

23828

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (the "Fourth Amendment") is entered into on the 31ST day of MAY, 2011, by and between **BEHRINGER HARVARD DOWNTOWN PLAZA LP**, a Delaware limited partnership, ("Landlord"), and **CITY OF LONG BEACH**, a municipal corporation ("Tenant").

RECITALS

A. WHC-One Investors, L.P., (the "Original Landlord") and Tenant entered into that certain Lease Agreement 23828 dated January 1, 1995, (the "Original Lease"), covering 15,369 square feet of office space, more or less, commonly known as Suite 500 (the "Premises") of the building known as Downtown Plaza and located at 211 East Ocean Boulevard, Long Beach, California (the "Building"); and

B. WMP II Real Estate Limited Partnership ("WMP"), successor to Original Landlord and Tenant entered into that certain First Amendment to Lease No. 23828 dated June 21, 1999 (the "First Amendment"), whereby, among other things the Term of the Lease was extended to expire on December 31, 2004; and

C. Pacifica Downtown Plaza, L.P. ("Pacifica"), as successor to WMP and Tenant entered into that certain Second Amendment to Lease No. 23828 dated November 12, 2004 (the "Second Amendment"), whereby, among other things the Term of the Lease was extended to expire on December 31, 2009; and

D. Landlord, as successor by assignment from Pacifica, and Tenant entered into that certain Third Amendment to Lease No. 23828 dated September 2, 2010 (the "Third Amendment"), whereby, among other things the Term of the Lease was extended to expire on August 31, 2011; and

E. The Original Lease, First Amendment, Second Amendment and Third Amendment are collectively referred to herein as the "Lease"; and

F. Landlord and Tenant desire to extend the Term and otherwise amend the Lease as set forth in this Fourth Amendment.

Accordingly, for good and valuable consideration, which the parties acknowledge receiving, Landlord and Tenant (collectively, the "Parties") hereby agree as follows:

AGREEMENT

1. The Parties hereby confirm the truth and accuracy of the foregoing recitals, and the same are hereby incorporated into this Fourth Amendment.

2. Unless otherwise defined herein, the capitalized terms used in this Fourth Amendment shall have the same meaning as set forth in the Lease Agreement.

3. The Term shall be extended for a period (the "Fourth Amendment Extended Term"), to begin on September 1, 2011 and to expire at 11:59 p.m. local Long Beach, California time on November 30, 2011 (the "Expiration Date") unless sooner terminated or extended by written agreement of the Parties. Tenant shall have no rights to extend or renew the Term beyond the Expiration Date, and any provision of the Lease to the contrary is hereby deleted.

4. During the Fourth Amendment Extended Term, the Base Rent shall be payable monthly in the amount of Twenty Seven Thousand Six Hundred Sixty Four and 20/100 Dollars (\$27,664.20). The monthly installments of Base Rent shall be payable by Tenant to Landlord on the first day of every month in accordance with the Lease.

5. During the Fourth Amendment Extended Term, the term "Base Year", as set forth in Section 5 of the Third Amendment, shall remain the calendar year 2010.

6. Tenant accepts the Premises for the Term, in its "as-is, where-is" condition, and any improvements to the Premises shall be at Tenant's sole cost.

7. OFAC Certification.

A. Tenant certifies that:

(i) It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

(ii) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

B. Indemnification. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

8. Tenant hereby represents and warrants to Landlord that Tenant has dealt with no real estate broker or agent in connection with this Fourth Amendment except for Cushman & Wakefield of California, Inc. ("Broker"). Tenant hereby agrees to indemnify and save Landlord harmless from any claim for a commission or other compensation on account of this Fourth Amendment or the Fourth Amendment Extended Term asserted against Landlord by any other real estate broker or agent with whom Tenant has dealt in connection with this Agreement, including reasonable attorney's fees. In connection with this Fourth Amendment, Landlord shall pay Broker a commission as outlined per a separate agreement.

9. Tenant hereby represents and warrants to Landlord that (i) as of the date hereof, Tenant is the legal and equitable owner of the lessee's entire interest in, to and under the Lease, has not previously assigned the Lease, and has full power and authority to execute and deliver this Fourth Amendment. Landlord hereby represents and warrants to Tenant that (i) as of the date hereof, Landlord is the legal and equitable owner of the Landlord's entire interest in, to and under the Lease, has not previously assigned the Lease (other than as security for any indebtedness), and has full power and authority to execute and deliver this Fourth Amendment.

10. This Fourth Amendment contains the entire agreement between the Parties hereto with respect to the subject matter of this Fourth Amendment, and supersedes all prior understandings, agreements and representations, if any, with respect to such subject matter except for such provisions of the Lease not affected by this Fourth Amendment.

11. 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.

12. The terms, covenants, conditions and provisions contained in this Fourth Amendment shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective successors and permitted assigns. Landlord and Tenant hereby ratify and confirm the terms and provisions of the Lease, as amended hereby, provided, however, that nothing in this Fourth 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. This Fourth Amendment shall be incorporated into the Lease for all purposes. Should a conflict arise between the terms of this Fourth Amendment and those of the Lease, the terms of this Fourth Amendment shall be controlling.

13. Unless amended herein, all other provisions of the Lease shall continue in full force and effect and are in all respects ratified and confirmed hereby, provided, however, that nothing in this Fourth 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.

14. If a mortgagee of the Building has the right to consent to this Fourth Amendment and fails to give such consent, Landlord shall have the right, at its sole option, to terminate and cancel this Fourth Amendment. Such option shall be exercisable by Landlord by written notice to Tenant of such termination, whereupon this Fourth 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.

15. This Fourth Amendment and all exhibits incorporated herein shall become binding on Landlord only upon execution and delivery thereof by Landlord. Until such execution and delivery, Tenant shall have no rights under this Fourth Amendment.

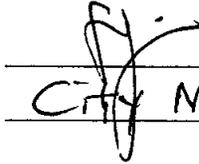
16. This Fourth Amendment may be executed in multiple counterparts, each of which shall be fully effective as an original, and which together shall constitute only one (1) instrument.

EXECUTED effective as of the date and year first above written.

TENANT: **CITY OF LONG BEACH,**
a municipal corporation

Assistant City Manager

By:



EXECUTED PURSUANT
TO SECTION 901 OF
THE CITY CHARTER.

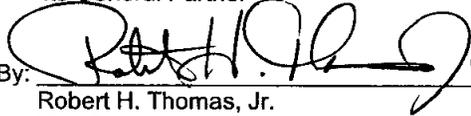
Title:

City Manager

LANDLORD: **BEHRINGER HARVARD DOWNTOWN PLAZA LP,**
a Delaware limited partnership

By: **BEHRINGER HARVARD DOWNTOWN PLAZA GP, LLC,**
a Delaware limited liability company,
Its General Partner

By:



Robert H. Thomas, Jr.
Vice President

APPROVED AS TO FORM

5-16 2011
ROBERT E. SHANNON, City Attorney



RICHARD ANTHONY
CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 10th day of May, 2011, by Robert H. Thomas, Jr., Vice President of Behringer Harvard Downtown Plaza GP, LLC, a Delaware limited liability company, as general partner of and on behalf of Behringer Harvard Downtown Plaza LP, a Delaware limited partnership.

Tamara Lee Ann Weaver

Notary Public in and for the State of Texas

Tamara Lee Ann Weaver
Printed or Typed Name of Notary

My Commission Expires: July 5, 2014

