

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2024-116**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AS THE OWNER, AND BOOT KEY VIEW CONDOMINIUM AS LESSEE FOR SUBMERGED LANDS IDENTIFIED BY REAL ESTATE NUMBER 00355400-000000; INCLUDING, BUT NOT LIMITED TO ESTABLISHING A LEASE AREA, LEASE AMOUNT, LEASE DURATION, AND RELEASE OF LIABILITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon, Florida (the “City”) is the owner of certain properties existing below the mean high waters of the State of Florida, further identified by real estate number 00355400-000000 and located within the geographical bounds of Boot Key Harbor (the “Property”); and

**WHEREAS**, Boot Key View Condominium (the “Lessee”) desires to lease certain portions of said Property for the purposes of docking facilities associated with the Lessee’s upload property identified by real estate number 00355370-002000; and

**WHEREAS**, the parties have agreed to lease terms including, but not limited to, lease area, lease amount, lease duration, and release of liability; and

**WHEREAS**, the City believes that the Lease Agreement is in the best interest of the Parties and of the residents of the City of Marathon, Florida.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are true, correct, and incorporated herein.

**Section 2.** The Lease Agreement between the City and the Lessee attached hereto as “Exhibit A,” is hereby approved. The City Manager is authorized to execute the Lease Agreement on behalf of the City.

**Section 3. Effective Date.** This resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 12<sup>th</sup> DAY OF NOVEMBER 2024.**

**THE CITY OF MARATHON, FLORIDA**

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**Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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Steve Williams, City Attorney

## SUBMERGED LAND LEASE

**THIS SUBMERGED LAND LEASE** ("Lease") dated as of \_\_\_\_\_, 20\_\_\_\_ made by and between the **CITY OF MARATHON**, a Florida municipal corporation, having an address at 9805 Overseas Highway, Marathon, Florida 33050 ("Lessor"), and **Boot Key View Condominium, Inc.** having an address at 307 Sombrero Blvd, Apt 2, Marathon, Fl 33050 ("Lessee").

### RECITALS

1. Lessor owns certain submerged real property located in Monroe County, Florida as more particularly described as Exhibit 'A' attached hereto and by this reference made a part hereof (the "Premises") upon which Lessee constructed a docking facility in conjunction with an upland 8 unit family residences without fueling facilities and without live-aboards (the "Dock").

2. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Premises solely for the operation, use, maintenance and repair of the Dock, subject to the terms and conditions of this Lease.

**NOW, THEREFORE**, in consideration of the Premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **SECTION 1. DEFINITIONS**

In addition to any terms defined elsewhere in this Lease, the following terms set forth below, when used in this Lease, shall be defined as follows:

(a) "Additional Rent" shall mean all monetary obligations of Lessee to Lessor (other than Base Rent) payable pursuant to this Lease.

(b) "City" shall mean the City of Marathon in its capacity as a municipal government, and not as Lessor under this Agreement.

(c) "COE" shall mean the United States Army Corps of Engineers and any other federal agencies which assist the COE with its permitting process.

(d) "County" shall mean Monroe County, a political subdivision of the State.

(e) "Effective Date" shall mean \_\_\_\_\_, 20\_\_\_\_\_.

(f) "FDEP" shall mean the Florida Department of Environmental Protection.

(g) "FFWCC" shall mean the Florida Fish and Wildlife Conservation Commission.

(h) "Governmental Approvals" shall mean all governmental and quasi-governmental approvals and permits from Governmental Authorities for all approvals and permits such as environmental approvals, dock permits, building permits, coastal systems permits, and all other governmental approvals required to develop, construct, repair, operate and maintain the Improvements on the Premises.

(i) "Governmental Authorities" shall mean the federal government, the State, County, and City including all agencies and subdivisions of each of them including, but not limited to, the COE, FDEP, FFWCC

(j) "Improvements" shall collectively mean the following: (i) the Dock, (ii) any and all fixtures, permanently affixed equipment, signs, facilities, utilities constructed in connection with the foregoing, and (iii) all other structures or improvements now or hereafter constructed on or offsite in connection with the Premises and all additions, alterations, modifications, renovations, and replacements thereto.

(k) "Indemnitees" shall mean Lessor, its elected officials, employees, agents, and consultants as well as their respective successors and assigns.

(l) "Lease Year" shall mean the twelve (12) month period beginning on the Effective Date and each anniversary thereof.

(m) "Permitted Use" shall mean the permitted uses which may be made of the Premises pursuant to Section 5 of this Lease.

(q) "Person" shall mean any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise.

(n) "Rent" shall mean the Base Rent and any Additional Rent.

(o) "State" shall mean the State of Florida.

(p) "Surviving Obligations" shall mean upon the expiration or earlier termination of this Lease the obligations of Lessee, including: (i) the obligation to pay Rent which is due and unpaid through the effective date of such expiration or termination (prorated through the date of such termination) to the extent due, (ii) compliance with the provisions of Section 12 (Indemnity) for matters arising prior to the date of termination of this Lease, (iii) Section 23 (Environmental Compliance), and (iv) and any other obligation identified as surviving obligation in this Lease.

## **SECTION 2. LETTING.**

(a) Let. The Lessor hereby lets to Lessee and Lessee hereby hires and takes from the Lessor the Premises.

(b) Uses. Lessee agrees to operate the Premises only for the Permitted Uses provided, further, if the Lessee shall, subject to the terms of this Lease, make the Premises available to Persons other than the Lessee by sublease or otherwise, the Lessee shall do so without discrimination and shall refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees in connection with the Premises.

(c) As Is. Except as may be otherwise provided in this Lease, the Premises and all components thereof, are hereby demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Following the Effective Date, the Lessee shall **ASSUME ALL RISKS** with respect to the condition of the Premises and of non-compliance of the Premises, or any part thereof, with any laws, ordinances, rules, or regulations of Governmental Authorities, except as otherwise set forth in this Lease. The Lessee hereby releases the Lessor of and from any and all claims and liabilities whatsoever on account of the condition of the Premises.

(d) Quiet Enjoyment. Lessee, upon paying the Rent herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on the Lessee's part to be performed and observed, shall peacefully and quietly have, hold and enjoy the Premises during the Term, subject to the terms and conditions of this Lease.

### **SECTION 3. TERM.**

(a) Term. The term ("Term") of this Lease shall commence on the Effective Date and shall terminate on the last day of the tenth (10<sup>th</sup>) Lease Year of this Lease ("Termination Date"), unless sooner terminated as provided herein. The Term as defined herein shall also include renewals or extensions thereto.

(b) Renewal. Any renewal of this Lease shall be at the sole option of the Lessor. Such renewal will be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Lessee is in full compliance with the terms of this Lease including the Permitted Use requirements set forth in Section 5 below, the Lessee may apply in writing for a renewal of the Term. Such application for renewal must be received by Lessor no sooner than one hundred twenty (120) days and no later than thirty (30) days prior to the Termination Date of the original or then current Term. Any renewal of the Term granted by the Lessor shall commence on the last day of the then current Term. If the Lessee fails to timely apply for renewal, or in the event the Lessor does not grant a renewal, the Lessee, at its cost and expense, shall vacate the Premises and remove all Improvements prior to the expiration of the Term subject to the provisions of Section 19 below. The obligation to remove all Improvements upon the expiration or earlier termination of this Lease shall constitute an affirmative covenant upon the Lessee and is intended to and shall run with the title to the Upland (as defined below) and shall be binding upon Lessee and Lessee's successors in title or successors in interest.

(c) Upland. During the Term, Lessee shall maintain a leasehold or fee simple title interest in the upland real property adjacent to the Premises (the "Upland") and, if such interest expires, terminates or is extinguished for any reason whatsoever including, but not limited to the sale or conveyance of the Upland, Lessor shall have the option to immediately terminate this Lease upon written notice to the Lessee, in which case the Rent shall be prorated as of the date of termination and the parties shall be relieved of all rights and obligations hereunder except for the Surviving Obligations. Prior to any sale or conveyance of the Upland, Lessee shall notify the potential buyer or grantee in writing of Lessor's termination right as set forth herein and, if Lessor elects not to terminate this Lease, Lessee and the buyer or grantee, as applicable, shall execute any documents required by the Lessor to effect and assignment and assumption of this Lease. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this Lease which include, but are not limited to, payment of all Rent prior to such assignment.

### **SECTION 4. RENT.**

(a) Base Rent. Commencing on the Effective Date, Lessee shall pay to Lessor the amount of **One Hundred Eighty Eight Dollars and 00/100 Dollars (\$188.00)** ("Base Rent") plus applicable sales tax, which Base Rent shall be paid annually on the first day of each Lease Year in advance commencing on the Effective Date. If the Effective Date does not fall on the first day of the month, in order for the annual installments of Base Rent to be paid on the first day of the first month of each Lease Year, the Base Rent shall be prorated for the number of days remaining in the month in which the Effective Date occurs. Annual installments of Base Rent shall then be paid on the first day of the first month of each Lease Year during the Term with the last year's Base Rent prorated in order to account for the initial proration

relative to the Effective Date. The Base Rent for the remaining years of the Term shall be adjusted (upwards only) pursuant to Section 18-21.011, Florida Administrative Code. The Lessor will notify the Lessee in writing of the amount and the due date of the increased Base Rent; provided, however, the failure of the Lessor to provide said notice shall not relieve the Lessee of payment of Base Rent in which case Lessee shall pay Lessor the Base Rent in the amount of prior Lease Year's Base Rent which shall be due on the anniversary of the date the prior Lease year's Base Rent was due until such time as Lessee receives Lessor's notice of the increased Base Rent.

The Base Rent shall be modified annually based on fluctuations of the Consumer Price Index ("CPI") with a ten percent (10%) cap on annual adjustments. The CPI is averaged over a five year period and the resulting percentage of change is then applied to the previous annual Base Rent. Upon request by the Lessor, Lessee shall promptly provide any and all information in a certified form and to calculate the Base Rent, including wet slip rental information, if applicable. In addition, if the wet slip rental rates change during the applicable Lease Year, Lessor shall submit a revised rate schedule within thirty (30) days following the effective date of the rate change. The Lessor reserves the right to assess retroactively additional payments, which shall constitute Additional Rent hereunder, when the actual rental rates or total number of linear feet for rent used to determine the Base Rent differs from the rental rates or total number of linear feet for rent supplied by the Lessee.

(b) Examination of Books and Records. For the purpose of this Lease, Lessee hereby authorizes Lessor to examine, for the Term including any extensions thereto, plus three (3) additional years after the expiration or earlier termination of the Term, at all reasonable hours and at Lessee's place of business or such other address within the City as provided by Lessee, the books, records, contracts, and other documents confirming and pertaining to the computation of Base Rent payments as specified in Section 4(a) above. The Lessee shall secure, maintain, and keep all books and records for the Term including any extensions thereto, plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all books records and accounts for Rent payment verification purposes by the Lessor.

(c) Licenses, Fees and Taxes. Lessee shall pay, on or before their respective due dates, to the appropriate collecting authority, all taxes, licenses, permits, assessments, and fees of Governmental Authorities, which are now or may hereafter be levied upon the Premises and this Lease, or upon Lessee, or upon any of Lessee's property used in connection therewith including, but not limited to the Improvements, or upon the Rent or other sums payable hereunder, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all licenses and permits, now or hereafter required by Governmental Authorities for the operation of the Premises and the Improvements.

(d) Additional Rent. If the Lessor is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease which breach is not cured by Lessee within the applicable cure period, Lessee agrees to pay the reasonable sums so paid or the reasonable expense so incurred, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Rent payable within thirty (30) calendar days after written demand therefor.

(e) Late Payments: Interest. Lessor shall be entitled to collect interest at the highest non-usurious rate permitted by law per annum from the date any sum is due to Lessor until the date paid on any amounts that are not paid within ten (10) days of their due date under this Lease. The right of Lessor to require payment of such interest and the obligation of the Lessee to pay same shall be in

addition to and not in lieu of the right of the Lessor to enforce other provisions herein and to pursue other remedies provided by law.

(f) Place of Payments. All payments of Rent required to be made by the Lessee to Lessor under this Lease shall be made payable to "City of Marathon" and shall be paid to the Lessor at the City of Marathon, 9805 Overseas Highway, Marathon, Florida 33050 or to such other office or address as may be substituted therefor. All Rent (together with all applicable sales tax thereon) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

**SECTION 5. RIGHTS AND USES OF THE LESSEE.**

(a) Permitted Use. Lessee shall be permitted to utilize the Premises solely for the operation, use, maintenance and repair of the Improvements. Lessee shall not alter or modify, or seek to alter or modify, in any manner the approved land use of the Premises or the type of land use of the Upland (e.g., commercial to multi-family residential) without first obtaining the Lessor's written consent in the form of an amendment to this Lease and the payment of additional fees, if applicable, and the removal of that portion of the Improvements which are no longer authorized pursuant to the amendment to the Lease. No Improvements shall be constructed in any manner that would cause harm to wildlife or the environment. Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structure whose use is not water dependent shall be erected or conducted over the Premises without prior written consent from the Lessor, which consent may be withheld in Lessor's sole and absolute discretion. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over the Premises without prior written consent from the Lessor which consent may be withheld in Lessor's sole and absolute discretion. Unless specifically authorized in writing by the Lessor such activities or structures shall be considered unauthorized and, in addition to a breach of the terms and conditions of this Lease, a violation of City Code, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This foregoing shall not apply to minor structural repairs required to maintain the authorized Improvements in a good state of repair in the interests of public health, safety or welfare; provided however, that such activities shall not exceed the activities authorized by this Lease.

(b)f Prohibited Uses. Lessee shall be expressly prohibited from utilizing the Premises for the following:

(1) The construction, installation, operation, or use of fueling facilities of any kind whatsoever.

(2) Mooring or docking (either temporarily or permanently) of any vessel not registered or titled in accordance with Chapters 327 and 328, Florida Statutes.

(3) Any use that requires the use or storage of Materials (as defined in Section 23(a) below at the Premises.

(4) Any use of the Premises for residential purposes or living quarters of any kind whatsoever including, but not limited to live-aboards.

(5) Any use which is not a Permitted Use as set forth in Section 5(a) above.

(6) Any use prohibited by law.

## **SECTION 6. GENERAL OBLIGATIONS OF LESSEE.**

(a) Encumbrances. Lessee hereby represents, warrants and covenants to the Lessor that the fee simple title to the Premises shall be at all times free and clear of all liens, claims and encumbrances created by or through Lessee (other than those created or consented to by Lessor). If any lien or notice of lien shall be filed against the fee simple title of the Premises created by or through Lessee, the Lessee shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. Lessee shall not be deemed to be Lessor's agent so as to confer upon any contractor or subcontractor providing labor or services that are material to the Premises (whether in connection with Lessee's Improvements or otherwise) a construction lien, mechanic's lien or both against Lessor's estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum to be recorded in the Public Records of Monroe County in accordance with Chapters 255 and 713, Florida Statutes.

(b) Title to Premises. Except for its rights in and to this Lease, Lessee shall make no claim of title or interest to the Premises by reason of the occupancy or use thereof, and all title and interest to the Premises is vested in the Lessor.

(c) In the event that the Improvements or any portion thereof are determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with the riparian rights of property owner(s) adjacent to the Premises, Lessee agrees to either obtain written consent in a form and substance acceptable to Lessor for the offending structure from the affected riparian owner or to remove the interference or encroachment within sixty (60) days from the date of the adjudication. Failure to comply with the foregoing shall constitute a material breach of this Lease and shall be grounds for immediate termination of this Lease at the option of the Lessor notwithstanding any notice requirements and cure periods otherwise provided in this Lease.

(d) Garbage. Lessee shall remove from the Premises and Improvements or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use of the Premises and Improvements or out of any operations conducted thereon in accordance with applicable law. Any of such as may be temporarily stored in the open, shall be kept in suitable garbage and waste receptacles. When effecting removal of all such waste, Lessee shall comply with all laws, ordinances, rules, regulations and procedures of all applicable Governmental Authorities. Without limiting the foregoing, Lessee shall place and maintain covered, secure trash receptacles, preferably of fifty (50) gallon capacity, of a sufficient number and at appropriate locations on the over water structures within the Premises to encourage facility users to discard litter in an acceptable manner and prevent litter from being discarded into the waters above the Premises.

(e) Waste. Lessee shall commit no legal nuisance, waste or injury on the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such material nuisance, waste or legal injury upon or to the Premises.

(d) Signs. No permanent or temporary signs directed to the boating public shall be erected or placed within the Premises and/or the Improvements. Lessee shall install and maintain manatee awareness signs, at locations and of a format acceptable to the Division of Marine Resources, Office of Protected Species Management, advising boaters to exercise caution due to the presence of manatee in the area. Lessee shall install and maintain manatee information displays, in locations and of a format acceptable to the Division of Marine Resources, Office of Protected Species Management, informing the boating public of the habitat and mannerisms of the manatee and potential threat boats can impose on the continued existence of the endangered manatee. Lessee hereby accepts the responsibility to contact and



comply with the requirements of the Division of Marine Resources, Office of Protected Species Management, MS 245, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, within six (6) months of receipt of executed lease. Lessee also agrees to provide an affidavit signed by the Lessee stating the required signs and displays have been installed and satisfy the requirements of the Division of Marine Resources, Office of Protected Species Management.

**SECTION 7. COMPLIANCE WITH LAWS.**

Lessee shall comply with all laws, ordinances, resolutions and governmental rules, regulations and orders of Governmental Authorities as may be in effect now or at any time during the Term of this Lease, all as may be amended, which are applicable to Lessee, the Premises, the Improvements, or the operations conducted at the Premises. A violation of any of such laws, ordinances, resolutions, rules, regulations or orders, as amended, not cured within the applicable cure period shall constitute a material breach of this Lease, and in such event Lessor shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

**SECTION 8. MAINTENANCE AND REPAIR.**

(a) Lessee shall throughout the Term assume the entire responsibility and shall relieve the Lessor from all responsibility for all repair, maintenance and replacements on the Premises (which shall include, without limitation, the Improvements thereon) whether such repair, maintenance and replacements are ordinary or extraordinary, structural or otherwise. Maintenance, repairs, replacements and capital improvements shall be in quality and class comparable to similar properties, to preserve the Premises and Improvements in good order and condition. During the Term, Lessee shall be required to keep all Improvements in good and useable condition throughout the Term of this Lease.

(b) If Lessee fails or neglects to fulfill its repair and maintenance obligations under Section 8(a) above and such failure continues for thirty (30) days following written notice from Lessor to Lessee specifying the nature of such failure or neglect and Lessee does not contest or dispute the failure or neglect set forth in Lessor's notice, Lessor shall have the right, but not the obligation to perform such repairs and maintenance obligations on behalf of Lessee. If Lessor performs such repairs and maintenance obligations pursuant to the terms and conditions of this Section, Lessee agrees to pay Lessor the cost thereof as Additional Rent within ten (10) days following written demand therefore.

**SECTION 9. INSURANCE REQUIREMENTS FOR LESSEE.**

(a) Casualty Insurance. Lessee shall, during the Term of this Lease, insure and keep insured to the extent of not less than 100% of the insurable replacement value thereof, the Improvements and fixtures and attached equipment on the Premises against such hazards and risks as may now or in the future be included under the Standard Form of Fire and Extended Coverage insurance policy of the State of Florida.

(b) Comprehensive General Liability Insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than One Million Dollars (\$1,000,000) with a Two Million Dollars (\$2,000,000) umbrella per occurrence, combined single limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Premises and Operations, Independent Contractors and Broad Form Contractual Coverage covering all liability arising out of the terms of this Lease.

(c) Workers' Compensation and Employer's Liability Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability with a limit of Five Hundred Thousand Dollars (\$ 500,000) each accident. Lessee must be in compliance with all applicable State and federal workers' compensation laws, including US Longshore and Harbor Workers Compensation Act, Jones Act (maritime), Federal Employers Liability Act (railroad), etc.

(d) Certificates. Lessee shall furnish to the Lessor, certificates of insurance or endorsements evidencing the insurance coverages specified by this Article prior to the Effective Date of this Lease. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals thereof shall name the Indemnitees as additional insureds as their interests may appear.

(e) Cancellation. Coverage is not to cease and is to remain in force (subject to cancellation notice) throughout the term of this Lease and until all performance required hereunder is completed. All policies must be endorsed to provide Lessor with at least thirty (30) calendar days' notice of cancellation, restriction or both. If any of the insurance coverages will expire prior to the termination of this Lease, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

(f) Continued Obligations. Compliance with the foregoing requirements shall not relieve the Lessee of its liability and obligations under any other provision of this Lease.

(g) Liability policies shall be endorsed to provide the following: 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.

#### **SECTION 10. DAMAGE TO OR DESTRUCTION OF PREMISES.**

(a) Removal of Debris. If the Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty, Lessee shall promptly remove, or cause to be promptly removed, all debris resulting from such damage from the Premises, and Lessee shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of persons and property. To the extent, if any, that the removal of debris under such circumstances is covered by Lessee's insurance, the proceeds thereof shall be paid to Lessee for such purpose.

(b) Minor Damage. If Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty but not rendered unusable, then there shall be no abatement of Rent and the Lease shall continue in full force and effect. Lessee may repair and restore the Improvements at the expense of Lessee and, if such damage is covered by Lessee's, insurance, the proceeds thereof shall be made available to Lessee for that purpose.

#### **SECTION 11. CONDEMNATION.**

If at any time during the Term of this Lease, the Premises or, as determined among the parties, any portion thereof, as would render the balance of the Premises not suitable for the Permitted Use enumerated in this Lease shall be taken by transfer or exercise of eminent domain power by any Governmental Authority, the Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time Rent and other charges shall be apportioned, except that this provision shall not release the parties from any liability or claims arising prior to the date of such termination nor other Surviving Obligations. The Lessor shall be entitled to the condemnation award for the Premises and Lessee

shall be permitted to make separate claim to the condemning authority for its leasehold interest hereunder. Lessor shall not be obligated to raise any defense to any proposed acquisition or use of the Premises by any condemning authority.

**SECTION 12. INDEMNITY.**

Lessee shall indemnify and hold harmless the Indemnitees from and against any and all claims, costs, losses and damages, liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of the Lessee, any subcontractor, any supplier, any Person directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, such is caused by the Lessor's gross negligence. This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the improvements, and including the loss of use resulting therefrom. Payment of any amount due pursuant to this Section 12 shall, after receipt of written notice by Lessee from the Lessor that such amount is due, be paid by Lessee if the Lessor becomes legally obligated to pay same, or the Lessee agrees that it is responsible for said claim, or in the alternative, the Lessor, at the Lessor's option, may make payment of an amount so due and Lessee shall promptly reimburse the Lessor for same. Where the basis for a claim for damages brought against the Lessor by a third party is that the Lessor has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent acts or omissions of Lessee under this Lease, then Lessee agrees, at Lessee's expense, after written notice from the Lessor to defend any action against the Lessor that falls within the scope of this Section 12, or the Lessor, at the Lessor's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit which alleged that the breach was a result of the negligent act or omissions of the Lessee under this Lease, then the reasonable costs and expenses of the Lessor incurred in defending such action shall be payable by Lessee. If the Lessor requests the Lessee to defend such action on behalf of the Lessor and the Lessor is not found liable for any damages which are expressly or impliedly claimed to be the result of the Lessee's acts or omissions, then, the Lessor shall reimburse the Lessee all the reasonable fees and costs expended in the defense. If either the Lessor or Lessee is required to incur attorneys' fees or costs to enforce this Section 12, the prevailing party in any litigation shall recover all of their attorneys' fees and costs at both trial and appellate levels. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

**SECTION 13. RIGHTS OF ENTRY RESERVED.**

(a) Access. The Lessor, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times and upon reasonable advance notice to enter upon the Premises and Improvements for the purpose of inspecting same. The Lessor may also observe the performance by the Lessee of its obligations under this Lease and for the doing of any act for which the Lessor may be obligated or have the right to do under this Lease or otherwise, subject to the provisions of this Lease, provided in connection with such access, such party shall use reasonable efforts to minimize disruption to the operations being conducted upon the Premises and Improvements.

(b) No Eviction. The exercise of any or all of the foregoing rights by the Lessor or others to the extent permitted by this Lease shall not be or be construed to be an eviction of the Lessee nor be

made the grounds for any abatement of Rent nor any claim or demand for damages, consequential or otherwise.

**SECTION 14. ASSIGNMENT AND SUBLETTING.**

(a) Assignment. This Lease shall not be assigned or otherwise transferred without prior written consent of the Lessor, which consent may be withheld by the Lessor in its sole and absolute discretion. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

(b) Subletting. Lessee shall not sublet portions or the whole of the Premises and the Improvements, or grant licenses or concessions thereat (all of the foregoing being deemed a "Sublease") without the prior written consent of the Lessor in each instance, which consent may be withheld by the Lessor in its sole and absolute discretion. The following terms and conditions shall apply in each instance where Lessor has consented to a sublease:

(1) Each Sublease shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions.

(2) No Sublease shall relieve Lessee from liability for any of its obligations hereunder, and in the event of any such Sublease, Lessee shall continue to remain primarily liable for and continue to make payments for the payments required to be made pursuant to this Lease and for the performance and observance of the other agreements on its part herein contained.

(3) The form of such Sublease shall be subject to the review and approval of the Lessor and shall, at a minimum, contain all of the material provisions of this Lease with respect to the obligations of Lessee.

**SECTION 15. DEFAULT; TERMINATION.**

(a) Default. If any one or more of the following events shall occur, same shall be an event of default under this Lease:

(1) Lessee shall voluntarily abandon the Premises or discontinue its operations on the Premises for a period of thirty (30) consecutive calendar days, other than as a result of casualty, condemnation, major renovation, or one or more acts of force majeure; or

(2) Any lien, claim or other encumbrance which is filed against the Lessor's fee simple title to the Premises (other than that created by or through Lessor) is not removed, or if the Lessor is not adequately secured by bond or otherwise with respect to any lien against the fee simple title of the Premises (other than that created by or through Lessor), within thirty (30) calendar days; or

(3) The Lessee shall fail to pay the Rent when due to the Lessor and Lessee shall continue in its failure to make any such payments for a period of ten (10) calendar days; or

(4) The Lessee shall fail to make any other payment required hereunder when due to the Lessor and shall continue in its failure to make any such other payments required hereunder for a period of ten (10) calendar days; or

(5) The Lessee shall fail to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Lease on its part to be kept, performed or observed within thirty (30) calendar days (except where fulfillment of its obligation requires activity over a greater period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days and continues such performance without material interruption); provided, however, the foregoing shall not apply if Lessee's failure to perform is due directly to the acts or omissions of Lessor; or

(6) To the extent permitted by law, if Lessee makes an assignment for the benefit of creditors; or

(7) To the extent permitted by law, if Lessee files a voluntary petition under Title 11 of the United States Code (the "Bankruptcy Code") or if such petition is filed against Lessee and an order for relief is entered and not dismissed within sixty (60) days or if Lessee files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law; or

(8) To the extent permitted by law, if within sixty (60) days after the commencement of any proceeding against Lessee seeking to have an order for relief entered against its as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding is not dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Lessee, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Lessee, or of all of any of the Premises or any interest of Lessee therein, such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment is not vacated.

(b) Remedy. Upon the occurrence of any event set forth in Section 15(a), above, or at any time thereafter during the continuance thereof, the Lessor may at its option immediately terminate the rights of Lessee hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice or Lessor may exercise any and all other remedies available to Lessor hereunder or at law or in equity. In the event of any such termination, Lessee shall have no further rights under this Lease and shall cease forthwith all operations upon the Premises and shall pay in full all Rent and other charges as set forth in this Lease, then due and owing, through the date of termination, and Lessee shall be liable for all Surviving Obligations as well as compensatory damages incurred by Lessor in connection with Lessee's default or the termination of this Lease upon such a default, including without limitation, all direct, indirect, and all other damages whatsoever, including punitive and consequential damages.

(c) Habitual Default. Notwithstanding the foregoing, in the event that the Lessee has defaulted in the performance of or breached the same obligation three (3) or more times in a twelve (12) month period, and regardless of whether the Lessee has cured each individual condition of breach or default, the Lessee may be determined by the Lessor to be an "habitual violator." At the time that such determination is made, the Lessor shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults of that particular obligation for the balance of such twelve (12) month period and that any subsequent breaches or defaults of that particular obligation for the balance of such twelve (12) month period, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Lease. In the event of any such subsequent breach or default of that particular obligation for the balance of such twelve (12) month period, for which the Lessee has been deemed to be a habitual violator, Lessor may terminate this Lease upon the giving of written notice of termination to the Lessee, such termination to be effective upon delivery of the notice to the Lessee.

(d) No Waiver. No acceptance by the Lessor of Rent, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Lessor to terminate this Lease, or to exercise any other available remedies. Failure by Lessor or Lessee to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

#### **SECTION 16. REMEDIES TO BE NON-EXCLUSIVE.**

(a) Cumulative Remedies. All rights and remedies of the parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any. No waiver by either party of any failure to perform any of the terms, covenants, and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions herein contained.

(b) Survival. Upon termination or expiration of this Lease, the Lessee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

#### **SECTION 17. SURRENDER.**

The Lessee covenants and agrees to yield and deliver peaceably and promptly to the Lessor, possession of the Premises, on the Termination Date or earlier termination of this Lease. The Lessee shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation accepted. All maintenance and repairs shall be completed prior to surrender.

**SECTION 18. ACCEPTANCE OF SURRENDER OF LEASE.**

No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Lessor and of the Lessee in a document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of the Lessor shall be deemed an acceptance of a surrender of letting under this Lease.

**SECTION 19. REMOVAL OF PROPERTY.**

(a) Removal. Immediately upon the termination or earlier expiration of this Lease, Lessee shall remove the Improvements and any other personal property from the Premises. Lessee shall immediately repair any damage to the Premises caused by its removal of the Improvements and any personal property. If the Lessee shall fail to remove the Improvements and any personal property by the expiration or earlier termination of this Lease, then, Lessee shall be considered to be holding over and subject to charges under Section 25(l), hereof, and after fourteen (14) calendar days following said termination or expiration, at the Lessor's option: (i) title to same shall vest in the Lessor, at no cost to the Lessor; or (ii) Lessor may remove such property to a public warehouse for deposit; or (iii) Lessor may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second, to any sums owed by the Lessee to the Lessor, with any balance remaining to be paid to the Lessee; or (iv) Lessor may dispose of such property in any manner permitted by law. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Lessor upon demand. In the event Lessee fails to pay such expenses to Lessor following demand therefore, Lessor is hereby authorized to file a claim of lien for such expenses upon the Upland and thereafter foreclose upon such Claim of lien in accordance with applicable law.

(b) Survival. The provisions of this Section shall survive the expiration or termination of this Lease.

**SECTION 20. NOTICES.**

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

[REST OF PAGE INTENTIONALLY LEFT BLANK]

**FOR LESSOR:**

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Attn: City Manager

and

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Attn: City Attorney

**FOR LESSEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

All notices, approvals and consents required hereunder must be in writing to be effective.

**SECTION 21. NON-LIABILITY OF INDIVIDUALS.**

No limited partner, director, officer, administrator, official, agent or employee of the Lessor or Lessee shall be charged personally or held contractually liable under any term or provisions of this Lease or of any supplement, modification or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution.

**SECTION 22. UTILITIES.**

From and after the Effective Date, the Lessee shall pay for all water, wastewater, electric, telephone, solid waste, recycling, and all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations at the Premises. Lessee shall pay all fees or charges relative to the foregoing promptly prior to delinquency. The metering devices and utility lines installed by the Lessee for such utilities shall be installed at the cost of the Lessee and shall (to the extent owned by Lessee) become the property of the Lessor at the end of the Term. Extension of utility mains or services to meet the needs of the Lessee on the Premises shall be at the expense of the Lessee. No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of the Lessee or grounds



for any diminution or abatement of rental or shall be grounds for any claim by the Lessee under this Lease for damages, consequential or otherwise unless caused by Lessor's wrongful act or gross neglect.

**SECTION 23. ENVIRONMENTAL COMPLIANCE; ENVIRONMENTAL CONTAINMENT AND REMOVAL.**

(a) No Warranty by Lessor. Lessor makes no representations or warranties whatsoever as to the existence of any pollutants, or hydrocarbon contamination, hazardous materials, or other contaminants or regulated materials (collectively, "Materials") on, in or under the Premises, whether or not in violation of any law, administrative code provision, ordinance, rule, regulation, order or directive of Governmental Authorities, as amended. It shall be the sole responsibility of Lessee to make sufficient inspection of the Premises to satisfy itself as to the presence or absence of any Materials.

(b) Compliance. From and after the Effective Date, Lessee agrees to comply with all existing and future environmental laws, administrative code provisions, ordinances, rules and regulations, and the requirements of Governmental Authorities covering the Premises and Improvements

(c) Clean Up. The Release (as defined in Section 23(d) below) of any Materials on, in or under the Premises, or as a result of Lessee's operations at the Premises including any Release into the waters above the Premises (other than any Materials created by or through Lessor), that is in an amount that is in violation of any law, administrative code provision, ordinance, rule, regulation, order or directive of Governmental Authorities, as amended, by Lessee or any of its or the officers, employees, contractors, subcontractors, invitees, or agents of Lessee committed subsequent to the Effective Date of this Lease, shall be, at the Lessee's expense, and upon demand of Lessor or any Governmental Authority, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Lessee does not take action promptly to have such Materials contained, removed and abated to the extent required by law, the Lessor may upon reasonable notice to Lessee (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by the Lessor or any of its agencies shall not relieve the Lessee of its obligations under this or any other provision of this Lease or as imposed by law. No action taken by either the Lessee or the Lessor to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release.

(d) Notice of Release. Lessee shall provide the Lessor with notice of Releases of Materials occurring at the Premises or on account of Lessee's operations at the Premises. As required by law, Lessee shall provide the Governmental Authorities with notice of spills, releases, leaks or discharges (collectively, "Release") of Materials on, in or under the Premises including any Release into the waters above the Premises which exceeds an amount required to be reported to any Governmental Authorities under applicable environmental laws, rules and regulations, which notice shall be in accordance with applicable environmental laws, rules and regulations.

(e) Cure. If Lessee is in default of its obligation to remove the Materials in violation of applicable law and such breach is not cured within the applicable cure period, and the Lessor arranges for the removal of any Materials on the Premises that were caused by the Lessee or the officers, employees, contractors, subcontractors, invitees, or agents of Lessee, the costs of such removal incurred by the Lessor shall be paid by Lessee to the Lessor within ten (10) calendar days of Lessor's written demand, with interest at the highest non-usurious rate permitted by Florida law per annum thereafter accruing.

(f) Survival. The provisions of this Section shall survive the expiration or other termination of this Lease.

#### **SECTION 24. NON-DISCRIMINATION.**

Lessee shall not discriminate against any Person because of that Person's race, color, religion, sex, national origin, age, handicap, or this Lease with respect to any activity occurring within the Premises or upon the Upland.

#### **SECTION 25. MISCELLANEOUS.**

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(b) Jurisdiction. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any disputes shall lie in the courts of Monroe County, Florida.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Relationship of Parties/Independent Contractor. It is the intent of the parties that the relationship of Lessor and Lessee hereunder is the relationship of landlord and tenant. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee, or its agents, as officers, employees, or agents of the Lessor. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall create or be deemed or construed to create a partnership, joint venture, joint enterprise or any other agency or other similar such relationship between the parties hereto.

(e) Third Party Beneficiaries. Neither Lessee nor Lessor intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease.

(f) Negotiated Lease. Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Lease, including all Exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

(g) Incorporation by Reference. The truth and accuracy of each "Recitals" clause set forth above is acknowledged by the parties. The attached Exhibits to this Lease are incorporated into and made a part of this Lease and all Exhibits subsequently attached to this Lease pursuant to the terms hereof shall be deemed incorporated into and made a part of this Lease.

(h) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party hereto, the other party will deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the

Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either party may reasonably request.

(i) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the Lessor and Lessee.

(j) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with subparagraph (i), above.

(k) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(l) Holdover. It is agreed and understood that any holding over of Lessee after the termination of this Lease shall not renew and extend same, but shall operate and be construed as a license from month to month. At the option of Lessor, upon written notice to Lessee, Lessee shall be required to pay to the Lessor during any holdover period, monthly license fees which shall be equal to double the amount of the monthly installment of rental that was due and payable for the month immediately preceding the termination date of this Lease. In addition, Lessee shall be required to pay to Lessor any other charges required to be paid hereunder during any such holdover period. Lessee shall be liable to the Lessor for all loss or damage on account of any such holding over against the Lessor's will after the termination of this Lease, whether such loss or damage may be contemplated at the execution of this Lease or not. It is expressly agreed that acceptance of the foregoing payments by the Lessor in the event that Lessee fails or refuses to surrender possession shall not operate or give Lessee any right to remain in possession nor shall it constitute a waiver by the Lessor of its right to immediate possession of the premises.

(m) Agent for Service of Process. It is expressly understood and agreed that if the Lessee is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event the Lessee does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the Lessor arising out of or based upon this Lease, and the service shall be made as provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. The Lessee shall designate an agent for service process in Florida. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to the Lessee at the address set forth herein. Any such service out of this State shall constitute valid service upon the Lessee as of the date of mailing. It is

further expressly agreed that the Lessee is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

(n) Waiver of Claims. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Premises or any part thereof; (ii) caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein; (iii) caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Premises or any fire or other casualty thereon; (v) occasioned by Lessee's failure to maintain the Premises and Improvements in a safe condition; or (vi) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Lessor. The Lessee agrees that Lessor shall not be liable for injury to Lessee's business for any loss of income therefrom or from loss or damage for merchandise or property of Lessee or its employees, invitees, customers, commercial Lessees or other persons in or about the Premises, nor shall Lessor be liable for injuries to any persons on or about the Premises whether such damage is caused by or as a result of theft, fire, electricity, water, rain or from breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, fixtures or for any other condition arising upon the Premises, or from any new construction or repair, alteration or improvement on the part of Lessee's Improvements or the equipment, fixtures or appurtenance thereof. The Lessor does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Lessor be liable for any consequential or punitive damages in connection with this Lease.

(o) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Lease.

(p) Time of Essence. Time is expressed to be of the essence of this Lease.

(q) Written Approvals. All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

(r) Authority of Individuals. The individuals executing this Lease on behalf of Lessee personally warrant that they have full authority to execute this Lease in a representative capacity on behalf of Lessee for whom they are acting herein.

(s) Recordation of Memorandum of Lease. The Lessee, at its own expense, shall record this fully executed Lease in its entirety in the Public Records of Monroe County, Florida within fourteen (14) days after receipt, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded Lease in its entirety which contains the O.R. Book and Pages at which the lease is recorded.

(t) No Set Off. The Lessee acknowledges that, as of the Effective Date hereof, it has no claims against Lessor with respect to any or the matters covered by this Lease and as of the Effective Date it has no claim of set off or counterclaims against any of the amounts payable by Lessee to Lessor under this Lease. The Lessee is not entitled to setoff against the amounts payable by Lessee to Lessor pursuant to this Lease.

(u) Police/Regulatory Powers. 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 Premises, any improvements thereon, or any operations at the Premises. 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.

(v) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may 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 Florida. Additional information regarding radon and radon testing may be obtained from your local public health unit.

(w) Broker. Each party represents to the other that it has not dealt with any broker or finder in connection with the execution of this Lease.

(x) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

(y) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, if Lessee is a general partnership or joint venture, any general partner or venturer of Lessee shall be jointly and severally liable and obligated with Lessee for the full performance of all of the terms, covenants, obligations and conditions of this Agreement.

(z) Attorneys' Fees. In the event of any litigation which arises out of, pertains to, or relates to this Lease or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, subject to the limits of this Section. Where the prevailing party is awarded compensatory damages from the non-prevailing party, the amount of fees shall not exceed the amount of compensatory damages (it being the intent that no fees shall be recoverable by a prevailing party in the absence of an award of compensatory damages other than nominal damages).

[REST OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNES 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

ATTEST:

\_\_\_\_\_  
Diane Clavier, City Clerk

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

\_\_\_\_\_  
Steve Williams, City Attorney

**LESSEE:** \_\_\_\_\_

\_\_\_\_\_

Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

**A portion of bay bottom in Boot Key Harbor, adjacent to the property at 307 Sombrero Blvd., Marathon FL and having Monroe County Parcel ID# 00355370-002000 as Recorded in plat Book 5, Page 101 of the Public Records of Monroe County, Florida, and more particularly described by feet and bounds as follows:**

**Commencing at Northwest corner of the existing seawall of the aforementioned 307 Sombrero Blvd. , bear North 00 degrees for a distance of 50 feet; thence turn East 90 degrees for a distance of 200 feet; thence turn South 180 degrees for a distance of 50 feet; thence turn west 270 degrees back to the point of Beginning.**

