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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2003-132**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, FLORIDA, APPROVING THE SUBMERGED LAND LEASE  
DOCUMENTS AND AUTHORIZING THE CITY MANAGER TO ENTER  
INTO INDIVIDUAL SUBMERGED LAND LEASES**

**WHEREAS**, there exist submerged lands within the jurisdiction of the City of Marathon (the "City") in Boot Key Harbor known as Parcel 14, in the Sombrero Properties, a sub-division recorded in Plat Boot 5, Page 100-101 of the Public Records of Monroe County, Florida; and

**WHEREAS**, there are conditions for the use of City owned submerged lands that need to be monitored and administered by the City; and

**WHEREAS**, the City is authorized to and desires to enter into Submerged Lands Leases with individuals residing in or using the waters above these submerged lands.

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

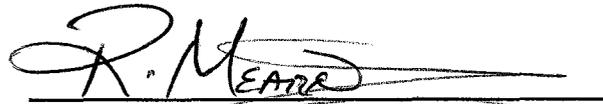
**Section 1.** The Submerged Lands Lease Agreement between the City and individual lessees, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 2.** The City Manager is authorized to execute Submerged Lands Leases with individual lessees, 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 14<sup>th</sup> day of October, 2003.

**THE CITY OF MARATHON, FLORIDA**

  
Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns  
NOES: None

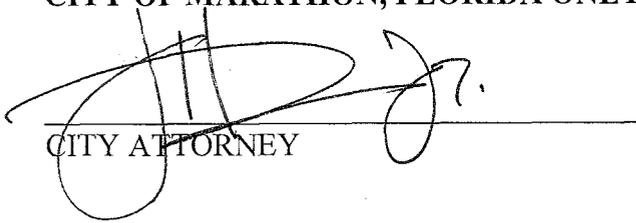
ABSENT: None  
ABSTAIN: None

**ATTEST:**



Cindy L. Ecklund, CITY CLERK  
(City Seal)

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



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CITY ATTORNEY

# Submerged Land Lease Rate Proposal

## City of Marathon – Ports Management

A rate schedule for submerged lands that are pre-empted by a use that would require a lease arrangement should be dependent upon the amount of affected area or shadow on the bottomland and a base rent modified annually in line with the Consumer Price Index (CPI). A ten percent (10%) cap on annual adjustments and a five year average of the CPI will provide equitable annual rent modification. There will be the ability to pro-rate the base rent relative to the effective date. A schedule will be started with this year and every subsequent year thereafter showing the rate, the minimum fee, and the CPI adjustment.

<u>Beginning</u>	<u>Basic Rate/sq. ft.</u>	<u>Minimum Annual Fee</u>	<u>Rate Change</u>
10/14/03	\$0.1278	\$383.50	CPI Adjusted _____%

This lease rate for submerged lands is in parity with the Florida Department of Environmental Protection, Division of State Lands.

SUBMERGED LAND LEASE

THIS SUBMERGED LAND LEASE ("Lease") dated as of \_\_\_\_\_, 200\_\_ made by and between the CITY OF MARATHON, a Florida municipal corporation, having an address at 10045 - 55 Overseas Highway, Marathon, Florida 33050 ("Landlord"), and \_\_\_\_\_, having an address at \_\_\_\_\_ ("Tenant").

RECITALS

1. Landlord owns certain submerged real property located in Monroe County, Florida as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Premises") upon which Tenant constructed a docking facility in conjunction with an upland single or multiple family residence without fueling facilities and without live-aboards (the "Dock").

2. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises solely for the operation, use, maintenance and repair of the Dock, subject to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

In addition to any terms defined elsewhere in this Lease, the following terms set forth below, when used in this Lease, shall be defined as follows:

(a) "Additional Rent" shall mean all monetary obligations of Tenant to Landlord (other than Base Rent) payable pursuant to this Lease.

(b) "City" shall mean the City of Marathon in its capacity as a municipal government, and not as Landlord under this Agreement.

(c) "COE" shall mean the United States Army Corps of Engineers and any other federal agencies which assist the COE with its permitting process.

(d) "County" shall mean Monroe County, a political subdivision of the State.

(e) "Effective Date" shall mean \_\_\_\_\_, 200\_\_.

(f) "FDEP" shall mean the Florida Department of Environmental Protection.

(g) "FFWCC" shall mean the Florida Fish and Wildlife Conservation Commission.

(h) "Governmental Approvals" shall mean all governmental and quasi-governmental approvals and permits from Governmental Authorities for all approvals and permits such as environmental approvals, dock permits, building permits, coastal systems permits, and all other governmental approvals required to develop, construct, repair, operate and maintain the Improvements on Premises.

(i) "Governmental Authorities" shall mean the federal government, the State, County, and City including all agencies and subdivisions of each of them including, but not limited to, the COE, FDEP, FFWCC

(j) "Improvements" shall collectively mean the following: (i) the Dock, (ii) any and all fixtures, permanently affixed equipment, signs, facilities, utilities constructed in connection with the foregoing, and (iii) all other structures or improvements now or hereafter constructed on or offsite in connection with the Premises and all additions, alterations, modifications, renovations, and replacements thereto.

(k) "Indemnitees" shall mean Landlord; its elected officials, employees, agents, and consultants as well as their respective successors and assigns.

(l) "Lease Year" shall mean the twelve (12) month period beginning on the Effective Date and each anniversary thereof.

(m) "Permitted Use" shall mean the permitted uses which may be made of the Premises pursuant to Section 5 of this Lease.

(q) "Person" shall mean any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise.

(n) "Rent" shall mean the Base Rent and any Additional Rent.

(o) "State" shall mean the State of Florida.

(p) "Surviving Obligations" shall mean upon the expiration or earlier termination of this Lease the obligations of Tenant, including: (i) the obligation to pay Rent which is due and unpaid through the effective date of such expiration or termination (prorated through the date of such termination) to the extent due, (ii) compliance with the provisions of Section 12 (Indemnity) for matters arising prior to the date of termination of this Lease, (iii) Section 23 (Environmental Compliance), and (iv) and any other obligation identified as surviving obligation in this Lease.

## SECTION 2. LETTING.

(a) Let. The Landlord hereby lets to Tenant and Tenant hereby hires and takes from the Landlord the Premises.

(b) Uses. Tenant agrees to operate the Premises only for the Permitted Uses provided, further, if the Tenant shall, subject to the terms of this Lease, make the Premises available to Persons other than the Tenant by sublease or otherwise, the Tenant shall do so without discrimination and shall refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees in connection with the Premises.

(c) As Is. Except as may be otherwise provided in this Lease the Premises and all components thereof, are hereby demised in "AS IS CONDITION" and "WITH ALL FAULTS." Following the Effective Date, the Tenant shall ASSUME ALL RISKS with respect to the condition of the Premises and of non-compliance of the Premises, or any part thereof, with any laws, ordinances, rules, regulations of Governmental Authorities, except as otherwise set forth in this Lease. The Tenant hereby releases the Landlord of and from any and all claims and liabilities whatsoever on account of the condition of the Premises.

(d) Quiet Enjoyment. Tenant, upon paying the Rent herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on the Tenant's part to be performed and observed, shall peacefully and quietly have, hold and enjoy the Premises during the Term, subject to the terms and conditions of this Lease.

### SECTION 3. TERM.

(a) Term. The term ("Term") of this Lease shall commence on the Effective Date and shall terminate on the last day of the eighth (8<sup>th</sup>) Lease Year of this Lease ("Termination Date"), unless sooner terminated as provided herein. The Term as defined herein shall also include any renewals or extensions thereto.

(b) Renewal. Any renewal of this Lease shall be at the sole option of the Landlord. Such renewal will be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Tenant is in full compliance with the terms of this Lease including the Permitted Use requirements set forth in Section 5 below, the Tenant may apply in writing for a renewal of the Term. Such application for renewal must be received by Landlord no sooner than one hundred twenty (120) days and no later than thirty (30) days prior to the Termination Date of the original or then current Term. Any renewal of the Term granted by the Landlord shall commence on the last day of the then current Term. If the Tenant fails to timely apply for renewal, or in the event the Landlord does not grant a renewal, the Tenant, at its cost and expense, shall vacate the Premises and remove all Improvements prior to the expiration of the Term subject to the provisions of Section 19 below. The obligation to remove all Improvements upon the expiration or earlier termination of this Lease shall constitute an affirmative covenant upon the Tenant and is intended to and shall run with the title to the Upland (as defined below), and shall be binding upon Tenant and Tenant's successors in title or successors in interest.

(c) Upland. During the Term, Tenant shall maintain a leasehold or fee simple title interest in the upland real property adjacent to the Premises as more particularly described on Exhibit "B" attached hereto (the "Upland") and, if such interest expires, terminates or is extinguished for any reason whatsoever including, but not limited to the sale or conveyance of the Upland, Landlord shall have the option to immediately terminate this Lease upon written notice to the Tenant, in which case the Rent shall be prorated as of the date of termination and the parties shall be relieved of all rights and obligations hereunder except for the Surviving Obligations. Prior to any sale or conveyance of the Upland, Tenant shall notify the potential buyer or grantee in writing of Landlord's termination right as set forth herein and, if Landlord elects not to terminate this Lease, Tenant and the buyer or grantee, as applicable, shall execute any documents required by the Landlord to effect and assignment and assumption of this Lease. Failure to do so will not relieve the Tenant from responsibility for full compliance with the terms and conditions of this Lease which include, but are not limited to, payment of all Rent prior to such assignment.

### SECTION 4. RENT.

(a) Base Rent. Commencing on the Effective Date, Tenant shall pay to Landlord the amount of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) ("Base Rent") plus applicable sales tax, which Base Rent shall be paid annually on the first day of each Lease Year in advance commencing on the Effective Date. If the Effective Date does not fall on the first day of the month, in order for the annual installments of Base Rent to be paid on the first day of the first month of each Lease Year, the Base Rent shall be prorated for the number of days remaining in the month in which the Effective Date occurs. Annual installments of Base Rent shall then be paid on the first day of the first month of each

Lease Year during the Term with the last year's Base Rent prorated in order to account for the initial proration relative to the Effective Date. The Base Rent for the remaining years of the Term shall be adjusted (upwards only) pursuant to Section 18-21.011, Florida Administrative Code. The Landlord will notify the Tenant in writing of the amount and the due date of the increased Base Rent; provided, however, the failure of the Landlord to provide said notice shall not relieve the Tenant of payment of Base Rent in which case Tenant shall pay Landlord the Base Rent in the amount of prior Lease Year's Base Rent which shall be due on the anniversary of the date the prior Lease year's Base Rent was due until such time as Tenant receives Landlord's notice of the increased Base Rent. The following represents the rate per square foot at which Base Rent will be computed as well as the subsequent charges by the City Ports Management Department and annual fluctuations of the Consumer Price Index (CPI) pursuant to Section 18-21.011, Florida Administrative Code.

<u>Beginning</u>	<u>Basic Rate/Sq. Ft.</u>	<u>Minimum Annual Fee</u>	<u>Reason for Rate Change</u>
10/14/03	\$0.1278	\$383.50	CPI Adjusted ___%

The Base Rent shall be modified annually based on fluctuations of the Consumer Price Index ("CPI") with a ten percent (10%) cap on annual adjustments. The CPI is averaged over a five year period and the resulting percentage of change is then applied to the previous annual Base Rent. Upon request by the Landlord, Tenant shall promptly provide any and all information in a certified form and to calculate the Base Rent, including wet slip rental information, if applicable. In addition, if the wet slip rental rates change during the applicable Lease Year, Landlord shall submit a revised rate schedule within thirty (30) days following the effective date of the rate change. The Landlord reserves the right to assess retroactively additional payments, which shall constitute Additional Rent hereunder, when the actual rental rates or total number of linear feet for rent used to determine the Base Rent differs from the rental rates or total number of linear feet for rent supplied by the Tenant.

(b) Examination of Books and Records. For the purpose of this Lease, Tenant hereby authorizes Landlord to examine, for the Term including any extensions thereto, plus three (3) additional years after the expiration or earlier termination of the Term, at all reasonable hours and at Tenant's place of business or such other address within the City as provided by Tenant, the books, records, contracts, and other documents confirming and pertaining to the computation of Base Rent payments as specified in Section 4(a) above. The Tenant shall secure, maintain, and keep all books and records for the Term including any extensions thereto, plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all books records and accounts for Rent payment verification purposes by the Landlord.

(c) Licenses, Fees and Taxes. Tenant shall pay, on or before their respective due dates, to the appropriate collecting authority, all taxes, licenses, permits, assessments, and fees of Governmental Authorities, which are now or may hereafter be levied upon the Premises and this Lease, or upon Tenant, or upon any of Tenant's property used in connection therewith including, but not limited to the Improvements, or upon the Rent or other sums payable hereunder, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all licenses and permits, now or hereafter required by Governmental Authorities for the operation of the Premises and the improvements.

(d) Additional Rent. If the Landlord is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Tenant to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease which breach is not cured by Tenant within the applicable cure period, Tenant agrees to pay the reasonable sums so paid or the reasonable expense so incurred, including all interest, costs, damages and penalties, and reasonable

attorneys' fees and costs, and each and every part of the same shall be and become Additional Rent payable within thirty (30) calendar days after written demand therefor.

(e) Late Payments; Interest. Landlord shall be entitled to collect interest at the highest non-usurious rate permitted by law per annum from the date any sum is due to Landlord until the date paid on any amounts that are not paid within ten (10) days of their due date under this Lease. The right of Landlord to require payment of such interest and the obligation of the Tenant to pay same shall be in addition to and not in lieu of the right of the Landlord to enforce other provisions herein and to pursue other remedies provided by law.

(f) Place of Payments. All payments of Rent required to be made by the Tenant to Landlord under this Lease shall be made payable to "City of Marathon" and shall be paid to the Landlord at the Ports Management Department, 10045-55 Overseas Highway, Marathon, Florida 33050 or to such other office or address as may be substituted therefor. All Rent (together with all applicable sales tax thereon) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

## SECTION 5. RIGHTS AND USES OF THE TENANT.

(a) Permitted Use. Tenant shall be permitted to utilize the Premises solely for the operation, use, maintenance and repair of the Improvements as shown on Exhibit "C" attached hereto and in accordance with City dock permit No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_ attached hereto as Exhibit "D" ("Permitted Use"). Tenant shall not alter or modify, or seek to alter or modify, in any manner the approved land use of the Premises or the type of land use of the Upland (e.g., commercial to multi-family residential) without first obtaining the Landlord's written consent in the form of an amendment to this Lease and the payment of additional fees, if applicable, and the removal of that portion of the Improvements which are no longer authorized pursuant to the amendment to the Lease. No Improvements shall be constructed in any manner that would cause harm to wildlife or the environment. Tenant shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structure whose use is not water dependent shall be erected or conducted over the Premises without prior written consent from the Landlord, which consent may be withheld in Landlord's sole and absolute discretion. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over the Premises without prior written consent from the Landlord which consent may be withheld in Landlord's sole and absolute discretion. Unless specifically authorized in writing by the Landlord such activities or structures shall be considered unauthorized and, in addition to a breach of the terms and conditions of this Lease, a violation of City Code, and shall subject the Tenant to administrative fines under Chapter 18-14, Florida Administrative Code. This foregoing shall not apply to minor structural repairs required to maintain the authorized Improvements in a good state of repair in the interests of public health, safety or welfare; provided however, that such activities shall not exceed the activities authorized by this Lease. Additionally, notwithstanding the provisions of this Section 5, Tenant may install boatlifts within the Premises without amendment of this Lease provided that (i) Tenant provides to Landlord an acceptable engineering drawing of the proposed lift; (ii) the location or size of the boatlift does not increase the mooring capacity of the Dock; and (iii) written approval of Landlord is obtained prior to the installation and construction of the boatlift. A copy of such authorization shall then be attached to the Lease and become a part hereof.

(b) Prohibited Uses. Tenant shall be expressly prohibited from utilizing the Premises for the following:

(1) The construction, installation, operation, or use of fueling facilities of any kind whatsoever.

(2) Mooring or docking (either temporarily or permanently) of any vessel not registered or titled in accordance with Chapters 327 and 328, Florida Statutes.

(3) Any use that requires the use or storage of Materials (as defined in Section 23(a) below at the Premises.

(4) Any use of the Premises for residential purposes or living quarters of any kind whatsoever including, but not limited to live-aboards.

(5) Any use which is not a Permitted Use as set forth in Section 5(a) above.

(6) Any use prohibited by law.

#### **SECTION 6. GENERAL OBLIGATIONS OF TENANT.**

(a) Encumbrances. Tenant hereby represents, warrants and covenants to the Landlord that the fee simple title to the Premises shall be at all times free and clear of all liens, claims and encumbrances created by or through Tenant (other than those created or consented to by Landlord). If any lien or notice of lien shall be filed against the fee simple title of the Premises created by or through Tenant, the Tenant shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. Tenant shall not be deemed to be Landlord's agent so as to confer upon any contractor or subcontractor providing labor or services that are material to the Premises (whether in connection with Tenant's Improvements or otherwise) a construction lien, mechanic's lien or both against Landlord's estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum to be recorded in the Public Records of Monroe County in accordance with Chapters 255 and 713, Florida Statutes.

(b) Title to Premises. Except for its rights in and to this Lease, Tenant shall make no claim of title or interest to the Premises by reason of the occupancy or use thereof, and all title and interest to the Premises is vested in the Landlord.

(c) In the event that the Improvements or any portion thereof are determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with the riparian rights of property owner(s) adjacent to the Premises, Tenant agrees to either obtain written consent in a form and substance acceptable to Landlord for the offending structure from the affected riparian owner or to remove the interference or encroachment within sixty (60) days from the date of the adjudication. Failure to comply with the foregoing shall constitute a material breach of this Lease and shall be grounds for immediate termination of this Lease at the option of the Landlord notwithstanding any notice requirements and cure periods otherwise provided in this Lease.

(d) Garbage. Tenant shall remove from the Premises and Improvements or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use of the Premises and Improvements or out of any operations conducted thereon in accordance with applicable laws. Any of such as may be temporarily stored in the open, shall be kept in suitable garbage and waste receptacles. When effecting removal of all such waste, Tenant shall comply with all laws, ordinances, rules, regulations and procedures of all applicable Governmental Authorities. Without limiting the foregoing, Tenant shall place and maintain covered, secure trash receptacles, preferably of fifty (50) gallon capacity, of a sufficient number and at appropriate locations on the over water structures within the

Premises to encourage facility users to discard litter in an acceptable manner and prevent litter from being discarded into the waters above the Premises.

(e) Waste. Tenant shall commit no legal nuisance, waste or injury on the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such material nuisance, waste or legal injury upon or to the Premises.

(d) Signs. No permanent or temporary signs directed to the boating public shall be erected or placed within the Premises and/or the Improvements. Tenant shall install and maintain manatee awareness signs, at locations and of a format acceptable to the Division of Marine Resources, Office of Protected Species Management, advising boaters to exercise caution due to the presence of manatee in the area. Tenant shall install and maintain manatee information displays, in locations and of a format acceptable to the Division of Marine Resources, Office of Protected Species Management, informing the boating public of the habitat and mannerisms of the manatee and potential threat boats can impose on the continued existence of the endangered manatee. Tenant hereby accepts the responsibility to contact and comply with the requirements of the Division of Marine Resources, Office of Protected Species Management, MS 245, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, within six (6) months of receipt of executed lease. Tenant also agrees to provide an affidavit signed by the Tenant stating the required signs and displays have been installed and satisfy the requirements of the Division of Marine Resources, Office of Protected Species Management.

#### SECTION 7. COMPLIANCE WITH LAWS.

Tenant shall comply with all laws, ordinances, resolutions and governmental rules, regulations and orders of Governmental Authorities as may be in effect now or at any time during the Term of this Lease, all as may be amended, which are applicable to Tenant, the Premises, the Improvements, or the operations conducted at the Premises. A violation of any of such laws, ordinances, resolutions, rules, regulations or orders, as amended, not cured within the applicable cure period shall constitute a material breach of this Lease, and in such event Landlord shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

#### SECTION 8. MAINTENANCE AND REPAIR.

(a) Tenant shall throughout the Term assume the entire responsibility and shall relieve the Landlord from all responsibility for all repair, maintenance and replacements on the Premises (which shall include, without limitation, the Improvements thereon) whether such repair, maintenance and replacements are ordinary or extraordinary, structural or otherwise. Maintenance, repairs, replacements and capital improvements shall be in quality and class comparable to similar properties, to preserve the Premises and Improvements in good order and condition. During the Term, Tenant shall be required to keep all Improvements in good and useable condition throughout the Term of this Lease.

(b) If Tenant fails or neglects to fulfill its repair and maintenance obligations under Section (a) above and such failure continues for thirty (30) days following written notice from Landlord to Tenant specifying the nature of such failure or neglect and Tenant does not contest or dispute the failure or neglect set forth in Landlord's notice, Landlord shall have the right, but not the obligation to perform such repairs and maintenance obligations on behalf of Tenant. If Landlord performs such repairs and maintenance obligations pursuant to the terms and conditions of this Section 11(b), Tenant agrees to pay Landlord the cost thereof as Additional Rent within ten (10) days following written demand therefore.

## SECTION 9. INSURANCE REQUIREMENTS FOR TENANT.

- (a) Casualty Insurance. Tenant shall, during the Term of this Lease, insure and keep insured to the extent of not less than 100% of the insurable replacement value thereof, the Improvements and fixtures and attached equipment on the Premises against such hazards and risks as may now or in the future be included under the Standard Form of Fire and Extended Coverage insurance policy of the State of Florida.
- (b) Comprehensive General Liability Insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than One Million Dollars (\$1,000,000) with a Two Million Dollars (\$2,000,000) umbrella per occurrence, combined single limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Premises and Operations, Independent Contractors and Broad Form Contractual Coverage covering all liability arising out of the terms of this Lease.
- (c) Workers' Compensation and Employer's Liability Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.
- (d) Certificates. Tenant shall furnish to the Landlord, certificates of insurance or endorsements evidencing the insurance coverages specified by this Article prior to the Effective Date of this Lease. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals thereof shall name the Indemnitees as additional insureds as their interests may appear.
- (e) Cancellation. Coverage is not to cease and is to remain in force (subject to cancellation notice) throughout the term of this Lease and until all performance required hereunder is completed. All policies must be endorsed to provide Landlord with at least thirty (30) calendar days' notice of cancellation, restriction or both. If any of the insurance coverages will expire prior to the termination of this Lease, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.
- (f) Continued Obligations. Compliance with the foregoing requirements shall not relieve the Tenant of its liability and obligations under any other provision of this Lease.

## SECTION 10. DAMAGE TO OR DESTRUCTION OF PREMISES.

- (a) Removal of Debris. If the Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty, Tenant shall promptly remove, or cause to be promptly removed, all debris resulting from such damage from the Premises, and Tenant shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of persons and property. To the extent, if any, that the removal of debris under such circumstances is covered by Tenant's insurance, the proceeds thereof shall be paid to Tenant for such purpose.
- (b) Minor Damage. If Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty but not rendered unusable, then there shall be no abatement of Rent and the Lease shall continue in full force and effect. Tenant may repair and restore the

Improvements at the expense of Tenant and, if such damage is covered by Tenant's, insurance, the proceeds thereof shall be made available to Tenant for that purpose.

(c) Major Damage to or Destruction of the Premises. If Improvements located on the Premises or any part thereof shall be destroyed or so damaged by fire, the elements, or other casualty as to render the Premises then this Lease shall terminate effective as of the date of such casualty. If this Lease terminates pursuant to this Section, Tenant shall surrender the Premises to Landlord immediately following its removal of debris as required by Section 10(a) above and the removal of the remainder of the Improvements as required by Section 19 below.

#### **SECTION 11. CONDEMNATION.**

If at any time during the Term of this Lease, the Premises or, as determined among the parties, any portion thereof, as would render the balance of the Premises not suitable for the Permitted Use enumerated in this Lease shall be taken by transfer or exercise of eminent domain power by any Governmental Authority, the Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time Rent and other charges shall be apportioned, except that this provision shall not release the parties from any liability or claims arising prior to the date of such termination nor other Surviving Obligations. The Landlord shall be entitled to the condemnation award for the Premises and Tenant shall be permitted to make separate claim to the condemning authority for its leasehold interest hereunder. Landlord shall not be obligated to raise any defense to any proposed acquisition or use of the Premises by any condemning authority.

#### **SECTION 12. INDEMNITY.**

Tenant shall indemnify and hold harmless the Indemnitees from and against any and all claims, costs, losses and damages, liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of the Tenant, any subcontractor, any supplier, any Person directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, such is caused by the Landlord's gross negligence. This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the improvements, and including the loss of use resulting therefrom. Payment of any amount due pursuant to this Section 12 shall, after receipt of written notice by Tenant from the Landlord that such amount is due, be paid by Tenant if the Landlord becomes legally obligated to pay same, or the Tenant agrees that it is responsible for said claim, or in the alternative, the Landlord, at the Landlord's option, may make payment of an amount so due and Tenant shall promptly reimburse the Landlord for same. Where the basis for a claim for damages brought against the Landlord by a third party is that the Landlord has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent acts or omissions of Tenant under his Lease, then Tenant agrees, at Tenant's expense, after written notice from the Landlord to defend any action against the Landlord that falls within the scope of this Section 12, or the Landlord, at the Landlord's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit which alleged that the breach was a result of the negligent act or omissions of the Tenant under this Lease, then the reasonable costs and expenses of the Landlord incurred in defending such action shall be payable by Tenant. If the Landlord requests the Tenant to defend such action on behalf of the Landlord and the Landlord is not found liable for any damages which are expressly or impliedly claimed to be the result of the Tenant's acts or omissions, then, the Landlord shall reimburse the Tenant all the reasonable fees and costs expended in the defense. If either the Landlord or Tenant is required to incur attorneys' fees or costs to enforce this Section 12, the prevailing party in any litigation shall recover all of their attorneys' fees and costs at both trial and

appellate levels. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

### SECTION 13. RIGHTS OF ENTRY RESERVED.

(a) Access. The Landlord, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times and upon reasonable advance notice to enter upon the Premises and Improvements for the purpose of inspecting the same, for observing the performance by the Tenant of its obligations under this Lease and for the doing of any act or thing for which the Landlord may be obligated or have the right to do under this Lease or otherwise, subject to the provisions of this Lease, provided in connection with such access, such party shall use reasonable efforts to minimize disruption to the operations being conducted upon the Premises and Improvements.

(b) No Eviction. The exercise of any or all of the foregoing rights by the Landlord or others to the extent permitted by this Lease shall not be or be construed to be an eviction of the Tenant nor be made the grounds for any abatement of Rent nor any claim or demand for damages, consequential or otherwise.

### SECTION 14. ASSIGNMENT AND SUBLETTING.

(a) Assignment. Tenant shall not sell, convey, transfer or assign (all of the foregoing being deemed as an "Assignment") all or any portion of its interest in this Lease, the Premises and the Improvements, without the prior written consent of Landlord which consent may be withheld in Landlord's sole and absolute discretion. No Assignment shall be deemed valid or binding upon Landlord, and the assigning Tenant shall not be released from its obligations hereunder, until Landlord has consented to such Assignment, there shall have been delivered to Landlord a true copy of the instrument in a form and substance reasonably acceptable to Landlord in all respects effecting such Assignment, together with the address of each assignee therein named, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease on Tenant's part to be performed. After the aforesaid instrument has been delivered to Landlord and Landlord has consented to such Assignment, then upon such assignee assuming the obligations of this Lease for all obligations arising from and after the date of such assumption, the assigning party shall be released of all further obligations under this Lease for the period from and after the date of such assumption. For purposes of this Section, an "Assignment" will include: (i) any transfer of the Lease by merger, consolidation or liquidation, or by operation of law, or (ii) if Tenant is a corporation, any change (other than to affiliates of existing shareholders or partners of Tenant) in ownership or power to vote a majority of the outstanding voting stock thereof from those controlling the power to vote such stock on the date of the Lease, or (iii) if Tenant is a limited or a general partnership or joint venture, or a limited liability company, any transfer of an interest in the partnership or joint venture (other than to an existing partner or any Affiliates of existing partners) of greater than a majority of such partnership or joint venture interest from the interest of such partnership or joint venture on the date of the Lease.

(b) Subletting. Tenant shall not sublet portions or the whole of the Premises and the Improvements, or grant licenses or concessions thereat (all of the foregoing being deemed a "Sublease") without the prior written consent of the Landlord in each instance, which consent may be withheld by the Landlord in its sole and absolute discretion. The following terms and conditions shall apply in each instance where Landlord has consented to a sublease:

(1) Each Sublease shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions.

(2) No Sublease shall relieve Tenant from liability for any of its obligations hereunder, and in the event of any such Sublease, Tenant shall continue to remain primarily liable for and continue to make payments for the payments required to be made pursuant to this Lease and for the performance and observance of the other agreements on its part herein contained.

(3) The form of such Sublease shall be subject to the review and approval of the Landlord and shall, at a minimum, contain all of the material provisions of this Lease with respect to the obligations of Tenant.

#### SECTION 15. DEFAULT; TERMINATION.

(a) Default. If any one or more of the following events shall occur, same shall be an event of default under this Lease:

(1) Tenant shall voluntarily abandon the Premises or discontinue its operations on the Premises for a period of thirty (30) consecutive calendar days, other than as a result of casualty, condemnation, major renovation, or one or more acts of force majeure; or

(2) Any lien, claim or other encumbrance which is filed against the Landlord's fee simple title to the Premises (other than that created by or through Landlord) is not removed, or if the Landlord is not adequately secured by bond or otherwise with respect to any lien against the fee simple title of the Premises (other than that created by or through Landlord), within thirty (30) calendar days after the Tenant has received notice thereof, or

(3) The Tenant shall fail to pay the Rent when due to the Landlord and Tenant shall continue in its failure to make any such payments for a period of ten (10) calendar days after written notice is given to make such payments; or

(4) The Tenant shall fail to make any other payment required hereunder when due to the Landlord and shall continue in its failure to make any such other payments required hereunder for a period of ten (10) calendar days after written notice is given to make such payments; or

(5) The Tenant shall fail to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Lease on its part to be kept, performed or observed within thirty (30) calendar days after receipt of written notice of default thereunder (except where fulfillment of its obligation requires activity over a greater period of time and the Tenant shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without material interruption); provided, however, the foregoing shall not apply if Tenant's failure to perform is due directly to the acts or omissions of Landlord; or

(6) To the extent permitted by law, if Tenant makes an assignment for the benefit of creditors; or

(7) To the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Code (the "Bankruptcy Code") or if such petition is filed against Tenant and an order of relief is entered and not dismissed within sixty (60) days or if Tenant files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law; or

(8) To the extent permitted by law, if within sixty (60) days after the commencement of any proceeding against Tenant seeking to have an order for relief entered against its as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding is not dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Tenant, or of all of any of the Premises or any interest of Tenant therein, such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment if not vacated.

(b) Remedy. Upon the occurrence of any event set forth in Section 15(a), above, or at any time thereafter during the continuance thereof, the Landlord may at its option immediately terminate the rights of Tenant hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice or Landlord may exercise any and all other remedies available to Landlord hereunder or at law or in equity. In the event of any such termination, Tenant shall have no further rights under this Lease and shall cease forthwith all operations upon the Premises and shall pay in full all Rent and other charges as set forth in this Lease, then due and owing, through the date of termination, and Tenant shall be liable for all Surviving Obligations as well as compensatory damages incurred by Landlord in connection with Tenant's default or the termination of this Lease upon such a default, including without limitation, all direct, indirect, and all other damages whatsoever, provided Landlord shall not be entitled to punitive or consequential damages.

(c) Habitual Default. Notwithstanding the foregoing, in the event that the Tenant has defaulted in the performance of or breached the same obligation three or more times in a twelve (12) month period, and regardless of whether the Tenant has cured each individual condition of breach or default, the Tenant may be determined by the Landlord to be an "habitual violator." At the time that such determination is made, the Landlord shall issue to the Tenant a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Tenant that there shall be no further notice or grace periods to correct any subsequent breaches or defaults of that particular obligation for the balance of such twelve month period and that any subsequent breaches or defaults of that particular obligation for the balance of such twelve month period, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default of that particular obligation for the balance of such twelve month period, for which the Tenant has been deemed to be a habitual violator, Landlord may terminate this Agreement upon the giving of written notice of termination to the Tenant, such termination to be effective upon delivery of the notice to the Tenant.

(d) No Waiver. No acceptance by the Landlord of Rent, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Tenant shall be deemed a waiver of any right on the part of the Landlord to terminate this Lease, or to exercise any other available remedies. Failure by Landlord or Tenant to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this lease.

**SECTION 16. REMEDIES TO BE NON-EXCLUSIVE.**

(a) Cumulative Remedies. All rights and remedies of the parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any. No waiver by either party of any failure to perform any of the terms, covenants, and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions herein contained.

(b) Survival. Upon termination or expiration of this Lease, the Tenant shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

**SECTION 17. SURRENDER.**

The Tenant covenants and agrees to yield and deliver peaceably and promptly to the Landlord, possession of the Premises, on the Termination Date or earlier termination of this Lease. The Tenant shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation accepted. All maintenance and repairs shall be completed prior to surrender.

**SECTION 18. ACCEPTANCE OF SURRENDER OF LEASE.**

No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Landlord and of the Tenant in a document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of the Landlord shall be deemed an acceptance of a surrender of letting under this Lease.

**SECTION 19. REMOVAL OF PROPERTY.**

(a) Removal. Immediately upon the termination or earlier expiration of this Lease, Tenant shall remove the Improvements and any other personal property from the Premises. Tenant shall immediately repair any damage to the Premises caused by its removal of the Improvements and any personal property. If the Tenant shall fail to remove the Improvements and any personal property by the expiration or earlier termination of this Lease, then, Tenant shall be considered to be holding over and subject to charges under Section 25(1), hereof, and after fourteen (14) calendar days following said termination or expiration, at the Landlord's option: (i) title to same shall vest in the Landlord, at no cost to the Landlord; or (ii) Landlord may remove such property to a public warehouse for deposit; or (iii) Landlord may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second, to any sums owed by the Tenant to the Landlord, with any balance remaining to be paid to the Tenant; or Landlord may dispose of such property in any manner permitted by law. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Tenant shall pay such excess to the Landlord upon demand. In the event Tenant fails to pay such expenses to Landlord following demand therefore, Landlord is hereby authorized to file a claim of lien for such expenses upon the Upland and thereafter foreclose upon such Claim of lien in accordance with applicable law.

(b) Survival. The provisions of this Section shall survive the expiration or termination of this lease.

**SECTION 20. NOTICES.**

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**FOR LANDLORD:**

City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Attn: City Manager

with a copy to:

Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.  
2665 South Bayshore Drive  
Suite 420  
Miami, Florida 33133  
Attn: Nina L. Boniske, Esq.

**FOR TENANT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

All notices, approvals and consents required hereunder must be in writing to be effective.

**SECTION 21. NON-LIABILITY OF INDIVIDUALS.**

No limited partner, director, officer, administrator, official, agent or employee of the Landlord or Tenant shall be charged personally or held contractually liable under any term or provisions of this Lease or of any supplement, modification or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution.

**SECTION 22. UTILITIES.**

From and after the Effective Date, the Tenant shall pay for all water, wastewater, electric, telephone, solid waste, recycling, and all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall

pay all fees or charges relative to the foregoing promptly prior to delinquency. The metering devices and utility lines installed by the Tenant for such utilities shall be installed at the cost of the Tenant and shall (to the extent owned by Tenant) become the property of the Landlord at the end of the Term. Extension of utility mains or services to meet the needs of the Tenant on the Premises shall be at the expense of the Tenant. No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of the Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by the Tenant under this Lease for damages, consequential or otherwise unless caused by Landlord's wrongful act or gross neglect.

**SECTION 23. ENVIRONMENTAL COMPLIANCE; ENVIRONMENTAL CONTAINMENT AND REMOVAL.**

(a) No Warranty by Landlord. Landlord makes no representations or warranties whatsoever as to the existence of any pollutants, or hydrocarbon contamination, hazardous materials, or other contaminants or regulated materials (collectively, "Materials") on, in or under the Premises, whether or not in violation of any law, administrative code provision, ordinance, rule, regulation, order or directive of Governmental Authorities, as amended. It shall be the sole responsibility of Tenant to make sufficient inspection of the Premises to satisfy itself as to the presence or absence of any Materials.

(b) Compliance. From and after the Effective Date, Tenant agrees to comply with all existing and future environmental laws, administrative code provisions, ordinances, rules and regulations, and the requirements of Governmental Authorities covering the Premises and Improvements

(c) Clean Up. The Release (as defined in Section 23(d) below) of any Materials on, in or under the Premises, or as a result of Tenant's operations at the Premises including any Release into the waters above the Premises (other than any Materials created by or through Landlord), that is in an amount that is in violation of any law, administrative code provision, ordinance, rule, regulation, order or directive of Governmental Authorities, as amended, by Tenant or any of its or the officers, employees, contractors, subcontractors, invitees, or agents of Tenant committed subsequent to the Effective Date of this Lease, shall be, at the Tenant's expense, and upon demand of Landlord or any Governmental Authority, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Tenant does not take action promptly to have such Materials contained, removed and abated to the extent required by law, the Landlord may upon reasonable notice to Tenant (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by the Landlord or any of its agencies shall not relieve the Tenant of its obligations under this or any other provision of this Lease or as imposed by law. No action taken by either the Tenant or the Landlord to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release.

(d) Notice of Release. Tenant shall provide the Landlord with notice of Releases of Materials occurring at the Premises or on account of Tenant's operations at the Premises. As required by law, Tenant shall provide the Governmental Authorities with notice of spills, releases, leaks or discharges collectively, "Release") of Materials on, in or under the Premises including any Release into the waters above the Premises which exceeds an amount required to be reported to any Governmental Authorities under applicable environmental laws, rules and regulations, which notice shall be in accordance with applicable environmental laws, rules and regulations.

(e) Cure. If Tenant is in default of its obligation to remove the Materials in violation of applicable law and such breach is not cured within the applicable cure period, and the Landlord arranges for the removal of any Materials on the Premises that were caused by the Tenant or the officers,

employees, contractors, subcontractors, invitees, or agents of Tenant, the costs of such removal incurred by the Landlord shall be paid by Tenant to the Landlord within ten (10) calendar days of Landlord's written demand, with interest at the highest non-usurious rate permitted by Florida law per annum thereafter accruing.

(f) Survival. The provisions of this Section shall survive the expiration or other termination of this Lease.

#### SECTION 24. NON-DISCRIMINATION.

Tenant shall not discriminate against any Person because of that Person's race, color, religion, sex, national origin, age, handicap, or this Lease with respect to any activity occurring within the Premises or upon the Upland.

#### SECTION 25. MISCELLANEOUS.

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(b) Jurisdiction. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any disputes shall lie in the courts of Monroe County, Florida.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Relationship of Parties/Independent Contractor. It is the intent of the parties that the relationship of Landlord and Tenant hereunder is the relationship of landlord and tenant. Services provided by Tenant shall be subject to the supervision of Tenant and such services shall not be provided by Tenant, or its agents, as officers, employees, or agents of the Landlord. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall create or be deemed or construed to create a partnership, joint venture, joint enterprise or any other agency or other similar such relationship between the parties hereto.

(e) Third Party Beneficiaries. Neither Tenant nor Landlord intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this lease.

(f) Negotiated Lease. Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Lease, including all Exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

(g) Incorporation by Reference. The truth and accuracy of each "Recitals" clause set forth above is acknowledged by the parties. The attached Exhibits to this Lease are incorporated into and made

a part of this Lease and all Exhibits subsequently attached to this Lease pursuant to the terms hereof shall be deemed incorporated into and made a part of this Lease.

(h) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party hereto, the other party will deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either party may reasonably request.

(i) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the Landlord and Tenant.

(j) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with subparagraph (j), above.

(k) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(l) Holdover. It is agreed and understood that any holding over of Tenant after the termination of this Lease shall not renew and extend same, but shall operate and be construed as a license from month to month. At the option of Landlord, upon written notice to Tenant, Tenant shall be required to pay to the Landlord during any holdover period, monthly license fees which shall be equal to double the amount of the monthly installment of rental that was due and payable for the month immediately preceding the termination date of this Lease. In addition, Tenant shall be required to pay to Landlord any other charges required to be paid hereunder during any such holdover period. Tenant shall be liable to the Landlord for all loss or damage on account of any such holding over against the Landlord's will after the termination of this Lease, whether such loss or damage may be contemplated at the execution of this lease or not. It is expressly agreed that acceptance of the foregoing payments by the Landlord in the event that Tenant fails or refuses to surrender possession shall not operate or give Tenant any right to remain in possession nor shall it constitute a waiver by the Landlord of its right to immediate possession of the premises.

(m) Agent for Service of Process. It is expressly understood and agreed that if the Tenant is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event the Tenant does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the Landlord arising out of or based upon this Lease, and the service shall be made as

provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. The Tenant shall designate an agent for service process in Florida. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Tenant may be personally served with such process out of this State by certified mailing to the Tenant at the address set forth herein. Any such service out of this State shall constitute valid service upon the Tenant as of the date of mailing. It is further expressly agreed that the Tenant is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

(n) Waiver of Claims. Landlord shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Premises or any part thereof; (ii) caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein; (iii) caused by or arising from any act or omission of Tenant, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Premises or any fire or other casualty thereon; (v) occasioned by Tenant's failure to maintain the Premises and Improvements in a safe condition; or (vi) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Landlord. The Tenant agrees that Landlord shall not be liable for injury to Tenant's business for any loss of income therefrom or from loss or damage for merchandise or property of Tenant or its employees, invitees, customers, commercial tenants or other persons in or about the Premises, nor shall Landlord be liable for injuries to any persons on or about the Premises whether such damage is caused by or as a result of theft, fire, electricity, water, rain or from breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, fixtures or for any other condition arising upon the Premises, or from any new construction or repair, alteration or improvement on the part of Tenant's Improvements or the equipment, fixtures or appurtenance thereof. The Landlord does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Landlord be liable for any consequential or punitive damages in connection with this Lease.

(o) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Lease.

(p) Time of Essence. Time is expressed to be of the essence of this Lease.

(q) Written Approvals. All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

(r) Authority of Individuals. The individuals executing this Lease on behalf of Tenant personally warrant that they have full authority to execute this Lease in a representative capacity on behalf of Tenant for whom they are acting herein.

(s) Recordation of Memorandum of Lease. Landlord hereby consents to Tenant recording a Memorandum of this Lease in the Public Records of Monroe County, Florida, which Memorandum shall set forth, and shall only set forth: (i) the names of the parties; (ii) the legal descriptions of the Premises and Upland; (iii) the Effective Date and Term of the Lease, and (iv) a notice of non-responsibility to advise all contractors and subcontractors that the Tenant shall not have the right to create a lien against Landlord's interest in and to the Premises. Tenant shall not record this Lease in the Public Records of Monroe County, Florida. The Tenant agrees that upon any termination of the Lease that it will execute a document in form reasonably requested by Landlord terminating the memorandum of record.

(t) No Set Off. The Tenant acknowledges that, as of the Effective Date hereof, it has no claims against Landlord with respect to any of the matters covered by this Lease and as of the Effective Date it has no claim of set off or counterclaims against any of the amounts payable by Tenant to Landlord under this Lease. The Tenant is not entitled to setoff against the amounts payable by Tenant to Landlord payable pursuant to this Lease.

(u) Police/Regulatory Powers. 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 Premises, any improvements thereon, or any operations at the Premises. Nothing in this Lease 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 zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, State laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

(v) 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 local public health unit.

(w) Broker. Each party represents to the other that it has not dealt with any broker or finder in connection with the execution of this Lease.

(x) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

(y) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, if Tenant is a general partnership or joint venture, any general partner or venturer of Tenant shall be jointly and severally liable and obligated with Tenant for the full performance of all of the terms, covenants, obligations and conditions of this Agreement.

(z) Attorneys' Fees. In the event of any litigation which arises out of, pertains to, or relates to this Lease or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, subject to the limits of this Section. Where the prevailing party is awarded compensatory damages from the non-prevailing party, the amount of fees shall not exceed the amount of compensatory damages (it being the intent that no fees shall be recoverable by a prevailing party in the absence of an award of compensatory damages other than nominal damages).

IN WITNESS WHEREOF, the parties hereto have made and executed this Lease on the respective dates under each signature.

**LANDLORD:**

CITY OF MARATHON, a Florida  
municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF THE  
CITY OF MARATHON ONLY:

\_\_\_\_\_  
CITY ATTORNEY

**TENANT:**

Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA )

SS:

COUNTY OF MONROE )

THIS IS TO CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared \_\_\_\_\_ as Mayor of the CITY OF MARATHON, a Florida municipal corporation, on behalf of the City, who (check one) [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA )

SS:

COUNTY OF MONROE )

THIS IS TO CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared \_\_\_\_\_, who (check one) [ ] is personally known to me or [ ] produced a \_\_\_\_\_ drivers license as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF UPLAND**

**EXHIBIT "C"**  
**IMPROVEMENTS**

**EXHIBIT "D"**  
**DOCK PERMIT**

**EXHIBIT "D"**  
**DOCK PERMIT**