

FIRST LEASE AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of _____, 20__, in San Francisco, California, by and between 101 SOUTH VAN NESS LLC, a California limited liability company ("Landlord") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Landlord have previously entered into an existing lease agreement, dated as of February 1, 2013 (the "Lease"), for the lease of 101 South Van Ness (the "Building") located at 110 12th Street, San Francisco, being a portion of Lot 003, in Assessor's Block 3514, San Francisco, California.

B. The Certificate of Merger was recorded August 13, 2019, Document No. 2019-K814782-00, to document the updated ownership of 110 12th Street, San Francisco following the merger of The St. James Partnership into 101 South Van Ness LLC, a California limited liability company.

C. Landlord has leased to City the premises in the Building identified in the Basic Lease Information (the "Premises"). City is using the Premises for office and production areas for the City's reproduction and mail services and such other uses as specified in the Basic Lease Information.

D. The parties now desire to modify the Lease on the terms and conditions as set forth herein.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Landlord agree as follows:

1. The subsections in Section 1. (Basic Lease Information) listed below are hereby amended and restated to read in their entirety as follows:

"Term (Section 3): Commencement date: February 1, 2023

Expiration date: January 31, 2028"

"Base Rent (Section 4.1):

Annual Base Rent:
\$454,668.67 (\$43.43 per sq. ft.)

Monthly payments:
\$37,889.06 (\$3.62 per sq. ft.)"

"City's Percentage Share (Section 4.4):

Annually on each February 1 following the Commencement Date, the Base Rent shall be increased by three percent (3%)."

2. **No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Landlord relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity

conducted by Landlord, and the City shall in no way be responsible for the acts or omissions of Landlord on the Premises or otherwise.

3. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.
4. **Governing Law.** This Lease will be construed and enforced in accordance with the Legal Requirements of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum.
5. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.
6. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.
7. **Notification of Prohibition on Contributions.** By executing this Lease, Landlord acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Landlord acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Landlord further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord certifies that

it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

- 8. Landlord's Compliance with City Business and Tax and Regulations Code.** Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Landlord, without interest, late fees, penalties, or other charges, upon Landlord coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.
- 9. Taxes, Assessments, Licenses, Permit Fees, and Liens.** San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease.
- 10. Consideration of Salary History.** Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Agreement or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.
- 11. Drug-Free Workplace.** Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal Legal Requirements is prohibited on City premises. Any violation of this prohibition by Tenant, its Agents, or assigns will be a material breach of this Lease.
- 12. Contractor Vaccination Requirements.**

 - (1) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any

undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

(2) A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

(3) Tenant has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Tenant agrees that:

(I) Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(II) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

13. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

14. Effective Date. The date of which this Amendment shall become effective as of the date this Amendment is duly executed and exchanged by the parties hereto.

15. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights which the City may have relating to the Lease. Landlord and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

LANDLORD: 101 SOUTH VAN NESS LLC,
a California limited liability company

By: _____
Its: _____

By: _____
Its: _____

TENANT: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

Date: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Anna Parlato Gunderson
Deputy City Attorney