

34170

SECOND AMENDMENT TO LEASE
-EXTENSION-

This SECOND AMENDMENT TO LEASE ("Second Amendment") is made and entered into as of April 20, 2023, by and between 4811 Airport Plaza, LLC, a Delaware limited liability company ("Landlord"), and City of Long Beach, a municipal corporation ("Tenant").

RECITALS:

A. Landlord and Tenant entered into that certain Office Lease dated as of February 1, 2016 ("Original Lease"), as amended by that certain First Amendment to Lease dated as of September 13, 2019 ("First Amendment"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain office space located in that certain building located at 4811 Airport Plaza Drive, Long Beach, CA 90815 (the "Building"). The Original Lease and First Amendment shall be collectively referred to herein as the "Lease."

B. By this Second Amendment, Tenant desires to exercise its option to extend the Lease Term pursuant to Section 6 of the Addendum of the Original Lease and, in connection therewith, Landlord and Tenant desire to provide for such extension and to otherwise modify the Lease as provided herein.

C. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

1. **The Existing Premises.** Landlord and Tenant hereby acknowledge that pursuant to the Lease, Tenant currently leases from Landlord that certain office space in the Building containing a total of approximately 22,511 rentable square feet located on the first (1st) and second (2nd) floors of the Building and commonly known as Suites 110, 120 and 200 ("Premises"), as further described in the Lease. Landlord and Tenant acknowledge and agree that the Rentable Area of the Premises was re-measured and increased by approximately 377 rentable square feet. Therefore, effective on August 1, 2023, the Rentable Area of the Premises shall become 22,888 rentable square feet. The term "rentable square feet" shall mean rentable area calculated pursuant to Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-2017.

2. **Extended Lease Term.** The Lease Term shall be extended for sixty (60) months, to commence on August 1, 2023 ("New Commencement Date") and terminate on July 31, 2028 ("New Expiration Date"). The period from the New Commencement Date through the New Expiration Date specified above, shall be referred to herein as the "Extended Term."

3. **Base Rent for Premises.** The monthly installment of Base Rent payable to Landlord ("Base Rent") for the first twelve (12) months of the Extended Term for the Premises shall be \$55,151.95 per month (approximately \$2.41 per rentable square foot per month) and thereafter the monthly installment of Base Rent shall increase annually by three percent (3%). Thus, the monthly installment of Base Rent shall be as follows:

<i>Months</i>	<i>Monthly Installment of Base Rent</i>
1 – 12	\$55,151.95
13 – 24	\$56,806.51
25 – 36	\$58,510.70
37 – 48	\$60,266.02
49 – 60	\$62,074.01

4. **Abatement Provisions.** Subject to the terms and conditions in Section 15.10 of the Original Lease, Landlord grants to Tenant a total credit against the monthly installment of Base Rent for the following five (5) months of the Extended Term: first (1st) month, thirteenth (13th) month, twenty-fifth (25th) month, thirty-seventh (37th) month, and forty-ninth (49th) month.

5. **Base Year.** Effective as of the New Commencement Date, the term “Base Year” shall mean calendar year 2023. Notwithstanding the foregoing or anything in the Lease to the contrary, the Base Rent shall not be increased by the Tax and Operating Expense Adjustment for the first twelve (12) months of the Extended Term.

6. **Tenant's Percentage Share.** Effective as the New Commencement Date, the term “Tenant's Percentage Share” for purposes of calculating Tenant's share of Operating Expenses and Property Taxes for the Premises shall mean Eighteen and Twenty-Six Hundredths percent (18.26%) based on the Building being approximately 125,354 rentable square feet.

7. **Option to Extend Lease Term.** Tenant hereby acknowledges and agrees that it has no remaining options to extend the Lease Term beyond the New Expiration Date except as expressly set forth in this Section 7. Provided Tenant is not in default under any term or provision contained in the Lease, as amended hereby, beyond any applicable notice and cure period, and is in possession of the Premises at the time Tenant exercises its option, Tenant shall have one (1) option to extend the Lease Term (“Extension Option”) for a period of five (5) years (“Option Term”) for all of the space then under the Lease under the same terms and conditions except for the monthly installment of Base Rent. If Tenant wishes to exercise the Extension Option, Tenant shall deliver written notice to Landlord no less than nine (9) months prior to the expiration of the Extended Term (“Exercise Notice”). If Tenant fails to timely deliver the Exercise Notice, Tenant shall be considered to have elected not to exercise the Extension Option.

- a. The monthly installment of Base Rent payable during the Option Term shall be the fair market rental rate for the Premises (based on comparable space in the same locality and taking into account any rent abatement, tenant improvement allowances or other monetary concessions generally available with respect to such comparable spaces) (the “Fair Market Value”) as of the date of the Exercise Notice. The Base Year for the Option Term shall adjust to the calendar year the Option Term commences. Except for Base Rent and Base Year, all of the terms and conditions of the Lease shall remain the same and shall remain in full force and effect throughout the Option Term; provided, however, that any free rent, improvement allowances, moving allowances, lease assumption payments, plan design allowances (or payments), expansion options, opportunity rights or other similar concessions provided for in the Lease shall not apply during any Option Term. The final Base Rent rate for the Option Term as determined herein shall be subject to the approval of Tenant's City Council. Within thirty (30) days of Tenant's delivery to Landlord of the Exercise Notice, each party shall deliver to the other a proposal containing the Fair Market Value of the Premises and escalations that the submitting party believes to be correct (each, an “Extension Proposal”). If, on or before the date which is thirty (30) days after delivery of the Extension Proposals, Landlord and

Tenant, after negotiating in good faith, are unable to agree on the Fair Market Value and escalations for the Option Term, then Tenant shall elect to either (a) withdraw its Exercise Notice, or (b) arbitrate Fair Market Value as follows:

- i. Within ten (10) days of Tenant's notice to Landlord of its election to arbitrate the Fair Market Value of the Premises and escalations for the Option Term, Landlord and Tenant shall meet and make a good faith attempt to mutually appoint a single Arbitrator (defined below) to determine the Fair Market Value and escalations. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within ten (10) days after the meeting, select an Arbitrator. The two Arbitrators so appointed shall select either Landlord's or Tenant's Extension Proposal, or, if the two proposals are within five percent (5%) of each other, the two proposals shall be averaged and the resultant amount shall be the Fair Market Value. If the two proposals are not within five percent (5%) of each other and the Arbitrators cannot agree on the selection of one proposal, the two Arbitrators shall, within five (5) days, appoint a third Arbitrator. If the two Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon five (5) days prior written notice to the other party of such intent. The decision of the Arbitrator(s) shall be made within thirty (30) days after the appointment of a single Arbitrator, the two Arbitrators or the third Arbitrator, as applicable, which decision shall to be select either Landlord's or Tenant's Extension Proposal.
 - ii. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Fair Market Value and escalations are not determined by the first day of the Option Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Option Term until such determination is made. After the determination of the Fair Market Value and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Fair Market Value and escalations for the Option Term.
 - iii. An "Arbitrator" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than ten (10) years of experience in the appraisal of improved office space in the greater Los Angeles area, or (B) a licensed commercial real estate broker with not less than fifteen (15) years' experience representing landlords and/or tenants in the leasing of office space in the greater Los Angeles area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.
- b. The rights contained in this Section 7 shall be personal to the Tenant expressly named in this Second Amendment and may be exercised only by this Tenant (and not any assignee, sublessee, or other transferee of this Tenant's interest in the Lease) and only if this Tenant occupies the entire Premises as of the date it exercises the Extension Option in accordance with the terms of this section.

8. **Right of First Refusal.** The parties acknowledge and agree that during the Extended Term, Tenant shall continue to have the ROFR set forth in Section 8 of the Addendum to the Original Lease.

9. **Early Termination Option.** Section 12 of the Addendum to the Original Lease is hereby deleted and of no further force or effect. Provided Tenant is not in default under any term or provision contained in the Lease, as amended hereby, beyond any applicable notice and cure period, Tenant shall have the ongoing option to terminate the Lease ("**Early Termination Option**") exercisable at any time after the last day of the thirty-sixth (36th) month of the Extended Term, by giving no less than one hundred eighty (180) days' prior written notice to Landlord of such intent ("**Early Termination Notice**"). The Early Termination Notice must set forth the date, at least one hundred eighty (180) days after the last day of the thirty-sixth (36th) month of the Extended Term and Landlord's actual receipt of the Early Termination Notice, on which Tenant wishes to terminate the Lease ("**Early Termination Date**"). If Tenant timely and properly exercises the Early Termination Option, the Lease shall expire on the Early Termination Date with the same force and effect as if such date were the stated New Expiration Date and Landlord and Tenant shall have no further obligations under the Lease after the Early Termination Date except for any obligations or liabilities that explicitly survive termination as set forth in the Lease.

- a. In the event that such Early Termination Option is exercised, Tenant shall pay to Landlord a "**Termination Fee**" in an amount equivalent to the sum of the unamortized portion of (i) the TI Allowance provided pursuant to Section 10 of this Second Amendment below, (ii) the rent abatement provided pursuant to Section 4 of this Second Amendment, (iii) the brokerage commissions paid and arising from this Second Amendment, and (iv) any legal fees incurred and paid by Landlord in connection with this Second Amendment. For purposes of calculating the Termination Fee, Landlord's costs described above shall be amortized over the sixty (60) months of the Extended Term on a straight line basis using an interest rate of six percent (6%) per annum. Tenant shall pay the Termination Fee to Landlord within ninety (90) days after delivery of the Early Termination Notice. The failure to timely give the Early Termination Notice or pay the Termination Fee by Tenant shall render any such Early Termination Notice null and void, and Tenant shall be required to give a new Early Termination Notice to exercise the Early Termination Option.
- b. In the event Tenant exercises the Extension Option in accordance with Section 7 of this Second Amendment above, the Early Termination Option shall continue to apply during the Option Term such that it shall be exercisable at any time after the last day of the thirty-sixth (36th) month of the Option Term by giving an Early Termination Notice at least one hundred eighty (180) days prior to the effective Early Termination Date, and subject to all of the other terms and conditions set forth in this Section 9. For the avoidance of doubt, such Early Termination Option may not be exercised during the first thirty-six (36) months of the Option Term.
- c. The rights contained in this Section 9 shall be personal to the Tenant expressly named in this Second Amendment and may be exercised only by this Tenant (and not any assignee, sublessee, or other transferee of this Tenant's interest in the Lease) and only if this Tenant occupies the entire Premises as of the date it exercises the Early Termination Option in accordance with the terms of this section.

10. **Tenant Improvement Allowance.** Tenant agrees to accept the Premises in its "AS-IS" condition during the Extended Term. Subject to the terms and conditions in Section 15.10 of the Original

Lease, Tenant shall be entitled to a tenant improvement allowance of Four Hundred Fifty-Seven Thousand Seven Hundred Sixty and 00/100 Dollars (\$457,760.00) ("TI Allowance") to perform Alterations in the Premises in accordance with the terms and conditions set forth in Article IX of the Original Lease. Upon completion of any such Alterations, but no later than the last day of the twenty-fourth (24th) month of the Extended Term, Tenant shall submit to Landlord a written request for disbursement of all or a portion of the TI Allowance ("Request"), which Request shall include (i) a copy of all bills and invoices which Tenant has paid, (ii) an affidavit from Tenant confirming that such Alterations have been completed, (iii) copies of appropriate and customary conditional and final lien releases and waivers, as applicable for a completed project; and (iv) other customary and commercially reasonable documents and contractor's and architects affidavits as may be reasonably required by Landlord in good faith. Within thirty (30) days of Landlord's receipt of any such Request, Landlord shall provide Tenant with a reimbursement check equal to the sum of the amount requested (but not to exceed the remaining amount of the TI Allowance). Tenant may complete Alterations in multiple phases during the Extended Term, provided that all Requests for disbursements of the TI Allowance must be made within the first twenty-four (24) months of the Extended Term. In the event that Tenant does not exhaust the full TI Allowance while performing such Alterations, Tenant may elect to utilize up to One Hundred Fourteen Thousand Four Hundred Forty and 00/100 Dollars (\$114,440.00) of any remaining TI Allowance as a credit against Base Rent, and any remaining unused portion of the TI Allowance shall be forfeited.

11. Development Project. The word "retrofitting" is hereby inserted after the word "conversion" in the first sentence of Section 27.02 of the Original Lease.

12. Indemnity. The following provision is added to the end of Section 10.01(A)(i) of the Original Lease, as previously amended by Section 5 of the First Amendment: "It should also be construed to apply to any conditions arising upon the Premises or any portion of the Building."

13. Anti-Terrorism Representations. Tenant is not, and shall not during the Lease Term become, a person or entity with whom Landlord is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107 56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Prohibited Persons"). To the best of its knowledge, Tenant is not currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises. Tenant will not in the future during the Lease Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises. Breach of these representations constitutes a material breach of the Lease and shall entitle Landlord to any and all remedies available thereunder, or at law or in equity.

14. Force Majeure. The first sentence of Section 28.04 of the Original Lease is hereby deleted and replaced with the following: "Landlord shall incur no liability to Tenant with respect to, and shall not be responsible for any failure to perform, any of Landlord's obligations hereunder if such failure is caused by any reason beyond the control of Landlord including, but not limited to, strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of Landlord), pandemic, epidemic, contagion, viral outbreak or other public health emergency (including quarantines, shelter-in-place orders, travel restrictions, and supply chain disruptions resulting therefrom), act of a public enemy, war, riot, sabotage, blockade, embargo, governmental rule, regulations, ordinance, statute or interpretation, or by fire, earthquake, lightning, storm, hurricane, tornado, flood, washout, explosion, civil commotion, or failure or disruption of utility services."

15. **Attorneys Fees.** Section 16.01 of the Original Lease is hereby amended and restated in its entirety as follows: "If either Landlord or Tenant shall commence any action or other proceeding against the other arising out of, or relating to, this Lease or the Premises, including without limitation an eviction or unlawful detainer action, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, a maximum of \$1,000.00 in reasonable attorneys' fees awarded by a court. In the event any such action or proceeding is dismissed prior to trial, the parties agree that there shall be no prevailing party for purposes of an award of attorneys' fees and/or costs. Notwithstanding the foregoing, the cap on attorneys' fees set forth in this Section 16.01 shall not apply to attorneys' fees recoverable pursuant to Sections 9.03, 9.04, 10.01, 16.02, and 23.01 of this Lease."

16. **Brokers.** Each party represents and warrants to the other that no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Second Amendment, other than Jamison Realty, Inc. for Landlord and Cushman & Wakefield Of California, Inc. for Tenant (collectively "Brokers"). Each party further agrees to defend, indemnify and hold harmless the other party from and against any claim for commission or finder's fee by any entity, other than Brokers, who claims or alleges that they were retained or engaged by the first party or at the request of such party in connection with this Second Amendment.

17. **Access Inspection.** As of the date of this Second Amendment, the Building has not been inspected by a Certified Access Specialist pursuant to California Civil Code Section 55.53. 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. This Section 17 does not modify Section 6.02 of the Original Lease.

18. **Defaults.** Tenant hereby represents and warrants to Landlord that, as of the date of this Second Amendment, Landlord is in full compliance with all terms, covenants and conditions of the Lease and that there are no breaches or defaults under the Lease by Landlord, and that Tenant knows of no events or circumstances which, given the passage of time, would constitute a default under the Lease by Landlord.

19. **No Further Modification.** Except as set forth in this Second Amendment, all of the terms and provisions of the Lease shall apply to the Premises and shall remain unmodified and in full force and effect. Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this Second Amendment.

20. **Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

21. **Successors and Assigns.** The Lease, as amended hereby, shall apply to and bind Landlord and Tenant and their respective successors and assigns.

22. **Tenant Representations.** Each person executing this Second Amendment on behalf of Tenant represents and warrants to Landlord that: (a) Tenant is properly formed and validly existing under the laws of the state in which Tenant is formed and Tenant is authorized to transact business in the state in which the Building is located; (b) Tenant has full right and authority to enter into this Second

Amendment; and (c) each person (and persons if more than one signs) signing this Second Amendment on behalf of Tenant is duly and validly authorized to do so.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first above written.

LANDLORD:

4811 Airport Plaza, LLC,
a Delaware limited liability company,

By: Jamison Services, Inc.,
a California corporation
Its: Authorized Agent

By: 

Phillip Lee
Chief Executive Officer

Date: 5/5/23

TENANT:

City of Long Beach,
a municipal corporation

By: Linda F. Tatum

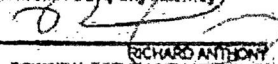
Name: LINDA F. TATUM

Its: ASST CITY MANAGER

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

APPROVED AS TO FORM

4.20.23
DAWN MCINTOSH, City Attorney

By: 
RICHARD ANTHONY
PRINCIPAL DEPUTY CITY ATTORNEY