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**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-062**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH DEWEY BROBERG, JR. TRUST AND MARY LOU BROBERG TRUST FOR TRAILER SPACE AT CITY HALL IN THE AMOUNT OF \$500.00 PER MONTH.

WHEREAS, presently, City of Marathon (the "City") staff does not have adequate working space in the existing rented office space at City Hall; and

WHEREAS, the City Hall property owner, Dewey Broberg, Jr. Trust and Mary Lou Broberg Trust, has agreed to rent open space to the City in the parking lot behind City Hall for the placement of a temporary office trailer for \$500 per month until office space becomes available in the City Hall building.

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

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

Section 2. The City Manager is authorized to enter into a lease agreement for trailer space behind City Hall for \$500 per month, a copy of which is attached as Exhibit "A," together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. The City Manager is authorized to execute the lease agreement.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 8th day of June, 2004.


THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

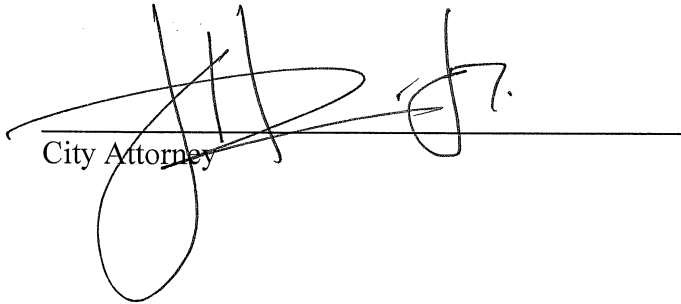
ATTEST:



Cindy L. Ecklund
City Clerk

(City Seat)

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



City Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this ____ day of _____, 2004, between the **DEWEY O. BROBERG, JR., TRUST and the MARY LOU BROBERG TRUST**, whose business address is c/o Richard A. Malafy, 10959 Overseas Highway, Marathon, Florida 33050 (the "Landlord") and **CITY OF MARATHON**, a Florida municipal corporation, whose business address is 10045-55 Overseas Highway, Marathon, FL 33050 (the "Tenant").

RECITALS:

1. Landlord is the owner of that certain improved real property described on Exhibit "A" attached hereto and made a part hereof (the "Property").
2. Tenant desires to lease from Landlord, and Landlord is willing to lease to Tenant, the Property in furtherance of such purposes of Tenant 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, Landlord and Tenant agree as follows:

ARTICLE 1. Demise; Term; Commencement Date.

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Term (as hereinafter defined), an approximate area measuring 10 x 44 feet. Tenant shall place a trailer on the Property to be used for office space. Landlord hereby authorizes Tenant for the Term to use the Property for office space purposes subject to the terms contained herein.

1.2 The term (the "Term") of this Lease shall commence on November 1, 2004 (the "Commencement Date") and expire on May 1, 2005 (the "Expiration Date"). The Term shall hereinafter be referred to as the "Term."

1.3 Upon the expiration of the Term or any earlier expiration or termination of this Lease, Tenant shall immediately quit and surrender to Landlord the Property, broom clean, in the same condition it was in at the commencement of the term.

ARTICLE 2. Rent.

2.1 The monthly rent for the Term shall be Five Hundred and 00/100 Dollars (\$500.00) payable to Landlord upon the commencement of the Term and thereafter, in advance, on the first day of each month (the "Rent"). Tenant shall have the option to extend the Term for an additional one (1) year Term by providing Landlord with written notice of its intent to extend the Term at least thirty (30) days prior to the expiration of the current Term. Rent for the extension Term shall increase four percent (4%) to Five Hundred Twenty and 00/100 Dollars (\$520.00).

2.2 Tenant shall further pay to Landlord the sum of Two Hundred Fifty and 00/100 Dollars (\$250.00) as "Additional Rent" for the Term and any extensions thereof. The Additional Rent contained within this paragraph shall be used to partially reimburse Landlord for any and all additional expenses associated with Tenant's use of the premises, including but not limited items such as garbage, all taxes, etc.

2.3 Tenant shall pay, subject to any adjustments necessary for payments already made pursuant to Article 2, section 2.2 herein, to Landlord, on or before the applicable due date all Taxes (hereinafter defined) incurred during the Term. Tenant's obligations hereunder are conditioned upon Landlord providing to Tenant documentation showing the charges due. The term "Taxes" shall mean the cost of all real estate, personal property and other ad valorem taxes, sales and use taxes, and any other levies, charges, local improvement rates, and assessments whatsoever assessed or charged against the Premises, the equipment and improvements therein contained, and including any amounts assessed or charged in substitution for or in lieu of any such taxes, as well as any amounts assessed or charged against Landlord or Tenant or both arising out of or in connection with Tenant's use and occupancy of the Premises and this Lease.

ARTICLE 3 Utilities.

Water, and electricity shall be separately arranged for and paid by the Tenant. Services to be arranged for and paid by the Landlord, subject to reimbursement by tenant as detailed herein, include, but are not limited to the following: (a) trash removal, (b) landscaping maintenance, and (c) twenty-four (24) hour outside lighting. Any other services to be provided to, or which shall be necessary for the conduct of, Tenant's operations such as cleaning, telephone, facsimile, and mail shall be separately arranged and paid for by Tenant.

ARTICLE 4. Condition of Property.

4.1 Tenant has inspected the Property, knows the condition thereof, and Landlord shall have no obligation to prepare the Property for Tenant's occupancy and Tenant otherwise accepts the Property "as is." Tenant acknowledges that Landlord has made no warranties or representations with respect to the condition or legal status of the Property.

4.2 Tenant shall perform or cause to be performed all work and make any and all improvements necessary to prepare the Property for Tenant's occupancy. Such work shall be performed in accordance with the provisions of Article 7 hereof entitled "Alterations and Installations." The work shall be performed at Tenant's sole cost and expense.

ARTICLE 5. Use of Property.

5.1 The Property shall be used for office space.

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

ARTICLE 6. Compliance with Laws.

Tenant, at Tenant's sole cost and expense, shall promptly comply with all Laws relating to Tenant's use and occupancy of the Property of any Government Entity or any body that shall impose any violation, order or duty upon Tenant. "Law" or "Laws" as used in this Lease means each and every law, regulation, order, ordinance, statute or requirement of any kind whatsoever, present or future, issued by any Government Entity applicable to or affecting the Property. "Government Entity" as used in this Lease means the United States, the State of Florida, the County of Monroe, the City of Marathon, and any and every political subdivision of government of any kind whatsoever, now existing or hereafter created, now or hereafter having jurisdiction over the Property.

ARTICLE 7. Alterations and Installations.

7.1 Tenant shall not cut, drill into, disfigure, deface or injure any part of the Property and/or Property or perform or undertake any alteration, addition, improvement or construction (each an "Alteration") to or in the Property without Landlord's prior written consent, which consent shall neither be unreasonably withheld nor delayed except, however, that Landlord may withhold or delay consent at Landlord's sole discretion, for any Alteration which:

- (a) will alter or affect any portion of the Property;
- (b) will detract from the use or character of the Property; or
- (c) will require amendment of any certificate of occupancy for the Property.

7.2 With respect to every Alteration (unless Landlord waives such requirement in writing in any case), Tenant shall cause all necessary designs, plans and specifications for a proposed Alteration to be prepared at Tenant's expense by a licensed architect (or licensed engineer if appropriate) and shall submit the same to Landlord for Landlord's written approval.

7.3 With respect to every Alteration:

- (a) Tenant shall procure or cause to be procured all permits, approvals, consents, licenses and filings of any kind required by Laws.
- (b) Tenant shall undertake, prosecute, and complete all work in connection with the Alteration continuously and expeditiously and in a good and workmanlike manner.
- (c) Tenant will inform Landlord in writing of the names of any contractor or subcontractors Tenant proposes to use in performing Alterations upon the

Property. All contractors and subcontractors shall be licensed by the State of Florida, as required. Landlord reserves the right to reject any contractor or subcontractor.

- (d) All Alterations shall be installed in compliance with Laws and, when installed, shall comply with Laws.
- (e) Each Alteration:
 - (i) will be of good quality and free from faults and defects, latent or otherwise;
 - (ii) will be free and clear of liens;
 - (iii) will conform to the plans and specifications as approved by Landlord; and
 - (iv) will be fit for the intended use and purpose.
- (f) Tenant and Tenant's contractors shall allow access for inspection by Landlord's representatives at all reasonable times after reasonable advance notice.
- (g) Prior to the commencement of any Alteration, Tenant shall deliver to Landlord insurance policies or certificates of each contractor evidencing insurance coverage in a form and amount reasonably satisfactory to Landlord and issued by an insurer licensed to do business in the State of Florida.

7.4 Landlord may require that Tenant deliver to Landlord, at Tenant's expense, in form satisfactory to Landlord and issued by a surety company approved in writing by Landlord a performance bond guaranteeing to Landlord Tenant's full and faithful completion of the Alteration in accordance with the plans and specifications approved by Landlord.

7.5 Tenant agrees to discharge, at Tenant's sole cost and expense (whether by payment, bonding, or otherwise) every lien filed against the Property for work claimed to have been done for or materials claimed to have been furnished to Tenant, within thirty (30) days after written notice from Landlord.

ARTICLE 8. Fixtures and Equipment; Tenant's Property.

8.1 All Alterations made and installed upon or in the Property by Landlord, and any fixtures or Alterations made or installed by Tenant are and shall be Landlord's property and shall remain upon the Property (and be surrendered by Tenant) at the end of the Term. All furniture and furnishings including the trailer located on the Property provided by Tenant or at Tenant's expense and any other movable property of Tenant shall be and remain property of Tenant that Tenant must remove on or before the Expiration Date.

8.2 If any property that Tenant must remove under Section 8.1 is not removed on or before the Expiration Date, Landlord may remove and dispose of the same at Tenant's expense.

8.3 Tenant shall bear the risk of loss of the personal property of Tenant and its respective subtenants, agents, representatives, employees, agents and invitees that may from time-to-time be located on the Property.

ARTICLE 9. Maintenance; Repairs.

Tenant shall, at its sole cost and expense, throughout the Term of this Lease, keep and maintain in good order, condition and repair the Property and the fixtures and appurtenances (if any) therein. Tenant shall also perform all minor maintenance and repair work to the Property as necessary in order to maintain the good order, condition and repair of the Property. Tenant shall, at its sole cost and expense, promptly repair any damage to the Property and/or Property caused by the acts or omissions of Tenant and its employees, agents, guests and invitees.

ARTICLE 10. Damage; Restoration.

10.1 If the Property or any part thereof shall be damaged or destroyed by fire, flood or other casualty ("Damage") and Tenant gives prompt notice thereof to Landlord and this Lease is not terminated pursuant to any provision of this Article, then Landlord shall proceed with reasonable diligence to repair or cause to be repaired the Damage to the Property only to the extent insurance proceeds are available to Landlord for such purpose. All other repairs required by reason of such Damage and the replacement of its own furniture, furnishings and equipment, and any other items of Tenant's property (and the replacement and repair of any furniture and furnishings made available to Tenant by Landlord) shall be performed by Tenant, at its expense, in accordance with the terms of this Lease promptly and with due diligence.

10.2 If the Property is so damaged as to render the Property untenable by Tenant for a consecutive period of more than thirty (30) days, either Landlord or Tenant may terminate this Lease by giving thirty (30) days' Notice (as defined below) to the other party within sixty (60) days after the date of such Damage.

ARTICLE 11. Landlord's Access to Demised Property.

Tenant authorizes Landlord, its agents, employees and representatives to enter the Property at any time on reasonable notice, and without notice in case of emergency to inspect the Property and/or to perform any maintenance or to make any repairs, alterations, or improvements which Landlord reasonably deems necessary or which are otherwise permitted under this Lease provided that Landlord shall use its best efforts not to interfere with Tenant's use and occupancy of the Property.

ARTICLE 12. Quiet Enjoyment.

Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Tenant may lawfully and quietly hold and enjoy the Property during the Term without hindrance, ejection, molestation, or interruption.

ARTICLE 13. Default.

In the event of any failure of compliance by Tenant with any of its obligations to Landlord as provided for herein such action shall constitute a default by Tenant under this Lease. Upon any such default by Tenant, Landlord shall provide to Tenant Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions Tenant must take to cure the same. Tenant shall cure any such default, within: (i) ten (10) days following the date of the Default Notice, in the case of any default involving the payment of moneys due and unpaid to Landlord hereunder; or, (ii) thirty (30) days following the date of the Default Notice, in the event of any other default by Tenant. In the case of non-monetary defaults, if the nature of Tenant's obligations are such that more than thirty (30) days is required to effect cure, then Tenant shall not be in default hereunder if Tenant commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance. In the event Tenant fails to effect any required cure as provided for herein, Tenant shall be deemed to be in uncured default hereunder, and Landlord, at Landlord's option, Landlord may give Notice to Tenant (the "Termination Notice"), stating that this Lease and the Term shall expire and terminate on the date specified in such Termination Notice (which date shall not be less than thirty (30) days after the giving of the Termination Notice). In such event, this Lease and the Term shall expire and terminate as if the date specified in the Termination Notice were the Expiration Date. In addition to the foregoing, in the event of an uncured default Landlord shall be entitled to its remedies at law and in equity.

ARTICLE 14. Indemnification.

Tenant hereby agrees, to the fullest extent permitted by law, to indemnify Landlord, its elected officials, employees, consultants, invitees, guests and agents (collectively hereinafter referred to as "Indemnitees") and Indemnitees' successors and assigns and hold Indemnitees and Indemnitees' successors and assigns harmless from and against (and to pay the full amount of) all loss, liability, obligation, damage, penalty, tax, cost, claim, demand, judgment, charge, or expense of every kind whatsoever, including attorneys' fees and costs (at both the trial and appellate levels), which Indemnitees and/or Indemnitees' successors and assigns may suffer, incur, or pay out, or which may be asserted against Indemnitees and/or Indemnitees' successors and assigns in whole or in part, by reason of, or in connection with Tenant's use and occupancy of the Property and the observance or performance of any obligation under the Lease. Nothing contained herein shall be construed or interpreted to be a waiver of Tenant's sovereign immunity.

ARTICLE 15. Assignment and Subletting.

Tenant shall not sublet assign or otherwise transfer this Lease, or any part of Tenant's right, title or interest therein or mortgage, pledge or otherwise encumber this Lease without Landlord's prior written consent, which consent may be withheld by Landlord in its sole and absolute discretion.

ARTICLE 16. Notices.

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and sent to the address set forth on the first page of this Lease. 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 only if delivered by hand, evidenced by written receipt; sent by certified mail, return receipt requested, postage and fees prepaid; or sent by overnight delivery service, evidenced by written receipt. A Notice sent by certified mail shall be deemed given as of the receipt date indicated on the return receipt. All other Notices shall be deemed given when received.

ARTICLE 17. Insurance.

17.1 In this Lease "Required Insurance" means the insurance coverage specified in Exhibit "B". At Tenant's sole expense, Tenant shall secure and keep in force all Required Insurance at all times during the Term.

17.2 All Required Insurance shall be evidenced by valid and enforceable policies issued by an insurance company authorized to do business in the State of Florida. (Each such policy is referred to in this Lease as an "Insurance Policy".) Each Insurance Policy shall provide that the same shall not be canceled except after thirty (30) days' prior written notice to Landlord (whether or not such provision is obtainable only by payment of additional premium). Duly executed certificates of insurance or duplicate originals of the original policies shall be delivered to each party on or before the Commencement Date.

17.3 All policies of casualty insurance carried by Tenant shall include, if available without additional premium, a waiver by the insurer of all rights of subrogation against Landlord, Tenant, and Landlord's and Tenant's elected officials, members, trustees, directors, officers, contractors, employees and agents. Neither Landlord nor Tenant, nor any party in respect of which subrogation is waived, shall be liable to the other or such other party for loss or damage caused by any risk covered by such insurance, to the extent that policies are obtainable with waiver of subrogation.

17.4 Before any entry upon the Property by Tenant or Tenant's employees, agents, or contractors, as the case may be, Tenant shall deliver to Landlord certificates evidencing that all Required Insurance is then in full force and effect. Thirty (30) days prior to the expiration of any Insurance Policy, Tenant shall deliver to Landlord certificates evidencing renewal or replacement of such Insurance Policy.

17.5 All policies of Required Insurance shall name Landlord as an additional insured, as its interests may appear. Tenant and Landlord shall cooperate with each other in connection with collection of any insurance proceeds.

17.6 Tenant shall not do or permit to be done any act or thing upon the Property which will invalidate any Insurance Policy carried by Landlord at the Property or be in conflict with any Insurance Requirements, or increase the rate of fire insurance applicable to the Property.

ARTICLE 18. Termination of Lease upon Space in City Hall becoming available.

Landlord agrees to rent to Tenant adequate space located in City Hall immediately upon space becoming available as more particularly set forth in Exhibit "C". Upon such time as space becomes available, Tenant and Landlord shall terminate this Lease Agreement as stated in Section 16 and enter a new lease for the space to be leased to Tenant by Landlord in City Hall.

ARTICLE 19. Miscellaneous.

19.1 This Lease contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, written or oral. This Lease may only be modified in writing by an instrument executed by Landlord and Tenant.

19.2 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and assigns.

19.3 If any term, covenant, condition 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.

19.4 Tenant shall at all times provide for the security of the Property. Tenant shall use its best efforts to protect the Property from theft, vandalism, malicious mischief and other related occurrences.

19.5 The failure by any party to insist in any one or more instances upon the strict performance of any covenant, agreement, term, provision or condition of this Lease shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, or condition, but the same shall continue and remain in full force and effect. No waiver by Landlord or Tenant City of any condition shall be deemed to have been made unless expressed in writing and signed by the waiving party.

19.6 Nothing herein contained shall be deemed in any way to constitute Landlord and Tenant a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Tenant shall be considered an independent contractor.

19.7 Neither this Lease nor any memorandum of same shall be recorded in the Public Records of Monroe County.

19.8 Tenant shall be responsible for accommodating all Americans with Disabilities Act related requests arising out of Tenant's use of the Facility.

19.9 This Lease may be executed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

19.10 Landlord 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 or any operations at the Property. Nothing herein shall be deemed to create an affirmative duty of Landlord 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 ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

19.11 Landlord and Tenant each warrant and represent to the other that the individuals signing this Lease on behalf of the Landlord and Tenant, respectively, have full power and authority to execute and deliver the Lease and to bind the respective parties hereto.

19.12 GOVERNING LAW; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY IN THE STATE. THE PARTIES AGREE THAT VENUE FOR AND LEGAL ACTION INSTITUTED IN CONNECTION WITH THIS AGREEMENT SHALL BE IN MONROE COUNTY, FLORIDA. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.

19.13 As required by Florida law, Landlord hereby includes the following notification as part of this Lease:

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 county public health unit.

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this lease as of the day and year first above written.

TENANT:

Donna M. Cafano
Print Name: Donna M. Cafano

Dewey B. Broberg, Jr. TTEE
Dewey Broberg, Jr., Trust

Susan Thomas
Print Name: Susan Thomas

Donna M. Cafano
Print Name: Donna M. Cafano

Mary Lou Broberg TTEE
Mary Lou Broberg, Trust

Susan Thomas
Print Name: Susan Thomas

LANDLORD:

WITNESSES:

CITY OF MARATHON,
A Florida municipal corporation,

Donna M. Cafano
Print Name: Donna M. Cafano

By: Michael H Puto
Print name: Michael H Puto
Title: City Manager

Susan Thomas
Print Name: Susan Thomas

Attest: Cindy Ecklund
Cindy Ecklund, City Clerk

Approved as to form and legal sufficiency for
the use and reliance of the City of Marathon, Florida only:

[Signature]
By: _____
City Attorney

EXHIBIT "A"

The Property

100th STREET CENTER
BACK PARKING LOT
MARATHON, FLORIDA

EXHIBIT "B"

Required Insurance

The following is Required Insurance under this Lease:

Comprehensive general liability insurance containing the so-called "occurrence" clause (which shall include specifically the Property) with coverage limits not less than:

- (i) bodily
 each occurrence: \$1,000,000

- (ii) property damage
 each occurrence: \$1,000,000

subject to increases from time to time which are not in excess of increases for similar properties;
and

(iii) coverage shall include also:

- (A) personal injury groups A, B, C with employee exclusion
 deleted,

- (B) broad form property damage,

- (C) independent contractors,

- (D) blanket contractual liability,

- (E) products liability and completed operations.

EXHIBIT "C"