




Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: December 12, 2017

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

FROM: Paul Sladek, Manager 
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: APPROVAL AND EXECUTION OF FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN ORANGE COUNTY AND ORLANDO SUNPORT FLEXXSPACE, LTD. AND AUTHORIZATION TO DISBURSE FUNDS TO PAY ARREARAGES IN PASSTHROUGH EXPENSES

PROJECT: OCHD – Emergency Storage Facility
8026 Sunport Drive, Units 307-311, Orlando, Florida, 32809
Lease File #2064

District 4

PURPOSE: To resolve dispute with landlord concerning amounts owed by County pursuant to existing lease agreement for passthrough expenses for calendar years 2014-2016, and to clarify provisions for calculation of passthrough expenses in subsequent years

ITEM: First Amendment to Lease Agreement
Cost: \$13,789.29

BUDGET: Account No.: 0001-060-2520-3620

APPROVALS: Real Estate Management Division
County Attorney's Office
Health Services Department

REMARKS: At the request of the Orange County Health Department, a division of the Florida Department of Health, ("FDOH") Orange County ("County") entered into that certain "Lease Agreement" dated December 18, 2012, (the "Lease") with Orlando Sunport Flexxspace, Ltd. ("Landlord") to provide space for FDOH to use as a disaster preparedness center. The Lease was extended by that certain "Agreement to Exercise Renewal Option" between County and Landlord dated June 20, 2016. County has a separate sublease with FDOH governing the County-FDOH relationship as to the leased premises.

Among other terms and conditions, the Lease provides that County will periodically remit to Landlord payments for certain passthrough expenses (e.g. real estate taxes, insurance premiums, etc.). A dispute has arisen between Landlord and County concerning how much was owed by County to Landlord for passthrough expenses for the 2014 through 2016 calendar years and, correspondingly, how much of the amount owed by County remains unpaid. The dispute centers almost exclusively on interpretation of arguably ambiguous language in the Lease (as opposed to a challenge of the actual costs incurred by Landlord). Landlord initially claimed that over \$50,000 remained unpaid by County.

This First Amendment settles Landlord's claim as to unpaid passthrough expenses for the 2014 through 2016 calendar years at \$13,789.29 and amends certain provisions of the Lease as to passthrough expenses to provide more clarity on the calculation of passthrough expenses for 2017 and subsequent calendar years.

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FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**") is made and entered into by and between ORLANDO SUNPORT FLEXXSPACE, LTD., a Florida limited partnership ("**Sunport**" or "**Lessor**"), and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida ("**County**" or "**Lessee**"), effective as of the date of latest execution set forth below (the "**First Amendment Effective Date**").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a "Lease Agreement" dated December 18, 2012 ("**Original Lease**"), for space identified as 8026 Sunport Drive, Units 307-311, Orlando, Florida ("**Leased Premises**"), as such Leased Premises is more particularly identified in the Original Lease; and

WHEREAS, on or about June 20, 2016, Lessor and Lessee executed an "Agreement to Exercise Renewal Option" ("**Renewal**") extending the term of the Original Lease to June 30, 2019, and specifying the amount of the Base Rent for such extended term (the Original Lease and the Renewal are hereinafter, collectively, referred to as the "**Lease**"); and

WHEREAS, there has been a dispute between the parties regarding the method of calculating Lessee's share of Project Operating Expenses (pursuant to Section 4 of the Lease), guard/patrol services (pursuant to Section 6 of the Lease), Lessor's insurance premiums (pursuant to Section 7 of the Lease), Real Estate Taxes (pursuant to Section 8 of the Lease), and other expenses charged to Lessee (collectively "**Passthrough Expenses**") under the Lease, resulting in alleged balances due as claimed by Lessor, but disputed by Lessee; and

WHEREAS, the Parties wish to resolve their dispute, and clarify their Passthrough Expense obligations going forward.

NOW, THEREFORE, in consideration of the covenants and conditions set out herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties for themselves, and for their successors and assigns, do covenant and agree as follows:

1. The above recitations are true and correct and are incorporated herein by this reference. Any defined (capitalized) terms used in this First Amendment, but not defined in this

First Amendment, shall have the meaning given to such terms by the Lease.

2. The parties agree that for purposes of calculating Passthrough Expenses, it is agreed that the Passthrough Expenses for calendar year 2013 were \$2.92 (rounded) per square foot based on Project Operating Expenses of \$335,406.75, Real Estate Taxes of \$132,307.72, and Lessor then owning 160,134 leasable square feet of space in the Project. As such, for calendar year 2013, Lessee paid Lessor \$44,435.76 for Lessee's share of Passthrough Expenses based on the Leased Premises having 15,225 square feet (as then calculated by the methodology set forth in the Original Lease, to the exclusion of the changes being made by this First Amendment).

3. Notwithstanding anything else in the Lease to the contrary, the Parties hereby acknowledge and agree that Lessee's share of Passthrough Expenses: (i) for calendar year 2014 was and/or shall be \$46,657.55; (ii) for calendar year 2015 was and/or shall be \$48,990.43; and (iii) for calendar year 2016 was and/or shall be \$51,439.95. The Parties hereby further acknowledge and agree that the amounts set forth above for Lessee's share of Passthrough Expenses for calendar years 2014, 2015, and 2016: (x) were calculated by starting with Lessee's share of Passthrough Expenses for calendar year 2013 (\$44,435.76) and applying the five percent (5%) cap on annual increases set forth in paragraph 4.b.ii of the Original Lease; and (y) are less than then amount that would result from multiplying Lessee's Proportionate Share by the actual Passthrough Expenses incurred by Landlord during calendar years 2014, 2015, and 2016.

4. As a result of the Parties' agreements set forth in Section 3 of this First Amendment above, the Parties acknowledge and agree that Lessee owes Lessor, for Lessee's share of Passthrough Expenses for calendar years 2014, 2015, and 2016, \$13,789.29 more than the amounts previously remitted by Lessee to Lessor. Lessee shall remit such sum of \$13,789.29 to Lessor within thirty (30) days of the First Amendment Effective Date.

5. Effective for calculations to be performed under the Lease (as amended by this First Amendment) on or after January 1, 2017, the second sentence of paragraph 4 of the Original Lease is deleted and replaced by the following:

"Lessee's Proportionate Share" shall be calculated as a percentage, the numerator of which shall be the number of usable square feet contained in the Leased Premises, (14,710 as of November 3, 2017, but as the same may be adjusted from time to time) and the denominator of which shall be the aggregate

number of usable square feet owned by the Lessor in the Project (84,036 as of November 3, 2017, but as the same may be adjusted from time to time)."

6. For each of calendar years 2017, 2018, and 2019, the Parties agree that, notwithstanding anything in the Lease (as amended by this First Amendment) to the contrary, in no event shall Lessee's share of Passthrough Expenses for a given calendar year exceed the lesser of: (i) Lessee's share of Passthrough Expenses simply calculated as Lessee's Proportionate Share multiplied by the actual amount of Passthrough Expenses incurred by Lessor for a given calendar year; and (ii) Lessee's share of Passthrough Expenses for the immediately prior calendar year increased by five percent (5%). For example only, and without giving any effect to subclause (i) of this Section above, pursuant to subclause (ii) of this Section above in no event may Lessee's share of Passthrough Expenses for calendar year 2017 exceed \$54,011.94 (i.e. Lessee's share of Passthrough Expenses calendar year 2016, \$51,439.95, increased by 5%).

7. In the event Lessee elects to exercise its second option to renew under paragraph 38 of the Original Lease, then for calendar year 2020 and any and all calendar years thereafter, the Parties agree that, notwithstanding anything in the Lease (as amended by this First Amendment) to the contrary, in no event shall Lessee's share of Modified Passthrough Expenses for a given calendar year exceed the lesser of: (i) Lessee's share of Modified Passthrough Expenses simply calculated as Lessee's Proportionate Share multiplied by the actual amount of Modified Passthrough Expenses incurred by Lessor for a given calendar year; and (ii) Lessee's share of Modified Passthrough Expenses for the immediately prior calendar year increased by five percent (5%). As used herein, the term "**Modified Passthrough Expenses**" shall mean and refer to all Passthrough Expenses less and except Real Estate Taxes. For avoidance of doubt, the intent of this Section is that for calendar year 2020, and for any and all calendar years thereafter, the limitation that year to year Passthrough Expenses not increase by more than five percent (5%) (as expressed in Section 6 of this First Amendment above, and elsewhere in the Original Lease), shall not apply to Real Estate Taxes (which Real Estate Taxes shall, for calendar year 2020 and any and all calendar years thereafter, be calculated and paid as provided in Section 8 of the Lease, as amended by this First Amendment).

8. Paragraph 3 of the Renewal is deleted and of no further force and effect.

9. Following completion of calendar year 2017, in the event that it shall be determined that Lessee's share of Passthrough Expenses for calendar year 2017 shall exceed the

Estimated Payments made by Lessee during calendar year 2017 (for Lessee's share of Passthrough Expenses for calendar year 2017), then such deficiency shall be noticed by Lessor, and reviewed and paid by Lessee, in accordance with the provisions of paragraph 4.c. of the Original Lease.

10. For avoidance of doubt, Real Estate Taxes only include those Real Estate Taxes levied and assessed against lands owned by Lessor in the Project.

11. The parties agree that paragraph 13 of the Original Lease shall be modified to include the following, at the end of existing paragraph 13 of the Original Lease, and as part of the list describing Lessee's responsibility for repairs and maintenance of the HVAC equipment servicing the Leased Premises:

Year 1 of the first renewal term, the Lessee shall pay for the first Four Thousand Dollars (\$4,000.00) of maintenance and repair costs minus the amount paid for in the first forty two (42) months of the Lease Term.

Year 2 of the first renewal term, the Lessee shall pay for the first Five Thousand Dollars (\$5,000.00) of maintenance and repair costs minus the amount paid for in the first fifty four (54) months of the Lease Term.

Year 3 of the first renewal term, the Lessee shall pay for the first Six Thousand Dollars (\$6,000.00) of maintenance and repair costs minus the amount paid for in the first sixty six (66) months of the Lease Term.

Year 1 of the second renewal term (applicable only if Lessee elects to exercise its second option to renew), the Lessee shall pay for the first Seven Thousand Dollars (\$7,000.00) of maintenance and repair costs minus the amount paid for in the first seventy eight (78) months of the Lease Term.

Year 2 of the second renewal term (applicable only if Lessee elects to exercise its second option to renew), the Lessee shall pay for the first Eight Thousand Dollars (\$8,000.00) of maintenance and repair costs minus the amount paid for in the first ninety (90) months of the Lease Term.

Year 3 of the second renewal term (applicable only if Lessee elects to exercise its second option to renew), the Lessee shall pay for the first Nine Thousand Dollars (\$9,000.00) of maintenance and repair costs minus the amount paid for in the first one hundred and two (102) months of the Lease Term.

12. To the extent not inconsistent with this First Amendment, the terms of the Lease shall remain in full force and effect. In the event of an inconsistency, the terms of this First Amendment shall govern. This First Amendment may be executed in two or more counterpart copies each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument; signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[signature page follows]

IN WITNESS WHEREOF, the Parties have set out their hands and seals on the dates reflected.


LESSOR:

Signed, sealed, and delivered
in the presence of:

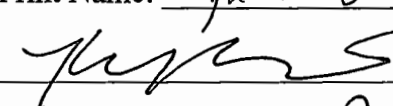
ORLANDO SUNPORT FLEXXSPACE, LTD.,
a Florida limited partnership

By: Orlando Sunport Flexxspace 2 LLC,
a Florida limited liability company,
its General Partner

By: Adler Newco GP 2 Inc.,
a Florida corporation, its Manager



Print Name: Yuseini Ortega



Print Name: Katherine Rodriguez

By: T. Spano

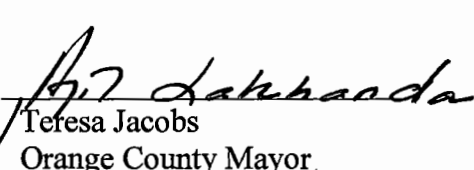
Name: Tina Spano

Title: Secretary/Treasurer

Date: 12/11/17

LESSEE:

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: 
Teresa Jacobs
Orange County Mayor

Date: 1.9.18

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners


By: Deputy Clerk

Date: JAN 9 9 2018

