

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2007-53**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING CITY MANAGER TO EXECUTE THE FOURTH LEASE AMENDMENT WITH OXFORD BUSINESS III, CORP., A FLORIDA CORPORATION, AS SUCCESSOR-IN-TRUST TO THE DEWEY O. BROBERG, JR., TRUST AND THE MARY LOU BROBERG TRUST, TO EXTEND THE LEASE TERMS ON UNITS 1, 5, AND 6, AT THE 100<sup>TH</sup> STREET CENTER UNTIL MAY 1, 2009, FOR A TOTAL PAYMENT OF 7,990.59 MONTHLY PLUS \$75.00 PER MONTH PER UNIT SEWER SERVICE FEE**

**WHEREAS**, the City of Marathon (the "City") leases office space from Oxford Business III, Corp., a Florida corporation as successor-in-trust to the Dewey O. Broberg, Jr. Trust and the Mary Lou Broberg Trust known as Units 1, 5, and 6 at the 100<sup>th</sup> Street Center (10005, 10045 & 10055 Overseas Highway) Marathon, Florida, 33050; and

**WHEREAS** on April 4, 2001, Lessor and Lessee entered into that certain Commercial Lease (the "Lease") concerning real property located at 100<sup>th</sup> Street Center, Units 5 and 6, also commonly known as 10045 and 10055 Overseas Highway, Marathon, Monroe County, Florida (the "Premises"); the term of the Lease expired on April 30, 2003; and

**WHEREAS** thereafter (a) on or about February 25, 2003 the parties entered into the First Amendment to the Commercial Lease (the "First Amendment") extending the term of the Lease from April 30, 2003 to April 30, 2004 and adding Unit 1, also commonly known as 10005 Overseas Highway, to the scope of the Lease (among other things more specifically recited therein); (b) on or about June 8, 2004 the parties entered into the Second Amendment to the Commercial Lease (the "Second Amendment") extending the term of the Lease from April 30, 2004 to May 1, 2005 (the "Term") (among other things more specifically recited therein); and (c) on or about June 14, 2005 the parties entered into the Third Amendment to the Commercial Lease (the "Third Amendment") extending the term of the Lease from May 1, 2005 to May 1, 2007 (the "Term") (among other things more specifically recited therein). The original Lease, the First Amendment, the Second Amendment and the Third Amendment shall hereinafter collectively be referred to as the "Lease"; and

**WHEREAS** the Parties have agreed to enter into this Fourth Amendment to extend the Term of the Lease and modify certain terms and conditions of the Lease; and

**WHEREAS**, the fourth amendment gives the city the right to terminate the lease on four months notice, such termination to be effective no earlier than six months into the lease term; and

**WHEREAS**, a security deposit in the amount of \$8,000.00 will be delivered to lessor and will be retained by lessor if the lease is terminated prior to April 30, 2008; and

**WHEREAS**, the rent shall be \$7,990.59 per month for the first year of the lease and shall increase by 5% for the second and third year.

**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 fourth amendment to a lease agreement for units 1, 5, and 6 at 100<sup>th</sup> Street Center until May 1, 2009, for a total payment of \$7,990.59 monthly, 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 24th day of April, 2007.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Christopher M. Bull Mayor**

AYES: Cinque, Tempest, Vasil, Worthington, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

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

(City Seal)

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

  
\_\_\_\_\_  
City Attorney



**FOURTH AMENDMENT TO COMMERCIAL LEASE**

**THIS FOURTH AMENDMENT TO COMMERCIAL LEASE** (the "Fourth Amendment") is entered into this \_\_\_\_ day of April 2007, by and between **OXFORD BUSINESS III, CORP.**, a Florida corporation, as successor-in-interest to the DEWEY O. BROBERG, JR., TRUST and the MARY LOU BROBERG TRUST (the "Lessor"), and the **CITY OF MARATHON**, a Florida municipal corporation (the "Lessee").

**RECITALS**

1. On April 4, 2001, Lessor and Lessee entered into that certain Commercial Lease (the "Lease") concerning real property located at 100<sup>th</sup> Street Center, Units 5 and 6, also commonly known as 10045 and 10055 Overseas Highway, Marathon, Monroe County, Florida (the "Premises"); the term of the Lease expired on April 30, 2003; and

2. Thereafter (a) on or about February 25, 2003 the parties entered into the First Amendment to the Commercial Lease (the "First Amendment") extending the term of the Lease from April 30, 2003 to April 30, 2004 and adding Unit 1, also commonly known as 10005 Overseas Highway, to the scope of the Lease (among other things more specifically recited therein); (b) on or about June 8, 2004 the parties entered into the Second Amendment to the Commercial Lease (the "Second Amendment") extending the term of the Lease from April 30, 2004 to May 1, 2005 (the "Term") (among other things more specifically recited therein); and (c) on or about June 14, 2005 the parties entered into the Third Amendment to the Commercial Lease (the "Third Amendment") extending the term of the Lease from May 1, 2005 to May 1, 2007 (the "Term") (among other things more specifically recited therein). The original Lease, the First Amendment, the Second Amendment and the Third Amendment shall hereinafter collectively be referred to as the "Lease".

3. The Parties have agreed to enter into this Fourth Amendment to extend the Term of the Lease and modify certain terms and conditions of the Lease.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Recitals. The above recitals are true and correct and are hereby incorporated herein by reference.

2. Conflict. In the event of any conflict between the terms of the Lease and the terms of this Fourth Amendment, the terms of this Fourth Amendment shall control.

3. This Lease. All references in this Fourth Amendment to "this Lease" shall include this Fourth Amendment.

4. Term. The Lease is hereby modified to extend the Term from May 1, 2007 to May 1, 2010 (the "Termination Date").

5. Rent. (a) Beginning on May 1, 2007, the rent paid for the premises shall be \$7,990.59 per month, which amount includes additional taxes and maintenance fees. The rent paid shall increase by five percent (5%) for the second year of the Term and for the third year of the Term.

(b) During the Term, the Lessee shall further pay to the Lessor the sum of Seventy-Five and 00/100 Dollars (\$75.00) per month per Unit for water and sewer services provided to the Premises.

6. Termination. The Lease is hereby amended by adding the following new Section 39 thereto:

39. Lessee shall have the right to terminate the Lease without penalty or premium provided that (i) Lessee provides notice of such termination to Lessor in writing not later than four months prior to the proposed date of termination and (ii) Lessee may not deliver any such notice of termination until after June 30, 2007. If the proposed date of termination is prior to April 30, 2008, Lessor shall be entitled to retain the security deposit required in Section 40 hereof.

7. Security Deposit. The Lease is hereby amended by adding the following new Section 40 thereto:

40. On or before May 1, 2007, Lessee shall deliver to Lessor a security deposit in the amount of \$8,000.00 in immediately available funds, to be held by Lessor. Upon the expiration of the Lease at the end of the Term or the termination of the Lease after April 30, 2008 pursuant to Section 39 hereof, Lessor shall return the deposit to Lessee after deducting therefrom the costs, if any, incurred by Lessor in repairing any damage to the demised premises caused by Lessee's failure to maintain the demised premises as required by Section 3 hereof.

8. Ratification. Except as set forth in this Fourth Amendment, the Lease remains unmodified and in full force and effect and all the terms and conditions set forth in the Lease are ratified by the parties.

9. Counterparts. This Fourth Amendment may be executed in one of more counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Fourth Amendment and any other signatures hereon shall be considered for all purposes as originals. Except as expressly modified by this Fourth Amendment, the terms and provisions of the Lease remain unmodified and are in full force and effect.

IN WITNESS WHEREOF, this Fourth Amendment has been executed by the parties as of the date set forth on the first page hereof.

WITNESSES:

Hillary H. Harrison  
Print Name: Hillary H. Harrison

Maria Thorley  
Print Name: Maria Thorley

Approved at to form:

By: [Signature]  
City Attorney

LESSEE

CITY OF MARATHON, a Florida municipal corporation,

By: Michael H. Poto  
Print Name: Michael H. Poto  
Title: City Manager

Attest: Diane Clavier  
Diane Clavier, City Clerk

WITNESSES:

Marilyn Brookes  
Print Name: Marilyn Brookes

Naiberto Olazabal  
Print Name: Naiberto Olazabal

LESSOR:

OXFORD BUSINESS III, CORP., a Florida corporation

By: [Signature]  
Name: EDUARDO FERNANDEZ  
Title: AUTHORIZED AGENT



STATE OF FLORIDA     )  
  )ss:  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this 22 day of April 2007, by Michael H Puto, who (check one) is [  ] personally known to me or [  ] has produced a Florida driver's license s identification.

Susan Thomas  
Printed Name of Notary Public

Susan Thomas  
Signature of Notary Public

My commission expires:



STATE OF FLORIDA     )  
  )ss:  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this 22 day of April 2007, by Eduardo Fernandez, as authorized agent of Oxford Business III, Corp. (the "Company"), on behalf of the Company, who (check one) is [  ] personally known to me or [  ] has produced a Florida driver's license s identification.

Marilyn Brookes  
Printed Name of Notary Public

[Signature]  
Signature of Notary Public

My commission expires:

