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Skagit County Auditor

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4/21/2016 Page

1 of

13 12:26PM

Return Address:

Document Title:

Amendment to Lease Agreement

Reference Number (if applicable):

Grantor(s):

additional grantor names on page ____.

- 1) Summit Park Properties, LLC.
- 2) _____

Grantee(s):

additional grantor names on page ____.

- 1) Emerald Evolution, LLC
- 2) _____

Abbreviated Legal Description:

full legal on page(s) ____.

Unit A, Skagit Sound Business Park Condominium Phase 1

Assessor Parcel /Tax ID Number:

additional parcel numbers on page ____.

P-19740

UNOFFICIAL DOCUMENT

AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2016, by and between SUMMIT PARK PROPERTIES, LLC, a Washington Limited Liability Company ("Landlord") and EMERALD EVOLUTION, LLC, a Washington Limited Liability Company ("Tenant").

RECITALS

- Unit A, Skagit Sound Business Park Condominium Phase 1 P-19740*
- A. Landlord is the current owner in fee of the real property located at 9019 Molly Lane, Anacortes, Skagit County, Washington, legally described on the attached Exhibit A ("the Subject Property").
- B. Tenant is the current occupant of a portion of the Subject Property, having entered into that certain Lease Agreement dated December 10, 2013 ("the Existing Lease").
- C. Landlord and Tenant now wish to amend the Existing Lease in certain respects.

AGREEMENT

In consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

- ARTICLE 1 - GRANTING CLAUSE.** Article 1 of the Existing Lease grants Tenant occupancy of an area consisting of approximately 4,500 square feet (43% of the building). Article I is hereby amended by granting Tenant exclusive occupancy of the entire building of 11,500 square feet, including all parking and drive surfaces and other Common Areas described in the Lease. Following the effective date of this Amendment, each reference in the Lease to "Premises" shall include the entire building and appurtenant areas.
- ARTICLE 2 - LEASE TERM.** Article 2 of the Existing Lease provides for a lease term of five years, commencing March 15, 2014 and expiring March 15, 2019. The new lease term shall be for a period of ten (10) years, commencing April 1, 2016 (or, if later, on the date of actual delivery of the Premises to Tenant in the condition required herein, broom clean and free of any waste, debris, or personal property) and expiring March 31, 2026 (or, if later, on the tenth anniversary of the date of delivery).
- ARTICLE 3 - RENT.**
 - 3.01 Minimum Rent.** Article 3.01 of the Existing Lease provides for Minimum Rent to be \$32,400 annually, \$2,700 monthly, based on \$0.60 per square foot. The new Minimum Rent shall be \$87,900 annually, \$7,325 monthly, based on \$0.65 per square foot for the main building

(10,500 square feet) and \$0.50 per square foot for the loft (1,000 square feet).

3.03 Additional Rent. Article 3.03 of the Existing Lease states that Tenant will pay a proportionate share of Landlord's real estate taxes and Common Area Maintenance. Article 3.03 is hereby amended to establish Tenant's Proportionate Share as 100%.

3.04 Taxes. Article 3.04 of the Existing Lease requires Tenant to pay a proportionate share of real estate taxes. This Article 3.04 is hereby modified to require that Tenant pay 100% of the real estate taxes.

3.05 Common Area Maintenance Charges. Article 3.05 of the Existing Lease (a) defines "Common Area," (b) defines what is required to be paid as Common Area Maintenance Charges (c) sets forth Tenant's obligation to pay a proportionate share of CAM charges and (d) states that Tenant shall not be required to pay for capital improvements or structural repairs. Article 3.05 is hereby amended as follows: (a) shall remain as is; (b) shall remain as is (with the understanding that Tenant shall handle most Common Area maintenance and repair as further described in Article 7 of the Lease, as modified below); (c) shall be changed to require that Tenant pay 100% of the CAM charges; and (d) shall be revised to read as follows:

It is expressly agreed and understood that Tenant's obligation under this Article 3.5 shall not apply to repairs or replacements to the structural components of the building, including footings, foundations, structural walls, roof structure, gutters and downspouts, existing HVAC system, existing sprinkler system, underground utilities (including main electric or plumbing lines to point of entry into the Premises), and drive surface structure (as distinct from sealcoating, striping, and surface treatments) (for convenience, the "**Structural Components**"). All of the foregoing shall be maintained and repaired by Landlord at its sole expense and without reimbursement.

If during the term of the Lease any capital replacements to non-Structural Components of the building (for example, the roof membrane) are necessary, Landlord shall be responsible for the replacement, the cost of which shall be amortized over the useful life of the improvement in accordance with reasonable accounting principles, and that portion amortized in a given year shall be included in Common Area maintenance charges for that year. If Tenant ultimately purchases the Subject Property, then the purchase price shall be increased by the unamortized value of any such capital replacements to non-Structural Components, if Tenant has previously acknowledged in writing that the capital replacement was reasonably necessary and would lead to such an adjustment (which acknowledgement shall not be unreasonably withheld, conditioned, or delayed). By way of example, if the Landlord replaced the roof membrane, the Tenant acknowledged the need for the new membrane, and the anticipated/warranted useful life was 20 years, then Tenant would reimburse 1/20 of the cost every year as Common Area maintenance charges. If the Tenant purchased the Subject Property on the fifth (5th) anniversary of the date of

replacement of the roof membrane, the purchase price would be increased by 15/20 of the cost of the membrane. Landlord shall not be responsible for any capital improvement initiated by Tenant for purposes of improving the building or Premises.

Notwithstanding use of the term "Common Areas," Tenant shall have the sole and exclusive right to use and occupy the entire building and related appurtenances, including without limitation all areas defined as Common Areas in the Lease.

3.06 Fire Insurance. A new Article 3.06 is added that requires Tenant to pay 100% of Landlord's customary and reasonable fire insurance premiums.

4. ARTICLE 4 - OPTION TO EXTEND

Article 4 of the Existing Lease gives Tenant the option to extend the lease under certain conditions. This Article 4 is hereby deleted in its entirety.

5. ARTICLE 5 - USE OF PREMISES AND COVENANTS OF PARTIES

Article 5 shall remain in full force and effect.

6. ARTICLE 6 - UTILITIES, SERVICES AND EQUIPMENT

Article 6 shall remain in full force and effect.

7. ARTICLE 7 - MAINTENANCE AND REPAIR

Article 7, subparagraphs (a) and (b) are hereby amended to provide that Landlord shall be responsible for maintenance, repair, and replacement of the Structural Components of the building (as defined in the foregoing amendment to Lease Section 3.05). Tenant shall be responsible for maintenance and repair of non-Structural Components of the Premises, including maintenance and repair of the Common Areas and the Premises interior; for maintenance and repair of all items that Tenant installs, including a new HVAC system and additional fire suppression equipment if applicable; and for all capital improvements that it elects to make to the Premises (as opposed to necessary capital replacements as described in the foregoing amendment to Lease Section 3.05). Landlord shall also be responsible for capital replacements of non-Structural Components, subject to its right to amortize the cost thereof as provided in the foregoing amendment to Lease Section 3.05. Article 7, subparagraphs (c) and (d) shall remain in full force and effect.

8. ARTICLE 8 - ALTERATIONS, RENOVATIONS AND TRADE FIXTURES

Article 8 shall remain in full force and effect.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

APR 21 2016

AMENDMENT TO LEASE - 3

Amount Paid \$ —
Skagit Co. Treasurer
By *HTB* Deputy

9. ARTICLE 9 - INSURANCE

Article 9 shall remain in full force and effect.

10. ARTICLE 10 - CASUALTY LOSS

Article 10 shall remain in full force and effect.

11. ARTICLE 11 - CONDEMNATION

Article 11 shall remain in full force and effect, except that in the event of condemnation, Tenant shall have the right to pursue claims against the condemning authority for the unamortized value of any improvements to the Premises made by Tenant at its own expense, and for Tenant's moving expenses.

12. ARTICLE 12 - ASSIGNMENT, SUBLETTING, EXCLUSIVE USE AND LEGISLATIVE

Article 12 shall remain in full force and effect.

13. ARTICLE 13 - SURRENDER OF PREMISES

Article 13 shall remain in full force and effect.

14. ARTICLE 14 - DEFAULT

Article 14 shall remain in full force and effect.

15. ARTICLE 15 - NOTICE

Article 15 shall remain in full force and effect except that the word "notarized" is hereby deleted from the second line of such Article 15.

16. ARTICLE 16 - ESTOPPEL CERTIFICATES, SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE

Article 16 shall remain in full force and effect.

17. ARTICLE 17 - GENERAL PROVISIONS

Article 17 shall remain in full force and effect.

18. A new Article 18 is added as follows:

ARTICLE 18 - CONSUMER PRICE INDEX ADJUSTMENT

MINIMUM RENT. On April 1st of the successive calendar years of the term of the Lease, beginning April 1, 2016 (each hereinafter referred to as an "Adjustment Date"), the monthly Minimum Rent (inclusive of any prior CPI increases) for April and each succeeding month until the next April 1st, shall be increased by the percentage of increase, if any, in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index -- Seattle/Tacoma -- All Items -- 1982-84=100 (the "CPI") by multiplying the Monthly Minimum Rent payable immediately prior to the Adjustment Date by a fraction, (a) the numerator of which is the CPI published most recently prior to the Adjustment Date and (b) the denominator of which is the CPI published most recently prior to the previous Adjustment Date. By way of example, and not of limitation, in April 2017 Minimum Rent shall be adjusted by multiplying Minimum Rent payable in March 2017 by a fraction, the numerator of which is the CPI published most recently prior to April 1, 2017 and the denominator of which is the CPI published most recently prior to April 1, 2016. In no event shall the monthly Minimum Rent be increased less than 1.5% nor more than 2.0% annually. The monthly Minimum Rent, as adjusted, shall remain in effect until the next Adjustment Date. If the CPI is discontinued, the Tenant and Landlord shall agree upon another similar index which reflects consumer prices.

19. A new Article 19 is added as follows. Landlord and Tenant shall cooperate to record a memorandum of the Option granted below in the public records of Skagit County, Washington promptly after execution of this Amendment:

ARTICLE 19 - OPTION TO PURCHASE

PURCHASE PRICE. The purchase price for the Subject Property shall be determined by calculating a 7.5% capitalization rate based only on the Minimum Rent payable under the Lease for the 12 months prior to Tenant's delivery of its Option Notice (defined below), less any actual, out-of-pocket expenses incurred by Landlord in connection with maintenance and repair of the Subject Property during the same period (disregarding property taxes, fire insurance on the building, the cost of the alarm system over the prior 12 months, and any expenses paid or reimbursed by Tenant). By way of example, and not of limitation, if gross Minimum Rent for the 12 months prior to delivery of the Option Notice is \$100,000 and Landlord spends \$1,000 on unreimbursed maintenance and repair during the same period, the purchase price for the Subject Property shall be \$1,320,000. The purchase price is further subject to adjustment as provided in the foregoing amendment to Lease Section 3.05.

OPTION PAYMENTS. Tenant shall pay \$7,000 simultaneously with mutual execution of this Amendment to Lease; and \$7,000 monthly thereafter for the following five months, for a total of \$42,000. On April 1st of each succeeding year, for the next six years (2017-2022), Tenant shall pay an additional \$42,000 annually. The total amount paid of \$294,000 (the "Option Payments") shall be applied to the purchase price if Tenant exercises its Option to purchase the Subject Property.

GRANT OF OPTION. In consideration of the Option Payments made, Landlord hereby grants to Tenant the right to purchase the Subject Property at any time between April 1, 2021 and March 31, 2022 (the "Option"). Tenant shall exercise its Option by delivering written notice of exercise ("Option Notice") at any time during the foregoing period. If Tenant exercises its Option, the terms of this Article 19 shall govern the transaction.

ASSIGNMENT OF OPTION. Tenant may assign this Option with Landlord's prior written consent, which consent will not be unreasonably withheld. Tenant may assign the Option to any entity owned or controlled by Tenant or its members without Landlord's consent.

PURCHASE PAYMENT TERMS.

Down Payment and Interest Rate. The Option Payments shall be treated as the down payment. The balance of the purchase price shall accrue interest of 2.75% above the Wall Street Journal prime rate but in no event shall it be less than six percent (6%) nor more than seven percent (7%) per annum. The interest rate calculated at the time of closing shall remain in place until the fifth anniversary of closing of the sale, at which time it shall be adjusted based on the same 2.75% above the Wall Street Journal prime rate but in no event shall it be less than six percent (6%) nor more than seven percent (7%) per annum.

Payments to Seller and Method of Payment. Tenant shall pay principal and interest installments beginning 30 days after the close of escrow and on that same day of each succeeding calendar month with the monthly installment payment calculated as set forth above and amortized over 20 years. The indebtedness shall be evidenced by a promissory note ("Note") and first deed of trust on the Subject Property ("Deed of Trust"). The balance of principal and accrued interest shall be due and payable in full ten (10) years after close of escrow.

Default/Default Interest/Prepayment. During any period of Tenant's default under the Note or Deed of Trust, the principal balance of the Note shall bear interest at the rate of 18% per annum or the maximum rate allowed by law, whichever is less. A late charge of 5% of any installment payment shall be added to any payment more than 15 days late. If Tenant has not cured any default within 30 days after written notice, Seller may declare all outstanding sums immediately due and payable. Tenant may prepay all or part of the balance owed at any time without penalty.

Personal Guaranty. Tenant shall personally guaranty the obligation under the Note.

OTHER PURCHASE TERMS.

Within ten (10) days after delivery of the Option Notice, Landlord and Tenant shall execute the then-current form of the Commercial Brokers Association Commercial & Investment Real Estate Purchase and Sale Agreement (CBA form PS-1A)(the "PSA") with all fields completed in accordance with the terms of this Article 19 or, to the extent this Article 19 does not address a particular term, then the default term offered by the form shall be used. The

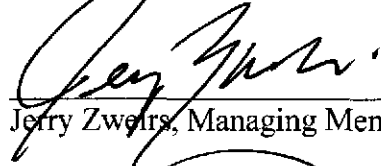
following specific terms shall apply:

1. Closing of sale of the Subject Property shall occur on a date mutually acceptable to Landlord and Tenant within sixty (60) days after delivery of the Option Notice.
2. The Anacortes, Washington office of Chicago Title Insurance Company shall act as Closing Agent and Chicago Title Insurance Company shall be title insurer.
3. Title to the Subject Property shall be conveyed by statutory warranty deed, subject only to permitted exceptions determined pursuant to the PSA.
4. No value shall be assigned to any personal property included in the sale.
5. No brokers or agents shall participate in the transaction, and neither party shall be responsible for payment of any commissions in connection therewith.
6. The first box shall be checked under each of the "Buyer Default" and "Seller Default" remedy provisions.
7. Unless Landlord and Tenant agree upon different forms, the LPB forms of promissory note and deed of trust referenced in the PSA shall be used for the Note and Deed of Trust.
8. In the event of any disagreement over how a particular term of the PSA should be completed, the Closing Agent shall be directed to complete the term in accordance with customary practice as determined by Closing Agent in its reasonable discretion.

IN WITNESS WHEREOF, this Amendment to Lease is executed by the parties, intending to be legally bound, as of the date first written above.

LANDLORD:

SUMMIT PARK PROPERTIES, LLC



Jerry Zwiers, Managing Member



Art Timmons, Managing Member

TENANT:

EMERALD EVOLUTION, LLC



Jeremy Ruiz, Managing Member

STATE OF WASHINGTON)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Jerry Zweirs is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document and acknowledge it as Managing Member of Summit Park Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

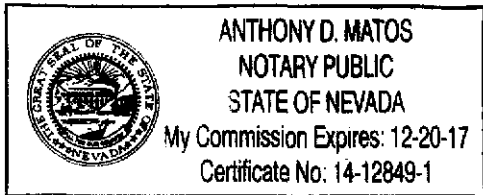
GIVEN under my hand and official seal this _____ day of _____, 2016.

Notary Public in and for the State of
Washington, residing at _____
My commission expires: _____

Nevada
~~STATE OF WASHINGTON~~)
Clark)ss.
~~COUNTY OF SAN JUAN~~)

I certify that I know or have satisfactory evidence that Art Timmons is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document and acknowledge it as Managing Member of Summit Park Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 29th day of March, 2016.



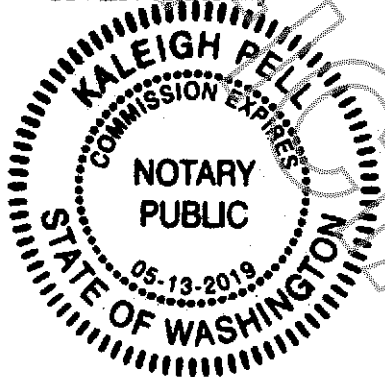
Anthony D. Matos

Notary Public in and for the State of
~~Washington~~ *Nevada*, residing at 601 W. Kellogg Blvd
My commission expires: 12/20/2017

STATE OF WASHINGTON)
)ss.
COUNTY OF Skagit)

I certify that I know or have satisfactory evidence that Jerry Zweirs is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document and acknowledge it as Managing Member of Summit Park Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 7 day of April, 2016.



Kaleigh Pell
Notary Public in and for the State of
Washington, residing at Anacortes
My commission expires: 05/13/2019

STATE OF WASHINGTON)
)ss.
COUNTY OF SAN JUAN)

I certify that I know or have satisfactory evidence that Art Timmons is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document and acknowledge it as Managing Member of Summit Park Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 2016.

Notary Public in and for the State of
Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Jeremy Ruiz is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document and acknowledge it as Managing Member of Emerald Evolution, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 2016.

Notary Public in and for the State of
Washington, residing at _____
My commission expires: _____

PERSONAL GUARANTY

The undersigned, in consideration of the letting by SUMMIT PARK PROPERTIES, LLC, as Landlord of the premises described hereinabove to Tenant herein, does hereby covenant with Landlord that if default shall at any time be made by Tenant in the payment of rent or in the performance of any other financial covenants contained in the above Lease, the undersigned will pay to Landlord, or its assigns, the rental or any arrears thereof and all damages that may arise in consequence of any default by Tenant under this Lease. This Guaranty shall be a continuing Guaranty and the liability hereunder shall in no way be affected or diminished by reason of any extension of time that may be granted by Landlord to Tenant.

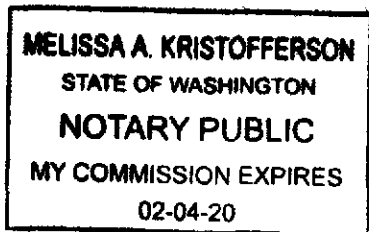
IN WITNESS WHEREOF, the undersigned has signed this Personal Guaranty on this 20TH day of APRIL, 2016.

Jeremy Ruiz
Jeremy Ruiz

STATE OF WASHINGTON)
)ss.
COUNTY OF Skagit)

I certify that I know or have satisfactory evidence that Jeremy Ruiz is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the document as his free and voluntary act for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 20th day of April, 2016.



[Signature]
Notary Public in and for the State of
Washington, residing at Burinton
My commission expires: 2-14-2020

Exhibit A
LEGAL DESCRIPTION OF SUBJECT PROPERTY

Unit A, Skagit Sound Business Park Condominium Phase 1, a condominium, according to the Declaration thereof, recorded May 3, 2007, under Auditor's File No. 200705030119 and Survey Map and Plans thereof recorded May 3, 2007, under Auditor's File No. 200705030118, records of Skagit County, Washington; being a portion of Lots 5 and 6 of Short Plat No. ANA-03-001, recorded February 13, 2003, under Auditor's File No. 200302130095, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington

The Real Property or its address is commonly known as 9019 MOLLY LN, ANACORTES, WA 98221. The Real Property tax identification number is P19740.