

30102

SECOND AMENDMENT TO LEASE NO. 30102

THIS SECOND AMENDMENT TO LEASE NO. 30102 (this "Amendment") is made and entered into as of the 29th day of March, 2020 (the "Effective Date"), by and between **LONG BEACH AIRPORT HANGAR OWNER LLC**, a Delaware limited liability company ("Lessor"), and the **CITY OF LONG BEACH**, a municipal corporation ("Lessee").

RECITALS

- A. AP-Long Beach Airport LLC, a Delaware limited liability company ("**Original Lessor**"), and Lessee entered into that certain AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease dated as of May 17, 2007 (the "**Original Lease**"). The Original Lease was amended by that certain First Amendment to Lease No. 30102 by and between Original Lessor and Lessee dated as of September 21, 2011 ("**First Amendment**," and together with the Original Lease, the "**Lease**"). Lessor is successor-in-interest to Original Lessor.
- B. Pursuant to the Lease, Lessor leases to Lessee space containing approximately 128,871 rentable square feet (the "**Original Premises**") in the building located at 3205 Lakewood Boulevard, Long Beach, California (the "**Building**"), as more particularly described in the Lease.
- C. Lessee has requested that additional space containing approximately 43,574 rentable square feet as depicted on **Exhibit A** attached hereto (the "**Expansion Space**") be added to the Original Premises and that the Lease be appropriately amended, and Lessor is willing to do the same on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Expansion.**

(a) As of the Effective Date (the "**Expansion Effective Date**"), the Premises, as defined in the Lease, is increased from approximately 128,871 rentable square feet to approximately 172,445 rentable square feet by the addition of the Expansion Space. From and after the Expansion Effective Date through and including the Expansion Expiration Date, the Original Premises and the Expansion Space, collectively, shall be deemed the Premises, as defined in the Lease. The "**Expansion Expiration Date**" shall be March 31, 2021, unless otherwise extended pursuant to this Amendment or unless earlier terminated pursuant to the Lease (as amended hereby, the "**Amended Lease**"). The period from the Expansion Effective Date through and including the Expansion Expiration Date shall be referred to herein as the "**Expansion Space Term**". Lessee's rights and obligations regarding the Expansion Space during the Expansion Space Term are subject to all the terms and conditions of the Lease except as expressly modified herein and except that Lessee shall not be entitled to receive any allowances, abatements or other financial concessions (even if granted with respect to the Original Premises) unless such concessions are expressly provided for herein with respect to the Expansion Space.

(b) Lessor shall deliver possession of the Expansion Space to Lessee upon Lessee's delivery to Lessor of evidence of all required insurance with respect to the Expansion Space (and

fulfillment of any other administrative requirements reasonably required by Lessor). If for any reason Lessor is delayed in delivering possession of the Expansion Space by such date, this Amendment will not be void or voidable, nor will Lessor be liable to Lessee for any loss or damage resulting therefrom.

2. **Base Rent.** In addition to Lessee's obligation to pay Base Rent for the Original Premises as and when due under the Lease, commencing on June 1, 2020, Lessee shall pay monthly installments of \$26,144.40 each ("**Expansion Monthly Base Rent**") with respect to the Expansion Space during the Expansion Space Term, subject to adjustment during any Extension Term as set forth below. All such Expansion Monthly Base Rent shall be payable by Lessee in accordance with the terms of the Lease; except that the first full month's monthly Base Rent to become due shall be paid within three (3) weeks of the Effective Date.

3. **Lessee's Percentage Share of Project Operating Expenses.** Notwithstanding anything to the contrary contained in the Lease, throughout the Term, Lessee shall continue to pay Lessee's Percentage Share of Project Operating Expenses for the Original Premises as set forth in the Lease. In addition to the foregoing obligation, commencing on June 1, 2020, and continuing thereafter for the duration of the Expansion Space Term, Lessee shall pay additional monthly installments of \$19,608.30 each with respect to the Expansion Space ("**Expansion Space Additional Rent**"), subject to adjustment during any Extension Term as set forth below.

4. **Extension.** Provided (i) Lessee is not in default beyond applicable notice and cure periods under the terms of the Amended Lease at the time the Extension Option (as defined below) is exercised or at the commencement of the Extension Term (as defined below), (ii) Lessee is open and occupying the entire Premises, and (iii) a default under the Amended Lease has not occurred more than one (1) time in any twelve (12) month period for nonpayment of monetary obligations, Lessee shall have the one-time option to renew the Expansion Space Term (the "**Extension Option**") for one (1) additional period of twelve (12) months ("**Extension Term**"). The Extension Term shall be on all the terms and conditions of this Amended Lease, except that (a) Lessor shall have no additional obligation for free rent, allowances, leasehold improvements or for any other Lessee inducements for the Extension Term, (b) Expansion Monthly Base Rent for the Extension Term shall be \$26,928.73 per month, and (c) Expansion Space Additional Rent during the Extension Term shall be increased by 5% (for avoidance of doubt, Lessee's Percentage Share of Project Operating Expenses for the Original Premises shall remain unaffected and shall continue to be calculated and paid separately). There shall be no additional extension terms beyond the Extension Term set forth herein. Lessee must exercise the Extension Option, if at all, by giving Lessor written notice (the "**Extension Notice**") of its election to do so no later than 90, nor earlier than 180, days prior to the end of the Extended Term. Any notice not given in a timely manner shall be void, and Lessee shall be deemed to have waived its Extension Option. The Extension Option set forth herein is personal to the original Lessee named in this Amendment and shall not be included in any assignment of the Amended Lease.

5. **Lessee's Percentage Share Calculation.** For avoidance of doubt, Section 4.4(b) of the Lease shall continue to govern calculation of Lessee's Percentage Share (both respect to the Original Premises and the Expansion Space).

6. **Permitted Use.** Unless otherwise permitted by Lessor in writing, Lessee shall use the Expansion Space solely for health storage, emergency response, COVID-19 related storage, emergency Local Distribution Site (LDS) for Los Angeles County, or for the same use as Lessee uses the Original Premises as of the Effective Date, in each case all in compliance with the other provisions of the Amended Lease and applicable law.

7. **Signs.** Lessee, at Lessee's sole cost, may (a) modify the existing monument sign for the Building and (b) place an identity sign at the entrance of the Expansion Space, provided Lessee has obtained Lessor's prior written consent to such signs and all signs comply with all Applicable Requirements and the terms of the Lease.

8. **Access.** Subject to factors beyond Lessor's control and subject to the other provisions of the Amended Lease, Lessee shall have access to the Premises and entry access to the Building twenty-four (24) hours per day, seven (7) days per week year round.

9. **Improvements to Expansion Space.** Lessee has inspected the Expansion Space and agrees to accept the same "as is" without any agreements, representations, understandings or obligations on the part of Lessor to perform any alterations, repairs or improvements thereto. Notwithstanding anything in the Lease to the contrary, Lessee shall not make any Utility Installations or Alterations to the Expansion Space without the prior written consent of Lessor, which Lessor may withhold in its sole and absolute discretion; provided, however that Lessee may install electrical distribution equipment for service to refrigeration units, at its sole cost and expense and in accordance with all other provisions of the Lease, upon Lessor's review and approval of plans for such installation, which approval will not be unreasonably withheld.

10. **Parking.** During the Expansion Space Term, Lessor, at no additional cost to Lessee, shall provide an additional 44 automobile parking spaces for use by Lessee's patrons, visitors, and employees, and which spaces Lessor may specifically designate from time to time in Lessor's discretion.

11. **Statements For Rent Payments.** For any rent statements for the Expansion Premises, Lessor shall invoice Tenant separately as follows: City of Long Beach, Department of Health and Human Services, 2525 Grand Avenue, Long Beach, California 90815.

12. **Surrender of Expansion Space.** Upon the Expansion Expiration Date, Lessee shall surrender the Expansion Space in the condition required by the Lease with respect to the Premises generally upon the expiration or termination of the Lease.

13. **Non-Discrimination.** Lessor agrees, subject to applicable laws, rules and regulations, that no person shall be subject to discrimination in the performance of the Amended Lease on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, AIDS, HIV status, age, disability, handicap, or Vietnam Era veteran status. Lessor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any of these bases, including but not limited to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

14. **California Accessibility Disclosure.** For purposes of Section 1938(a) of the California Civil Code, Lessor hereby discloses to Lessee, and Lessee hereby acknowledges, that the Expansion Space has not undergone inspection by a Certified Access Specialist (CASp). In addition, the following notice is hereby provided pursuant to Section 1938(e) of the California Civil Code: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of

the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of and in connection with such notice: (i) Lessee, having read such notice and understanding Lessee's right to request and obtain a CASp inspection and with advice of counsel, hereby elects not to obtain such CASp inspection and forever waives its rights to obtain a CASp inspection with respect to the Expansion Space, Building and/or Project to the extent permitted by applicable laws now or hereafter in effect; and (ii) if the waiver set forth in clause (i) hereinabove is not enforceable pursuant to applicable laws now or hereafter in effect, then Lessor and Lessee hereby agree as follows (which constitute the mutual agreement of the parties as to the matters described in the last sentence of the foregoing notice): (A) Lessee shall have the one-time right to request for and obtain a CASp inspection, which request must be made, if at all, in a written notice delivered by Lessee to Lessor on or before the Expansion Effective Date; (B) any CASp inspection timely requested by Lessee shall be conducted (1) between the hours of 9:00 a.m. and 5:00 p.m. on any business day, (2) only after ten (10) days' prior written notice to Lessor of the date of such CASp inspection, (3) in a professional manner by a CASp designated by Lessor and without any testing that would damage the Expansion Space, Building or Project in any way, and (4) at Lessee's sole cost and expense, including, without limitation, Lessee's payment of the fee for such CASp inspection, the fee for any reports prepared by the CASp in connection with such CASp inspection (collectively, the "**CASp Reports**") and all other costs and expenses in connection therewith; (C) Lessee shall deliver a copy of any CASp Reports to Lessor within two (2) business days after Lessee's receipt thereof; (D) Lessee, at its sole cost and expense, shall be responsible for making any improvements, alterations, modifications and/or repairs to or within the Expansion Space to correct violations of construction-related accessibility standards including, without limitation, any violations disclosed by such CASp inspection; and (E) if such CASp inspection identifies any improvements, alterations, modifications and/or repairs necessary to correct violations of construction-related accessibility standards relating to those items of the Building and Project located outside the Expansion Space that are Lessor's obligation to repair as set forth in the Lease, then Lessor shall perform such improvements, alterations, modifications and/or repairs as and to the extent required by applicable laws to correct such violations, and the payment for such improvements, alterations, modification and/or repairs shall be as set forth in the Lease.

15. Miscellaneous.

(a) This Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Lessee be entitled to any rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided to Lessee in connection with entering into the Lease, unless specifically set forth in this Amendment. Except as otherwise expressly set forth herein, Lessee acknowledges that it has no termination or cancellation options, options to extend, options to renew, rights of first offer or rights of first refusal pursuant to the Lease, all of which are hereby extinguished to the extent they existed as of the date of this Amendment.

(b) Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect.

(c) In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control.

(d) Submission of this Amendment by Lessor is not an offer to enter into this Amendment but rather is a solicitation for such an offer by Lessee. Lessor shall not be bound by this Amendment until Lessor has executed and delivered the same to Lessee.

(e) The initially capitalized defined terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.

(f) Other than Cushman & Wakefield of California, Inc. ("**Lessee's Broker**"), Lessee hereby represents to Lessor that Lessee has dealt with no broker in connection with this Amendment. Lessee agrees to indemnify and hold Lessor, its members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents harmless from all claims of any brokers, other than Lessee's Broker, claiming to have represented Lessee in connection with this Amendment. Other than CBRE ("**Lessor's Broker**"), Lessor hereby represents to Lessee that Lessor has dealt with no broker in connection with this Amendment. Lessor agrees to indemnify and hold Lessee, its members, principals, beneficiaries, partners, officers, directors, employees, and agents, and the respective principals and members of any such agents harmless from all claims of any brokers, other than Lessor's Broker, claiming to have represented Lessor in connection with this Amendment. Lessor, at Lessor's sole cost, shall pay the commissions due to Lessor's Broker pursuant to a separate agreement; Lessee's Broker shall be compensated pursuant to its agreement with Lessor's Broker, if any.

(g) Lessee hereby represents and warrants to Lessor that, as of the date of this Amendment, (i) Lessee is in full compliance with all terms, covenants and conditions of the Lease, (ii) that there are no breaches or defaults under the Lease by Lessor or Lessee, (iii) that Lessee knows of no events or circumstances which, given the passage of time or notice or both, would constitute a default under the Lease by either Lessor or Lessee, and (iv) that there are no events, conditions or circumstances currently existing that could confer upon Lessee the right to seek or obtain any offset against, deduction from, reduction of or abatement of any Rent required to be made by Lessee under the Lease or that could give Lessee the right to terminate the Lease.

(h) Any obligation or liability whatsoever of Lessor which may arise at any time under the Amended Lease, or any obligation or liability which may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of, its trustees, directors, shareholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

(i) This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Amendment.

(j) Lessor and Lessee each (i) have agreed to permit the use from time to time, where appropriate, of facsimile or other electronic signatures in order to expedite the transaction contemplated by this Amendment, (ii) intend to be bound by its respective facsimile or other electronic signature, (iii) are aware that the other will rely on the facsimile or other electronically transmitted signature, and (iv) acknowledge such reliance and waives any defenses to the enforcement of this Amendment and the documents affecting the transaction contemplated by this Amendment based on the fact that a signature was sent by facsimile or electronic transmission only.

16. **Approvals.** The effectiveness of this Amendment is specifically conditioned upon written approval by the City of Long Beach. Lessee agrees to assist Lessor in securing any consent or approvals to this Amendment, if any, required by the Long Beach Municipal Airport.

[SIGNATURES ARE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Amendment as of the day and year first above written.

LESSOR:

LONG BEACH AIRPORT HANGAR OWNER LLC,
a Delaware limited liability company

By: Jackie Hamilton David Prince
Name: Jackie Hamilton and David Prince
Title: President / Secretary

LESSEE:

CITY OF LONG BEACH,
a municipal corporation

By: Rebecca G. Garner
Name: Rebecca Garner
Title: Assistant City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

The foregoing Amendment is hereby approved as to form
this _____ day of March, 2020.

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

3.23.20.20
CHARLES PARKIN, City Attorney
By: [Signature]
**RICHARD ANTHONY
DEPUTY CITY ATTORNEY**

Exhibit A
Expansion Space

