

DUPLICATE

Document No. 00-21309
Filed APR 20 2021
Office of the City Clerk
San Diego, California

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE AGREEMENT (the "**Third Amendment**") is made by and between RUFFIN-SD, LLC, a California limited liability company ("**Lessor**"), and the CITY OF SAN DIEGO, a California municipal corporation ("**Lessee**").

RECITALS

- A. Lessor and Lessee are parties to a commercial real estate lease executed by Lessor on September 26, 2007 and by Lessee on December 7, 2007, consisting of: (1) the Lease, (2) the Lease Addendum Number One, which is an undated ten-page agreement consisting of eighteen provisions and three exhibits (Exhibit A, "Parking Rules and Regulations," and Exhibit B, "Commencement Agreement" and Exhibit C, "Space Plan"), (3) Lease Addendum Number Two, which is a five-page agreement dated August 3, 2007, (4) the executed Commencement Agreement, which is a one-page document signed by Lessor on July 21, 2008, (5) the "First Amendment to Lease," effective June 1 2014, and (6) the "Second Amendment to Lease" effective February 1, 2016. (*collectively*, "**Lease**").
- B. By way of a first amendment to the Lease with an effective date of June 1, 2014 ("**First Amendment**"), Lessor and Lessee amended the Lease to, among other things: (1) extend the Term of the Lease; (2) adjust the Base Rent; (3) allow for certain Lessee improvements; (4) allow for a right of first offer; (5) allow for a right to extend the Term; (6) allow the installation, at Lessee's sole cost and expense, of a bullet-proof security enclosure in the reception/front-desk area of the Premises; and (7) restate the Lease term for parking at the Building.
- C. By way of a second amendment to the Lease with an effective date of February 1, 2016 ("**Second Amendment**"), Lessor and Lessee amended the Lease to, among other things: (1) allow Lessee to expand into Suite 150 of the Building; (2) adjust the Base Rent; and (3) allow for certain Lessee improvements.
- D. Under the Lease, Lessee is occupying Suite 100 and the Expansion Space located in Suite 150 (collectively, the original Premises and the Expansion Space are referred to as the "**Premises**") of the building located at 9370 Chesapeake Drive, San Diego, California ("**Building**").
- E. Lessor and Lessee desire to amend the Lease to, among other things: (1) extend the Term of the Lease; (2) adjust the Base Rent; (3) allow for the right to extend the Term; and (4) allow for certain Lessee improvements.

TERMS AND CONDITIONS

Lessor and Lessee acknowledge, understand and agree as follows:

- 1. Effective Date. The Effective Date of this Third Amendment shall be June 1, 2020.

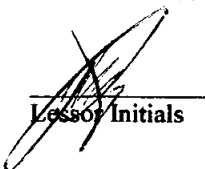

Lessor Initials


Lessee Initials

2. **Term.** Commencing on the Effective Date of this Third Amendment, the Term of the Lease shall be extended by sixty (60) months expiring on May 31, 2025 unless otherwise terminated as herein provided (the "**Second Extended Term**").
3. **Base Rent.** The Base Rent for the Second Extended Term of the Lease consists of monthly full service gross rent plus electricity serving the Premises, as outlined in the schedule below.

Period	Monthly Rate Per Rentable Sq. Ft.(RSF))	Monthly Base Rent
June 1, 2020 – May 31, 2021	\$2.17/RSF + E	\$45,231.48 + E
June 1, 2021 – May 31, 2022	\$2.22/RSF + E	\$46,362.27 + E
June 1, 2022 – May 31, 2023	\$2.28/RSF + E	\$47,521.32 + E
June 1, 2023 – May 31, 2024	\$2.34/RSF + E	\$48,709.36 + E
June 1, 2024 – May 31, 2025	\$2.40/RSF + E	\$49,927.09 + E

4. **Operating Expense Increase.** As of the Effective Date, for calculating the Operating Expense Increase, as that term is defined in the Lease, for the Premises the Base Year, shall be amended to be calendar year 2020. In calculating Lessee's Operating Expenses for the new Base Year of 2020 and each Comparison Year thereafter, all Operating Expenses shall be calculated as if the Building was 100% occupied. Lessee's proportionate share shall be 49.90%. Notwithstanding anything to the contrary in Lease Paragraph 10 or otherwise, Lessee shall not pay for any increases in real property taxes that result from the sale or transfer of the Premises, Building, the Project, or any appurtenant real property.. Notwithstanding anything to the contrary in Lease Paragraph 4 or otherwise, Operating Expense Increases, excluding Real Estate Taxes and Insurance, shall be capped and limited to up to 4% per year.
5. **Lessee Improvements.** Except as set forth in this Amendment, Lessee shall accept the Premises "as-is." Notwithstanding the foregoing, Lessor shall provide Lessee Improvements as set forth in attached Exhibit B.
6. **Renewal Option.** Provided (i) Lessee is not in default as of the date of exercise of the Renewal Option (as hereinafter defined) nor at the date of the commencement of the Renewal Option, (ii) Lessee has not done anything nor failed to do anything that with the passage of time and/or the giving of notice would constitute a default hereunder, and (iii) Lessee is in possession of the Premises and has not sublet any part of the Premises or assigned any part of the Lease, Lessee shall have the right to renew the term of the Lease one (1) time for a period of five (5) years ("**Renewal Option**"). During the Renewal Option, all of the terms and conditions of the Lease shall be at the Fair Market Rental Value (as hereafter defined) for the Premises but under no circumstances shall the Base Rent for the Renewal Option be less than the amount Lessee is paying at the end of the Second Extended Term. Lessee shall lease the


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Premises throughout the renewal term in its then current "as-is" condition. Lessee shall exercise the Renewal Option by furnishing Lessor written notice of Lessee's exercise thereof ("Renewal Notice") no later than one hundred eighty (180) days prior to the expiration of the Term of the Lease.

For all purposes hereof, the "Fair Market Rental Value" of the Premises will be the rental rate based upon the then prevailing rent for renewals of premises comparable in size and use to the Premises located in the Building.

Lessor shall, within ten (10) Business Days of receipt of Lessee's Renewal Notice, deliver a Lease amendment containing the Fair Market Rental Value for the Renewal Option; all other terms and conditions shall remain as provided in this Lease, except that the Renewal Option shall have been used. Lessee shall have seven (7) days to execute the amendment, thus exercising the Renewal Option. Should Lessee disagree with Lessor's determination of the Fair Market Rental Value, Lessee's sole remedy shall be to decline to exercise the Renewal Option. If Lessee fails to execute the amendment within the seven (7) day time frame set forth above, Lessee shall conclusively be deemed to have declined to exercise the Renewal Option and the Lease shall end as of the end of the Term. This option shall be personal to Lessee and shall not be assignable or transferable to any party whatsoever.

7. Full Force and Effect. Except as expressly amended hereby, the Lease is unmodified, and shall remain in full force and effect in accordance with its terms and conditions. Lessee knows of no Default by Lessor under the Lease as of the Effective Date.
8. Authority. Lessor and Lessee each represent and warrant that: (a) they have due power and lawful authority to execute and deliver this Amendment and to perform their obligations under the Lease, including, but not limited to, this Amendment; and (b) the Lease, this Amendment and all prior amendments are the valid, binding and enforceable obligations of Lessor and/or Lessee, as the case may be. If Lessee executes this Amendment in other than an individual capacity, the person executing this Amendment on behalf of Lessee personally represents and warrants that he or she is an authorized signatory.
9. Binding Agreement. This Amendment and the Lease, as amended hereby and by any prior amendments, shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors, legal representatives and assigns.
10. Separability. If any clause or provision of this Amendment is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Amendment shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Amendment a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

11. Amendments; Binding Effect. Neither the Lease nor any addenda or amendments thereto may be amended except by instrument in writing signed by Lessor and Lessee. No provision of this Amendment shall be deemed to have been waived by Lessor unless such waiver is in writing signed by Lessor, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Lessor to insist upon the performance by Lessee in strict accordance with the terms hereof.
12. Entire Agreement. The Lease constitutes the entire agreement between Lessor and Lessee regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in the Lease, no representations, warranties, or agreements have been made by Lessor or Lessee to the other with respect to this Lease or the obligations of Lessor or Lessee in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits, addenda or amendments hereto.
13. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California in which the Premises is located.
14. Recording. Lessee shall not record the Lease, any amendments to the Lease or any memorandum of the Lease or amendments thereto without the prior, written consent of Lessor, which consent may be withheld or denied in the sole and absolute discretion of Lessor. Lessee grants to Lessor a power of attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Lessor. Notwithstanding the foregoing, Lessor acknowledges and agrees that disclosure of the Lease or all addenda or amendments thereto may be subject to disclosure by Lessee pursuant to California law.
15. Prohibited Persons and Transactions. Lessee and Lessor (each, a "Representing Party") each represents and warrants to the other (i) that neither the Representing Party nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Money Laundering Act"), and (iii) that throughout the Lease Term (as extended hereby), the Representing Party shall comply with the Executive Order and with the Money Laundering Act.



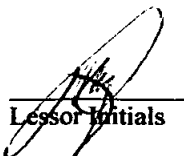
Lessor Initials



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16. No Breach. To the best of Lessee's knowledge, information and belief, as of the Effective Date of this Amendment, Lessor is not in breach under any of the terms or conditions of the Lease.
17. Exhibits. Each Exhibit attached to this Amendment, if any, is hereby made a part hereof for all purposes.
18. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Lease.
19. Counterparts. This Amendment may be executed by the parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
20. No Broker. Both parties each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in conjunction with this Amendment and no one is entitled to any commissions or finders in connection herewith. Lessee and Lessor hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party.

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IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment to be duly executed, as of the day and year first above written.

Executed as of the date last written below.

LESSOR:

RUFFIN – S.D., L.L.C.
a California limited liability company



Signature

By: _____

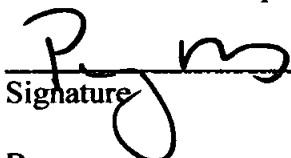
Name: MICHAEL HARDT

Title: DIRECTOR OF REAL ESTATE ASSETS

Date: 2-10-21

LESSEE:

CITY OF SAN DIEGO,
a California municipal corporation



Signature

By: _____

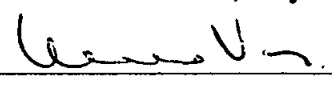
Name: Penny Maus

Title: Director, Real Estate Assets

Date: _____

APPROVED as to form:
this 6th day of May, 2021.

MARA W. ELLIOTT, City Attorney

By: 

Deputy City Attorney

Marco A. Verdugo
Deputy City Attorney

Document No. 00- 21309
Filed APR 20 2021
Office of the City Clerk
San Diego, California



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EXHIBIT B
WORK LETTER

This Work Letter Agreement ("**Work Letter**") is a part of that certain Third Amendment to Office Lease (the "**Third Amendment**") between Ruffin-SD, LLC ("**Lessor**") and the City of San Diego. ("**Lessee**") for space in the Building located at 9370 Chesapeake Rd. San Diego, CA. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Lease. For and in consideration of the agreement to lease the Expansion Space and the mutual covenants contained herein and in the Lease, Lessor and Lessee hereby agree as follows:

1. **Acceptance of Premises.** Except as set forth in this Exhibit, Lessee accepts the Premises in their "**AS-IS**" condition on the date that this Lease is entered into.

2. **Scope of Work.** Lessor, at its sole cost and expense, in an amount not to exceed \$104,220.00 (the "**Allowance**"), shall perform the following work in the Premises (the "**Work**"):

- (a) Repair or Replace, as necessary in the Lessee's sole discretion, the carpets
- (c) Touch-up paint as necessary in the Lessee's sole discretion.
- (d) Repair miscellaneous electrical issues for workstations to the Lessee's satisfaction.

The Work must be completed by May 31, 2021 or any remaining Allowance will be forfeited and Landlord will have no further obligation for any remaining Work or reimbursement thereof. Lessor will notify Lessee no less than 20 days prior to when the Work is completed. Within 5 business days after receiving such notice, Lessee shall inspect the Premises for any deficiencies in the Work. A "punch-list" of all the deficiencies in the Work shall be prepared by Lessee and provided to Lessor. Lessor will correct the defective items stated in the punch-list. Lessor shall complete all reasonable punch-list items within 30 days of receiving the punch-list. Upon completion of such punch-list items, Lessee shall acknowledge the completion of such items in writing to Lessor.

3. **Changes in Work.** Lessee may initiate changes in the Work. Each such change must receive the prior written approval of Lessor. If such requested change: (a) would adversely affect (in the reasonable discretion of Lessor) (i) the Building's structure or the Building's Systems and Equipment (including the Building's restrooms or mechanical rooms), (ii) the exterior appearance of the Building, or (iii) the appearance of the common area; or (b) delay the Expansion Space Commencement Date, Lessor may withhold its consent in its sole and absolute discretion. Each and every change order shall be signed by Lessor's and Lessee's respective construction representative.

4. **Removal of Lessee Improvements.** Notwithstanding anything to the contrary contained in the Lease, Lessee shall not be required to remove the Lessee Improvements upon the expiration of earlier termination of the Lease.

5. **Construction Representatives.** Lessor's and Lessee's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Lessor's Representative:

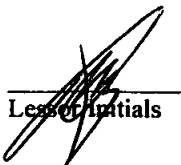
Joseph C Altman, CPM & VP
Evanco Realty Advisors
2245 San Diego Ave, Ste 222
San Diego, CA 92110
Telephone: 619-814-1681
Email: joe@evancorealty.com

Lessee's Representative:

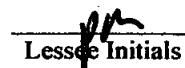
Telephone: _____
Email: _____

6. **Entire Agreement for Work.** This Work Letter (Exhibit B) sets forth the entire agreement of Lessor and Lessee with respect to the completion of the Work. Neither this Work Letter nor any of the provisions contained in this Work Letter may be changed or waived, except by a written instrument signed by both parties.

7. **Miscellaneous.** To the extent not inconsistent with this Exhibit, the Lease shall govern the performance of the Work and Lessor's and Lessee's respective rights and obligations regarding the improvements installed pursuant thereto.



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(O-2021-99)
(COR. COPY)

ORDINANCE NUMBER O- 21309 (NEW SERIES)

DATE OF FINAL PASSAGE APR 22 2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE
THE THIRD AMENDMENT TO LEASE BETWEEN
RUFFIN-SD, LLC AND THE CITY OF SAN DIEGO FOR
OFFICE SPACE AT 9370 CHESAPEAKE DRIVE, SAN DIEGO,
CALIFORNIA 92123, AND AUTHORIZING THE CHIEF
FINANCIAL OFFICER TO MAKE CERTAIN
EXPENDITURES.

WHEREAS, the City of San Diego (City) entered into a lease, dated December 7, 2007, with Ruffin-SD, LLC, a California limited liability company (Lessor), for certain office space in the building at 9370 Chesapeake Drive, San Diego, California 92123 (Premises), approved by the Council of San Diego (Council) pursuant to Charter section 99 on November 20, 2007 by Ordinance No. O-19686 (Lease). The Lease includes Lease Addendum Number One, Lease Addendum Number Two, and the Commencement Agreement; and

WHEREAS, the City and Lessor entered into the First Amendment to Lease with an effective date of June 1, 2014, extending the term of the Lease, providing an option to extend the term of the Lease for an additional five (5) year period, and adjusting the base rent, among other items as set forth in the First Amendment to Lease approved by the Council on November 25, 2014 by Ordinance No. O-20430; and

WHEREAS, the City and Lessor entered into the Second Amendment to Lease with an effective date of February 1, 2016, expanding the Premises, adjusting base rent, and requiring the Lessor to expend funds for improvements to the expansion space, among other items as set forth

in the Second Amendment to Lease approved by the Council on December 16, 2015 by Ordinance No. O-20584; and

WHEREAS, the City and Lessor have agreed to amend the Lease (Third Amendment to Lease), subject to Council's approval, to among other items, extend the term of the Lease, adjust base rent, allow for the right to extend the term, and allow for certain improvements to the Premises, as more fully set forth in the Third Amendment to Lease on file with the Office of the City Clerk as Document No. OO- 21309; and

WHEREAS, this Amendment will be submitted for approval under Charter section 99 to be consistent with approval of the original lease; and

WHEREAS, under Charter section 99, no contract, agreement, or obligation extending for a period of more than five years may be authorized except by ordinance approved by a two thirds' majority vote of the City Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego (Council), as follows:

Section 1. That the Mayor, or his designee, is authorized to enter into that certain Third Amendment to Lease between SD-Ruffin, LLC, a California limited liability company, as Lessor, and the City of San Diego, as lessee, for certain office space at 9370 Chesapeake Drive, San Diego, California 92123, Suites 100 and 150, compromising 20,884 square feet, and on file with the Office of the City Clerk as Document No. OO- 21309.

Section 2. That the Chief Financial Officer is authorized to expend an amount not to exceed \$2,853,018.24 for rent and \$185,000.00 for estimated operating expenses over the extended term of the Lease, contingent upon adoption of annual funds for the applicable fiscal year and upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure, are, or will be, on deposit with City Treasurer.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Marco A. Verdugo
Marco A. Verdugo
Deputy City Attorney

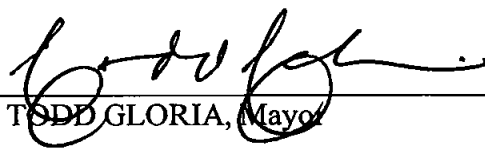
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03/17/2021
04/08/2021 COR. COPY
Or.Dept:READ
Doc. No.: 2594627

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 04/20/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Stacy D. Ready
Deputy City Clerk

Approved: 4/22/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 20 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

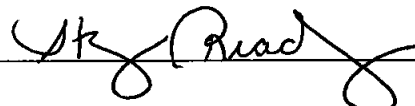
Date of final passage APR 22 2021.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 06 2021, and on APR 22 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21309

Passed by the Council of The City of San Diego on April 20, 2021, by the following vote:

YEAS: LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON
WILPERT, CATE, CAMPILLO, MORENO & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Stacy D. Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
ORDINANCE NO. O-21309 (New Series) of The City of San Diego, California.

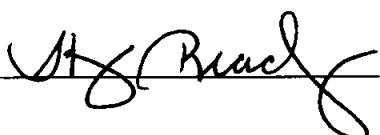
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days
had elapsed between the day of its introduction and the day of its final passage, to wit, on
April 6, 2021, and on April 20, 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such
reading was dispensed with by a vote of five members of the Council, and that a written
copy of the ordinance was made available to each member of the Council and the public
prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy