

FIRST AMENDMENT TO OFFICE LEASE

30534

THIS FIRST AMENDMENT TO OFFICE LEASE (this "First Amendment") is executed and entered into effective as of ~~September~~ ^{September 7}, 2009 (the "Effective Date") by and between BEHRINGER HARVARD DOWNTOWN PLAZA LP, a Delaware limited partnership ("Landlord") and CITY OF LONG BEACH, a municipal corporation ("Tenant").

RECITALS

A. Landlord and Tenant are parties to that certain Office Lease dated February 7, 2008 (the "Lease"). The Lease covers the Premises, which is 2,548 rentable square feet known as Suite 410 of the building known as Downtown Plaza located at 211 East Ocean Boulevard, Long Beach, California (the "Building").

B. Landlord and Tenant acknowledge that as of the Effective Date of this First Amendment, Tenant has not spent or otherwise utilized any portion of the Construction Allowance (as said term is defined in the Lease, and which the parties agree is in the amount of \$22,932).

C. Tenant has requested that it be allowed to use the amount of the Construction Allowance as a credit against Base Rent under the Lease, and Landlord hereby approves Tenant's request, subject to the terms and conditions of this First Amendment.

Accordingly, for good and valuable consideration which the parties acknowledge receiving, Landlord and Tenant agree as follows:

AGREEMENT

1. Recitals. The Recitals are incorporated into this First Amendment.
2. Application of Lease Terms. Capitalized terms used in this First Amendment and not defined herein shall have the meanings ascribed to them in the Lease.
3. Base Rent Credit. Provided that the Lease is then in full force and effect and there is no uncured breach or default by Tenant, Tenant shall be entitled to a Base Rent Credit (herein so called) in an amount equal to TWENTY THOUSAND ONE HUNDRED NINETY THREE AND NO/100 DOLLARS (\$20,193), (which credit is calculated as the \$22,932 Construction Allowance less the amount of Landlord's attorneys' fees incurred in connection with this First Amendment in the amount of \$2,739), which Base Rent Credit shall be applied against the Base Rent payments next coming due under the Lease following the Effective Date of this First Amendment, until the amount of the Base Rent Credit is exhausted. If the Lease should terminate or expire

for any reason without Tenant having received the entire Base Rent Credit as set forth herein, then Landlord shall have no obligation to provide Tenant any credit or offset for any remaining, unused balance of the Base Rent Credit. Tenant's right to apply the Base Rent Credit against Base Rent as set forth above shall be the sole means whereby Tenant shall receive, or be paid, the Base Rent Credit. Tenant's right to the Base Rent Credit is conditioned upon Tenant's full and timely performance of its obligations under the Lease. If Tenant defaults under or breaches any provisions of the Lease, then Tenant's right to the Base Rent Credit shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under the Lease, the full amount of the Base Rent Credit, or portion thereof, previously taken by Tenant.

4. Deletion of Construction Allowances and Work Letter. The Lease is hereby amended wherever necessary to delete the terms "Construction Allowance" and "Amortized Construction Allowance", wherever such terms appear in the Lease. The Lease is further amended to delete "EXHIBIT F – WORK LETTER" in its entirety. Tenant agrees and acknowledges that any improvements or betterments to the Premises shall be at Tenant's sole cost and expense, and shall be governed by the provisions of ARTICLE 8 entitled "Alterations."

5. Amendment of EXHIBIT E – OPTION TO TERMINATE. The second sentence of the second paragraph of Section (d) of EXHIBIT E is hereby modified to state in its entirety as follows:

"As used in this Exhibit, the term "Landlord's Costs" shall mean the sum of the following amounts: (i) the amount of the Base Rent Credit actually credited against Base Rent under the Lease, and (ii) all leasing and brokerage commissions paid by Landlord in connection with this Lease."

6. Brokers. Tenant warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this First Amendment other than Cushman & Wakefield of California, Inc. (Robert S. Garey) ("Tenant's Broker") and Cushman & Wakefield of California, Inc. (Robert L. Alperin) ("Landlord's Broker"). Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, costs, expenses or liabilities, including reasonable attorneys' fees, for commissions or other compensation claimed by any broker or agent other than Landlord's Broker with regard to this First Amendment as a result of any dealings with Tenant or claiming by or through Tenant.

7. Landlord's Address. Landlord's address for notice as set forth in Section 1.1(m) of the Lease is hereby modified to read in its entirety:

Behringer Harvard Downtown Plaza LP
15601 Dallas Parkway, Suite 600
Addison, Texas 75001
Attention: Lease Administration

with copy to: Behringer Harvard Downtown Plaza LP
c/o Property Manager
2041 Rosecrans Avenue, Suite 300
El Segundo, California 90245

With a copy of notices of default to:
Behringer Harvard REIT I, Inc.
15601 Dallas Parkway, Suite 600
Addison, Texas 75001
Attn: Chief Legal Officer

8. No Default. Tenant acknowledges that as of the date hereof, Landlord has performed all of its obligations under the Lease, Landlord is not in default under the Lease, and Tenant has no claims, counterclaims, set-offs or defenses against Landlord arising out of the Lease or relating thereto.

9. Lender Approval. If a mortgagee of the Building has the right to consent to this First Amendment and fails to give such consent, Landlord shall have the right at its sole option, to terminate and cancel this First Amendment. Such option shall be exercisable by Landlord by written notice to Tenant of such termination, whereupon this First Amendment shall be deemed cancelled and terminated, and both Landlord and Tenant shall be relieved of any and all liabilities and obligations hereunder; provided, however, that the Lease shall remain in full force and effect.

10. Attorneys' Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this First Amendment (including without limitation any claims in a bankruptcy or assignment for the benefit of creditors), the prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' fees, costs and expenditures) from the non-prevailing party.

11. Counterparts. This First Amendment may be executed in any number of counterparts, all of which together shall constitute a single contract, and each of such counterparts shall for all purposes be deemed to be an original. This First Amendment may be executed and delivered by fax (telecopier); any original signatures that are initially delivered by fax shall be physically delivered with reasonable promptness thereafter.

12. Miscellaneous. As amended hereby, the Lease shall continue in full force and effect and is in all respects ratified and confirmed hereby, provided, however, that nothing in this First Amendment shall be deemed a waiver or release of any unperformed obligations of Tenant under the Lease, including, without limitation, any delinquent rentals or other delinquent payments payable by Tenant under the Lease.

13. Confidentiality. Tenant will not record this First Amendment or a memorandum of this First Amendment without Landlord's written consent. Tenant will keep the terms of this First Amendment confidential and, unless required by law, may not disclose the terms of this First Amendment to anyone other than Tenant's Affiliates to the extent necessary to Tenant's business.

Landlord and Tenant have executed and delivered this First Amendment to Office Lease effective as of the date and year first written above.

CITY OF LONG BEACH,
A MUNICIPAL CORPORATION

BEHRINGER HARVARD DOWNTOWN
PLAZA LP, A DELAWARE LIMITED
PARTNERSHIP

By:  Assistant City Manager

Print: Mark H. West

Title: City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

By: Behringer Harvard Downtown Plaza
GP, LLC, a Delaware limited
liability company, its general partner

By: 

Print: ROBERT H. THOMAS, JR.

Title: VICE PRESIDENT

APPROVED AS TO FORM AND RETURNED:

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM

9-9, 2009

 ROBERT E. SHANNON, City Attorney

By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY