, Marathon, FL, more commonly referred to as the Seven Mile Bridge Marina and described on Exhibit "A" attached hereto (the "Property"); and;

2. Lessor is initially leasing parking area, reasonable accommodation of parking spaces, an area near the building to park the train (approximately 1,950 square feet), and an area adjacent to the parking area in order that Lessee may place an approximately 100 square foot building intended as a ticketing location for the Pigeon Key train as delineated in a red outline on Exhibit "B"; and

3. Ultimately (time & date to be determined), Lessor is leasing that portion of the 7 Mile Marina that encapsulates approximately 1,500 square feet of interior space, 1,950 square feet of exterior space as noted in 2. and the aforementioned parking area as noted in 2. and as delineated in a red outline on Exhibit "C" with both parties expressly acknowledging that the Lessee is not leasing the entire structure or premises and;

4. 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 thirty (30) years commencing on Jan, 11, 2023 (the "Effective Date"), and terminating on Jan 11, __, 2053 (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 The Lease shall be reviewed on an approximately three (3) year basis to consider adjustments as may be necessary to manage actual cost of property maintenance and Consumer Price Index and inflation.

1.4 Lessee shall have the right to terminate this Lease for any reason upon thirty (30) 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 For the period of time under the Term of the Lease that Lessee is only utilizing the area delineated in Exhibit "B," the rent shall be \$__1,000.00__ Dollars per month for each month during the Term of the Lease (the "Rent") that the area in Exhibit "B" remains the sole rental area, with the first month's Rent payable to Lessor on the Effective Date, and thereafter on the first day of each month.

1.6 For the remaining time within the Term of the Lease that Lessee is utilizing the area delineated in Exhibit "C," the rent shall be \$__2,500.00__ Dollars per month for each month during the Term of the Lease (the "Rent") that the area in Exhibit "C" becomes the rental area, with the first month's Rent payable to Lessor on the on the first day the month that follows occupation of the space identified in Exhibit "C" and thereafter on the first day of each month.

1.7 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.

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

4.2 Lessor shall be responsible for the cost of pest control and shall maintain an orderly, clean site at all times material to this Lease, including the maintenance of common area spaces such as the bathroom facilities and cleaning of Lessees Lease area. Terms of such cleaning services within the Lease area of the building shall be discussed/negotiated between the Lessor and Lessee prior to implementation of service within the Lease area.

4.3 Lessee shall not obstruct the flow of stormwater on site, nor the regular flow of traffic utilizing the boat ramp or marina area.

ARTICLE 3. Use; Certain Representations.

3.1 The Property shall be used for the purposes of providing the Pigeon Key Foundation a land-based operational center off of Pigeon Key itself, including a transportation staging area to assist Pigeon Key visitors in reaching the island 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 Lessor shall be responsible for building out the interior of the building associated with the subject Lease at its expense. Should the Lessee wish to build out the interior at its expense, the City is willing to negotiate a difference in the Lease value (Rent).

3.3 Lessee shall be allowed to utilize available parking spaces with the understanding that there will be other commercial users and the City utilizing the property requiring parking spaces as well. Typically, Pigeon Key would have access to 1/3 to 1/2 of the 60 plus parking spaces available on site with no specific limitations at this time. However, for tenants associated with the property, parking shall be on a first come, first served basis.

3.4 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.

3.5 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.

3.6 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. Lessee shall indemnify, defend, and hold harmless the City, its officials, employees and volunteers from and against all claims, liabilities, losses, expenses, damages, costs, fines or penalties foreseen or unforeseen including without limitation counsel, engineering, or any other professional or expert fees, that the City may incur by reason of the negligence of the Lessee's employees, officials, representatives and agents or actions during the term of this Agreement as set forth herein.

Lessee shall pay for and maintain all necessary insurances including but not limited to, General Liability, Automobile coverages and Workers Compensation, listing the City as an additional insured. The Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's occupation, operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee. This paragraph shall survive the termination of this lease, and Lessee's obligations under this paragraph shall apply whenever the City incurs costs or liabilities for Lessee's actions of the types described in this paragraph.

The coverages, limits and/or endorsements required herein protect the interests of the City, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect Lessee against any loss exposures, whether as a result of this Lease or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Lease.

Lessee shall not commence operations under this Agreement until Lessee has obtained all insurance required, and that such Coverages have been approved by the City. Lessee shall not allow any Subcontractor to commence Work on any subcontract until the Subcontractor, as provided in this Agreement and all Coverages required of any Subcontractor have been approved

by the City. In addition, Lessee shall be responsible for any policy deductibles and self-insured retentions.

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:

Pigeon Key Foundation, Inc.
5800 Overseas Highway, #17
Marathon, FL 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.

ARTICLE 13. Insurance.

13.1 UPON EXECUTION OF THIS AGREEMENT, LESSEE SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT CITY IS NAMED AS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS.

13.2 Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

13.3 All coverages shall be in force throughout the life of this contract:

- a. Lessee shall provide the City with valid Certificates of Insurance (binders are unacceptable) at least ten (10) days prior to execution of this Lease and no later than thirty (30) days prior to commencement of any improvements.
- b. Lessee shall provide a Certificate of Insurance to the City with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Lessee to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event this Lease term goes beyond the expiration date of the insurance policy, Lessee shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend this Lease until this requirement is met.
- e. The City shall be named as an Additional Insured on all liability policies.
- f. The Lease, Bid/Contract Number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

13.4 Insurance Requirements: Lessee shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverages and minimum limits of liability:

13.5 General Liability

General Liability insurance with limits of not less than \$2,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. \$100,000 each occurrence for Damage to Rented Premises.

This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of LESSEE.

13.6 Automobile Liability

Comprehensive or Business Automobile Liability insurance with/ limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles, equipment or both as applicable . This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

13.7 Workers' Compensation

“Statutory” Limits (per limits outlined by Chapter 440, Florida Statutes) Part A, and \$1,000,000 Part B, Employer 's Liability coverage.

The LESSEE waives, and the LESSEE shall ensure that the LESSEE’s insurance carrier waives, all subrogation rights against the City and the City’s officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Lessee must be in compliance with all applicable State and Federal Workers’ Compensation laws, including the U.S. Longshore Harbor Workers’ Act and the Jones Act, if applicable.

13.8 Liability policies shall be endorsed to provide the following:

- a) Name as additional insured the City of Marathon and its respective officers, agents, employees and elected officials.
- b) That such insurance is primary to any other insurance available to the City with respect to claims covered under the policy and that such insurance applies separately to each insured against whom or which claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

13.9 The issuing agency shall include its full name, address and telephone number in each insurance certificate issued.

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.

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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
George Garrett, City Manager

Date: 1/11/2023

Attest:

Diane Clavier
Diane Clavier, City Clerk

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

Steve Williams
Steve Williams, City Attorney

LESSEE:

Donald Hiller

Print Name: Donald Hiller

Date: 02/23/23

Witnesses as to Lessee

Hillary Palmer
Print Name: Hillary Palmer

EXHIBIT "A"

VISUAL REPRESENTATION OF TOTAL LAND AREA OF 7 MILE MARINA



See also Title Documents

EXHIBIT "B"
VISUAL REPRESENTATION OF EXTEROR LAND TO BE LEASED



EXHIBIT "C"

VISUAL REPRESENTATION OF LAND & INTERIOR AREA TO BE LEASED

