

**FIRST AMENDMENT TO STANDARD INDUSTRIAL/COMMERCIAL  
SINGLE-TENANT LEASE -- GROSS**

This First Amendment (“First Amendment”) to the Standard Industrial/Commercial Single-Tenant Lease -- Gross dated June 5, 2012 (“Lease”) is entered into by and between the City of Chula Vista (“City” or “Lessor”), a chartered municipal corporation, and South Bay Community Services (“Lessee”), a California nonprofit public benefit corporation. Lessor and Lessee may be referred to herein collectively as the “parties” and individually as a “party”.

**Recitals**

WHEREAS, Lessor is the owner of all interests in the real property and current improvements at the Premises (as this term is defined in the Lease);

WHEREAS, Lessor and Lessee entered into the Lease for the Premises on or about June 5, 2012;

WHEREAS, the Original Term of the Lease is set to expire on June 30, 2017;

WHEREAS, section 47 of the Lease provides that the parties are permitted to modify the Lease by means of a writing executed by both parties;

WHEREAS, Lessee has informed Lessor of its desire to remain a tenant at the Premises beyond the Original Term;

WHEREAS, Lessee has further expressed a desire to design, deliver, and construct a facility upon the Premises which will consist of a fifteen thousand square foot (15,000 sf) office building and all of its component structures, improvements, installations, parts, and materials (collectively, the “Facility”) subject to all regulatory approval requirements and the terms and conditions herein; and

WHEREAS, Lessor and Lessee desire to extend and amend the Lease on the terms and conditions provided herein.

NOW THEREFORE, for good and valuable consideration, the adequacy of which the parties hereby acknowledge, the parties agree to amend the Lease as follows:

**Agreement**

1. Extension of Original Term. Paragraph 1.3 of the Lease is amended and restated in its entirety as follows:

“Term: ~~Five (5)~~ *Eleven (11)* years and 0 months (“Original Term”) commencing on July 1, 2012 (“Commencement Date”) and ending ~~June 30, 2017~~ *June 30, 2023* (“Expiration Date”). (See also Paragraph 3).”

2. Extension of Rent Adjustment for Original Term. Paragraph 51 (A)(I)(a) of the Lease is amended and restated in its entirety as follows:

“On (Fill in COLA Dates): **July 1 2013; July 1 2014; July 1 2015 ; July 1 2016; July 1 2017; July 1 2018; July 1 2019 ; July 1 2020; July 1 2021; and July 1 2022**

the Base Rent shall be adjusted by the change, if any, from ~~the Base Month specified below~~ **the first month of the term of this Lease as set forth in paragraph 1.3** in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for ~~(select one): ...~~ **CPI U (All Urban Consumers) for San Diego (All Items 1982-1984 = 100)**, herein referred to as “CPI.”

3. Option to Extend. Paragraph 52 (A) of the Lease is amended and restated in its entirety as follows:

“A. OPTION(S) TO EXTEND

Lessor *agrees to* grants to Lessee the option to extend the term of this Lease for **two (2) additional fifteen (15)** year periods commencing when the prior term expires upon each and all of the following terms and conditions:

- (i) ***Lessee fully and timely completes the Facility in strict accordance with this First Amendment.***
- (ii) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 12 months prior to the date that the option period would commence time being of the essence. If proper notification of the exercise of an option is not given and/or received such option shall automatically expire. Options if there are more than one may only be exercised consecutively.
- (iii) The provisions of paragraph 39 including those relating to Lessee’s Default set forth in paragraph 39.4 of this Lease are conditions of this Option.
- (iv) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.
- (v) This Option is personal to the original Lessee and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.
- (vi) The monthly rent for each month of the option period shall be calculated as follows using the method indicated below: ~~(Check Method(s) to be Used and Fill in Appropriately)~~

I. Cost of Living Adjustment(s) (COLA)

- a. On (Fill in COLA Dates): **July 1 2023; July 1 2024; July 1 2025; July 1 2026; July 1 2027; July 1 2028; July 1 2029; July 1 2030; July 1 2031; July 1 2032; July 1 2033; July 1 2034; July 1 2035; July 1 2036; July 1 2037; July 1 2038; July 1 2039; July 1 2040; July 1 2041, July 1 2042, July 1 2043, July 1 2044, July 1 2045, July 1 2046, July 1 2047, July 1 2048, July 1 2049, July 1 2050; July 1 2051; July 1 2052**

the Base Rent shall be adjusted by the change if any from the Base Month specified below in the Consumer Price Index of the Bureau of Labor Statistics of the US Department of Labor for ~~(select one): ...~~ CPI U (All Urban Consumers) for ~~(Fill in Urban Area): San Diego~~ (All Items 1982-1984 = 100) herein referred to as CPI.

- b. The monthly rent payable in accordance with paragraph A.I.a of this Addendum shall be calculated as follows the Base Rent set forth in paragraph 1.5 of the ~~attached~~ Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to ~~(select one):~~ the first month of the term of this Lease as set forth in paragraph 1.3 (“Base Month”) ~~or ...~~. The sum so calculated shall constitute the new monthly rent hereunder but in no event shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment. *In no event shall any adjustment exceed two percent (2%) in any given year.*
- c. In the event the completion and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued then the index most nearly the same as the CPI shall be used to make such calculation In the event that he Parties cannot agree on such alternative index then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.”

#### 4. Maintenance and Repair Obligations.

4.1 Effective upon the issuance of a certificate of occupancy for the Facility, Paragraph 7.1(d) of the Lease is deleted in its entirety and is no longer of any force or effect.

4.2 Effective upon the issuance of a certificate of occupancy for the Facility, Paragraph 7.2 of the Lease is amended and restated in its entirety as follows:

**“Lessor’s Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation) it is intended by the Parties hereto that Lessor have no obligation in any manner whatsoever to repair and maintain the Premises ~~or the equipment therein all of which obligations are intended to be that of the Lessee except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary.~~ It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this lease.”**

5. Facility. In consideration for and as a condition of entering into this First Amendment, Lessee agrees to exercise best efforts to construct, maintain, and occupy the Facility at the Premises at its sole cost and expense and subject to the terms and conditions below:

5.1 Ownership. The Facility shall be the sole property of Lessee, but also considered as a part of the Premises as defined in the Lease. Fee title in the Premises shall at all times remain in Lessor and nothing contained in this First Amendment shall be construed to allow or permit any of Lessee's interest in the Premises to ripen into a fee ownership interest of the Premises.

5.2 Construction/Regulatory Approvals. Lessee will exercise best efforts to fully design, construct, and complete the Facility, including but not limited to obtaining all necessary regulatory approvals and a certificate of occupancy, at its sole cost and expense, by no later than June 30, 2023. Lessee's failure to timely design, construct, and complete the Facility will prohibit Lessee from exercising an Option to Extend pursuant to Section 3 of this First Amendment but will not be considered a default of the Lease.

5.3 Compliance with Prevailing Wages. As the Facility will be wholly owned by Lessee, subject to removal from the Premises, and constructed and maintained without the use of public funds or assistance, the parties have initially determined that the construction of the Facility should not be subject to payment of prevailing wages. Notwithstanding the foregoing, Lessee acknowledges that the construction and/or maintenance of the Facility may be subject to prevailing wage requirements. Lessee agrees to strictly comply with and be responsible for all prevailing wage requirements as provided by any state or federal law or regulation. To the fullest extent permitted by law, Lessee further agrees to defend, indemnify, protect, and hold harmless, the City and its elected and appointed officers, agents, volunteers, and employees from and against any and all liability, claims, costs, expenses (including without limitation legal costs and attorneys' fees), and damages, arising from, connected with, incident to, or in any way attributable to a failure by Lessee, its employees, contractors, or agents to comply with any prevailing wage requirement of any state or federal law or regulation. Such failures may include but are not limited to a failure to post or provide required notices, a failure to keep required records or documents, or a failure to pay required wages.

5.4 Additional Access. If an agency with jurisdiction requires additional access facilities or improvements to be installed or maintained at the Premises as a result of the design, construction, maintenance, repair, occupation, or operation of the Facility, Lessee agrees to cause all such facilities and improvements to be installed and maintained at Lessee's sole cost and expense.

5.5 Maintenance and Repair. Lessee will maintain, repair, and operate the Facility in a clean and safe condition at Lessee's sole cost and expense.

5.6 Utility Improvements. Lessee will install and maintain all water, gas, heat, light, power, telephone, and other utility improvements and services for the Facility on the Premises at Lessee's sole cost and expense.

5.7 Insurance. In addition to other insurance requirements of the Lease, Lessee will procure and maintain all additional insurance required by Lessor as set forth in Exhibit A.

5.8 Taxes. Lessee will pay all real property, personal property, possessory interest, and other taxes assessed by reason of or due to the Facility directly to the applicable taxing authority.

5.9 Removal of Facility. Unless otherwise agreed to in writing prior to expiration or termination of the Lease, Lessee will remove the Facility from the Premises on or before the date of the expiration or termination of the Lease at Lessee's sole cost and expense. If Lessee fails to remove the Facility by the date of expiration or termination of the Lease, the City has the right but not obligation to remove the Facility and store it at an alternate location. Lessee will pay Lessor all actual and reasonable costs of such removal and storage. If the removal of the Facility results in damage to the Premises, Lessee will pay to repair such damage or pay Lessor for the actual costs incurred to repair such damage, at Lessor's option.

5.10 Restoration of Premises. After removal of the Facility from the Premises, Lessee will restore the Premises to the condition that existed prior to locating the Facility at the Premises. If Lessee fails to restore the Premises to the condition existing prior to locating the Facility at the Premises, Lessor has the right but not the obligation to cause the Premises to be restored to the condition that existed prior to locating the Facility at the Premises and Lessee will pay Lessor the actual costs incurred for such restoration.

5.11 Liens. Except as explicitly authorized in section 5.12 below, Lessee will keep the Premises free and clear from any and all liens in connection with any work performed, material furnished, equipment provided, or other obligations incurred by or for Lessee. Lessee will inform every contractor, subcontractor, equipment provider, and material supplier that intend to provide any work, service, equipment, or material to Lessee in connection with the Premises that the Premises is public property not subject to mechanics' liens or stop notices for services, equipment, or materials provided for Lessee. If Lessee does not cause the release of a mechanic's lien, stop notice, or other lien purporting to attach to the Premises within thirty (30) days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper in its sole discretion, including payment of the claim giving rise to such lien. Lessee will reimburse the City for all actual costs incurred in connection with any such lien (including reasonable attorneys' fees) within ten (10) days following receipt of the City's demand together with copies of invoices or other evidence to document the costs incurred.

5.12 Encumbrance. Lessee will not at any time encumber any of Lessor's interest in the real property of the Premises, including but not limited to Lessor's fee title, or any of Lessor's fixtures, structures, improvements, or other interests in the Premises. Lessee may, subject to the prior written consent by Lessor, encumber the Facility by means of mortgage or other security interest in order to finance the design, delivery, and/or construction of the Facility. If Lessee elects to encumber the Facility, the parties agree to cooperate to negotiate reasonable protections of the parties' respective interests in the Premises prior to Lessee entering into any such mortgage or security interest. Such reasonable protections must include but are not be limited to the following:

- i. That any encumbrance will not encumber any of Lessor's interest in the real property, including but not limited to Lessor's fee title, or any of Lessor's fixtures, structures, improvements, or other interests in the Premises; and
- ii. In the event that the Lessee at any time becomes in default under the mortgage or security instrument, that Lessor has the right but not the obligation to cure such default and Lessee will pay Lessor the actual costs incurred to cure the default.

5.13 Compliance With All Laws. Lessee will design, deliver, construct, maintain, repair, use, operate, and occupy the Facility in strict accordance with all local, state, and federal laws and regulations including but not limited to CEQA/NEPA, the American Disabilities Act (ADA), Clean Air Act of 1970, the Clean Water Act (33 USC 1368), Executive Order 11738, and Stormwater Management and Discharge Control Ordinance (Ord. No. 0-17988), Essential Services Building Seismic Safety Act, and SB 239 & 132, laws prohibiting discrimination, and laws pertaining to the City of Chula Vista, including its Charter, Municipal Code, and ordinances. Lessee warrants it is aware of such applicable laws and will strictly conform to said laws.

6. Right of First Offer. Lessee will not dispose of, sell, or agree to sell the Facility without first offering to sell it to Lessor. The word "sell" includes any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of the Facility.

6.1 First Offer. Prior to Lessee entering into an agreement for the marketing of the Facility or otherwise selling or agreeing to sell the Facility, Lessee will offer in writing ("First Offer") to sell the Property to Lessor on the same terms and conditions that Lessee would then be willing to offer to a third party. The First Offer must, at a minimum, include the following information: (i) the purchase price; (ii) the method of payment of the purchase price; and (iii) the time and location for the close of escrow.

6.2 Acceptance Period . Lessor will have sixty (60) calendar days from the date of the First Offer to accept the First Offer (“Acceptance Period”) by delivering to Lessee acceptance on or before 5:00 p.m. Pacific Standard Time on the last day of the Acceptance Period. If Lessee fails to accept the First Offer before the Acceptance Period ends, the First Offer will be deemed rejected.

6.3 Closing Period. If Lessor accepts the First Offer, the parties will have thirty (30) calendar days following acceptance of the First Offer (“Closing Period”) to consummate the purchase of the Facility pursuant to the terms and conditions of the First Offer.

6.4 Counter Offer. If Lessor responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first offer will terminate and the response will be deemed an offer to purchase the Facility on the terms and conditions in the response (“Counter Offer”). Lessee will be entitled to accept or reject the Counter Offer.

7. Broker Fees. Notwithstanding any obligation of Lessor to make payments to Brokers for services rendered pursuant to the original Lease, Lessor has no further obligations to make any payments to Brokers and Lessee will be solely responsible for and make all payments to Brokers as necessitated by the parties entering into this First Amendment.

8. Clarification of “Premises”. For the avoidance of doubt, the parties hereby agree that the term “Premises” under the Lease shall include all real property, buildings, parking facilities, and improvements currently located at 430 F Street, Chula Vista, California, 91911 and the Facility.

9. Shared Use of Conference Room. The parties agree that Paragraph 54 (Shared Use of Conference Room) of the Lease is deleted in its entirety and is no longer of any force or effect.

10. Parking. For the avoidance of doubt, the parties agree that Lessee shall have exclusive access to parking facilities on the Premises.

11. Additional Breach. Failure to comply with any terms, conditions, or covenants of this First Amendment, shall constitute a material Breach under the Lease.

12. No Other Changes. This First Amendment incorporates only the changes identified above. No other changes to the Lease are contemplated or intended by this First Amendment. The remainder of the Lease shall remain unchanged and continue in full force and effect.

The parties hereto have executed this First Amendment in Chula Vista, California effective as of June 30, 2017.

Dated: \_\_\_\_\_, 2017

CITY OF CHULA VISTA

\_\_\_\_\_  
Gary Halbert, City Manager

Attest:

\_\_\_\_\_  
Donna Norris, City Clerk

Approved as to form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

Dated: \_\_\_\_\_, 2017

SOUTH BAY COMMUNITY SERVICES

\_\_\_\_\_  
Kathryn Lembo, CEO

## **EXHIBIT A**

### **ADDITIONAL INSURANCE REQUIREMENTS**

**Builder's Risk (Course of Construction):** Lessee will procure and maintain insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.