

## NINTH AMENDMENT TO LEASE AGREEMENT

This NINTH AMENDMENT TO LEASE AGREEMENT (this "Agreement"), made as of the \_\_\_ day of \_\_\_, 2018, by and between IVY TOWER 101 PROPERTY, LLC, a Delaware limited liability company, having an address c/o Ivy Realty, 102 Chestnut Ridge Road, Suite 204, Montvale, New Jersey 07645 (hereinafter called "Landlord"), and THE CITY OF FORT LAUDERDALE, a Florida municipal corporation, having an address at Tower 101, 101 NE Third Avenue, Fort Lauderdale, Florida 33301 (hereinafter called "Tenant").

### RECITALS

WHEREAS, Selzer-Ornst Co. ("Selzer"), as predecessor-in-interest to Landlord, and Tenant entered into Lease Agreement-Office, dated May 23, 1997 (the "Original Lease"), for the lease of 13,021 rentable square feet (the "Original Premises") at Tower 101 Building (the "Building") within the complex located at 101 NE Third Avenue, Fort Lauderdale, Florida; and

WHEREAS, Selzer and Tenant entered into a Lease Amendment, dated September 3, 1997 (the "First Amendment") and, together with the Original Lease, hereinafter referred to as the "Voided Lease"), whereby, among other things, certain terms and conditions of the Original Lease were modified and amended; and

WHEREAS, CAPROC Third Avenue, L.L.C. ("CAPROC"), as predecessor-in-interest to Landlord, and Tenant entered into a Second Amendment to Office Lease Agreement, dated as of September 7, 2000 (the "Second Amendment"), whereby, among other things, (i) the Voided Lease was deemed null and void and replaced and superseded by the Second Amendment, (ii) the parties agreed to surrender a portion of the Original Premises, and (iii) the term of the Lease with respect to the remaining portion of the Original Premises was extended through September 30, 2005; and

WHEREAS, CAPROC and Tenant entered into a Third Amendment to Office Lease Agreement, dated as of September 25, 2001 (the "Third Amendment"), whereby, among other things, the surrender date with respect to the aforementioned portion of the Original Premises was modified; and

WHEREAS, CAPROC and Tenant entered into a Fourth Amendment to Office Lease Agreement, dated September 14, 2005 (the "Fourth Amendment"), whereby, among other things, the term of the Lease with respect to the remaining portion of the Original Premises was extended through September 30, 2008; and

WHEREAS, CAPROC and Tenant entered into a Fifth Amendment to Office Lease Agreement, dated November 20, 2008 (the "Fifth Amendment"), whereby, among other things, the term of the Lease with respect to the remaining portion of the Original Premises was extended through September 30, 2009; and

WHEREAS, CAPROC and Tenant entered into a Sixth Amendment to Office Lease Agreement, dated May 4, 2010 (the "Sixth Amendment"), whereby, among other things, (i) the term of the Lease with respect to the remaining portion of the Original Premises was extended through May 31, 2010, at which time Tenant surrendered such premises, and (ii) as of June 1, 2010, the "Premises" demised under the Lease was relocated to that certain 11,764 rentable square feet of space in the Building known as Suite 1400 (the "Suite 1400"), and (iii) the term of the Lease with respect to the Suite 1400 was extended through December 30, 2015; and

WHEREAS, Tower 101 Associates, LLC, as predecessor-in-interest to Landlord, and Tenant entered into a Seventh Amendment to Lease Agreement, dated as of October 28, 2015 (the "Seventh Amendment") whereby, among other things, the term of the Lease was extended through and including July 31, 2023; and

WHEREAS, Landlord and Tenant entered into an Eighth Amendment to the Lease Agreement, dated as of August 24, 2016 (the "Eighth Amendment" and, together with the Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, and Seventh Amendment, hereinafter collectively referred to as the "Lease"), whereby, among other things, Tenant leased from Landlord certain additional space on the fourteenth (14th) floor of the Building, known as Suite 1430, consisting of that certain 2,006 rentable square feet of space ("Suite 1430" and, together with Suite 1400, the "Current Premises"); and

WHEREAS, Landlord and Tenant desire to further amend the Lease so as to, among other things, provide for Tenant to lease from Landlord certain additional space (the "Expansion Premises") on the fourteenth (14th) floor of the Building, known as Suites 1410 and 1420, consisting of that certain 3,947 rentable square feet of space, as more specifically shown on the Rental Plan annexed hereto as Exhibit "1"; subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties agree as follows:

## ARTICLE I Definitions

1.1 The recitals are specifically incorporated into the body of this Agreement and shall be binding upon the parties hereto.

1.2 Unless expressly set forth to the contrary and except as modified by this Agreement, all defined terms shall have the meanings as ascribed to them in the Lease.

1.3 For purposes of this Agreement, an "Expansion Lease Year" shall be comprised of a period of twelve (12) consecutive months (except for the sixth Expansion Lease Year). The first Expansion Lease Year shall commence on the Expansion Premises Commencement Date (as such term is defined in Section 2.2.1 below), but, notwithstanding the first sentence of this

paragraph, if the Expansion Premises Commencement Date is not the first day of a month, then the first Expansion Lease Year shall also include the additional period from the Expansion Premises Commencement Date to the end of the then current month. Each succeeding Expansion Lease Year shall end on the anniversary date of the last day of the preceding Expansion Lease Year (except for the sixth Expansion Lease Year). For example, if the Expansion Premises Commencement Date is June 1, 2018, then the first Expansion Lease Year would begin on June 1, 2018 and end on May 31, 2019, and each succeeding Expansion Lease Year would begin on June 1<sup>st</sup> and end on May 31<sup>st</sup> (except for the sixth Expansion Lease Year, which would end on July 31, 2023, regardless of when the Expansion Premises Commencement Date occurs). If, however, the Expansion Premises Commencement Date is June 2, 2018, then the first Expansion Lease Year would begin on June 2, 2018 and end on June 30, 2019, the second Expansion Lease Year would begin on July 1, 2019 and end on June 30, 2020, and each succeeding Expansion Lease Year would begin on June 1<sup>st</sup> and end on June 30<sup>th</sup> (except for the sixth Expansion Lease Year, which would end on July 31, 2023, regardless of when the Expansion Premises Commencement Date occurs).

1.4 For purposes of this Agreement, the term “Tenant Delay” shall mean any act or omission of any nature by Tenant or Tenant’s employees, agents, contractors, licensees or invitees which actually delays the substantial completion of the EP Work, including, without limitation, (i) Tenant's failure to furnish plans and specifications for the EP Work by the date of this Agreement; (ii) Tenant's request for materials, finishes or installations other than Landlord's standard; (iii) Tenant's changes in said plans or specifications; (iv) the performance or completion of any work, labor or services by a party employed by Tenant; (v) Tenant’s interference with the performance of the EP Work; or (vi) Tenant's failure to approve, or approve as noted, final construction documents within five (5) business days after such submission thereof to Tenant for approval. Moreover, in the event of an accumulation of Tenant Delay in excess of thirty (30) days in the aggregate, the Expansion Premises Commencement Date shall automatically be deemed to be the date that is four weeks following the date of this Agreement.

ARTICLE II  
Lease Modifications

The Lease shall hereby be modified and amended as follows:

2.1 Premises. From and after the Expansion Premises Commencement Date, Landlord shall lease to Tenant the Expansion Premises, subject to all of the terms of the Lease, as modified by this Agreement. From and after the Expansion Premises Commencement Date, all references to the term “Premises” in the Lease and in this Agreement shall mean the Current Premises together with the Expansion Premises, which the parties stipulate and agree consists of 17,717 rentable square feet of space, in the aggregate (the “Combined Premises”). Landlord hereby acknowledges that the Expansion Premises are, as of the date hereof, vacant.

2.2 Term.

2.2.1 The term of the Lease, as it relates to the Expansion Premises only, shall commence on the date (the “Expansion Premises Commencement Date”) that is the earlier to occur of: (i) the date upon which the EP Work (as hereinafter defined) has been substantially completed, as evidenced by the issuance of a temporary or permanent certificate of occupancy or completion, as applicable, or (ii) the date Tenant takes occupancy of the Expansion Premises (or any portion thereof) for the conduct of Tenant’s business therein. If Landlord shall be delayed in such “substantial completion” as a result of any Tenant Delay, then the Expansion Premises Commencement Date hereunder shall be accelerated by the number of days of such Tenant Delay. Notwithstanding any such acceleration of the Expansion Premises Commencement Date, Tenant shall not be permitted to occupy the Expansion Premises unless and until the EP Work is substantially completed. Tenant waives any right to rescind this Agreement or the Lease under applicable law then in force and further waives the right to recover any damages which may result from Landlord's failure to deliver possession of the Expansion Premises on any scheduled or anticipated Expansion Premises Commencement Date.

2.2.2 The term of the Lease, as it relates to the Expansion Premises only, shall expire on the existing Expiration Date (i.e., July 31, 2023); it being the express intention of the parties that the term of the Lease as it relates to the Expansion Premises shall run co-terminously with the term of the Lease as it relates to the Current Premises.

### 2.3 Rental.

2.3.1 With respect to the Current Premises only, the Base Rental shall continue to be due and payable in accordance with the terms and conditions of the Lease, including, without limitation, Section 5 of the Seventh Amendment and Section 2.3 of the Eighth Amendment, through and including the Expiration Date.

2.3.2 From the Expansion Premises Commencement Date through and including the Expiration Date, Base Rental for the Expansion Premises only shall be payable as follows:

During the first Expansion Lease Year, Base Rental shall be \$98,675.04 per annum, payable in equal monthly installments of \$8,222.92.

During the second Expansion Lease Year, Base Rental shall be \$101,635.20 per annum, payable in equal monthly installments of \$8,469.60.

During the third Expansion Lease Year, Base Rental shall be \$104,684.28 per annum, payable in equal monthly installments of \$8,723.69.

During the fourth Expansion Lease Year, Base Rental shall be \$107,824.80 per annum, payable in equal monthly installments of \$8,985.40.

During the fifth Expansion Lease Year, Base Rental shall be \$111,059.64 per annum, payable in equal monthly installments of \$9,254.97.

During the sixth Expansion Lease Year (or applicable portion thereof), Base Rental shall be payable in equal monthly installments of \$9,532.61.

2.3.3 Tenant is a Florida municipal corporation and the intended use of the Premises is for governmental purposes (as provided in the Lease). As such, the Lease of the Combined Premises is currently exempt from sales or use tax.

2.3.4 In addition to the Base Rental set forth herein, Tenant shall (a) only to the extent Tenant is not entitled to an exemption from sales or use tax (as described above), pay monthly to Landlord any sales or use tax now or hereafter imposed on any Rental, Base Rental or Additional Rent due under the Lease or this Agreement (including, without limitation, with respect to Tenant's Share of Operating Expenses pursuant to Section 7 of the Seventh Amendment), and (b) remain responsible for the payment of all other items of Additional Rent payable under the Lease (as may have been amended by this Agreement), with respect to the Current Premises and, as of the Expansion Premises Commencement Date, the Expansion Premises, through the Expiration Date.

2.3.5 Provided Tenant is not in default under any of its obligations under the Lease or this Agreement, Tenant shall receive a Rent credit in the total amount of \$26,227.82 to be applied in two (2) equal installments of \$13,113.91 toward the Base Rental and Additional Rent otherwise due and payable with respect to the Expansion Premises during the first and second full calendar months of the first Expansion Lease Year.

## 2.4 EP Work.

2.4.1 Tenant hereby acknowledges and agrees that that Landlord has completed all items of work previously required to be completed by Landlord under the Lease. Tenant hereby accepts the Current Premises in its "as is" condition and acknowledges that Landlord shall not be required to perform any work or incur any expense in order to prepare the Current Premises for Tenant's occupancy thereof.

2.4.2 Landlord, at Landlord's sole cost and expense, shall perform the following work within the Expansion Premises (collectively, the "EP Work"): (a) install new carpet tiles within the Expansion Premises; and (b) re-paint all painted interior walls within the Expansion Premises. All aspects of the EP Work shall be performed by Landlord using Landlord's Building-standard materials and finishes with (where appropriate) colors to be selected by Tenant from Landlord's Building-standard color chart. Notwithstanding anything herein to the contrary, in the event Tenant does not select the finishes and/or colors required with respect to the EP Work by no later than May 31, 2018, same shall be deemed a "Tenant Delay" hereunder. Notwithstanding anything to the contrary contained herein, the EP Work shall not include the purchase, transport or installation of Tenant's furniture or office equipment, which shall be installed by Tenant at Tenant's sole cost and expense, in accordance with plans and specifications developed by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

2.5 Tenant's Share. Effective as of the Expansion Premises Commencement Date, the term "Tenant's Share", as used in the Lease (including, without limitation, Paragraph 2 of the Second Amendment, as modified by Section 7 of the Seventh Amendment), shall mean 9.98%.

2.6 Renewal Options. Tenant acknowledges and agrees that the renewal options set forth in Section 16 and Exhibit C of the Seventh Amendment shall remain in full force and effect and shall hereafter apply to the entire Combined Premises only.

2.7 Operating Expense Adjustment. For purposes of clarification, it is understood and agreed that (i) Section 3.01 of the Original Lease is deleted in its entirety and (ii) Operating Expenses are and shall continue to be payable pursuant to Section 7 of the Seventh Amendment. For information purposes only, Landlord's reasonable estimate of Operating Expenses for calendar year 2018 is \$14.87 per rentable square foot per annum, subject to reconciliation as provided in Section 7 of the Seventh Amendment.

### ARTICLE III Broker

3.1 Tenant represents to Landlord that this Agreement was brought about by Jones Lange LaSalle Brokerage, Inc. and Colliers International South Florida, Inc., as brokers (collectively, "Broker"), and all negotiations with respect to this Agreement were conducted exclusively with Broker. Each party (the "Indemnifying Party") hereby agrees that if any claim is made for commissions by any other broker, then the Indemnifying Party will hold the other party free and harmless from any and all liabilities and expenses in connection therewith, including reasonable attorney's fees and disbursements. Landlord agrees to pay Broker a commission pursuant to a separate agreement(s) between Landlord and Broker.

### ARTICLE IV Ratification

4.1 Tenant represents and warrants that the Lease is presently in full force and effect, that no event of default has occurred on the part of Landlord and that Tenant has no defense or right of offset in connection with Landlord's performance under the Lease to this date.

4.2 The parties hereby ratify and confirm all of the terms, covenants and conditions of the Lease, except to the extent that those terms, covenants and conditions are amended, modified or varied by this Agreement. If there is a conflict between the provisions of the Lease and the provisions of this Agreement, then the provisions of this Agreement shall control.

4.3 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

4.4 Tenant represents that it has full authority to enter into this Agreement and that the person or persons signing on its behalf are duly authorized to execute this Agreement with binding effect on Tenant.

IN WITNESS WHEREOF, the parties have executed this Ninth Amendment to Lease Agreement as of the day and year first above written.

**CITY OF FORT LAUDERDALE**, Florida  
municipal corporation, "TENANT"

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
[Witness print or type name]

\_\_\_\_\_

\_\_\_\_\_  
[Witness print or type name]

By: \_\_\_\_\_  
Dean J. Trantalis, Mayor

\_\_\_\_\_  
Lee R. Feldman, City Manager

ATTEST:

\_\_\_\_\_  
Jeffrey A. Moderelli, City Clerk


APPROVED AS TO FORM:  
Alain E. Boileau, Interim City Attorney,

By: \_\_\_\_\_  
Lynn Solomon  
Assistant City Attorney



WITNESS:

IVY TOWER 101 PROPERTY, LLC  
"LANDLORD"

  
\_\_\_\_\_  
Christopher R. Milligan  
[Witness print or type name]

By:   
\_\_\_\_\_  
Title: Manager


  
\_\_\_\_\_  
Cara Sarlo  
[Witness print or type name]

Exhibit "1"

Expansion Premises Rental Plan

