

**FIRST ADDENDUM TO
TERMS AND CONDITIONS OF LEASE AGREEMENT
AND
INDEMNITY AGREEMENT
(Yamhill County and Modular Space Corporation)**

THIS FIRST ADDENDUM TO LEASE AGREEMENT AND INDEMNITY AGREEMENT ("Addendum #1") is made by and between **Yamhill County**, a political subdivision of the State of Oregon ("Customer"), and the **Modular Space Corporation** ("ModSpace"), a Delaware corporation, operating locally at 13132 N. Woodrush Way, Portland, OR.

RECITALS:

- A. Customer and ModSpace are parties to that certain lease agreement dated the same date as this Addendum #1 (the "Lease Agreement"), memorialized as B.O. 18-_____.
- B. Customer and Modspace are also parties to that certain indemnity agreement dated the same date as this Addendum #1 (the "Indemnity Agreement"), memorialized as B.O. 18-_____.
- C. Pursuant to the Lease Agreement and the Indemnity Agreement, ModSpace is to provide certain specified modular equipment and related services to Customer (the "Project").
- D. Customer and ModSpace now desire to memorialize this addendum to the Lease Agreement and Indemnity Agreement upon the terms and conditions as more particularly set forth herein below.
- E. Capitalized terms not defined herein shall have the meanings attributed to such terms in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Customer and ModSpace, intending legally to be bound, hereby agree as follows:

- 1. The second sentence of Section 2(c) of the Lease Agreement is hereby modified to add the word "undisputed" after "Any" and before "amount". The balance of Section 2(c) is unchanged.
- 2. Section 3(g) of the Lease Agreement is hereby amended to insert the following after "and" and before "Customer" as follows:

"...subject to Article II, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act..."

The balance of Section 3(g) is unchanged.

3. Section 4(a) of the Lease Agreement is hereby amended to add the following to the end of the second sentence:

“...ordinary wear and tear excepted.”

The balance of Section 4(a) is unchanged.

4. Section 4(b) of the Lease Agreement is hereby amended to insert the following at the beginning of the fifth sentence:

“With not less than twenty four (24) hours prior written notice.....”

The balance of Section 4(b) is unchanged.

5. Section 8 of the Lease Agreement is hereby amended to insert the following after “agents,” and before “Customer” in the first sentence:

“...subject to Article II, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act...”

The balance of Section 8 is unchanged.

6. Section 9(c) of the Lease Agreement is hereby amended to insert the following after “Site,” and before “Customer” in the second sentence:

“...and subject to Article II, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act,...”

The balance of Section 9(c) is unchanged.

7. Section 14 of the Lease Agreement is hereby amended to include the following:

“(d) ModSpace agrees to indemnify, defend and hold harmless Customer, its officers, employees and agents from any and all loss, claims liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys’ fees and investigative costs) (collectively “Claims”) that may arise from the intentional act or omission or gross negligence of ModSpace or its officers, employees or agents. (e) Any modifications to this Lease Agreement shall be in writing signed by both parties.

(f) This Lease Agreement shall be governed by the laws of the State of Oregon, without regard to its conflicts of laws rules and any disputes shall be resolved in Oregon. Any claims or legal actions by one party against the other party shall be brought and maintained in the Circuit Court for Yamhill County, Oregon and both parties hereby submit to the jurisdiction and venue of said court.

(g) In the event of a claim for damages made by either party under this Lease Agreement or in the event either party to this Lease Agreement shall take any other action, judicial or otherwise to enforce or interpret any of

the terms of this Lease Agreement, each party shall be wholly responsible for its own legal expenses incurred in taking such action, including costs and attorneys' fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

(h) In performing this Lease Agreement ModSpace agrees it will not engage in discrimination in employment of persons because of race, color, sex, national origin, ancestry, religion or any other protected status.

(i) This Lease Agreement may be executed in separate counterpart, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

(j) Either party shall be excused from performance during any delay beyond the time named for the performance of this Lease Agreement caused by any act of God, war, civil disorder, strike or other cause beyond its reasonable control

(k) ModSpace shall be considered an independent contractor and not an employee of Customer.”

The balance of Section 14 remains unchanged.

8. The first sentence of the fifth paragraph of the Indemnity Agreement is hereby amended to include the following:

“Subject to Article II, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act...”

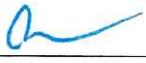
The balance of the Indemnity Agreement remains unchanged.

9. Ratification. Except as otherwise expressly modified by the terms of this Addendum #1, the Lease Agreement and Indemnity Agreement remain unchanged. All terms, covenants and conditions of the Lease Agreement and Indemnity Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and constitute valid and binding obligations of Customer and ModSpace enforceable according to the terms thereof.
10. Authority. Customer and ModSpace and each of the persons executing this Addendum #1 on behalf of Customer and ModSpace hereby covenants and warrants that: (i) such party has full right and authority to enter into this Addendum #1 and has taken all action required to authorize such party (and each person executing this Addendum #1 on behalf of such party) to enter into this Addendum #1, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.
11. Binding Effect. All of the covenants contained in this Addendum #1 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.
12. Counterparts. This Addendum #1 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Addendum #1.

13. Recitals. The foregoing recitals are intended to be a material part of this Addendum #1 and are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Addendum #1 on the date indicated by their duly authorized officials.

MODULAR SPACE CORPORATION



Print Name/Title Julian Vega TSM
Date: 9/2/18

Ss#/Tax ID#: _____

APPROVED AS TO FORM

By: 

CHRISTIAN BOENISCH
County Counsel

YAMHILL COUNTY, OREGON



MARY STARRETT, Chair
Board of Commissioners
Date: 9/20/18


LAURA TSCHABOLD
County Administrator
Date: 9-20-2018

Accepted by Yamhill County
Board of Commissioners on
9/20/18 by Board Order
18-336