

FIRST AMENDMENT TO GROUND AND AIR LEASE

This First Amendment to Ground and Air Lease (this "Amendment") is made and entered into as of _____, 2018, by and between City of Mesa, a municipal corporation ("Landlord"), and _____, a(n) _____ ("Tenant"). Landlord and Tenant are sometimes referred to in this Amendment collectively as the "Parties," or individually as a "Party."

RECITALS

A. Landlord ("City") and 3W Management, LLC, an Arizona limited liability company ("Developer") have executed and delivered into that certain Development Agreement dated December 7, 2017, and recorded in the Maricopa County Recorder's Office ("Official Records") as Recording No. 20170915520 (the "Development Agreement"). The Development Agreement is for a mixed-use commercial and residential development that includes a minimum of 18,000 rentable square feet of commercial, retail/restaurant or office space; 180,000 square feet of apartment space; 24,000 square feet of row homes; parking garage improvements; and public improvements; all of which are described and defined as the "Project" in the Development Agreement.

B. As more fully described in the Development Agreement, and upon the completion of certain conditions precedent, City (as the Landlord named in the Lease) and Developer (or its permitted assignee) are to enter into a Ground and Air Lease (the "Lease"), which is Exhibit P to the Development Agreement.

C. On or about February ___, 2018, City and Developer executed and delivered that certain First Amendment to Development Agreement dated February ___, 2018, and recorded in the Official Records as Recording No. _____ (the "Development Agreement Amendment"). The Development Agreement amendment provides for certain credits to be provided to Developer ("Credits") upon Tenant's causing certain conditions to be satisfied by its Targeted Subtenant (as more fully defined in the Development Agreement Amendment), as well as providing for the repayment of such Credits by Tenant to Landlord in the event of a failure of Tenant either to cause its Targeted Subtenant to achieve such conditions, or to cause the Targeted Subtenant to maintain those conditions for the periods of time required by the Development Agreement Amendment. The Credits are to be provided to Developer in the form of reduced Rent under the Lease and as a reduced License Fee under the License.

D. In order to integrate the provisions of the Development Agreement Amendment into the Lease, and to acknowledge both (i) Tenant's obligations to cause certain conditions to be met, and (ii) Tenant's obligations to make certain payments or reimbursements in the event of a failure of such conditions to be satisfied (including, but not limited to, a default of the Targeted Subtenant), the Parties have entered into this Amendment concurrently with their execution and delivery of the Lease.

AGREEMENTS

1. Amendment to Lease. The Parties now amend the Lease by adding a new Section 16.3, as follows:

16.3 Required Sublease with Targeted Subtenant. On or before May 1, 2018, Tenant must enter into a sublease with an anchor tenant in the Premises that provides collaborative co-working spaces to encourage entrepreneurial endeavors (particularly emphasizing technology and innovation), such as CO+HOOTS™ (or comparable enterprise approved by City in its sole, absolute and unfettered discretion; the “Targeted Subtenant”).

a. Required Sublease Terms. The Targeted Subtenant’s sublease must be for not fewer than 13,000 square feet of the Premise’s commercial space (the “Subleased Premises”) for a sublease term of not fewer than ten (10) years (the “Sublease Term”); the Targeted Subtenant must be open to the public for business in the entire Subleased Premises on or before the Opening Date; and the Targeted Subtenant must remain open to the public for business in the entire Subleased Premises for not fewer than ten (10) years from the Opening Date. “Opening Date” in this Lease means the earliest of (i) the date on which the Subleased Premises is first open to the public for business, or (ii) the date on which the final certificate of occupancy is approved for the Subleased Premises, or (iii) December 31, 2020; provided, however, the Parties may agree in writing to different date as the Opening Date so long as such date is within three (3) months of either of the three (3) dates described in this definition.

b. Agreement with Post-Secondary Institution. The Targeted Subtenant must use commercially reasonable, good faith efforts to enter into an agreement with a post-secondary institution located in the City of Mesa to provide programming classes and entrepreneurial courses as part of an advanced degree or certificate program, and the Targeted Subtenant will demonstrate to Tenant and Landlord that the Targeted Subtenant has either entered into such an agreement with a post-secondary institution located in the City of Mesa prior to the Opening Date, or has used commercially reasonable, good faith efforts to do so.

c. Public Events. The Targeted Subtenant must provide free public programs, workshops or seminars to assist new businesses and entrepreneurs (“Public Events”) for each year for the first ten (10) years of the Sublease Term. In the first year of the Sublease Term, the Targeted Subtenant will provide not fewer than fifty (50) Public Events; in the second year of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred (100) Public Events; and in the third through tenth years, inclusive, of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred and fifty (150) Public events during each such year.

d. Scholarships. The Targeted Subtenant must provide, for each year for the first ten (10) years of the Sublease Term, not fewer than fifteen (15) scholarships per year to secondary school students residing in the City of Mesa for coding, programming

and related business technology classes (or other educational classes as approved by City, through its City Manager or designee, in the Manager's or designee's reasonable discretion) provided by the Target Subtenant and at the Subleased Premises or at another facility within the City of Mesa.

e. Entrepreneurial Assistance. During each year of the Sublease Term, the Targeted Subtenant will offer (i) assistance, including but not limited to technical support, for Qualifying Businesses within the Subleased Premises with respect to attracting investors and capital, (ii) an updated directory of investors seeking to capitalize business of the nature of the Qualifying Businesses, and (iii) events to introduce investors to Qualifying Businesses.

f. Qualifying New Businesses. The Targeted Subtenant must create twenty-five (25) Qualifying New Businesses at the Project within ten (10) years of the Opening Date. To be a "Qualifying New Business" means that either of the following is satisfied: (1) it is a business that subleases (or sublicenses) office space within the Subleased Premises from the Targeted Subtenant for twelve (12) consecutive months and uses such office space as its primary professional office (including but not limited to the receipt of physical mail or other deliveries), or (2) it is a business located in the City of Mesa and started by a tenant that subleases (or sublicenses) office space from the Targeted Subtenant and is open for twelve (12) consecutive months. A Qualifying New Business expressly excludes any existing business located in the City of Mesa that relocates to office space within the Subleased Premises.

g. Qualifying New Jobs. The Targeted Subtenant, or Qualifying New Businesses, must create five hundred (500) Qualifying New Jobs at the Project within ten (10) years of the Opening Date, of which Three Hundred (300) of the Five Hundred (500) Qualifying New Jobs must be filled by employees who are residents of the City of Mesa for at least twelve (12) consecutive months. To be a "Qualifying New Job" means that all of the following are satisfied: (1) the job (or position) is a paid employment position where the employee is paid for at least thirty-five (35) hours each week for twelve (12) months within any given consecutive sixteen-month period by the Targeted Subtenant or a Qualifying New Business, (2) the position must be filled by an employee (or employees) of the Targeted Subtenant or a Qualifying New Business for twelve (12) consecutive months, and (3) the principal place of work of the employee (or employees) filling the position must be within the Targeted Subtenant's space at the Project (or within an expanded premises of the Targeted Subtenant or a Qualifying New Business that is located within the City of Mesa) for twelve consecutive months. The City Manager (or designee) will have the authority to review and reasonably determine compliance with this provision.

h. Demonstration of Compliance with Requirements.

(1) Within thirty (30) days of a date specific requirement in Section 16.3(a) and Section 16.3(b), Tenant must provide commercially reasonable evidence to Landlord establishing compliance with each requirement. Every year during the Sublease Term but within sixty (60) days of each annual anniversary of a yearly

requirement in Section 16.3(c), Section 16.3(d) and Section 16.3(e), Tenant must provide commercially reasonable evidence to Landlord establishing compliance with each annual requirement. Landlord and Tenant may agree in writing upon a single annual anniversary date to establish compliance for the requirements in Section 16.3(c), Section 16.3(d) and Section 16.3(e).

(2) No later than sixty (60) days after the first anniversary of the Opening Date, and no later than sixty (60) days after each anniversary of the Opening Date thereafter, for the first ten (10) years of the Sublease Term, Tenant, or the Targeted Subtenant on behalf of Tenant, must submit proof to City, by providing commercially reasonable evidence of the progress of the Targeted Subtenant's compliance with all requirements and written certification of, the number of Qualifying New Jobs and Qualifying New Businesses for the twelve-month period from and after the Opening Date. Within thirty (30) days of receiving Developer's submissions, City may request, and Developer will promptly provide, additional information necessary to reasonably establish all requirements have been satisfied to qualify each Qualifying New Job or Qualifying New Business, as applicable.

i. Repayment Upon Default. Upon any uncured Event of Default relating to this Section 16.3 relating to performance by the Targeted Subtenant, Tenant will pay to City that amount of money equal to the Economic Development Credits and Permit Reimbursements received by Developer, which payments by Tenant (i) will be paid as Rent under the Lease and as the License Fee under the License; (ii) will be paid in equal installments over the same period of time in which such credits and reimbursements were received by Developer; and (iii) will commence with the first payment of Rent (under the Lease) or License Fee (under the License) owing after the uncured Event of Default, as follows:

	Economic Development Incentive (due back to City)	New Job Creation Permit Reimbursement (due back to City)	
Vacate Years 1-5	100%	100%	
Vacate Year 6	50%	If 500/300 ¹ New Jobs Created: 50%	If less than 500/300 ¹ New Jobs Created: 100%
Vacate Year 7	40%	If 500/300 ¹ New Jobs Created: 40%	If less than 500/300 ¹ New Jobs Created: 80%
Vacate Year 8	30%	If 500/300 ¹ New Jobs Created: 30%	If less than 500/300 ¹ New Jobs Created: 60%
Vacate Year 9	20%	If 500/300 ¹ New Jobs Created: 20%	If less than 500/300 ¹ New Jobs Created: 40%
Vacate Year 10	10%	If 500/300 ¹ New Jobs Created: 10%	If less than 500/300 ¹ New Jobs Created: 20%

¹500 total New Jobs, of which 300 are filled by Mesa residents

j. Additional Limitations. The Economic Development Credits and Permit Reimbursements (as defined in the Development Agreement, as amended) (i) are not transferrable (directly or by operation of law) to any leasehold mortgagee that succeeds to the interest of Tenant pursuant to Section 17 of the Lease, and will be deemed fully extinguished in such event; (ii) will not reduce any obligation of Tenant owing to Landlord as a result of Tenant's Default under the Lease; and (iii) to the extent of any unutilized or unpaid portion of the Economic Development Credits and Permit Reimbursements, will not reduce the Purchase Price for the Premises in the event Tenant exercises its Purchase Option pursuant to Section 30 of the Lease.

2. Replacement of Exhibits. The Parties replace Exhibit C (Schedule of Rent) to the Lease with Exhibit 1 attached to this Amendment, which is entitled "Exhibit C, Schedule of Rent."

3. Defined Terms; No Other Amendments. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the Lease (and in the exhibits to the Lease, as applicable), unless a different definition is set forth in this Amendment. This Amendment is the entire agreement of the Parties with respect to the matters set forth in this Amendment. Except as expressly set forth in this Amendment, the Lease is unmodified and remains in full force and effect.

4. Statutory Notice Requirement. The Parties acknowledge that this Amendment is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

[The signatures of the Parties are on the following two (2) pages.]

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the date written above.

LANDLORD

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

ATTEST:

By: _____
DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM:

By: _____
James N. Smith, City Attorney

TENANT

_____,
a(n) _____

By: _____
Printed Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of _____, a(n) _____, on behalf of Tenant.

Notary Public

My commission expires:

Exhibit 1 to First Amendment to Ground and Air Lease

“Exhibit C | Schedule of Rent”

SCHEDULE OF RENT

Year 1 ¹	Base Monthly Lease Rate	Base Yearly Lease Rate	PI Cap Credit (Monthly)	PI Cap Credit (Yearly)	Monthly Lease w/PI Cap Credit	Yearly Lease w/PI Cap Credit	Economic Dev Credit (Monthly)⁶	Economic Dev Credit (Yearly)⁶	Monthly Lease w/All Credits	Yearly Lease w/All Credits
Construction Rate	\$1,000	\$12,000	N/A	N/A	\$1,000	\$12,000	N/A	N/A	\$1,000	\$12,000
Year 2 ¹										
Lease up period	\$2,500	\$30,000	N/A	N/A	\$2,500	\$30,000	N/A	N/A	\$2,500	\$30,000
Years 3-7 ^{2,3}										
6% Lease	\$18,850	\$226,200	\$9,425	\$113,100	\$9,425	\$113,100	\$9,425	\$113,100	\$0.00	\$0.00
Years 8-15 ^{2,4}										
6% Lease	\$18,850	\$226,200	\$14,137.50	169,650	\$4,712.50	\$56,550	N/A	N/A	\$4,712.50	\$56,550
Years 16-20 ⁴										
7% Lease	\$22,000	\$264,000	\$11,000	\$132,000	\$11,000	\$132,000	N/A	N/A	\$11,000	\$132,000
Years 21-99 ⁵	Based on 7% monthly/annually of the then appraised value of the property every 7 years									

¹ If Developer does not meet the Compliance Dates in Section 4.12, including but not limited to timely submittal of plans, paying for permits, and Commencing Construction timely, the Rent for the remainder of the Construction Rate and Lease Up periods shall be \$22,000/month.

² Rent Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. Rent Credits are only available beginning in Year 3 of the Lease. Additionally, if Tenant is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and License Exhibit D to reduce the Rent (and the License Fees under the License) until the Credits are used (up to the Cap) between the Rent and License Fees or are extinguished under the terms of the Development Agreement, Lease, or License at which point the Rent shall be as described in the "Base Monthly Lease Rate" and "Base Yearly Lease Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

³ For Years 3-7, the maximum Public Infrastructure Rent Credit that can be used to offset the Rent shall not exceed 50% of the Rent and the maximum Economic Development Rent Credit that can be used to offset the Rent shall not exceed 50% of the Rent.

⁴ For Years 8-15, the maximum Public Infrastructure Rent Credit that can be used to offset the Rent shall not exceed 75% of the Rent. After Year 7, no Economic Development Rent Credits are available to offset the Rent. After Year 15, the maximum Public Infrastructure Rent Credit to offset the Rent shall not exceed 50% of the Rent.

⁵ Starting in the 21st year of the Lease and every 7 years thereafter, the Rent shall be based on 7% of the fair market value of the Premises (as unimproved property and air rights) as follows: one hundred and twenty days before the 21st year of the Lease (and every 7 years thereafter), the Parties (if they Parties are unable to agree upon the fair market value of the Premises unimproved) shall each create a list of three appraisers and provide such list to the other Party. The appraisers on the lists shall be members of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years of experience in appraising commercial real property. The Parties shall act in good faith to select one appraiser from one of the lists as the primary appraiser (the "Primary Appraiser") and to select from the other list another appraiser to be the review appraiser (the "Review Appraiser") (the Primary Appraiser and Review Appraiser shall be from different lists). If the Parties cannot so agree within thirty (30) days of providing the lists, either Party may, upon at least 5 days prior written notice to the other Party, apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for selecting such appraisers. Within 45 days after selecting the Primary Appraiser, the Primary Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved). Within 15 days after receiving such appraisal, either Party may provide notice to the other Party that they disagree with the Primary Appraiser's fair market value of the Premises and engage the Review Appraiser to appraise the Premises. If such notice is not provided, the fair market value of the Premises shall be as stated in the Primary Appraiser's appraisal, unless the Parties agree in writing to another amount for the fair market value of the Premises. If notice that a Party disagrees with the Primary Appraiser's determination is provided, the Parties agree that the Premises shall be appraised by the Review Appraiser; and, then, within 30 days of engaging the Review Appraiser, the Review Appraiser shall provide

the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved); the Parties shall negotiate in good faith based on the two appraisals to agree upon a fair market value of the Premises that falls within the range of the two appraisals. If the Parties cannot so agree within thirty (30) days of receiving the Review Appraiser's appraisal, either Party may, upon at least 5 days prior written notice to the other Party, apply to presiding judge of the Maricopa County Arizona Superior Court, (or file suit in Maricopa County Arizona Superior Court) for a determination of the fair market value of the Premises. Each Party agrees to pay one-half (½) of the fees for the appraisals. The date of valuation for the appraisals shall be the date the appraisal is completed.

⁶Eligibility for, and continued right to, the Economic Development Credits is subject to compliance with all the terms, conditions, and limitations set forth in the First Amendment to the Development Agreement and First Amendment to License (First Amendment to Lease, for Lease exhibit) Agreement