AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Second Amendment to Ground Lease Agreement; B.A.M.P., LLC; Lot 3B, Gold Basin Industrial Park; 4/1/13

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and B.A.M.P., LLC.

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
The current lease language is an administrative burden due to the rate, the timing of the CPI adjustment, that it bills in advance, and the interest rate is not consistent with other billing accounts with the County.

Fiscal Impact: Decrease of $2,214.63 current annual from prev. annual amt.

Submitted by: Ben Cowan **Submitter's Email Address:** bcowan@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

These changes provide consistency across all Industrial Park leasehold agreements.

Reviewed by: Lnienhueser Discharge Date: 7/3/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

ok db/6/13

Reviewed by: DBaumgarten Discharge Date: 7/5/2013 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 7/12/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 7/23/2013 Follow Up Agenda Date: N/A

Revised April 2013

constitute a month to month Lease (hereinafter the "Month-to-Month Holdover") with rent payable to Lessor at 150% of the Lease rate then in effect, otherwise subject to all of the terms and conditions of this Lease Agreement. The Month-to-Month Holdover is revocable by either party by giving notice of termination at least ten days prior to the end of any month.

3. Ground Rent. In consideration of this Lease Agreement, Lessee shall pay to Lessor Ground Rent for use of the Premises. Ground Rent shall be in the amount of $.08 per square foot for a total of Three Thousand Nine Hundred Seventy Four and 85/100 U.S. Dollars ($3,974.85) per calendar quarter. Ground Rent for the first calendar quarter shall be payable in advance and shall be due upon the full execution of this Lease Agreement. In addition, a prorated amount of Ground Rent shall be payable in advance which shall be calculated from the date the Lease Agreement is executed to the end of that calendar quarter. Thereafter, Ground Rent shall be due calendar quarterly and paid no later than by the first day of the calendar quarter. This Ground Rent payment requirement is not contingent upon receiving prior approval by the Gunnison County Planning Department of Lessee's application for proposed building or structure (hereinafter the "Improvements") or roadway or utility line(s) (hereinafter the "Infrastructure") to be installed and/or constructed upon the Premises. Ground Rent shall be adjusted annually by the Denver/Boulder CPI. Ground Rent shall be due and payable, whether or not Lessee receives a bill. Ground Rent shall be made payable to Gunnison County and shall be delivered to the County's Finance Director at Gunnison County Courthouse, 200 E. Virginia, Gunnison, CO 81230, or such other address as the Lessor may designate in writing from time to time.. Lessor shall attempt to notify Lessee in March of every calendar year of the Ground Rent Denver/Boulder CPI adjustment. Any portion of the Ground Rent not paid when due shall bear interest from the due date until paid at the rate of 15% per annum. Failure of the Lessor to notify Lessee of the Ground Rent due shall not waive the obligation for payment, nor shall such failure delay the due date for payment of the Ground Rent. Failure to timely pay the Ground Rent shall be a default event.

4. Inconvenience During Construction. Lessee recognizes that from time to time during the term of this Lease Agreement it may be necessary for the Lessor to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair related to development of the Industrial Park or other Lessor purposes which will require accommodation and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience Lessee in its operation at the Industrial Park. Lessee agrees that no liability shall attach to the Lessor, its commissioners, officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience or interruption; provided, however, Lessor agrees to use its best efforts to perform such activities in a manner and at such times that will minimize interference with Lessee's use and enjoyment of the Premises.

SECOND AMENDMENT TO GROUND LEASE AGREEMENT

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado entered into a Ground Lease Agreement dated June 1, 2009, with B.A.M.P., L.L.C., a Colorado limited liability company whose address is 202 East Tomichi Avenue, Gunnison, Colorado 81230; and

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado and B.A.M.P., L.L.C. further amended said Lease Agreement on October 5, 2010; and

WHEREAS, both parties to such agreement desire to amend the terms of the Ground Rent resulting in more convenient administration of the agreement; and

WHEREAS, such amendment shall replace Section 3. Ground Rent. in whole; and

NOW, THEREFORE, in consideration of the mutual agreements included herein, the sufficiency of which is hereby acknowledged, the parties agree to amend the Ground Lease Agreement dated June 1, 2009:

1. Section 3. Ground Rent. In consideration of this lease agreement, Lessee shall pay to Lessor ground rent ("Ground Rent") for use of the premises. Ground Rent shall be in the amount of $2,645 per acre per annum, payable in monthly installments. Payments shall be made by the end of the month following the then current month from invoice or other such notice from the County. Ground rent shall be due and payable, whether or not Lessee receives a bill. This ground rent requirement is not contingent upon receiving prior approval by the Gunnison County Community Development Department of Lessee's application of proposed building or structure (hereinafter the "Improvements" or roadway or utility line(s) (hereinafter the "Infrastructure") to be installed and/or constructed upon the Premises. Ground rent shall be adjusted from time to time by Resolution of the Board of County Commissioners. Ground rent shall be payable to Gunnison County and shall be delivered to the County's Finance Director at the Gunnison County Courthouse, 200 East Virginia Avenue, Gunnison, CO 81230, or other such address as the Lessor may designate in writing from time to time. Ground Rent shall be considered delinquent if not received by the end of the month following when the payment became due. Interest shall accrue on the delinquent payment at the rate of one percent (1%) per month on all material balances that are not reasonably disputed. Failure to timely pay the Ground Rent shall also be deemed a default event.

IN WITNESS WHEREOF, the parties have executed the Amendment to be effective as of April 1, 2013.

LESSOR:

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy County Clerk

LESSEE:

B.A.M.P., LLC,
a Colorado Limited Liability Company

By: _____
Daniel McKenna, Owner

ATTEST:

_____
Secretary