

LIVINGSTON CITY COMMISSION ADDENDUM

REGULAR MEETING 04.19.2022

ADDENDUM TO RESOLUTIONS

B. UPDATED LEASE AGREEMENT WITH PET ROBIN CO. LLC, DBA MOUNTAIN AIR.

CITY OF LIVINGSTON LEASE CONTRACT

This lease is made by and between the City of Livingston, 220 E. Park Street, Livingston Montana 59047, “Lessor.”, and Pet Robin Co LLC, dba Mountain Air, PO Box 108, Livingston, MT 59047.

1. **PURPOSE OF LEASE**

The Lessee has a need to lease space in Livingston, Montana to conduct its business, and the Lessor has space available for this purpose.

2. **PREMISE DESCRIPTION**

The leased space includes a premises and parking area (Premises) is approximately 3780 gross square feet (including the garage) and the parking area is 19,191 square feet. The physical address is 101 Star Road, Livingston, Montana.

3. **TERM OF LEASE/CONDITION OF PREMISE AT END OF TERM**

A. The lease term is 37 months, effective May 1, 2022 through June 30, 2025, unless earlier terminated as provided in sections 13, 17, 18, and 21 or renewed as provided in Section 5. The Lease may be renewed on an annual basis after the initial term by mutual written agreement of the parties.

B. The Lessee understands that the premises is in an “As Is” condition and that the Lessee will have the ability to make changes and improvements, with the consent of the Lessor. Upon termination of this lease or any extension of it, the Lessee shall vacate and surrender the Premise to the Lessor in good condition, reasonable wear and tear and Lessor-authorized changes, alterations, and improvements included. Lessee shall remove all personal property that it placed within the Premise within 30 days of termination.

If the Lessee does not remove its personal property within the 30 days, then Lessee shall pay Lessor a full month’s rent even if the Lessee’s personal property is removed before the month has expired.

4. **CONSIDERATION**

A. From May 1, 2022 through June 30, 2025, Lessee’s monthly payment is \$1800.00. This reflects a cost of \$66,600.00 with a rate of approximately \$15.00 per gross square foot per year.

B. The Lessee shall pay the Lessor rent due by the 10th of the month. The Lessee has the right to request that the costs of improvements be deducted from its rents up to the amount of \$66,600.00. The Lessee shall provide all receipts, for labor and materials related to the approved alterations and improvements, to the premises, by the 10th of the month, to the Lessor at 220 East Park Street, Livingston, Montana 59047, for credit towards the rent for that month. Receipts in addition to the amount of monthly rent will be credited towards future months’ rent.

5. **RENEWAL OPTION**

All lease renewals are subject to prior approval, by the Lessor, and the Lessee.

6. UTILITIES AND MAINTENANCE SERVICES

A. The Lessee shall furnish and pay for all utilities including interior and landscape and irrigation water (hot and cold for the interior), gas, electricity, air conditioning (if available), garbage removal, pest control (if necessary), and sewer. The Lessee shall at its expense shall maintain the exterior of the property including weed control and mowing.

B. Lessee at its expense and with Lessor's approval may install additional telephone, electrical, or computer network lines or change the location of such existing facilities.

C. At its expense, Lessee may make alterations and improvements to the premises with the approval of the Lessor, such approvals may be sought and obtained from the Building Department (406)222-4903.

7. PARKING SPACE

At no additional charge or cost to the Lessee, Lessor agrees to allow parking spaces designated for Lessee parking. Lessee customers may use available public parking in the parking area.

8. PARKING AREA AND SIDEWALK MAINTENANCE

The Lessor shall keep the parking area and sidewalks safe and in good repair and shall timely remove debris, snow and ice from the parking area and sidewalk.

9. NOTICE

For a notice under this lease to be valid, it must be in writing and must be personally delivered or sent by email, fax, or first-class mail. Notice personally delivered or sent via email or fax is effective on receipt. If email is used and the sender receives a machine-generated notice that delivery has failed, then the sender must provide notice by another means allowed by this section. Notice sent by first class mail is effective within three days of mailing.

The Lessor's address for purpose of receiving demand or notice is City of Livingston located at 220 East Park Street, Livingston, Montana 59047.

The Lessor's representative for the purposes under this lease is Livingston City Attorney, 406-823-6009, email address cityattorney@livingstonmontana.org.

The Lessee's address for the purpose of receiving demand or notice is Vicki Petry, Pet Robin Co LLC, dba Mountain Air, PO Box 108, Livingston, MT 59047.

The Lessee's representative for purposes under this lease is Vicki Petry, telephone (406) 224-0536, e-mail address petrobinco@gmail.com.

If either party changes its address or contact person, it shall promptly notify the other party in writing at the address provided in this section.

10. QUIET ENJOYMENT

Without interference from Lessor or third parties, the Lessee has the right to peaceful and quiet possession and use of (i) the Premise and common areas and (ii) the rights and interests appurtenant to the Premise and common areas.

11. ACCESS FOR MAINTENANCE/INSPECTION

A. Upon 24-hours' prior notice to the Lessee, the Lessor or its agent(s) may enter the Premise at reasonable times to maintain, repair, or inspect the Premise.

B. If an emergency arises, Lessor may enter the Premise without prior notice to the Lessee. Lessee shall provide Lessor with a key and code to its locked doors to be placed in the Knox Box for emergency entry by EMS personnel.

12. MAINTENANCE/REPAIR OF PREMISE

A. At its cost and expense, Lessee shall maintain and repair in a good, safe, and usable condition the Premise and the interior of the building in which the Premise is located, including related mechanical, electrical, plumbing, sanitary, heating, ventilation, and air conditioning systems and elevator (if any).

B. At its cost and expense, Lessee shall maintain and repair in a good, safe, and usable condition the exterior of the building and the Premise, including the roof, foundation, walls, doors, fixtures, outdoor lighting, lawns and other landscaping, drainage, and related sidewalks, stairways, and parking areas.

13. FIRE OR OTHER CASUALTY DAMAGE

A. If the Premise or any part of it becomes so damaged by fire, earthquake, other casualty, or structural defects that it cannot be used for Lessee's business purposes, then Lessee may without penalty terminate this lease by giving Lessor five days' notice. Lessor shall refund Lessee any unearned rent paid if Lessee so terminates.

B. If such damage does not render the Premise unusable for Lessee's purposes, Lessor shall promptly repair such damage at Lessor's cost. In this case, Lessee's rental payment must be reduced by the same ratio as the net square feet the Lessee is precluded from occupying bears to the total net square feet in the Premise.

"Net square feet" means actual inside dimensions and does not include public corridors, stairwells, elevators, and restrooms. If the Lessor does not complete the repairs within 30 days following the initial damage, Lessee may without penalty immediately terminate this lease.

C. Lessor shall continue to insure the Premise until the Lessee's personal property is removed from the Premise.

14. ALTERATIONS TO PREMISE

The Lessee may not make permanent improvements or alterations to the Premise without the Lessor's prior written consent. Permanent improvements or alterations will remain the Lessor's property upon lease termination unless Lessor and Lessee's written consent specifies differently. Lessee's personal property including but not limited to printing and screening equipment remains the Lessee's property and may be removed upon lease termination. Lessor's personal property including but not limited to window treatments remains the Lessor's property and may not be removed upon lease termination.

15. SIGNS

If Lessor allows signage and the Lessee wishes to advertise its location in the building where the Premise is located, Lessee shall pay for installation of a suitable sign on the exterior of the Premise at a location mutually agreeable to the Lessor and Lessee.

16. INSURANCE SPECIFICATIONS

A. Lessor Property. Lessor has property insurance as provided by the Montana Municipal Interlocal Authority (MMIA), which is a property and liability self-insured risk sharing pool. Such insurance provides coverage for among other things:

- (i) Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis.
- (ii) Loss or damage from leakage or sprinkler systems now or hereafter installed in the Premise.
- (iii) Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings within which the Premise is located.

B. Lessor Liability. The Lessor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Lessor and its officers, employees, or agents in accordance with § 2-9-108, MCA.

C. Lessee Insurance. Lessee shall maintain insurance covering its property and shall be insured for personal injury and property damage in an amount sufficient to cover its property and estimable losses.

17. HOLDOVER TENANCY

A. Absent a written agreement stating otherwise, if the Lessee holds the Premise beyond the lease term the lease will be deemed a month-to-month tenancy subject to all terms and conditions of this lease.

B. Either party may terminate the holdover tenancy, without incurring a penalty, by providing the other party thirty (30) day written notice of termination before the beginning of the final month.

18. BREACH

A. Either party's failure to perform the lease's terms and conditions is a breach.

B. If a breach arises, the non-breaching party may send the breaching party a written notice, identifying in reasonable detail the breach and the requested remedy.

Except as provide in subsection C. below, the breaching party shall cure the breach as soon as reasonably possible but no longer than 30 days, except if an emergency condition exists requiring a cure to be immediately started and completed within 24 hours if reasonably possible given the circumstances.

C. If the breaching party does not cure the breach, the nonbreaching party may cure all or part of the default after providing notice to the breaching party of its intent to perform such cure, and, if applicable, recover the costs incurred in curing the default.

If the nonbreaching party is the Lessee, the Lessee may deduct all costs incurred from rent or other charges owed to Lessor.

If the nonbreaching party is the Lessor, Lessor will submit properly executed vouchers and proof of payment to Lessee and Lessee shall remit payment to Lessor within 30 days or as soon as is practicable.

The nonbreaching party is under no obligation to cure some or all the default of the breaching party. To the extent that the nonbreaching party does not cure the default, the nonbreaching party may pursue its legal and contractual remedies against the breaching party.

The nonbreaching party's failure to cure the breaching party's default does not waive the nonbreaching party's rights to relief. Nothing herein removes or lessens either party's obligation to mitigate damages.

D. If it is not reasonably possible to cure an emergency or non-emergency condition within 24-hours or 30 days, respectively, the breaching party shall so notify the non-breaching party within 24-hours or 10 days, respectively. Such notice shall explain why the cure is not reasonably possible with due diligence to complete within 24 hours (if an emergency) or 30 days (if a non-emergency) and provide the earliest date that the work can be completed as soon as reasonably possible.

E. "Emergency condition" means a condition requiring a cure that (i) prevents or substantially disrupts the Lessee from using all or a substantial part of the Premise, or (ii) causes or substantially threatens to cause injury to persons or damage to property or raises a substantial danger to the health or safety of any persons on or using the Premise. Notice under this paragraph may be by the means allowed in the Notice section 9, but in addition includes actual notice/awareness that Lessor has of a condition independent of any such notice.

19. VENUE

If a dispute arises over this lease and a party chooses to file a suit, the proper venue for the case is the District Court of the Montana, Sixth Judicial District, Park County. Each party shall pay its own attorney fees and costs.

20. ENTIRE LEASE/INTERPRETATION

This lease, consisting of six pages, sections 1 through 21, contains the entire agreement between the Lessee and the Lessor. If an ambiguity exists in this Lease, this lease may not be interpreted against the drafter.

21. SMOKE FREE ENVIRONMENT

The Lessee shall make all parts of the Premise smoke-free, and Lessee may not allow its employees or visitors to smoke in the Premise. "Smoke" means smoke from a lighted cigar, pipe, cigarette, any kind or variety of e-cigarette or vapor cigarette, or any other smokable product. Refer to Montana Clean Indoor Air Act, 50-40-101, et seq., MCA.

(The remainder of this page is intentionally left blank.)

The parties have entered into and executed this Lease on the dates stated below:

LESSOR

CITY MANAGER

By: _____ Date: _____

_____ Date: _____

Approved for legal content.
City Attorney

LESSEE

By: _____ Date: _____

Vicki Petry
Mountain Air