

RESOLUTION NO. 01-04-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING THE LEASE AGREEMENT FOR NEW CITY HALL OFFICE SPACE; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF SAID LEASE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council hereby approves the Lease Agreement between Dewey O. Broberg, Jr., Trust and Mary Lou Broberg, Trust (the "Lessor") and the City of Marathon (the "Lessee") for new office space designated as City Hall to be located at Unit #s 5 & 6, 100th Street Center, commonly known as 10045 & 10055 Overseas Highway, Marathon, Florida.


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

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Agreement.** The City Council hereby authorizes the City Manager and City Attorney to finalize the terms and conditions of said Lease Agreement and authorizes the Mayor to execute said Lease Agreement upon finalization.


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

PASSED AND ADOPTED this 4th day of April, 2001.




ROBERT MILLER, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

COMMERCIAL LEASE

THIS AGREEMENT OF LEASE, made and entered into this 4th day of April ~~March~~, 2001, by and between the DEWEY O. BROBERG, JR., TRUST and the MARY LOU BROBERG TRUST, hereinafter referred to as Lessor, and the CITY OF MARATHON, FLORIDA, hereinafter referred to as Lessee (the terms "Lessor" and "Lessee" to be construed in the singular or plural number accordingly as they respectively represent one or more than one person, partnership, corporation or other organization):

WITNESSETH:

That Lessor does by these presents lease and demise unto Lessee the following described property, lying and being situated in the city of Marathon, County of Monroe, State of Florida, and being more particularly described as follows: Units #s 5 & 6, 100th Street Center, commonly known as 10045 & 10055 Overseas Highway, Marathon, Monroe County, Florida, (hereafter referred to as the "Premises" or "Demised Premises") for a term of two (2) years, beginning on the 1st day of May, 2001, and ending on the 30th day of April, 2003, to be occupied for the purpose of conducting the business of a City Government office, only (and said demised premises are to be used in no other manner and for no other purposes whatsoever without the prior written consent of Lessor), paying therefore the initial base rent of \$ 4,000.00 per month upon the following terms, conditions and covenants:

1. Lessee shall pay the rent monthly, in advance, as aforesaid, as the same shall fall due at such address as shall be supplied by Lessor. If this lease is for a term longer than one (1) year, the base rent shall be subject to an annual increase of four percent (4%), on each anniversary date.

J.P.B. 4/2/01 CW (or CPI whichever is less)

2. In addition to the monthly base rent, the Lessee shall be obligated to pay his prorata share of the annual costs for fire, flood and windstorm insurance, waste collection fees, common utilities and annual costs to keep and maintain in good repair the building exterior, landscaping, lighting, sidewalks, driveways, curbs and sign. Toward these obligations, Lessee shall pay \$800.00 per month as an estimated prorata share of these expenses. This amount is subject to adjustment during the term of the lease, based on actual costs. Each Party shall refund or pay the other as necessary based upon such adjustment. Lessee shall be entitled to audit such costs and expenses at lessee's expense and upon reasonable notice given to Lessor.

3. Lessee shall at all times during the continuance of this lease, and at his own cost and expense, keep and maintain in good repair the interior of the premises hereby leased, which shall include all windows, plate glass and doors contiguous to the exterior. Unless there is damage caused by the negligence of Lessor, Lessor's agent, servant or employee, Lessee shall keep the air conditioning equipment serving the unit, the plumbing work, water closets, pipes and fixtures belonging thereto in good repair and shall keep the water pipes and connections free from obstructions, and to generally maintain the demised premises to the satisfaction of the municipal, police and any other governmental authority, during the term of this lease. Lessee shall not overload the carrying capacity of the floors of the

Should the Lessee secure its own ~~solid~~ Separate Solid waste collection service, The Lessee Shall not be responsible for a prorata Share of waste Collection Fees, If not utilized by Lessee described herein. 4/3/01 CW J.P.B. \$300 \$240

demised premises. Lessee, so long as he shall remain in possession of the demised premises, shall keep and maintain all portions of the premises, the improvements thereon, the appurtenances, machinery, equipment and fixtures therein, in such condition as to prevent any loss, damage or injury to the persons, property, businesses, business or occupations of any other persons permitted by Lessee to be in or about the leased premises, owners, occupants and invitees of adjoining premises, and persons upon the adjacent portions of the street in front and the side streets of the demised premises. In the event Lessee shall replace appurtenances, machinery, equipment or fixtures, the replacements shall be in general conformity to that replaced as to quality, size and appearance. At the termination of this lease, Lessee shall deliver up the demised premises in as good condition as at the beginning of the term, natural deterioration and normal wear and tear, depreciation and damage by fire and the elements only excepted. Lessor shall perform or cause to be performed all other repairs, maintenance and replacements that are not the responsibility of the lessee hereunder, including but not limited to structural and roof repairs to the building.

4. Lessee agrees to accept possession of the demised premises in their present condition and to allow for changes in such condition which may occur by reasonable deterioration between the date hereof and the date that Lessee actually occupies said premises.

5. All property of every kind which may be on said demised premises during the term hereof shall be at the sole risk of Lessee, or those claiming under him, and the Lessor shall not be liable to Lessee or to any other person whatsoever for any injury, loss or damage to any person or property in or upon said demised premises, or upon the sidewalks and alleyways contiguous thereto. Lessee hereby covenants and agrees to assume all liability for or on account of any injury, loss or damage above described and to save Lessor harmless therefrom. Furthermore, Lessor shall not be liable to Lessee or to Lessee's patrons, employees, licensees, permittees or visitors for any damage to person or property caused by the act or negligence of any other tenant or said demised premises, or due to the building on said premises or any appurtenances thereof being improperly constructed or being or becoming out of repair, nor for any damages from any defects or want of repair of any part of the building of which the demised premises form a part, unless injury or damage described above was caused by or was due to negligence of Lessor, Lessor's agent, servant, employee or patron; but Lessee accepts said premises as wholly suitable for the purposes for which same are leased and accepts the building and each and every appurtenance thereof and waives defects therein and further agrees, subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, (the sovereign immunity waiver law) to hold Lessor harmless from all claims for any such damage unless such damage was caused by or was due to negligence of Lessor or Lessor's agent servant or employee. It is further especially understood and agreed that Lessor shall not be liable for any failure of water supply or electric current, or for injury or damage which may be sustained to person or property by Lessee or any other person caused by or resulting from steam, electricity, water, rain or other liquid which may leak or flow from or into any part of said building or caused by the breakage, leakage, obstruction or other defect of pipes, wiring, appliances, plate glass, plumbing or lighting fixtures of the same, or by the condition of said premises or any part thereof or from any other source or by any other cause whatsoever, whether the said damage or injury shall be caused by or be due to the negligence of Lessor, Lessor's agent, servant, employee or not, nor shall Lessor be liable for interference with light or other incorporeal hereditaments, provided such interference is caused by anyone other than the Lessor nor shall Lessor be liable for such interference from operations by or for governmental agencies in construction of any public or quasi-public work.

6. Lessor will obtain fire, flood and windstorm insurance for the premises. Lessee shall reimburse Lessor for his prorata share of same. pursuant to section 2 above. Lessee shall purchase public liability insurance with coverage per occurrence of at least One-million Dollars (\$1,000,000.00) and shall name Lessor as a co-insured on said policy.

7. Lessee shall pay all charges for water and electric as the same shall become due during the term of this lease. Each office is separately metered for water and electricity. Each Tenant is responsible for their own usage and for payment of their utility bills.

8. In addition to the rental payments as called for herein, Lessee shall promptly pay Lessor his prorata share of real property taxes on the leased premises, intangible personal property taxes and all waste collection fees, Pursuant to section 2 above.

9. To the extent applicable to lessee, Lessee agrees that he promptly will execute and will fulfill all ordinances and regulations of the State, County or other governmental agencies applicable to said demised premises, and all ordinances imposed by the Monroe County Health Department and Sheriff's Department for the correction, prevention and abatement of nuisances in or upon or connected with said demised premises during the term of this lease, at Lessee's sole expense and cost.

10. Lessee shall not assign this Agreement, nor shall underlet the whole or any part of the demised premises, without the consent of Lessor first obtained in writing, and shall not occupy or permit or suffer the same to be occupied for any business or purpose deemed extra hazardous on account of fire.

11. Lessee shall give, in case of fire or other casualty to the demised premises, immediate notice in writing to Lessor, who shall thereupon cause the damage to be repaired forthwith, provided materials, supplies and labor are reasonably available; if any portion of the premises is rendered unfit for occupancy, the rent shall be apportioned for the period of time required to make the repairs, according to the part of the premises, if any, which remains usable by Lessee. If the entire building shall be destroyed or if the premises is not accessible or is rendered unfit for occupancy, then within 30 (thirty) days after the fire or other casualty, either Lessor or Lessee may cancel this Lease by notice in writing to the other, effective as of the date of the mailing of the written notice, except that the rent shall be apportioned as of the date of the fire or other casualty and lessee shall be released of all obligations hereunder.

12. Any sign for the demised premises shall conform to all applicable codes of the City of Marathon and shall be either a two-sided sandblasted or laser-cut sign, not to exceed 18 inches by 72 inches, and shall be installed by Lessor on the porch ceiling in front of the demised premises. Lessee shall not place, paint or otherwise affix any other signs, banners, flags or balloons at, on or about the premises, or any part thereof, or change any light fixture, except as and where first approved in writing by Lessor; and Lessor shall have the right to remove any sign or signs in order to paint the building or premises or make any other repairs or alterations, but nothing herein shall be construed to require or obligate Lessor, at any time or in any manner, to paint the building or premises or make any other repairs or alterations.

13. In the event of a breach that remains uncured following applicable notice and cure periods by Lessee of any of the agreements, conditions, covenants or terms hereof, Lessor shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursements were not herein provided for. Furthermore, the rights and remedies given to Lessor in this lease are distinct, separate and cumulative rights and remedies, and no one of them, whether or not exercised by Lessor, shall be deemed to be in exclusion of any of the others.

14. The agreements, conditions, covenants and terms herein contained shall in every case apply to, be binding upon, and inure to the benefit of the respective parties hereto, their heirs, executors, administrators, successors and assigns, with the same force and effect as if specifically mentioned in each instance where a party hereto is named, provided, however, that no assignment or underletting by Lessee in violation of the provisions of this lease shall vest in any such assignee or undertenant any right to title in or to the leasehold estate hereby created.

15. No assent, express or implied, by Lessor to any breach of any of Lessee's covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.

16. It is especially understood and agreed that all personal property placed on the demised premises by the Lessee may be removed by Lessee at the termination of this lease, provided Lessee shall not then be in default of the performance of any of its agreements, conditions, covenants or terms hereof, and provided further that the building shall be left by Lessee substantially as well equipped as it is at the beginning of the term, and provided

further that no such property shall be removed by Lessee if such removal should permanently injure or dismantle said building, and provided further that the removal of any such property shall be effected within five (5) days after the expiration of the said term and all damage caused to said premises by such removal shall be repaired by Lessee at his own cost and expenses.

17. Lessee shall not make alterations, additions or improvements to the demised premises or to the building thereof without the prior written consent of Lessor; and after such consent has been given, unless otherwise agreed upon in writing, all alterations, improvements and additions made by Lessee upon the demised premises shall be done by a licensed contractor at a reasonable cost and, although at Lessee's own cost and expense, at the option of the Lessor shall remain upon the premises at the expiration of this lease and shall become the property of the Lessor in fee simple, without other action or process of law.

18. In the event Lessee shall make default in the performance of any of the agreements, conditions, covenants or terms herein contained, Lessor, following written notice to lessee specifying the default and lessee's failure to cure (or commence cure) within fourteen (14) days following receipt of said notice (no obligation, however, being imposed upon Lessor to do so) may perform the same for the account of Lessee, and any amount paid or any expense or liability incurred by Lessor in the performance of the same shall be deemed to be additional rent payable by Lessee for the demised premises, together with 18% (eighteen percent) interest thereon from the date of payment by the Lessor to the date of repayment, and the same, at the option of Lessor, may be added to any fixed rent then due or thereafter falling due hereunder; and Lessor shall have the right upon prior written notice (waived in the case of emergency) to enter the said demised premises for the purpose of correcting or remedying said default and to remain therein until the same shall have been corrected or remedied. Any money due to Lessor shall not be deemed to be in default until five (5) business days after prior written notice by Lessor to Lessee. Lessee shall have two (2) weeks after prior written notice by Lessor to correct any non-monetary default.

19. Lessor shall have a statutory landlord's lien and in addition is hereby given an express landlord's lien as security for the fixed rent herein reserved, as well as any of the other charges or expenses elsewhere hereinabove or hereinafter designated as "additional rent" upon all of the goods, ware, chattels, implements, fixtures, furniture, tools, machinery and other personal property which Lessee now or at any time hereafter placed in or upon the demised premises, all exemptions of said property or any part of it being hereby waived.

20. Lessee hereby especially covenants and agrees that this lease shall be subject and subordinate to any mortgage or mortgages now on the demised premises. Lessee further agrees to subordinate this lease to any mortgage obtained by Lessor during the term of this lease or any extensions or renewals thereof. The foregoing is contingent upon lessor providing a subordination and non-disturbance agreement reasonably acceptable to lessee.

21. Lessor hereby covenants and agrees that Lessee shall and will, upon payment of all of the rents and all other sums of money herein provided to be paid by Lessee, upon fully observing and performing the covenants and agreements herein provided to be observed and performed by Lessee, quietly and peaceably possess and enjoy said above-demised premises unless said lease be sooner terminated under and in accordance with any of the provisions herein elsewhere contained providing for such termination.

22. If any of the fixed rent herein reserved or any of the other charges or expenses hereinabove designated as "additional rent", or any of the taxes, assessments, charges or other sums of money to be paid by Lessee shall not be paid as and when the same become due and payable, or if Lessee shall default in the performance of any of the other agreements, conditions, covenants or terms herein contained, or if Lessee shall abandon the demised premises for a period of five (5) days or more, or if a petition or answer for reorganization of Lessee or the then owner of Lessee's interest hereunder shall be approved by any court or judge thereof, or if Lessee or the then owner of Lessee's interest hereunder shall make a general assignment for the benefit of creditors, or shall take any benefit under any insolvency or bankruptcy act, or have a receiver or trustee or other fiduciary appointed for its property, or if Lessee's leasehold interest shall be taken on execution or other process of law, or if this lease or the estate of Lessee hereunder shall be transferred or pass to or devolve upon any other person, firm, association or corporation except in the manner

provided hereunder, then and in any of said events, Lessor or those claiming under him may immediately or at any time thereafter have the right to terminate and end this lease and the term hereby granted, as well as all of the right, title and interest of Lessee hereunder, by giving Lessee five (5) business days with respect to monetary defaults and fourteen (14) day with respect to non-monetary defaults, in writing; and it is agreed that upon the expiration of the term fixed in such notice, if the said nonpayment, default or other cause of termination specified in such notice shall not have been made good or removed, provided in the case of a non-monetary default where lessee has commenced cure within the notice period but such cure cannot be completed, lessee shall be given additional time to diligently complete cure, this lease and the term hereby granted and created, as well as all of the right, title and interest of Lessee hereunder, shall, at the option of Lessor or those claiming under him, wholly cease and expire, in the same manner and with the same force and effect as if the expiration of time in such notice were the end of the term herein originally demised; and Lessor or those claiming under him may immediately or at any time thereafter and without further notice or demand enter into and upon the same premises or any part thereof, in the name of the whole, and repossess the same as of his first and former estate, and expel the Lessee and those claiming under him and remove its or their effects (forcibly, if necessary) without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and that upon entry as aforesaid, said lease shall be terminated; and Lessee agrees that, notwithstanding the termination of this lease and possession regained by Lessor, he will indemnify Lessor against all loss of rent which may accrue to him by reason of such termination during the remainder of the term aforesaid.

In the event Lessor does not exercise the right hereinabove given him, he may accept rent from the receiver, trustee or other officer in possession thereof for the term of such occupancy without impairing or affecting in any way the rights of Lessor against Lessee hereunder. Any neglect or failure to enforce the right of forfeiture of this lease or reentry upon breach of any of the conditions, covenants, terms and agreements herein contained shall not be deemed a waiver of such right upon subsequent breach of any such or any other condition, covenant, term and/or agreement herein contained.

23. It is understood and agreed by and between Lessor and Lessee that in the event the demised premises are condemned for public use by any governmental agency, County, State or Federal, this lease shall cease and terminate and shall be of no further effect, and Lessee shall have no claim or demand of any kind or character in and to any award made to Lessor by reason of such condemnation.

24. At all times during the term of this lease, Lessor shall have the right, by himself, his agents and employees, with reasonable notice to Lessee, but excepting an emergency where notice is not practical, to enter into and upon the demised premises during normal business hours for the purpose of examining and inspecting the same and determining whether Lessee shall have complied with all of its obligations hereunder in respect to the care and maintenance of the premises, the repair and rebuilding of the improvements thereon when necessary, and all other terms and conditions hereof.

25. The prevailing party in any litigation to enforce the terms of this agreement shall be entitled to recover from the non-prevailing party all attorneys' fees and cost at both the trial and appellate levels, provided any recovery from the lessee shall be limited by the provisions and monetary limitations of section 678.28, Florida Statutes.

26. Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien upon the present or other estate of the leasehold and demised premises, or upon any of the buildings or improvements thereon, except as herein elsewhere specifically provided. The interest of the Lessor shall not be subject to any liens for improvements made by the Lessee and Lessee agrees to notify the contractor making any such improvements of this provision.

27. Lessee agrees that in taking this lease he is governed by his own inspection of the premises and his own judgment of their desirability for his purposes, and has not been governed or influenced by any representation of Lessors to the conditions and character of the building upon the premises or as to the earning capacity thereof; that no agreements,

stipulations, reservations, exceptions or conditions whatsoever have been made or entered into in regard to said premises or this lease which will in any way vary, contradict or impair the validity of this lease or of any of its terms and conditions; and that no modification of this lease shall be binding unless it shall be in writing and executed and acknowledged in due form for recording by all of the parties hereto. Furthermore, Lessee takes this lease and the demised premises subject to all recorded easements and restrictions affecting the occupation and use thereof and subject to all statutes, ordinances and regulations of competent governmental authority affecting the occupancy and use thereof, the construction and maintenance of improvements thereon, and the businesses and occupations to be engaged in by Lessee, in force now and subsequently during the term of this lease.

28. Any word, group of words, phrase, sentence, paragraph or provision herein prohibited by law or decision by a court of competent jurisdiction shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

29. Whenever any payment is to be made under this lease at or within a time stated and whenever any act is to be done under this lease, by either party, at or within a stated time, time shall be of the essence of this agreement.

30. Any notice from Lessor to Lessee relating to the demised premises or to the occupancy thereof shall be duly served, if addressed to Lessee, by United States Registered Mail, Return Receipt Requested, to:

City of Marathon
Attn.: City Manager
10045 Overseas Highway
Marathon, FL 33050

Any notice from Lessee to Lessor shall be sent by United States Registered Mail, Return Receipt Requested, to:

Dewey O. Broberg, Jr.
P. O. Box 510152
Key Colony Beach, FL 33051-0152

31. It is distinctly understood and agreed by and between the Lessor and the Lessee that any holding over by Lessee of the herein demised premises after the expiration of this lease shall operate and shall be construed only as a tenancy at sufferance, and the tenant shall be liable for double rent for the period of time he holds over after expiration.

32. It shall be lawful for Lessor or his agents at any time within sixty (60) days before the expiration of the term of this lease upon prior notice, to enter upon the demised premises and to affix upon any suitable part thereof a notice or notices for the leasing of same, and the Lessee agrees not to remove any such notice or notices or to permit any of his employees, licensees or permittees to remove the same.

33. Providing Lessee is not in default, Lessee shall have the right to extend the lease term by electing, at his option, one (1) additional one-year (1-year) extension of the lease term. The election shall be exercised in writing not later than ninety (90) days from

the end of the lease term. The rental agreement shall be subject to annual increase as set forth in paragraph 1 herein.

34. Lessee agrees that up to 15 employee parking spaces have been allocated to lessee under the building and the remaining parking spaces under the building are allocated for employees of the other tenants. Parking in the lot on the highway in front of the office building should be reserved for public use of the patients, patrons, guests and invitees of the other tenants. Lessee agrees to cooperate in the enforcement of the parking plan for the building.

35. The individuals executing this agreement on behalf of Lessor and Lessee personally warrant that they have full authority to execute this agreement in a representative capacity on behalf of the respective Lessor and Lessee for whom they are acting herein and

no further consents or approvals of any other persons or entities are required for this agreement to be effective and legally binding.


36 Nothing herein shall be deemed as a waiver of Lessee's rights of sovereign immunity that it has under applicable law.

37 Lessee 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, the building and any improvements thereon, or any operations at thereat. Nothing in this lease shall be deemed to create an affirmative duty of Lessee 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.

38. Prior to the commencement of the term or as soon thereafter as practicable, Lessor agrees to paint and install new carpet within the premises as approved by the City Manager, and to provide 15 identified and reserved parking spaces for City Staff.

IN TESTIMONY WHEREOF, the parties to this agreement have hereunto set their hands to duplicate originals the day and year first above written after having first noted and approved all interlineations, insertions, strikeouts and strikeovers the 29 day of March, 2001.

WITNESSES:


THOMAS J. DOWDELL, III

DEWEY O. BROBERG, JR., TRUST and
MARY LOU BROBERG TRUST

By 
DEWEY O. BROBERG, Trustee

MARGUERITE P. LEWIS

CITY OF MARATHON, FLORIDA ,
a Florida municipal corporation

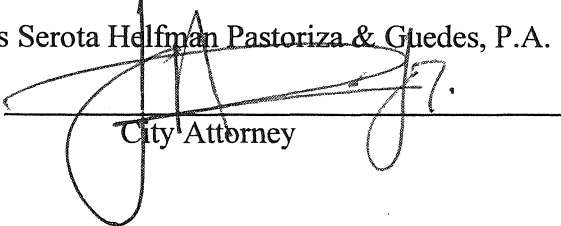

Katherine V. Selchan, Witness

By 
ROBERT "BOB" MILLER, Mayor


James P. Ward, Witness

For use and reliance by the City of Marathon only
Approved as to legal form and sufficiency:

Weis Serota Helfman Pastoriza & Guedes, P.A.

By: 
City Attorney