



Contract Number

96-741 A-5

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5252</u>
Contractor	<u>Virginia Dare Winery Business Centre Owners Association, Inc.</u>
Contractor Representative	<u>City Commercial Real Estate Service-Sean Bailey</u>
Telephone Number	<u>(909) 948-1662</u>
Contract Term	<u>1/1/93 – 9/30/25</u>
Original Contract Amount	<u>\$106,427.63103,507.00</u>
Amendment Amount	<u>\$ 43,914.00</u>
Total Contract Amount	<u>\$150,341.63147,421.00</u>
Cost Center	<u>1910002518</u>
GRC/PROJ/JOB No.	<u>38002840</u>
Internal Order No.	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County Flood Control District ("DISTRICT"), as lessor, Virginia Dare Winery Business Centre Owners Association, Inc. ("TENANT"), as lessee, have entered into a Lease Agreement, Contract No. 96-741, dated August 6, 1996, as amended by the First Amendment dated May 25, 1999, as amended by the Second Amendment dated April 5, 2005, as amended by the Third Amendment dated January 26, 2010, and as amended by the Fourth Amendment dated December 16, 2014, (collectively, the "Lease"), wherein the DISTRICT agreed to lease certain real property to TENANT and which Lease term expired on December 31, 2019 and has continued on a permitted month-to-month holdover; and,

WHEREAS, DISTRICT and TENANT now desire to amend the Lease to reflect a nine month holdover with DISTRICT's consent, the TENANT's exercise of the fifth of its seven (7) five-year options to extend the term of the Lease for the period of October 1, 2020 through September 30, 2025, adjust the annual rent, and amend certain other provisions of the Lease as more specifically set forth in this amendment ("Fifth Amendment").

NOW, THEREFORE, in consideration mutual covenants and conditions and the foregoing recitals which are incorporated herein by reference, the parties hereto agree the Lease is amended as follows:

1. Pursuant to **Paragraph 11, HOLDING OVER**, TENANT shall, with DISTRICT's express consent granted herein, occupy the Premises on a month-to-month term for the period from January 1, 2020 through September 30, 2020 in the amount of \$4,734.00 for the duration of the holdover term.

2. Effective October 1, 2020, pursuant to TENANT's exercise of its option under Paragraph 7., OPTION TO EXTEND TERM, DELETE in its entirety the existing Paragraph 4., TERM, and SUBSTITUTE therefore the following as a new Paragraph 4., TERM which shall read as follows:

"4. **TERM:** This Lease shall commence October 1, 2020 and terminate September 30, 2025 ("Fifth Extended Term")."

3. Effective October 1, 2020, DELETE in its entirety the existing Paragraph 5., RENT and SUBSTITUTE therefore the following as a new Paragraph 5., RENT which shall read as follows:

"5. **RENT:**

A. TENANT shall pay to DISTRICT an annual rental payments in advance during the Fifth Extended Term in the amounts as more specifically set forth below:

October 1, 2020 through September 30, 2021 – annual payment of \$7,380.00

October 1, 2021 through September 30, 2022 – annual payment of \$7,601.00

October 1, 2022 through September 30, 2023 – annual payment of \$7,829.00

October 1, 2023 through September 30, 2024 – annual payment of \$8,064.00

October 1, 2024 through September 30, 2025 – annual payment of \$8,306.00

If any annual rental payment or other sums due are not paid when due and payable, TENANT shall pay to DISTRICT an additional One Hundred and No/100 Dollars (\$100.00) for each annual rental payment or other sums due as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by TENANT. Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. Annual rental payments and other sums not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1½%) per month."

4. Effective October 1, 2020, DELETE in its entirety the existing Paragraph 6., ADJUSTMENTS TO RENT, and SUBSTITUTE therefore the following as a new Paragraph 6., which shall read as follows:

"6. **RESERVED:**"

5. Effective October 1, 2020, DELETE in its entirety the existing Paragraph 30., NOTICES, and SUBSTITUTE therefore the following as a new Paragraph 30., NOTICES which shall read as follows:

"30. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally by a reputable overnight courier service or sent by United States first-class mail, postage prepaid, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery by a reputable overnight courier service or if notice is sent by United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5pm local time shall be deemed delivered on the next business day.

DISTRICT's address: San Bernardino County Flood Control District
c/o Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

TENANT's address: Virginia Dare Business Center Owners Association, Inc.
c/o CityCom Real Estate Services
P. O. Box 548, 10722 Arrow Route, Suite 900
Rancho Cucamonga, CA 91729-0548"

6. Effective October 1, 2020, DELETE in its entirety the existing Paragraph 38., USE OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDS AND REQUIREMENTS, and SUBSTITUTE therefore the following as a new Paragraph 38., which shall read as follows:

"38. **RESERVED:**"

7. Effective October 1, 2020, DELETE in its entirety the existing Paragraph 39. SCHEDULE OF EXPENDITURE OF FEDERAL AWARDS, and SUBSTITUTE therefore the following as a new Paragraph 39., which shall read as follows:

"39. **RESERVED:**"

8. Effective October 1, 2020, ADD a new Paragraph 41., FORMER COUNTY OR DISTRICT OFFICIALS, which shall read as follows:

"41. **FORMER COUNTY OR DISTRICT OFFICIALS:** TENANT agrees to provide or has already provided information on former County of San Bernardino ("COUNTY") or DISTRICT administrative officials (as defined below) who are employed by or represent TENANT. The information provided includes a list of former COUNTY or DISTRICT administrative officials who terminated COUNTY or DISTRICT employment within the last five (5) years and who are now officers, principals, partners, associates, or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of TENANT. For purposes of this provision, "COUNTY or DISTRICT administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY or DISTRICT Administrative Officer or member of such officer's staff, COUNTY or DISTRICT department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit (See Exhibit "B", List of Former County or District Officials)."

9. Effective October 1, 2020, ADD a new Paragraph 42., PUBLIC RECORDS DISCLOSURE, which shall read as follows:

"42. **PUBLIC RECORDS DISCLOSURE; CONFIDENTIALITY:** All information received by the DISTRICT from the TENANT or any source concerning this Lease, including the Lease itself, may be treated by the DISTRICT as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). TENANT understands that although all materials received by the DISTRICT in connection with this Lease are intended for the exclusive use of the DISTRICT, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which TENANT has reasonably requested DISTRICT to hold in confidence is made to the DISTRICT, the DISTRICT shall notify the TENANT of the request and shall thereafter disclose the requested information unless the TENANT, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides DISTRICT a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the DISTRICT harmless in any/all actions brought to require disclosure. TENANT waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event DISTRICT fails to notify TENANT of any such disclosure request and/or releases any information concerning this Lease received from the TENANT or any other source."

10. Effective October 1, 2020, ADD a new Paragraph 43., ATTORNEYS' FEES AND COSTS, which shall read as follows:

"43. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the COUNTY, including such costs and attorneys' fees payable under Paragraph 13, INDEMNIFICATION, Paragraph 22, HAZARDOUS MATERIALS, and Paragraph 42, PUBLIC RECORDS DISCLOSURE."

11. All other provisions and terms of the Lease shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease and this Fifth Amendment, the terms and conditions of this Fifth Amendment shall control.

END OF FIFTH AMENDMENT

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**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

►
Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

**VIRGINIA DARE WINERY BUSINESS CENTRE
OWNERS ASSOCIATION, INC.**

By ► _____
(Authorized signature - sign in blue ink)

Name Veronica Speed
(Print or type name of person signing contract)

Title President
(Print or Type)

Dated: _____

Address P. O. Box 548,
10722 Arrow Route Suite 900
Rancho Cucamonga, CA 91729-0548

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Agnes I. Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►
Jim Miller, Real Property Manager, RESD

Date _____

EXHIBIT "B" - LIST OF FORMER COUNTY OR DISTRICT OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY or DISTRICT Administrative Official, the title/description of the Official's last position with the COUNTY or DISTRICT, the date the Official terminated COUNTY or DISTRICT employment, the Official's current employment and/or representative capacity with the TENANT, the date the Official entered TENANT's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

None

The undersigned hereby certifies that the information provided by TENANT n this Exhibit "B" is true, accurate, and complete.

VIRGINIA DARE WINERY BUSINESS CENTRE OWNERS ASSOCIATION, INC.

By: _____
Veronica Speed

Title: President

Date: _____