

Morgan Stanley  
**Law Division**

## Memorandum

**To:** MMandelstam  
KMaloney  
SGause  
CGrygielWest  
JChiovitti  
NRindone  
LeaseAdmin

**Date:** April 30, 2018

**From:** TArgueta

**Re:** Roseville, CA 1478 Stone Point Drive—First Amendment

Attached please find a fully executed copy of the above referenced document.

Thank you for your assistance.

## FIRST AMENDMENT TO LEASE

**THIS FIRST AMENDMENT TO LEASE** (this "Amendment") is made and entered into effective as of April 25, 2018 (the "Effective Date"), by and between **STONE POINT ASSOCIATES, LLC**, a California limited liability company ("Landlord") and **MORGAN STANLEY SMITH BARNEY FINANCING LLC**, a Delaware limited liability company ("Tenant").

### RECITALS:

A. Landlord and Tenant's predecessor-in-interest entered into that certain Office Lease Agreement dated January 23, 2008 (the "Lease") for certain premises containing 26,524 rentable square feet (the "Premises") on the fifth floor of the building located at 1478 Stone Point Drive, Roseville, CA 95661 (the "Building"), all as more particularly described in the Lease; and

B. The current Term of the Lease is set to expire on August 31, 2018; and

C. Landlord and Tenant desire to amend the Lease to (i) extend the Term of the Lease for five (5) years commencing on September 1, 2018; (ii) reduce the size of the Premises in accordance with Tenant's surrender and Landlord's acceptance of a certain portion of the Premises; and (iii) modify certain other provisions of the Lease as agreed to by Landlord and Tenant, all upon and subject to the terms and conditions set forth herein.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained in this Amendment, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties to this Amendment, intending to be legally bound, agree as follows:

1. **Recitals.** The foregoing recitals are accurate and correct and are incorporated herein. Capitalized terms used but not otherwise defined in this Amendment shall have the same meaning given to such terms in the Lease, unless otherwise specifically indicated or unless the context clearly indicates to the contrary.

2. **Surrender Space.** On August 31, 2018 ("Surrender Date"), Tenant shall vacate and deliver to Landlord a portion of the Premises comprising approximately 4,120 rentable square feet (3,583 usable square feet) as more particularly shown on Exhibit A attached hereto (the "Surrender Space"). Tenant will surrender and deliver the Surrender Space to Landlord in "AS IS" and "Broom Clean" condition, reasonable wear and tear damages or destruction by fire or other casualty and repairs which Landlord is obligated under the Lease to perform excepted. Tenant shall not be required to remove any alteration, addition, or improvement from the Surrender Space. Effective (the "Surrender Date"): (a) all references in the Lease as to the size of the Premises shall be amended to be 20,984 rentable square feet (18,247 useable square feet); (b) Exhibit A attached to the Lease shall be replaced in its entirety with Exhibit A attached to this

Amendment; and (c) Landlord and Tenant shall each be released of their obligations under the Lease with respect to the Surrender Space that accrue after the Surrender Date, except for any obligations that are explicitly stated to survive the expiration or earlier termination of the Lease.

**3. Renewal Term.** The term of the Lease is hereby amended and renewed (the “Renewal Term”), commencing on September 1, 2018 (the “Renewal Term Commencement Date”) and continuing through and including August 31, 2023 (the “Expiration Date”), unless sooner terminated, all in accordance with and subject to the terms and conditions set forth in the Lease. Without limitation, all references in the Lease to the “Term” and shall be deemed to include the Renewal Term in all respects.

**4. Rent.** Commencing as of the Renewal Term Rent Commencement Date and continuing throughout the Renewal Term, Tenant shall pay to Landlord the Rent for the Premises at the rate set forth below:

Lease Year	Base Rate per RSF	Annual Rent	Monthly Rent
9/1/2018-8/31/2019	\$33.60	\$705,062.40	\$58,755.20
9/1/2019-8/31/2020	\$34.27	\$719,121.68	\$59,926.81
9/1/2020-8/31/2021	\$34.96	\$733,600.64	\$61,133.39
9/1/2021-8/31/2022	\$35.66	\$748,289.44	\$62,357.45
9/1/2022-8/31/2023	\$36.37	\$763,188.08	\$63,599.01

Tenant shall have the right, at its election, to pay Base Rent, Additional Rent and any and all other amounts due and payable to Landlord hereunder, by automated clearing house (ACH) or by wire transfer of immediately available funds, in either event to an account designated by Landlord. Landlord shall deliver its wiring instructions for such account simultaneously upon execution of this Amendment, however Landlord may change such wiring instructions from time to time upon not less than twenty (20) days prior written notice to Tenant.

**5. Additional Rent.** Commencing as of the Renewal Term Rent Commencement Date, the term “Base Year” contained in Section 2(b) of the Lease shall be amended to be the calendar year 2019, and “Tenant’s Proportionate Share” contained in Section 2(r) of the Lease shall be amended to be 17.9%.

**6. Notices.** For purposes of sending all notices to Tenant under the lease, Section 29 of the Lease is hereby amended to reflect Tenant’s updated notice address as follows:

Morgan Stanley Smith Barney Financing LLC  
750 Seventh Avenue, 19th Floor  
New York, NY 10019  
Attention: Managing Director, Corporate Real Estate Management

With a copy to:

Morgan Stanley Legal and Compliance Division  
1221 Avenue of the Americas, 35th Floor  
New York, New York 10020  
Attention: Director, Corporate Real Estate Legal

In addition to the above Tenant addresses, rental invoices, operating expense statements and/or reconciliations of operating expenses shall continue to be simultaneously sent via email to Lease.Administration@morganstanley.com and to:

CBRE, Inc. – Portfolio Services  
6055 Primacy Parkway, Building II, Suite 300  
Memphis, Tennessee 38119  
Attn: Morgan Stanley –Roseville, CA [1478 Stone Point Drive]

7. **Renewal Options.** Tenant shall have two (2) consecutive renewal options, each of five (5) years duration, under the same terms and conditions hereunder, except that Base Rent for the renewal terms will be the Fair Market Rental Value. “Fair Market Rental” shall mean the annual base rental income that the Premises would most probably command on the open market as indicated by current rentals paid for comparable office space in the general area in which the Premises is located as of the end of the applicable Renewal Term, taking into account all relevant factors. Tenant shall exercise its options by giving Landlord not less than nine (9) months’ written notice prior to the expiration date of the applicable Renewal Term, as the case may be. In the event Landlord and Tenant cannot agree on the Fair Market Rental of the Premises, Fair Marker Rental shall be determined in accordance with the arbitration procedures set forth in Section 38 of the Lease.

8. **Right of First Offer.** Provided Tenant shall not be in default in fulfilling any of the covenants of the Lease beyond any applicable notice and cure periods, Tenant shall have a continuing right of first offer as to any available space in the Building (each space, a “ROFO Space”). In the event that any ROFO Space is vacated or otherwise becomes available (as Landlord learns that such ROFO Space will be vacated), Landlord shall provide Tenant with written notice (the “ROFO Notice”) within thirty (30) days of such availability. The term of the lease of the ROFO Space shall be coterminous with the Term of the Lease, and the ROFO Space shall be offered to Tenant on the same terms and conditions as then-exist under the Lease, including with respect to Base Rent, provided that such ROFO Notice is sent during the first thirty-six (36) months of the Renewal Term, and Tenant has waived their termination rights. In the event that the ROFO Notice is sent to Tenant after the first thirty-six (36) months of the Renewal Term, Base Rent for the ROFO Space shall be equal to the Fair Market Rental for such space. Tenant shall have twenty (20) business days from receipt of the ROFO Notice in which to elect to rent such ROFO Space from Landlord pursuant to such terms. If the parties cannot agree on the Fair Market Rental (if applicable) within ten (10) days after Tenant’s election to rent such ROFO Space, the parties shall settle such dispute in accordance with the arbitration procedures set forth in Section 38 of the Lease.

9. **Right of First Refusal.** Landlord hereby grants Tenant an ongoing right of first refusal on all horizontal or vertical contiguous space in the Building (the "**Right of First Refusal**"). If Landlord receives a bona fide third party proposal from a prospective tenant, Landlord shall give Tenant written notice of such fact, setting forth in such notice all of the material terms and conditions of such offer (the "**Offer**"). After Landlord notifies Tenant in writing of such an Offer, Tenant shall have ten (10) business days to exercise the Right of First Refusal by written notice to Landlord. If Tenant does not accept Landlord's offer election within the aforesaid ten (10) business day period, Tenant shall be deemed to have waived the Right of First Refusal with respect to the Offer.

10. **Early Termination Right.** Provided Tenant shall not be in default in fulfilling any of the covenants of the Lease beyond any applicable notice and cure periods, Tenant shall have the right to terminate the Lease ("**Early Termination Right**") effective as of November 30, 2021 (the "**Early Termination Date**") for all of the Premises or for a portion of the Premises. The Termination Right must be exercised by written notice (the "**Termination Notice**") given to Landlord no later than February 28, 2021. Tenant shall pay to Landlord a fee on or prior to the Early Termination Date (the "**Early Termination Fee**") equal to the unamortized portion of any brokerage commissions and the Allowance (equitably pro-rated in the case of a partial termination) incurred by the Landlord pursuant to this First Amendment to Lease. In the event Tenant terminates the Lease for a portion of the Premises, Tenant shall provide Landlord with a plan identifying the space to be separated from the Premises. Any space returned to Landlord shall be located in a mutually agreeable location and configuration of space to be separated, or returned to tenant. All cost of separation of a portion of the premises returned to the Landlord shall be paid by the Tenant.

11. **Tenant Improvement Allowance.** Landlord shall provide Tenant with a Tenant Improvement Allowance of \$92,895.00 (or \$4.43/RSF) (the "**Allowance**") for the hard and soft costs of making improvements to the Premises (the "**Improvements**"). Tenant shall be permitted to perform the Improvements with Landlord's prior approval after submitting plans and specifications, which prior approval shall not be unreasonably withheld, provided that no such approval shall be required if the Improvements do not affect the structural integrity, exterior areas, or building systems of the Building. Landlord shall pay the Allowance, or a portion thereof, as applicable, to Tenant within thirty (30) days of receipt of invoices from Tenant evidencing the costs associated with such Improvements. Tenant shall have the right to provide Landlord with such invoices on or before August 1, 2019. Tenant shall have the right to use such Allowance for the design and finishes of the Premises. Any portion of such Allowance not used by Tenant shall be credited against future rental payments to be made by Tenant during the first year of the Renewal Term.

12. **Tenant's Security Protocol.** Landlord acknowledges that it has been advised by Tenant that pursuant to Section 3(a)(39) of the Securities Exchange Act of 1934, persons who have been convicted or pled guilty or been sentenced within the last ten (10) years of certain felonies or misdemeanors are disqualified from providing services to Tenant within the Premises (hereinafter called "**Disqualified Persons**"). A Disqualified Person is any individual who: (i) within the last ten (10) years has been convicted of, or plead guilty or no contest to, any felony, or any misdemeanor that involves any of the following: the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft,

robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offences, or substantially equivalent activity in a domestic, military or foreign court; and/or (ii) within the last ten (10) years has served or completed sentencing or other state- or court-imposed obligations for any of the above-referenced offenses. Landlord agrees that it shall use commercially reasonable efforts to not permit any Disqualified Person employed or retained by Landlord or its agents, employees or contractors to enter the Premises demised hereunder. In addition, Landlord shall cause any and all of its employees, managers, representatives, contractors, vendors and agents who have access cards, key fobs, keys or other means of access to Tenant's Premises and are not expected to be accompanied by Tenant or an employee or representative of Tenant during such period of access to the Premises (any of the foregoing, an "Access Person"), to comply with all of Tenant's reasonable security, supervision, and other access control procedures adopted by Tenant from time to time during the Term of the Lease. Tenant's security protocols may include, without limitation, background checks and execution of Tenant's standard onboarding documentation (if applicable), and such security procedures shall be administered by Tenant at Tenant's expense.

**13. Permitted Occupancy by Affiliates.** Notwithstanding anything in the Lease to the contrary, Tenant may permit the occupancy of the Premises by any employee of an entity that controls, is controlled by or is under common control with Tenant or entity which acquires all the assets of Tenant's business as a going concern.

**14. Other Modifications to the Lease.** Section 27.1(h) of the Lease is deleted in its entirety.

**15. Real Estate Brokers.** Landlord and Tenant each represents and warrants to the other that such party has not authorized or employed, or acted by implication to authorize or to employ, any other real estate broker or salesperson to act for such party in connection with this Amendment other than Jones Lang LaSalle ("Tenant's Broker"). Each party shall hold the other harmless from and indemnify and defend the other against any and all claims by any real estate broker or salesperson for a commission, finder's fee or other compensation as a result of the inaccuracy of such party's representation above. Landlord shall pay Tenant's Broker any brokerage fee owed in connection with this Amendment pursuant to a separate agreement.

**16. Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall together constitute but one agreement.

**17. Ratification.** Except as modified by this Amendment, the Lease shall otherwise remain unmodified and in full force and effect and the parties ratify and confirm the terms of the Lease as modified by this Amendment. This Amendment shall be binding shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors, assigns and legal representatives. All references to the Lease shall mean the Lease as modified by this Amendment.


THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date and year first above written.


**LANDLORD:**

STONE POINT ASSOCIATES, LLC. a California limited liability company

By:   
Name: Bob Kelly  
Title: CEO

**TENANT:**

MORGAN STANLEY SMITH BARNEY FINANCING LLC, a Delaware limited liability company

By:   
Name: Jeff Shoener  
Title: Authorized Signatory