

Resolution No. 2023-02-07-1211

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND LEASE AMENDMENT WITH CHRIS NEILSON, AS DULY APPOINTED RECEIVER (LANDLORD), FOR 400 EAST MAIN STREET

The City purchased the Waterfront Office Towers at 501 and 509 West Weber Avenue in January 2018, to serve as the City's future City Hall; and

The City no longer needs the seventh floor space it is currently leasing at 400 East Main Street; and

Landlord has agreed to execute a Second Lease Amendment reducing the space the City is leasing by 9,344 SF and to extend the lease term through March 31, 2025; and

Reducing the space leased by the City will result in significant savings to the City; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized to execute a Second Lease Amendment between the City of Stockton and Chris Neilson, duly appointed Receiver (Landlord), for 400 East Main Street, attached as Exhibit 1 and incorporated by this reference.

2. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED February 7, 2023.

ATTEST:




ELIZA R. GARZA, CMC
City Clerk of the City of Stockton


KEVIN J. LINCOLN II
Mayor of the City of Stockton

**SECOND AMENDMENT TO STANDARD OFFICE LEASE
(400 East Main Street)**

This Second Amendment to Standard Office Lease (400 East Main Street), dated as of February 21, 2023 (this "Second Amendment") is by and between CHRIS NEILSON, duly appointed Receiver ("Landlord"), and THE CITY OF STOCKTON, a municipal corporation ("Tenant"), with reference to the following:

RECITALS

A. Pursuant to that certain (i) Standard Office Lease, dated February 25, 2015, by and between Landlord and Tenant, and (ii) First Amendment to Standard Office Lease, dated October 18, 2018, by and between Landlord and Tenant (collectively, the "Original Lease"), Landlord leases the Premises (as more specifically defined in the Original Lease, which shall hereinafter be referred to herein as the "Original Premises") to Tenant. Each initially capitalized term not otherwise defined herein shall have the meaning set forth for such term in the Original Lease.

B. Landlord and Tenant desire to decrease the size of the Original Premises leased to Tenant pursuant to the Original Lease and to amend and modify certain other provisions and conditions of the Original Lease, all as more specifically set forth herein. Except as expressly amended or modified by the provisions and conditions of this Second Amendment, it is intended by Landlord and Tenant that the Original Lease shall remain unchanged and otherwise in full force and effect. The Original Lease, as modified by the terms of this Second Amendment, shall hereinafter be referred to as the "Lease".

AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. **Defined Terms.** The meaning of certain defined terms in the Original Lease shall be modified as follows:

(a) **Premises.** Effective as of March 31, 2023 (the "Relinquished Premises Effective Date"), the term "Premises" shall mean (i) a portion of the third (3rd) floor of the Building consisting of approximately 25,755 rentable square feet, commonly known as Suite 310 and (ii) the entire fourth (4th) floor of the Building consisting of approximately 25,730 rentable square feet, commonly known as Suite 400, for a total Premises, as of the Relinquished Premises Effective Date, comprised of 51,485 rentable square feet ((i) and (ii) collectively, as used in this Second Amendment, the "Retained Premises"). From and after the Relinquished Premises Effective Date, the term "Premises", as used in the Original Lease (including as such Original Lease is amended by this Second Amendment), shall mean the Retained Premises.

The Retained Premises is shown on Exhibit A attached hereto and made a part hereof. Landlord and Tenant accept the calculation of 51,485 rentable square feet for the Retained Premises.

(b) **Lease Expiration Date; Term.** Subject to Section 2 and Section 3, below, effective as of the date hereof, March 31, 2025 shall hereinafter be referred to as the "Lease Expiration Date". The period beginning on February 25, 2015 and ending on the Lease Expiration Date (as such date may be further amended as set forth in this Second Amendment) shall hereinafter be referred to as the "Term".

(c) **Basic Monthly Rent.** Subject to Section 2 and Section 3 below, beginning on the date immediately following the Relinquished Premises Effective Date, Basic Monthly Rent for the Retained Premises shall be as follows:

<u>Period</u>	<u>Basic Monthly Rent</u>	<u>Gross Annual Rent</u>
April 1, 2023-March 31, 2025	\$80,081.23	\$960,974.76

2. **Month-to-Month Extension Rights.** Notwithstanding the Lease Expiration Date set forth in Section 1(b) above, Tenant shall have the right to extend the Lease Term on a month-to-month basis (the "Month-to-Month Extension Right" and such portion of the Term the "MTM Extension Term"), such MTM Extension Term to begin on the date immediately following the Lease Expiration Date (as defined in this Second Amendment) and shall continue until the earlier of (i) the date elected by Tenant in the Extension Exercise Notice or (ii) June 30, 2025 (the "Outside Lease Expiration Date"). If Tenant wishes to exercise the Month-to-Month Extension Right, then Tenant must provide written notice to Landlord of same no less than ninety (90) days prior to the Lease Expiration Date (the "Extension Exercise Notice"). The Extension Exercise Notice must expressly state Tenant's newly elected Lease Expiration Date, which date cannot be after the Outside Lease Expiration Date. If Tenant's Extension Exercise Notice reflects a new Lease Expiration Date that is prior to the Outside Lease Expiration Date, then Tenant may deliver another Extension Exercise Notice no later than ninety (90) days prior to the new Lease Expiration Date to further extend the MTM Extension Term on a month-to-month basis, subject to the Outside Lease Expiration Date. Basic Monthly Rent for all or any portion of the MTM Extension Term shall be equal to the Basic Monthly Rent amount owed by Tenant to Landlord for the last month of the Term immediately preceding the first day of the MTM Extension Term, subject to Section 3 below, with respect to Tenant's right to elect the Premises Reduction Option, if applicable, and the corresponding Basic Monthly Rent reduction that would result therefrom.

3. **Early Termination Option.** Notwithstanding the Lease Expiration Date set forth in Section 1(b) above, at any time after September 1, 2024, Tenant shall have the option to (i) reduce the Premises by relinquishing the entirety of the Premises located on the third (3rd) or fourth (4th) floor of the Building (the "Premises Reduction Option") or (ii) terminate the Lease in its entirety with respect to all of the Premises (the "Early Termination Option"). For the avoidance of doubt, to exercise the Premises Reduction Option, Tenant must be willing to reduce the Premises by no less than the entire portion of the Premises located on any one floor. If Tenant wishes to exercise the Premises Reduction Option or the Early Termination Option, then Tenant must provide Landlord with written notice of same no less than forty-five (45) days prior to the date Tenant wishes for such option to go into effect (the "Early Termination Notice"), which Early Termination Notice must expressly state (i) that Tenant elects to exercise either the Premises Reduction Option or the Early Termination Option, as applicable, (ii) if Tenant elects to exercise the Premises Reduction Option, whether Tenant is electing to relinquish all of the Premises on the third (3rd) floor or the fourth (4th) floor, and (iii) the date upon which Tenant will relinquish all or the applicable portion of the Premises, as applicable, which date shall be (a) no less than forty-five (45) days after such Early Termination Notice is delivered to Landlord and (b) the last day of a calendar month (the "Give-Back Date"). Provided, Tenant delivers the Early Termination Notice to Landlord in the form, and within the time period, required by this Section 3, and Tenant vacates all or the applicable portion of the Premises, as applicable, no later than the Give-Back Date, then the Lease shall terminate in its entirety or in part, as applicable, as of such Give-Back Date, and Tenant shall have

no further obligation under the Lease in connection with all or such portion of the Premises, as applicable. If Tenant elects to exercise the Premises Reduction Option, then (i) Basic Monthly Rent shall be reduced by Forty Thousand Fifty Six and 73/100 Dollars (\$40,056.73) beginning on the first day of the month immediately following the Give-Back Date, (ii) the Tenant Spaces and the Reserved Spaces allocated to Tenant in accordance with Item 10 of the Basic Lease Provisions shall be proportionately reduced based on the portion of the Premises relinquished as a result of Tenant exercising the Premises Reduction Option, (iii) Landlord and Tenant shall promptly enter into an amendment to the Lease to reflect the reduction of the (a) Premises, (b) Basic Monthly Rent and (c) Tenant Spaces and Reserved Spaces as a result of Tenant exercising the Premises Reduction Option in accordance with the terms hereof and (iv) Tenant may, at a later date, exercise the Early Termination Option by relinquishing the remainder of the Premises located on the floor that was not relinquished on the Give-Back Date; provided, Tenant exercises the Early Termination Option in accordance with the terms of this Section 3.

4. Parking.

(a) Effective as of the Relinquished Premises Effective Date, Item 10 of the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"10. **PARKING:** As part of Tenant's consideration under this Lease, Tenant shall be entitled to ninety-five (95) parking spaces located in the Parking Garage during the Term of this Lease (collectively, "Tenant's Spaces"), of which sixty-nine (69) of Tenant's Spaces shall be unreserved parking spaces and twenty-six (26) of Tenant's Spaces shall be reserved parking spaces (such Tenant's Spaces, the "Reserved Spaces"). The Reserved Spaces shall be located within that portion of the Parking Garage depicted on Exhibit "E" attached hereto and made a part hereof; provided, however, that Landlord shall have the right to temporarily relocate such Reserved Spaces for purposes of maintaining, repairing, restoring, altering or improving the Parking Garage and maintaining the safety of the Parking Garage and/or the Project. Landlord reserves the right to separately charge Tenant's guests and visitors for parking; provided, however, that Tenant's visitors shall be permitted to use, at no additional charge, any of Tenant's Spaces that are not being used by Tenant at the time such visitor wishes to park at the Building, as determined by Landlord (or any agent or employee thereof) in its reasonable discretion."

As of the date hereof, Exhibit "E" attached to the Original Lease is hereby deleted in its entirety and replaced with Exhibit E attached hereto and made a part hereof.

(b) **Effect of Prior Parking Provisions.** Landlord and Tenant hereby acknowledge and agree that any provisions contained in the Original Lease, to the extent contrary to, or inconsistent with, the provisions of Section 4(a) above shall be deemed amended by the provisions of Section 4(a) above.

5. **Extension Options.** Landlord and Tenant hereby acknowledge and agree that Tenant's Extension Option rights, as contained in Section 1.2 of the Original Lease, shall be deleted in their entirety and of no further force or effect. For the avoidance of doubt, Landlord and Tenant acknowledge and agree that from and after the date of this Amendment, Tenant shall not have any right to extend the Term of the Lease, except as may be expressly set forth in this Second Amendment.

6. **Conditions Precedent.** Notwithstanding anything to the contrary contained herein, the effectiveness of this Amendment is conditioned on Tenant executing and delivering to Landlord, concurrently with the execution of this Second Amendment, an amendment to that certain (i) Real Property Option Agreement and Joint Escrow Instructions (the "Option Agreement"), dated February 25, 2015, by and between Tenant, as Optionor, and Four Hundred Main Street LLC, an affiliate of Landlord ("Four Hundred Main"), as Optionee (the "Option Amendment"), and (ii) Memorandum of Option Agreement, dated February 25, 2015, between Tenant, as Optionor, and Four Hundred Main, as Optionee, recorded on April 21, 2015, in the real property records of San Joaquin County, California (the "Real Property Records"), as Instrument Number 2015-044221, which amendment shall be recorded in the Real Property Records (the "Memo Amendment" and, together with the Option Amendment, collectively, the "Required Option Amendments"), in the forms attached hereto as Exhibit B-1 and Exhibit B-2, respectively. If Tenant does not deliver to Landlord an executed original of each Required Option Amendment concurrently with Tenant's delivery of its signature to this Second Amendment, then this Second Amendment shall be null and void and of no further force or effect. Landlord and Tenant acknowledge and agree that upon execution and delivery by Landlord and Tenant of the Memo Amendment, Landlord shall cause the Memo Amendment to be recorded in the Real Property Records.

7. **Brokers.** Landlord has entered into an agreement with CBRE, Inc. ("Landlord's Broker"), pursuant to which Landlord has granted to Landlord's Broker the exclusive right to lease space in the Building. Landlord shall pay any commissions or fees that are payable to Landlord's Broker with respect to this Second Amendment in accordance with the provisions of a separate commission contract. Landlord shall have no further or separate obligation for the payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Second Amendment, other than Landlord's Broker. Subject to the foregoing, each party hereto shall indemnify and hold harmless the other party hereto from and against any and all damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees and related costs) resulting from any claims that may be asserted against such other party by any real estate broker, finder or intermediary other than Landlord's Broker, arising from any act of the indemnifying party in connection with this Second Amendment.

8. **Release; Waiver.** Tenant, on behalf of itself, and its officials, officers, agents, employees and/or other representatives, as of the date hereof, hereby discharges and releases Landlord, and its members, officers, shareholders, divisions, subsidiaries, agents, managers, contractors, servants, employees and invitees, except to the extent of such party's recklessness or willful misconduct, from all of its past and future claims, demands, damages, obligations, losses, liabilities, costs and expenses (including attorneys' fees and expenses) directly or indirectly related to or arising out of or in connection with the Original Lease. Tenant expressly waives the provisions of California Civil Code Section 1542, which provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

9. **No Further Modification.** Except as specifically set forth in this Second Amendment, all of the terms and provisions of the Original Lease remain unmodified and in full force and effect, and, except as expressly amended or modified hereby, all terms and provisions of the Original Lease are

hereby incorporated herein by reference thereto. Notwithstanding the foregoing, Landlord hereby reserves all rights and remedies Landlord may have as to the date hereof arising from any acts or omissions of Tenant occurring under the Original Lease. All references to the "Lease" in the Original Lease shall mean the Original Lease, as amended by this Second Amendment.

10. **Estoppe**. As of the date hereof, Tenant acknowledges and agrees that Landlord has performed all obligations required of Landlord under the Lease, and there are no offsets, counterclaims or defenses of Tenant under the Original Lease existing against Landlord. Tenant further acknowledges and agrees that no events have occurred that, with the passage of time or the giving of notice, or both, would constitute a basis for an offset, counterclaim or defense against Landlord, and that the Original Lease, as amended hereby, is in full force and effect.

11. **Counterparts**. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The parties hereto agree to accept a digital image of this Second Amendment, as transmitted via facsimile, email or other electronic means, as executed, as a true and correct original and admissible as best evidence for the execution and delivery of same by the parties hereto.

[Signatures Continue on Next Page]

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

LANDLORD

CHRIS NEILSON,
as Receiver and Successor-in-Interest to
MAIN STREET STOCKTON LLC,
a Delaware limited liability company,
and William J. Hoffman, as receiver

By:

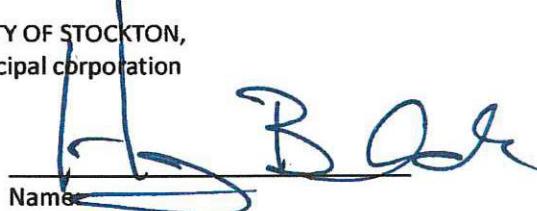


CHRIS NEILSON

TENANT

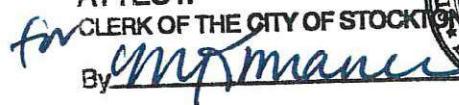
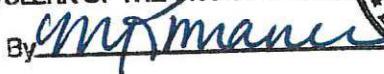
THE CITY OF STOCKTON,
a municipal corporation

By:

Name: 
Title:



ATTEST:

for 
CLERK OF THE CITY OF STOCKTON
By 

APPROVED AS TO FORM AND CONTENT

By 

Deputy City Attorney

EXHIBIT A

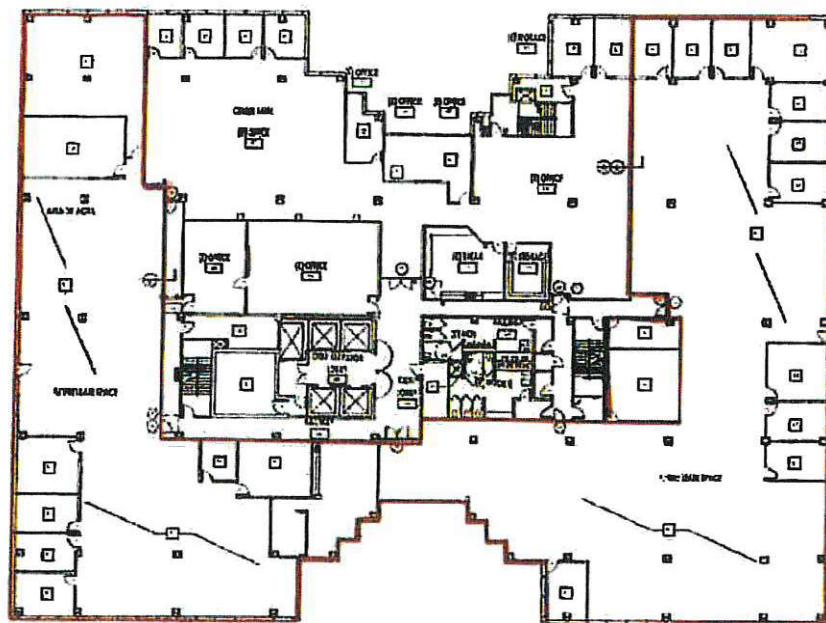
Depiction of Retained Premises

[See Attached]

Exhibit "A"

FOR PROPERTY AT 400 E Main Street Stockton, CA - Third Floor

Total Uninhabited Areas 1,233,756 RST



NOT TO SCALE – SPACE SIZING APPROXIMATE AND BASED ON RENTABLE SQUARE FEET

EXHIBIT "A"

This information has been obtained from sources believed reliable. We have not verified it and make no guarantee, warranty or representation about it. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs.

Exhibit "A"

FOR PROPERTY AT 400 E Main Street, Stockton, CA - Fourth Floor

Total Delinquent Area: 251,200 SF

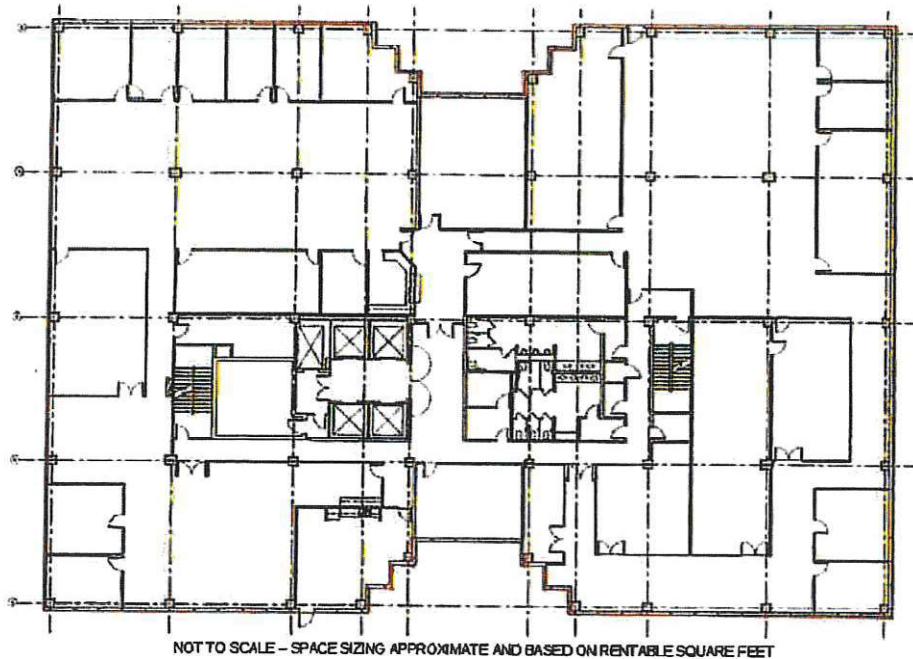


EXHIBIT "A"

This information has been obtained from sources believed reliable. We have not verified it and make no guarantee, warranty or representation about it. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs.

EXHIBIT B-1

Form of Option Amendment

[See Attached]