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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-79**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A TWO YEAR EXTENSION TO AN AGREEMENT WITH WILLIAMS SCOTSMAN, INC. AND THE CITY OF MARATHON FOR LEASE OF TRAILERS FOR USE AS CITY HALL ON THE EVENTS FIELD; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Williams Scotsman, Inc (“Landlord”) currently leases to the City of Marathon (“the City”) certain trailers located at the City Events Field, 9805 Overseas Highway, Marathon, Florida; and

**WHEREAS**, the City has negotiated a lower lease payment, and wishes to extend the lease term through September 30, 2011; and

**WHEREAS**, the City shall pay to Landlord total monthly lease payments of \$5,250.00, payable in advance on the 10<sup>th</sup> day of each month, for a total annual lease payment of \$63,000; at termination of the lease, the City shall pay for knockdown and return freight.

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

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

**Section 2.** The amendment to the lease agreement between the City of Marathon and Williams Scotsman for an extension to the lease of the trailers used as City Hall, a copy of which is attached as Exhibit “A” hereto, in substantially the same terms together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to execute the lease on behalf of the City.

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

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 25th day of August, 2009.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Mike Cinque**

AYES: Ramsay, Snead, Vasil, Worthington, Cinque  
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



AMENDMENT TO LEASE AGREEMENT  
(EXTENSION)

LESSEE:  
Marathon, City of  
9805 Overseas Highway  
Marathon FL 3305

EQUIPMENT LOCATION:  
Marathon, City of  
9805 Overseas Highway  
Marathon, FL 33050

**Equipment Serial/Complex Numbers:**

SMM 16245001-006 (CPX 75992); Order # 463019: Dated 6/22/07: Value: \$ 236,000.00 And  
DS 15758001-04 (CPX-71291); Order # 322727: Dated 9/02/05: Value: \$125,000.00

By this Amendment, **Williams Scotsman, Inc.** and **The City of Marathon** agree to modify the original lease agreements, referenced above, as set forth below:

1. The rental term for the equipment identified above as **SMM 16245001-006 (CPX 75992); Order # 463019: Dated 6/22/07: Value: \$ 236,000.00**, shall be extended from 12/01/2009 through 09/30/2011. (the "Extension Term").
2. The rental rate per month during the Extension Term for **SMM 16245001-006 (CPX 75992)** shall be \$3,335.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 10<sup>th</sup> day of each month during the Extension Term.
3. The rental term for the equipment identified above as **DS 15758001-04 (CPX-71291); Order # 322727: Dated 9/02/05: Value: \$125,000.00** shall be extended from 07/15/2009 through 09/30/2011. (the "Extension Term").
4. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease without penalty upon sixty (60) days' prior written notice to Lessor. "
5. The rental rate per month during the Extension Term for **DS 15758001-04 (CPX-71291)** shall be \$1,915.00 plus applicable taxes, which Lessee agrees to pay Lessor in advance on the 14<sup>th</sup> day of each month during the Extension Term.
6. Knockdown and return freight at the end of the "Extension Terms" shall be at Lessor's prevailing rate at the time the Equipment is returned.
7. All other Terms and Conditions of the original Lease Agreements shall remain the same and in full force and effect.

ACCEPTED:

LESSOR: WILLIAMS SCOTSMAN, INC.  
BY: [Signature]  
TITLE: Sr Contracts Administrator  
DATE: 9/8/09

LESSEE: CITY OF MARATHON  
BY: [Signature]  
TITLE: CITY MANAGER  
DATE: 8/28/09

**WILLIAMS SCOTSMAN, INC.**  
**GENERAL TERMS & CONDITIONS (03/05/07) revised**  
**CITY OF MARATHON**

**1. True Lease.** This Agreement is a true lease and not a sale. Lessee shall not acquire ownership interest in the Equipment. The Equipment shall remain the sole personal property of Lessor.

**2. Delivery; Acceptance.** Upon delivery, Lessee agrees to inspect and accept the Equipment. The Equipment is deemed finally accepted at the time of delivery unless Lessee notifies Lessor of a defect/deficiency in writing within 48 hours after delivery.

**3. Site Suitability; Inspection.** Lessee shall choose a firm level site accessible by truck to locate the Equipment. If Lessee fails to provide such a site, then Lessee shall pay for any resulting additional delivery and return charges, including but not limited to, storage related charges attributable to delayed delivery and/or installation of the Equipment required and/or requested by Lessee. Lessee shall not alter the manner of installation or location of the Equipment without written consent of Lessor. Lessor shall have the right to inspect the Equipment during the term of this Agreement.

**4. Use; Maintenance; Condition.** Lessee has the right to peaceably and quietly hold, use and enjoy the Equipment, subject to the terms and conditions of this Agreement. Lessee agrees not to remove existing nameplates or decals affixed to the Equipment. Lessee shall use the Equipment solely in the conduct of its business and in a careful and lawful manner. Lessee shall pay any and all fees, charges and expenses and comply with all laws related to the use, possession, and operation of the Equipment while it is in Lessee's possession, including obtaining all approvals and permits related to the use and/or possession of the Equipment. Lessee shall maintain and keep the Equipment in good repair and safe operating condition during the term of this Agreement in accordance with the Williams Scotsman Service Guide, receipt of which is hereby acknowledged by Lessee. Lessee shall not, without Lessor's prior written consent, make any changes, alterations or improvements in or to the Equipment or remove any parts, accessories or attachments from it. Lessor makes no representations as to the Equipment's compliance with federal, state or local building codes, zoning ordinances, or other types of regulations or use codes.

**5. Term of Lease; Extension.** The term of this Agreement begins on the date of delivery of the Equipment, and ends on the later of the last day of the Minimum Lease Term ("Term") or the Extension Period (as herein defined). At the end of the Term, this Agreement is extended on a month-to-month basis until the Equipment is returned to Lessor (the "Extension Period"). During the Extension Period, Lessor has the right to, on 30 days notice, increase the Rate Per Month and/or the knockdown and return freight charges to Lessor's then prevailing rate. **The Rate Per Month shall not increase if Lessee renews the Lease for an additional six (6) months after the Minimum Lease Term.** After the end of the Term, either party can terminate this Agreement on 30 days written notice.

**6. Rent; Fees; Taxes; Late Charges.** Rent begins to accrue on the Delivery Date. Lessee shall pay Lessor monthly rent for the Equipment on the due date at the Rate Per Month stated in this Agreement during the Term, and at the Rate Per Month established by Lessor during the Extension Period. If any payment is not paid on the due date, Lessee agrees to pay Lessor a charge of 1 ½% per month of the amount in arrears for the period such amount remains unpaid. Lessee shall pay or, if requested by Lessor, reimburse Lessor for any and all sales, use, personal property taxes, or other taxes, fees or assessments levied against or imposed upon the Equipment, its value, use or operation. **Lessee shall be exempt from sales tax upon receipt of valid tax exempt certificate.** Payments shall be effective upon receipt. Lessor may apply any payment from Lessee against any obligation due and owing by Lessee under this Agreement, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of payment. The receipt by Lessor of a partial payment of any amount due to Lessor endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demand) to pay rent and all other amounts due

hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment, or reduction.

**7. No Liens.** Lessee agrees to keep the Equipment free and clear of any and all claims, liens, encumbrances or attachments.

**8. Indemnity.** Lessee agrees to indemnify, defend and keep harmless Lessor, its agents and employees, from and against any and all losses, claims, attorneys' fees and expenses, **excluding those arising out of or caused by the sole negligence of Lessor or its agents or employees,** related to: (a) the death of, injury to, or damage to the property of, any person or party related to or arising out of the delivery, installation, use, possession, condition, return or repossession of the Equipment; and/or (b) the failure of Lessee to maintain the Equipment as agreed to herein.

**9. Loss; Damage.** Lessee assumes the risk of all loss and damage to the Equipment from all causes. Upon the occurrence of the total loss of the Equipment, to such an extent as to make the repair thereof uneconomical (in Lessor's opinion) Lessor shall declare the Equipment a Total Loss. In the event of a Total Loss, Lessee shall pay Lessor, on the next date for the payment of rent, the rent then due plus the Equipment Value as set forth herein (the "Total Loss Amount"). Upon Lessor's receipt of the Total Loss Amount, the lease will terminate. Lessor will transfer available documents of ownership of the Equipment to Lessee unless Lessor agrees to dispose of the Equipment at Lessee's cost and expense. In the event of loss or damage to the Equipment that does not constitute a Total Loss, Lessee, at its sole cost and expense, shall pay for the repair of such damage as directed by Lessor to the condition required by this Agreement.

**10. Insurance.** Lessee's responsibility for the Equipment begins immediately upon delivery. Lessee shall obtain and keep in force during the entire Lease Term liability and property insurance as follows: (A) **General Liability Insurance:** A policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence. (B) **Property Insurance:** A policy of insurance covering loss or damage to the Equipment, in an amount equal to 100% of the Equipment Value, providing protection against all perils included within the classification and special extended perils ("all risk" insurance). (C) **General.** (1) The insurance for the Equipment shall be issued by insurance companies satisfactory to Lessor. Within 10 days after the delivery of the Equipment, Lessee shall provide Lessor with Certificates of Insurance showing that the required coverages are in effect and naming Lessor as Additional Insured and Loss Payee. The Certificates of Insurance must provide Lessor with 30 days prior written notice of any cancellation. Any proceeds of such insurance shall be paid to Lessor and shall be applied to the replacement of the Equipment or payment of monies due under this Agreement, at the option of Lessor. Lessee shall comply with all requirements of the insurance underwriters or any governmental authority. (2) Lessee shall pay a Missing or Expired Certificate fee of \$50 per 8' wide, \$60 per 9' and 10' wide, \$90 per 11' and 12' wide, and \$100 per 13' wide and above mobile unit each month that Lessee fails to timely provide the required Certificate of Insurance for property coverage. Lessee shall pay a fee of \$20 per unit for mobile units for each month that Lessee fails to timely provide the required Certificate of Insurance for liability coverage. Payment of such fees shall not provide Lessee with any insurance coverage, nor excuse Lessee from performing its obligations under Sections 8 & 9.

**11. Insurance Waiver Program.** In the event Lessee prefers not to provide evidence of either or both insurance coverages in accordance with Paragraph 10 hereof, Lessee may elect to participate in Lessor's Insurance Waiver Program ("Program"), if available. The Program is not an insurance policy. The waiver fee(s), when paid, relieves the Lessee of the contractual responsibility to provide evidence of the required insurance coverage(s). Lessee may elect to participate in this Program, in lieu of providing evidence of either or both insurance coverages by signing a Lease Agreement Insurance Waiver Addendum, paying all

applicable fees and abiding by the other terms of the Program and this Agreement.

**12. Defaults; Remedies.** (A) Lessee shall be deemed to be in default hereunder upon the occurrence of any of the following events ("Events of Default"): (1) Lessee shall fail to make any payment due hereunder within 10 days after its due date; (2) Lessee shall fail to perform or observe any other term, covenant, or condition of this Agreement; or (3) Lessee shall have defaulted under any other agreement with Lessor. (B) Upon the occurrence of an Event of Default, **and after written notice and twenty (20) days given to Lessee to cure Event of Default**, Lessor may declare this Agreement to be in Default, and thereafter may exercise any one or more of the following remedies: (1) Declare the rent for the Term and all other unpaid rent, fees, taxes and charges under this Agreement immediately due and payable; (2) Repossess, retake and/or retain any or all of the Equipment free of all rights and claims of Lessee without notice, legal process, or judicial intervention, and without releasing Lessee of any term, covenant or condition provided herein; (3) Sell or otherwise dispose of any or all of the Equipment in a commercially reasonable manner and apply the net proceeds of such disposition, after deducting all costs, to the obligations of Lessee, with Lessee remaining liable for any deficiency; (4) Cancel this Agreement; and/or (5) Exercise any other right or remedy available to Lessor at law or in equity. Lessor's waiver of any Event of Default shall not constitute a waiver of any other Event of Default or a waiver of any term or condition of this Agreement. No right or remedy referred to herein is intended to be exclusive, and each may be exercised concurrently or separately and from time to time. In the event Lessor shall repossess or retake the Equipment, and there shall be in or attached to such Equipment any property owned by, or in the custody or control of Lessee, then Lessor is hereby authorized to take possession of such property for a period of 10 days. Thereafter, any such property will be deemed abandoned, and Lessor shall have the right to dispose of it. (C) Lessee and Lessor waive all right to trial by jury of all claims, defenses, counterclaims and suits of any kind arising from or relating to this Agreement.

**13. Return of Equipment; Termination of Lease.** At the end of the lease term, Lessee shall make the Equipment available to Lessor, without impediment, at the Delivery Address or any other address to which Lessor has previously provided written approval of relocation of the Equipment. Any impediment to pick-up of the Equipment may result in additional charges to Lessee. Lessee shall provide Lessor with at least 30 days advance written notice of the return of the Equipment. The Equipment shall be "broom clean" and in the same condition as delivered to Lessee, ordinary wear and tear excepted. Termination will become effective only when the Equipment has been returned to Lessor as herein provided and Lessee has paid Lessor all unpaid rental and other charges applicable to the Equipment. Lessee agrees that prior to the return of the Equipment to Lessor or upon notice of its repossession, Lessee shall immediately disconnect all utilities, remove all of Lessee's personal property, and vacate the Equipment. Lessee hereby consents to entry by Lessor or its agents upon the premises where the Equipment may be located for return or repossession of the Equipment. Unless otherwise specifically provided in the Agreement, Lessor shall not be responsible for site restoration. Lessor shall not be liable for keeping or storing any personal property of Lessee left in or on the Equipment; such property will be deemed abandoned by Lessee. Any accessories and additions to the returned Equipment shall be deemed to be part of the Equipment and the property of Lessor. Lessee shall reimburse Lessor for any and all costs incurred related to the return of the Equipment and in repairing, cleaning or otherwise restoring the Equipment to its condition when delivered, ordinary wear and tear excepted.

**14. Limited Warranty.** For as long as Lessee timely makes all payments due hereunder, Lessor warrants throughout the term of this Agreement that it will

repair structural or mechanical defects in the Equipment (excluding HVAC filters, fire extinguishers, fuses/breakers and light bulbs), provided that Lessee notifies Lessor in writing of any defects, malfunctions, or leaks within two (2) business days of the occurrence thereof. Lessor shall have no liability for the repair of any defect or condition resulting from Lessee's relocation of the Equipment, utilities connection, alteration of the Equipment, use of the Equipment for a purpose for which it was not intended, vandalism, misuse of the Equipment, for excessive wear and tear or for which timely notice is not provided to Lessor. The repair of the Equipment by Lessor, due to a defect or condition resulting from any of the preceding causes shall result in additional charges to Lessee. Lessor shall have no liability whatsoever for any consequential, incidental or punitive damages, costs or expenses. Except as specifically provided herein, Lessor disclaims any and all warranties, express or implied, related to the Equipment and any maintenance or repair work performed by Lessor including any warranties of merchantability, suitability, or fitness for a particular purpose.

**15. Assignment.** Lessee shall not assign this Agreement or sublet the Equipment without the prior written consent of Lessor. This Agreement shall be binding upon any permitted assignee or successor of Lessee. Lessor may assign any of its rights hereunder without notice to Lessee.

**16. Miscellaneous.** (a) Time is of the essence with respect to this Agreement. (b) This Agreement, when signed by both parties, constitutes the entire agreement between the parties, superseding and replacing all prior documents and representations, with respect to the subject matter hereof. It may only be amended by a document signed by both parties. (c) If any provision of this Agreement is deemed unenforceable for any reason, then such provision shall be deemed stricken and shall not affect the enforceability of any of its other provisions. Notwithstanding anything contained herein to the contrary, if it should be determined by a court of competent jurisdiction that any indemnification or other protection afforded to an indemnitee under Section 8 would be in violation of or otherwise prohibited by any applicable law, then Section 8 shall automatically be deemed to be amended in a manner which provides the maximum indemnification and other protections to such indemnitee consistent with such applicable law. (d) The obligations of Lessee under Sections 6, 7, 8 and 9, which accrue during the term of this Agreement, shall survive the termination of this Agreement. (e) If Lessee fails to perform any of its obligations hereunder, Lessor shall have the right to effect such performance; the amount of any out-of-pocket and other reasonable expenses of Lessor incurred in connection with such performance shall be payable by Lessee upon demand. (f) Lessor shall not be responsible for delays beyond its control. (g) Lessor shall have no liability whatsoever for any consequential, incidental or punitive damages, costs or expenses. (h) Lessee irrevocably appoints Lessor or its agents or assigns as Lessee's attorney-in-fact to execute any UCC financing statements, documents, and checks and drafts related to the payment of any loss, damage or defense under policies of insurance required by this Agreement. (i) This Agreement shall in all respects be governed by the laws of the state of Maryland. Lessee hereby consents and submits to the jurisdiction of the courts of Baltimore County, Maryland for purposes of enforcement of this Agreement. Lessee hereby waives any and all rights to or claims of sovereign immunity. (j) Lessee will pay all costs and expenses, including reasonable attorney's fees, incurred by Lessor in enforcing any terms, covenants and indemnities provided herein.

**Lease Terms & Conditions, Revision 03/05/07 REV 6/22/07 DEF**