

SECOND AMENDMENT TO LEASE FOR 1202 APOLLO WAY, SANTA ROSA, CALIFORNIA

This Second Amendment to Lease (“Second Amendment”), dated as of _____, 2021 (“Effective Date”) is by and between AIRPORT BUSINESS CENTER, a California limited partnership (“Landlord”) and the COUNTY OF SONOMA, a political subdivision of the State of California (“Tenant”). Landlord and Tenant are sometimes collectively referred to herein as the “parties” and singularly as “party”. All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to those terms in the Lease (as defined below).

RECITALS

WHEREAS, CEP Investors VIII LLC, a Delaware limited liability company (“CEP”), and Tenant entered into that certain Lease dated August 23, 2011 (“Original Lease”) for the real property located at and commonly known as 1202 Apollo Way, Santa Rosa, Sonoma County, California (“Premises”); and

WHEREAS, A.J. Ventures, Inc., a California corporation (“AJVI”), was the successor-in-interest of CEP and the landlord under that certain First Amendment to Lease dated May 7, 2013, (“First Amendment”; the Original Lease and the First Amendment are sometimes hereinafter collectively referred to as the “Lease”), in order, *inter alia*, to expand the Premises by approximately 7,547 rentable square feet; and

WHEREAS, by Grant Deed dated as of December 9, 2013, from AJVI to Landlord, recorded in the Official Records of Sonoma County under Document No. 2013-116087, AJVI conveyed fee simple title to the real property, inclusive of the Premises, as said term is defined in the Lease, to Landlord, and pursuant to the terms of that certain Assignment and Assumption Agreement dated as of December 10, 2013, by and between Landlord, as assignee, and AJVI, as assignor, AJVI assigned all of AJVI’s rights, titles and interest as landlord under the Lease to Landlord, herein defined as AIRPORT BUSINESS CENTER, which assumed all of the obligations of AJVI under the Lease accruing from and after December 10, 2013; and

WHEREAS, Tenant desires to amend the Lease in order to, *inter alia*: (i) extend the term of the Lease by an additional ten (10) years to July 31, 2032; and (ii) provide for certain tenant improvements.

AGREEMENT

1. Effective as of the Effective Date of this Second Amendment, the Lease is modified as follows:
 - A. Current lease term shall be extended an additional ten (10) years, commencing August 1, 2022 and expiring July 31, 2032 (“Extension Term”). Rent at commencement of Extension Term shall be \$2.28 per “Rentable Square Feet,” per month, as defined herein. “Rentable Square Feet” shall be 36,978, comprising of the original leased premises and “Expansion Premises” as defined in the First Amendment and hereafter collectively referred to as the “Premises”. Accordingly, the rent at commencement of the Extension Term shall be \$84,309.84.

- B. Commencing on the first (1st) yearly anniversary of the Extension Term (August 1, 2023), and continuing each yearly anniversary thereafter, the Rent payable under the Lease shall be increased by three percent (3%).
- C. Prior to commencement of Extension Term, Landlord shall at Landlord's expense paint Premises and install new carpet throughout Premises (including furniture lifting and equipment relocation) in a manner reasonably acceptable to Tenant. In completing all tenant improvements required under the Lease, inclusive of this Second Amendment, Landlord shall follow requirements listed in the attached Exhibit B PREVAILING WAGE ADDENDUM."
- D. Section 2.5 Option to Extend Term shall be deleted.
- E. Section 2.6.1 Non-Appropriation of Funds and 2.6.2 Discretionary Termination in the Lease shall be deleted and replaced with:

Tenant may terminate this Lease, in accordance with Section 2.6.3 below, upon ninety (90) days' prior written notice to Landlord ("Termination Notice") on the happening of any one or more of the following events: (a) the County Board of Supervisors fails to appropriate sufficient funds for the rental of the property covered by this Lease; (b) the County Board of Supervisors discontinues, in whole or in part, the program or agency for which the Premises were leased; (c) the funding, whether County, State or Federal, for the program or agency for which the Premises were leased is reduced or withdrawn; or (d) Tenant elects to occupy space in a new County Government Center.

- F. Prior to commencement of the Extension Term, Landlord shall at Landlord's expense reroof the Building and install solar panels and a minimum of two (2) EV charging stations at the Premises to be available for personal vehicles of County staff, who work at 1202 Apollo Way, free of charge Monday through Friday, 7:00am to 6:00pm. County staff's personal vehicles are not to be plugged overnight in EV charging stations. Tenant reimbursement to Landlord for these improvements shall be \$.16 per "Rentable Square Feet" per month during the Extension Term.
- G. Section 4.3 Tenant's Payment of Utilities shall be deleted and replaced with:

Section 4.3 Landlord's and Tenant's Payment of Utilities. Notwithstanding anything in this Lease to the contrary, in addition to payment of Rent, Tenant shall be responsible for payment of gas, water, and sewer for Premises. Landlord shall be responsible for payment of electricity for Premises, and all installation, maintenance, repairs or other costs associated with solar power for the Building or the EV charging stations, and all such costs related to the new roof, electrical and solar power and EV charging stations shall not be passed on to Tenant or considered improvements in the calculation of any termination fee. Tenant shall promptly pay the appropriate utility company directly for all utilities, excluding electricity, provided to Premises for which there is a separate meter or sub-meter to the Premises, and Tenant shall pay Landlord for Tenant's share,

as reasonably determined by Landlord (i.e., Based on Tenant's proportionate share of the Building based on square feet of Tenant's Rentable Area) of all utilities, excluding electricity, furnished to the Premises for which there is no separate meter, within thirty (30) days after billing by Landlord. Upon Tenant's request, Landlord shall provide copies of utility bills received by the Landlord for the building.

- H. Prior to the commencement of the Extension Term, Landlord shall give Tenant notice that the improvements referenced in sub-paragraphs C and F of this Paragraph 1 of the Second Amendment ("Extension Term Improvements") have been substantially completed. If Landlord, for any reason whatsoever, fails to provide this notice by December 31, 2022, then Tenant may: (1) terminate the Lease and this Second Amendment by giving Landlord five (5) days' prior written notice of its intention to do so; or (b) extend Landlord's time for completion thereof, and withhold from subsequent rental payments as may be necessary, as liquidated damages, an amount equal to twenty-five percent of daily rent, agreed by the Parties to be Six Hundred and Ninety Dollars (\$690.00), for each day that the Landlord has failed to give notice that the repairs have been substantially completed. Notwithstanding the foregoing, if Landlord, for any reason whatsoever, fails to give Tenant notice that the Extension Term Improvements have been substantially completed by March 31, 2023, Tenant at its option shall have the right, by giving Landlord five (5) days' prior written notice of its intention to do so, to immediately cancel the Lease and this Second Amendment, without a termination fee, and recover the additional sum of four (4) months' rent from Landlord, as liquidated damages. This agreement for liquidated damages is entered into because the amount is manifestly reasonable under the circumstances at the time of this Second Amendment, and it would be extremely difficult or impossible to determine, with any degree of accuracy, the actual damages caused by such delay. Except as specifically modified herein, Landlord's and Tenant's rights and obligations with respect to the Extension Term Improvements shall be governed by the remaining terms of the Lease, inclusive of Exhibit C. Notwithstanding anything to the contrary, the provisions of this sub-paragraph H of Paragraph 1 of this Second Amendment, shall not be applicable unless Tenant provides all reasonable cooperation to Landlord during Landlord's completion of the Extension Term Improvements. Landlord's completion of the Extension Term Improvements shall be done in a manner that does not unreasonably disrupt Tenant's ability to use the space and effectively do its work during the work week.
 - I. Exhibit A COVID ADDENDUM TO LEASE of this Second Amendment to Lease shall be added to the Lease.
2. Except to the extent the Lease is specifically amended or supplemented hereby, the Lease, together with exhibits is, and shall continue for the duration of the Extended Term to be in full force and effect as originally executed, and nothing contained herein shall, or shall be constructed to modify, invalidate or otherwise affect any provision of the Lease or any right of Tenant or Landlord arising thereunder.

3. This Second Amendment shall be governed by and construed under the internal laws of the State of California, and any action to enforce the terms of this Second Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS SECOND AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS SECOND AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the Effective Date.

“LANDLORD”:
AIRPORT BUSINESS CENTER, a California limited partnership

B

y: 

LARRY L. WASEM,
Managing General Partner

“TENANT”:
County of Sonoma, a political subdivision of the State of California

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y: _____
Caroline Judy, Director
General Services Department

APPROVED AS TO FORM FOR TENANT:

Deputy County Counsel

APPROVED AS TO CONTENT FOR TENANT:

Angela Struckmann, Director
Human Services Department

Keith Lew, Deputy Director, Deputy Director
General Services Department

Exhibit A

COVID ADDENDUM TO LEASE

Covid-19 Related Requirements. Landlord shall maintain Building systems and implement protocols for common areas and other areas of the Building not within the Premises as necessary to comply with applicable local, state, and federal laws, regulations, and guidance related to the Covid-19 pandemic, including, as applicable, social distancing, masking, capacity restriction, and air quality/safety requirements. Without limiting the foregoing, Landlord shall:

1. Ensure that for all indoor locations, regular evaluations are conducted and reasonable (and required, if applicable) measures are implemented for maximizing outside air allowance/ventilation, air exchange, and increased filtration efficiency, as compatible with existing HVAC systems and reasonable modifications and/or adjustments thereto;
2. To the fullest extent feasible and consistent with industry best standards and applicable laws, ensure that the epidemic air standards and recommendations of the American Society of Heating, Refrigerating, and Air- Conditioning Engineers are met with regard to the Premises and common areas of the Property (available at: <https://www.ashrae.org/file%20library/technical%20resources/covid-19/core-recommendations-for-reducing-airborne-infectious-aerosol-exposure.pdf>).
3. Ensure filtering of indoor building air by using highest-efficiency filters as feasible, including Minimum Efficiency Reporting Value (MERV)-13 mechanical filters and HEPA-filtration units if possible.
4. Ensure compliance with applicable requirements and industry best standards by all Landlord officers, agents, contractors, and subcontractors accessing the Building as otherwise allowed under this Lease.

Exhibit B

PREVAILING WAGE ADDENDUM

Airport Business Center (“Landlord”) and County of Sonoma (“Tenant”) hereby agree as follows in regard to the improvements to the Premises required by the Second Amendment to the Lease for 1202 Apollo Way in Santa Rosa, California.

1. **Compliance With Prevailing Wage.** Landlord agrees and acknowledges it shall comply with all applicable requirements of California’s Prevailing Wage Law (Labor Code, § 1720, et seq.) and be the “awarding body” as required under California Labor Code § 1722 for improvements to the Premises. Landlord shall pay to any worker on the job to which prevailing wage applies and for whom prevailing wages have been established an amount equal to or more than the general prevailing wage rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations or County of Sonoma, as applicable, to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to perform the Project. Landlord shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file with the County of Sonoma and will be made available to any person upon request.

2. **Compliance Monitoring and Registration.** Landlord shall comply with all monitoring and enforcement requirements imposed by the Department of Industrial Relations. Landlord shall furnish and shall require all contractors and subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code section 1771.4(a)(3)). Landlord and all contractors and subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Lease, including the Second Amendment.

3. **Subcontracts.** Landlord shall comply with all legal requirements to insert in every contract, subcontract or other arrangement which Landlord may make for performance of such work or labor on work, provision that the Contractor or Subcontractor shall pay persons performing labor or rendering service under contract or subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), Landlord shall provide to each Contractor and Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.

4. **Compliance with Law.** Landlord stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq.

5. **Statutory Compliance/Living Wage Ordinance.** Landlord agrees to comply, and to ensure compliance by its contractors and consultants, or subcontractors and subconsultants, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, as they exist now and as they are changed, amended or modified. Without limiting the generality of the foregoing, Landlord expressly acknowledges and agrees that this

Lease, including the Second Amendment, is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Lease will be considered a material breach and may result in termination of the Lease or pursuit of other legal or administrative remedies.

6. Notwithstanding Landlord's obligation to design, construct, and deliver the improvements to the Premises as required under the Lease, inclusive of the Second Amendment thereto, Landlord waives any and all rights and other provisions applicable to public works contractors arising under Public Contract Code section 9204 or the Local Agency Public Construction Act (Public Contract Code section 20100 et seq.).