

RESOLUTION NO. 01-09- 56

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO A LEASE AGREEMENT WITH THE OWNER OF CERTAIN IMPROVED REAL PROPERTY TO BE USED FOR RECREATIONAL PURPOSES INCLUDING A SKATEBOARD PARK AND FOR SUCH OTHER PURPOSES REFERENCED IN SAID AGREEMENT; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (“Tenant”) desires to enter into a Lease Agreement with an individual by the name of Stephan Ban (“Landlord”), and Landlord is the owner of that certain improved real property (“Premises”) together with parking located within the boundaries of the City of Marathon; and

WHEREAS, the Tenant desires to lease from Landlord, and the Landlord is willing to lease to Tenant, the Premises; and

WHEREAS, the Premises shall be used for recreational purposes including a skateboard park, and for such purposes ancillary to the foregoing uses, including administrative offices, referenced within said Lease Agreement, attached hereto as Exhibit “A”.

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 Agreement between the City and Landlord, in substantially the form and substance that is attached as Exhibit "A", is hereby approved. The

City Manager and the City Attorney are authorized to finalize the terms and conditions of said Agreement, if necessary, and the Mayor is authorized to execute the Agreement on behalf of the City.


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

PASSED AND ADOPTED this 18th day of September, 2001.



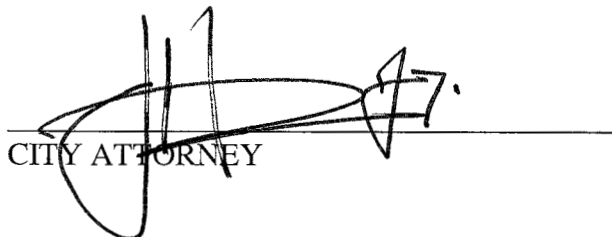
ROBERT MILLER, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

#4100v1

SCANNED

9/21/01 #4171 KSV

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" or "Agreement") is made and entered into as of this 18th day of September, 2001, by and between Stephan Ban whose mailing address is 67 Tingler Lane, Marathon, Florida 33050 ("Landlord") and **CITY OF MARATHON**, a municipal Florida corporation, whose mailing address is 11045-55 Overseas Highway, Marathon, Florida 33050 ("Tenant").

RECITALS

1. Landlord is the owner of that certain improved real property together with parking located at the street address of n/a ("Premises") as more fully set forth in that certain legal description attached hereto as Exhibit "A" and made a part hereof by this reference.
2. Tenant desires to lease from Landlord, and Landlord is willing to lease to Tenant, the Premises, in furtherance of such purposes of Tenant and upon and subject to all terms, covenants, conditions and provisions set forth below.

NOW, THEREFORE, in consideration of the rents and agreements set forth herein, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

ARTICLE 1. Demise; Term; Commencement Date, Option.

1.1 Landlord hereby leases to Tenant and Tenant hereby hires from Landlord for the Term (as hereinafter defined), the Premises.

1.2 The term (the "Term") of this Lease shall be on a month to month basis commencing at 12:00 a.m. on October 1, 2001, (the "Commencement Date") and expire at 11:59 p.m. on October 31, 2001 (the "Expiration Date"), or on such earlier date as the Lease may otherwise expire or terminate in accordance with its terms. Either Tenant or Landlord shall have the right to terminate this Lease upon written Notice (as defined below) to the other party delivered at least fifteen (15) days prior to the end of any month during the Term. If no such Notice is given by either party, this Lease shall automatically renew until such time as either party desires to terminate this Lease. Upon the date set forth in such Notice, this Lease shall terminate and the parties shall be relieved of all rights and obligations hereunder. The definition of "Term" shall include all renewal terms hereof.

1.3 Tenant may elect at any time during the Term to terminate this Lease upon at least thirty (30) days written Notice (as defined below). If Tenant elects to so terminate the Lease it must notify Landlord of its intent to terminate in writing and the Lease shall terminate thirty (30) days from the date of such Notice or later if expressly set forth in the Notice.

1.4 Upon the expiration of the Term or any earlier expiration or termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in the condition required under this Lease, excepting ordinary wear and tear.

ARTICLE 2. Rent.

2.1 Tenant agrees to pay Landlord fixed rent, plus any applicable sales taxes, and a pro-rata share of ad valorem taxes directly associated with the Premises (collectively hereinafter referred to as the "Rent") in monthly installments commencing on the 1st day of October, 2001, and continuing to and including the Expiration Date in the amount of One Dollar and 00/100 Dollars (\$1.00).

2.2 Each monthly installment of Rent shall be paid, in advance, on or before the fifteenth (15th) day of the month for which such monthly installment of Rent shall be due.

2.3 Tenant shall pay all Rent to Landlord at the following address: 67 Tingle Lane, Marathon, Florida 33050, or at such other place as Landlord may designate. All Rent shall be paid in lawful money of the United States by unendorsed check drawn to Landlord's order, on a Florida bank.

2.4 If by reason of any of the provisions of this Lease, the Commencement Date shall commence with respect to the Premises, or if the Expiration Date shall be, on a day other than the first day of a month, Rent for such month shall be prorated on a per diem basis.

ARTICLE 3. Condition of Premises.

3.1 Tenant has inspected the Premises, knows the condition thereof, and acknowledges that Landlord has made no warranties or representations with respect to the condition or legal status of the Premises, except as expressly set forth in this Lease Agreement.

3.2 Tenant shall perform or cause to be performed all work and make any and all improvements, as determined by Tenant in its sole discretion, necessary to prepare the Premises for occupancy. The work shall be performed at Tenant's sole cost and expense. Landlord agrees that only with respect to the work performed to prepare the Premises for Tenant's occupancy, Landlord shall perform or cause to be performed any repairs and/or maintenance necessary to comply with the laws, ordinances and regulations of Monroe County, Florida, relating to occupancy of the Premises.

ARTICLE 4. Utilities. All utilities and services to be provided to, or which shall be necessary for the conduct of, Tenant's operations within the Premises, including, but not limited to, water and sewer, electricity, cleaning, telephone, facsimile, trash collection, and mail shall be separately arranged and paid for by Tenant and Tenant shall be responsible for maintaining all such utilities and services. Tenant shall be responsible for any deposits required in connection with any utilities or services provided to the Premises.

ARTICLE 5. Use, Certain Representations.

5.1 The Premises shall be used for recreational purposes including a skateboard park,

and for such other purposes ancillary to the foregoing uses including administrative offices.

5.2 Landlord and Tenant acknowledge this Lease is a non-residential lease and is governed by Part I of Chapter 83, Florida Statutes. Landlord and Tenant acknowledge this Lease is not subject to the residential tenancy provisions of Florida Statutes.

5.3 Landlord represents to Tenant that the Premises are properly zoned for the intended use as set forth in paragraph 5.1 and that Landlord has received all applicable permits and approvals from Governmental Entities (as defined below) for the intended use. In the event that Tenant determines that the Premises is not properly zoned for the intended use or Landlord has not received all applicable permits and approvals from Governmental Entities for the intended use, this Lease shall be null and void as if the parties had never executed the same.

ARTICLE 6. Compliance with Laws. Except as set forth in paragraphs 3.2 and 5.3 above, Tenant, at Tenant's sole cost and expense, shall promptly comply with all Laws relating to Tenant's use and occupancy of the Premises of any Government Entity or any body which shall impose any violation, order or duty upon Tenant. "Law" or "Laws" as used in this Lease means each and every law, regulation, order, ordinance, statute or requirement of any kind whatsoever, present or future, issued by any Government Entity applicable to or affecting the Premises. "Government Entity" as used in this Lease means the United States, the State of Florida, Monroe County, City of Marathon, and any and every political subdivision of government of any kind whatsoever, now existing or hereafter created, now or hereafter having jurisdiction over the Premises.

ARTICLE 7. Alterations, Installations, and Signage.

7.1 During the Term of this Lease, from time to time Tenant may, at its sole cost and expense, undertake any alteration, addition, improvement or construction (each an "Alteration") in or to the Premises without Landlord's consent; provided, however, the parties acknowledge and agree that the Tenant shall not be responsible for or required to spend funds upon any Alteration that is not portable and capable of being removed from the Premises upon the expiration of the Term, it being expressly understood that Tenant cannot spend funds on permanent improvements to the Premises such as infrastructure.

7.2 Tenant may, at its sole cost and expense, erect a sign(s) identifying the business of Tenant at a location upon the grounds of Premises, with the written consent of Landlord, which consent may not be unreasonably withheld.

7.3 If necessary, Landlord shall cooperate with Tenant and assist Tenant in securing the necessary permits and approvals required from applicable Governmental Entities for all Alterations and signs, which said cooperation and assistance shall not be unreasonably withheld.

ARTICLE 8. Fixtures and Equipment, Tenant's Property.

8.1 All Alterations made and installed upon or in the Premises by Tenant or at Tenant's expense are and shall be Tenant's property and shall be removed from the Premises at the end of the Term. All equipment furniture and furnishings provided by Tenant or at Tenant's expense and any other movable property of Tenant shall also be and remain property of Tenant, and shall be removed from the Premises at the end of the Term.

8.2 If any property, which Tenant must remove under Section 8.1, is not removed from the Premises within thirty (30) days after the Expiration Date, Landlord may remove and dispose of the same at Tenant's expense.

8.3 Tenant shall bear the risk of loss of the personal property of Tenant and its respective subtenants, agents, representatives, employees, agents and invitees which may from time-to-time be located on the Premises.

ARTICLE 9. Maintenance, Repairs.

9.1 Tenant shall, throughout the Term of this Lease, keep and maintain in good order, condition and repair the Premises (including yard and landscaping maintenance) and the fixtures and appurtenances therein. Tenant may enter into contracts with third parties for the performance of such maintenance and repairs.

9.2 Tenant shall be responsible for all maintenance and repair to Tenant's installations and Alterations to the Premises.

ARTICLE 10. Damage, Restoration.

10.1 If the Premises or any part thereof shall be damaged or destroyed by fire, hurricane, flood or other casualty ("Damage") as to render the Premises untenable by Tenant for a consecutive period of more than thirty (30) days, either Landlord or Tenant may terminate this Lease by giving fifteen (15) days notice to the other party. Alternatively, Tenant may elect to set-off the monthly Rent owed to Landlord for the time the Premises is rendered untenable.

10.2 If the Lease terminates pursuant to Section 10.2 this Lease shall expire as of the date on which such termination shall be effective under that Section, as if such date were the Expiration Date.

ARTICLE 11. Landlord's Access to Demised Premises. Tenant authorizes Landlord, his agents, employees and representatives to enter the Premises at any time on reasonable notice and during normal business hours to inspect the Premises and/or to perform any maintenance or to make any repairs as required by this Lease provided that Landlord shall use its best efforts not to interfere with Tenant's use and occupancy of the Premises.

ARTICLE 12. Quiet Enjoyment. Upon paying Rent and keeping and performing the terms, covenants, conditions and provisions of this Lease, Tenant may lawfully and quietly hold and enjoy the Premises during the Term without hindrance, ejection, molestation, or interruption.

ARTICLE 13. Defaults, Conditional Limitations, Remedies.

13.1 The following shall be a "Default" under this Lease:

Tenant fails to keep or perform any other material term, covenant, condition, or provision of this Lease, and such failure continues for thirty (30) days after written Notice from Landlord; unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot be performed, done or removed within such thirty (30) days, in which case the Default shall not be deemed to exist as long as Tenant:

- (i) advises Landlord by written Notice within fifteen (15) days after Landlord's Notice that Tenant intends to take all steps necessary to remedy such failure with due diligence; and
- (ii) duly commences and diligently and continuously prosecutes completion all steps necessary to cure and remedy the same;

13.2 If and whenever any Default occurs, Landlord may avail himself of any legal or equitable remedy that may apply.

ARTICLE 14. Indemnification. To the extent permitted by Law, Landlord shall indemnify and defend Tenant (including Tenant's elected officials, officers, directors, employees, consultants and agents) and save Tenant harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from negligence or misconduct of Landlord, its employees or agents in connection with this Lease. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, and to the extent permitted by Law, Tenant shall indemnify and defend Landlord (including Landlord's officers, directors, employees, consultants and agents) and save Landlord harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from any negligence or misconduct of Tenant its employees or agents. Nothing in this Agreement shall be construed or interpreted to waive Tenant's sovereign immunity as established by law.

ARTICLE 15. Assignment and Subletting. Tenant shall not sublet assign or otherwise transfer this Lease, or any part of Tenant's right, title or interest therein or mortgage, pledge or otherwise encumber this Lease

ARTICLE 16. Notices.

16.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to Landlord:

Stephan Ban
67 Tingler Lane
Marathon, Florida 33050

If to Tenant:

City of Marathon
11045-55 Overseas Highway
Marathon, Florida 33050
Attn: City Manager

With a copy to:

Weiss, Serota, Helfman, Pastoriza & Guedes, P.A.
2665 S. Bayshore Dr., Suite 420
Miami, Florida 33133
Attn: Steven W. Zelkowitz, Esq.

Any Notice required by this Lease to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service,

ARTICLE 17. Insurance.

17.1 Tenant shall secure and keep in force at all times during the Term insurance policies insuring the Premises against loss of damage by fire or other casualty in an amount equal to its full insurable value.

17.2 Tenant shall secure and keep in force at all times during the Term insurance policies insuring Tenant's equipment, furniture and furnishings against loss of damage by fire or other casualty in an amount equal to its full insurable value.

17.3 Tenant shall secure and keep in force at all times during the Term commercial liability insurance policies in an amount of not less than \$2,000,000 insuring Tenant and the Premises against any claim or cause of action for bodily injury, sickness, disease or death for any occurrence. Such policy shall name the landlord as an additional insured as its interest may appear.

17.4 Before any entry upon the Premises by Tenant or Tenant's employees, agents, or contractors, as the case may be, Tenant shall deliver to Landlord certificates evidencing that Tenant's Insurance is then in full force and effect. At least fifteen (15) days prior to the expiration of any Insurance Policy, Tenant shall deliver to Landlord certificates evidencing renewal or replacement of such Insurance Policy.

ARTICLE 18. Miscellaneous.

18.1 This Lease shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

18.2 The terms, covenants, conditions, and provisions of this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and assigns.

18.3 If any term, covenant, condition or provision of this Lease (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby; and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Lease would prevent the accomplishment of the original intent of the agreement between the parties.

18.4 Each party represents and warrants to the other that the execution, delivery and performance of this Lease has been duly authorized by all necessary municipal, corporate or other organizational action, as required.

18.5 As required by Florida law, Landlord hereby includes the following notification as part of this Lease:

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 county public health unit.

18.6 At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and that to the best of the responding party's knowledge, the requesting party is not in default under this Lease (or if the responding party has knowledge that the requesting party is in default, identifying the default).

18.7 No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall constitute a waiver of any subsequent breach of such covenant or condition, or justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof.

18.8 The parties hereby waive trial by jury in any legal proceeding brought with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.

18.9 Landlord shall pay all ad valorem real property taxes assessed and levied against the Premises.

18.10 To the extent applicable, Tenant shall pay all taxes levied against Tenant's personal property, of every description, maintained on and used by Tenant in connection with the Premises.

18.11 If all of the Premises are permanently taken by eminent domain, this Lease shall automatically terminate as of the date of such taking. If any portion of the Premises are taken by eminent domain, Landlord or Tenant shall have the right to terminate this Lease by giving written notice thereof to the other party within thirty (30) days of being notified of said taking. If Tenant elects not to terminate this Lease. Landlord shall, at its expense restore the Premises to as close as possible to the condition of the Premises at the time of the date of taking. Additionally, Tenant shall be entitled to receive its prorata share of any settlement, forced sale, or court awarded judgment to the extent permitted by applicable laws.

18.12 Tenant 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 Tenant 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.

18.13 Tenant shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) caused by any defect in any building, structure, or other improvements on the Premises or in any equipment or other facility located thereon that existing prior to the Commencement Date; (ii) caused by or arising from any act or omission of Landlord, or of any of its agents or employees; (iii) arising from any accident on the Premises or any fire or other casualty thereon; (v) occasioned by Landlord's failure to repair the Premises as required by this Lease; or (vi) arising from any other cause; unless, in any of such events, caused by the neglect or willful act or omission of Tenant.

18.14 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. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

18.15 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.

ARTICLE 19. Hazardous Substances.

19.1 Tenant shall not, generate, manufacture, produce, release, discharge or dispose of on, in or under the Premises, or knowingly allow any other person or entity to do so.

19.2 Tenant shall comply with all local, state or federal laws, ordinances or regulations relating to Hazardous Materials.

19.3 Tenant shall properly notify Landlord should Tenant receive notice of or otherwise become aware of any (i) pending or threatened environmental regulatory action against Tenant or the Premises; (ii) claims made or threatened by any third party relating to any loss or injury resulting from any Hazardous Material; or (iii) release or discharge or threatened release of discharge of any Hazardous Material in, on, under or about the Premises.

19.4 Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Tenant shall protect, indemnify and hold harmless Landlord, its directors, officers, employees, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorney's fees, costs and expenses at both the trial and appellate levels) arising out of Tenant's failure to comply with this section.

19.5 To the best of Landlord's knowledge and belief (a) Landlord has conducted no activity on the Premises involving the generation, treatment, storage or disposal of Hazardous Materials; (b) no portion of the Premises is now being used or to the best of Landlord's knowledge has ever been used to treat, store, generate or dispose of Hazardous Materials; (c) Landlord has received no written notice that any previous owner or tenant conducted any such activity; (d) Landlord has received no written notice of any discharge, spill, or disposal of any Hazardous Materials on or under the Premises; (e) Landlord has received no written notice from any governmental authority or any other party of any Hazardous Materials violations concerning the Premises or any portion thereof, nor is Landlord aware of any such violation; (f) Landlord has received no written notice as to any locations off the Premises where Hazardous Materials, generated by or on the Premises have been treated, stored, deposited or disposed of; and (g) Landlord has no knowledge of the presence of any Hazardous Materials. To the extent permitted by Law, Landlord shall indemnify and defend Tenant (including Tenant's elected officials, officers,

directors, employees, consultants and agents) and save Tenant harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising or resulting from or related to the failure of any of Landlord's foregoing statements to be true and correct in any respect.

19.6 For purposes of this Agreement, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants" or "pollutants" under any applicable federal or state laws or regulations.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

WITNESSES:

Stephan Ban

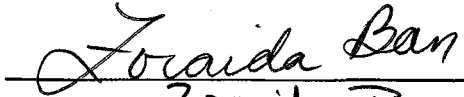


Name: Franklin D. Green

By: SLL C. R

Name: Stephan C. Ban

Title: Landlord

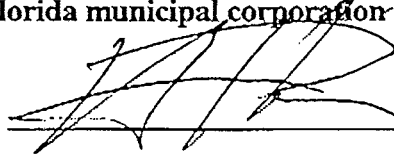


Name: Zoraida Ban

CITY OF MARATHON,
a Florida municipal corporation



Name: DEBORAH TUDOR

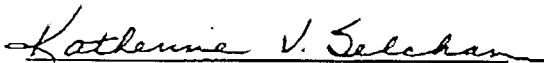
By: 

Robert K. Miller, Mayor



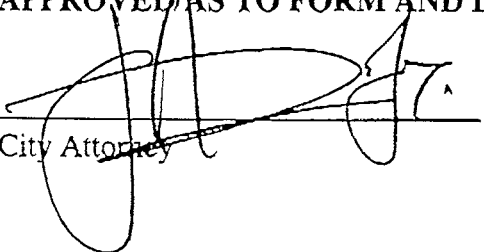
Name: DINA D. MICHAEL

ATTEST:



City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



City Attorney

SCANNED