Sponsored by: Puto

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 100TH 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 100th 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 100th 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 100th 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, BullNOES:NoneABSENT:NoneABSTAIN: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 Attorne

FOURTH AMENDMENT TO COMMERCIAL LEASE

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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 100th 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. <u>Recitals</u>. The above recitals are true and correct and are hereby incorporated herein by reference.

2. <u>Conflict</u>. 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. <u>This Lease</u>. All references in this Fourth Amendment to "this Lease" shall include this Fourth Amendment.

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

5. <u>Rent</u>. (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. <u>Termination</u>. 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. <u>Security Deposit</u>. 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. <u>Ratification</u>. 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. <u>Counterparts</u>. 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.

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

WITNESSES:

Print Name: Hillary H. Harrison <u>guain</u> Iby Print Name: Marra Thorby

Approved at to form:

By: **City Attorney**

LESSEE

CITY OF MARATHON, a Florida municipal corporation,

By: Print Name: 2+0 Title: th M anag 0 Jano Attest:

Diane Clavier, City Clerk

WITNESSES	56
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Print Name	MARILYN BRooke
()	muca
Print Name:	Norbetto Olezabal.
	- Contraction - Coppeter

LESSOR:

OXFORD BUSINESS III, CORP., a Florida corporation

FERNANDEZ Name: EDVARDO Title: ANTHORIZED AGENT

STATE OF FLORIDA))ss: COUNTY OF MONROE)

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

Printed Name of Notary Public

My commission expires:

Signature of Notary Public

an Thomas Commission DD262508 res February 08, 2008

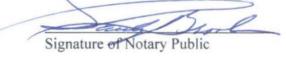
STATE OF FLORIDA))ss: COUNTY OF MONROE)

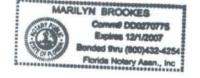
The foregoing instrument was acknowledged before me this 22 day of April 2007, by Eduardo Fernandez, as agent of Oxford Business III, Corp. (the "Company"), on behalf of the Company, who (check one) is[]personally known to me or [] has produced a Florida driver's license s identification.

Brookes

Printed Name of Notary Public

My commission expires:





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