



Real Estate Assets Department

SDC003

City / B.H. Camino Del Rio UC

CITY-909 - A00

Document Type

LEGAL DOCUMENTS



Sub - Category

AMENDMENTS



5

SECOND AMENDMENT TO OFFICE LEASE

THIS SECOND AMENDMENT TO OFFICE LEASE (the "Second Amendment") is entered into this ____ day of _____ 2023 ("Amendment Effective Date"), by and between B.H. CAMINO DEL RIO, LLC, a California limited liability company ("Landlord"), and THE CITY OF SAN DIEGO, a California municipal corporation ("Tenant"). Landlord and Tenant are sometimes referred to in this Second Amendment, each individually as a "Party," or, collectively, the "Parties."

RECITALS

- A. On June 11, 2017, Landlord and Tenant entered into that certain Office Lease (the "Original Lease"), whereby Landlord leased to Tenant and Tenant leased from Landlord that certain office space known as Suite 104, consisting of approximately 2,747 rentable square feet, in that certain building located at 4025 Camino Del Rio South, San Diego, California 92108, as more specifically described in the Lease (the "Premises"). The Original Lease was amended by that certain First Amendment to Office Lease dated July 8, 2020 (the "First Amendment"). The Original Lease, as amended by the First Amendment, is referred to in this Second Amendment as the "Lease." The Lease, as amended by this Second Amendment, is referred to in this Second Amendment as the "Amended Lease."
- B. By this Second Amendment, Landlord and Tenant desire to, among other things, extend the Term.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The Expiration Date is extended to August 31, 2025.
2. **Monthly Base Rent.** Until September 1, 2023 ("Second Amendment Commencement Date"), Tenant shall continue to pay Monthly Base Rent as provided in Section 2 of the First Amendment. Notwithstanding anything to the contrary in the Lease or this Second Amendment, beginning on the Second Amendment Commencement Date, the Monthly Base Rent will be as set forth in the table below in this Section 2.

Period	Monthly Base Rent
September 1, 2023 – August 31, 2024	\$6,849.19
September 1, 2024 – August 31, 2025	\$7,123.89

3. **Base Year.** Beginning on the Second Amendment Commencement Date, Tenant's Base Year shall be 2023.
4. **Rent Abatement.** Notwithstanding anything to the contrary in the Amended Lease, during any period in which Tenant's use or occupancy of all or a portion of the Premises is prevented, Rent payments due under the Amended Lease shall be abated. The amount of Rent abatement shall be such that the resulting Rent payments represent fair consideration

for the use and occupancy of the portions of the Premises that Tenant is not prevented from using (if any). The period of such Rent abatement shall commence with the date of the occurrence preventing Tenant's use or occupancy of all or a portion of the Premises and end on the earlier of when Tenant's use or occupancy of all or a portion of the Premises is no longer prevented or termination of the Amended Lease in accordance with its terms or applicable law.

5. Tenant Annual Fiscal Year Budget Condition. Notwithstanding anything to the contrary in the Amended Lease, Tenant's obligation to pay Rent and Tenant's associated right to occupy the Premises after June 30, 2024, are subject to the City Council of Tenant ("City Council") appropriating money to pay Rent under the Amended Lease in Tenant's fiscal years following Tenant's 2023-2024 fiscal year (July 1, 2023 - June 30, 2024), in the City Council's sole and absolute discretion. Tenant agrees to annually take all necessary action to include Rent payments under the Amended Lease in Tenant's future proposed annual budgets for all Tenant fiscal years following Tenant's 2023-2024 fiscal year in which any part of the Term or Option Term (if applicable) occurs, subject to the reserved sole and absolute discretion of the City Council to approve each such budget, with or without appropriating money for Rent payments under the Amended Lease. The Parties acknowledge that the City Council adopts an annual fiscal year budget for Tenant before the end of each fiscal year. If the City Council does not appropriate money to pay Rent under the Amended Lease in a Tenant annual budget for a fiscal year in which any part of the Term or Option Term (if applicable) occurs, Tenant may terminate the Amended Lease without liability as of the end of its then current fiscal year by delivering written notice to Landlord within seven (7) days after such budget adoption by the City Council, in which event Tenant shall vacate the Premises on or before the end of its then current fiscal year.
6. Condition of the Premises. Tenant continues to accept the Premises in its "as-is" condition and Tenant acknowledges that Landlord shall not be obligated to provide or pay for any other work or services related to the improvement of the Premises other than (a) professionally cleaning the flooring in the Premises, and (b) replacing all damaged or discolored lights and light covers in the Premises. Tenant also acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises.
7. Extension Option.
 - 7.1 Option to Extend. Landlord grants the Tenant named in this Lease (the "Original Tenant") one (1) option ("Option") to extend the Term for Premises for a period of one (1) year (the "Option Term"). Tenant can exercise the Option only by written notice delivered to Landlord as set forth in Section 7.4 below. The rights contained in this Section 7 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee, or other transferee of the Original Tenant's interest in this Lease), and only if the Original Tenant occupies the entirety of the Premises as of the date the Option Term commences.
 - 7.2 Option Rent. The Rent payable by Tenant during the Option Term ("Option Rent") shall be equal to the Market Rent (as defined below in this Section 7.2). The term "Market Rent" as used in this Section 7 shall mean the applicable Monthly Base Rent, including all escalations, and any and all other Rent, including additional rent, operating expense pass-throughs and other charges at which tenants of comparable size, quality, and financial strength, as of the commencement of the Option Term, are leasing non-subleased, non-

encumbered, office space comparable in size, location and quality to the Premises in renewal transactions for a term comparable to the Option Term for comparable office space in the Building or in other buildings in the San Diego, California area, taking into consideration all relevant factors, including without limitation, the location and quality of the Building and, if applicable, comparable buildings, the value of the existing improvements in the Premises to Tenant, as compared to the value of the existing improvements in such comparable space, with such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by Tenant with consideration given to the fact that the improvements existing in the Premises are specifically suitable to Tenant.

7.3 Determination of Market Rent. Within ten (10) days after receipt of Tenant's Exercise Notice, Landlord shall provide Tenant with its determination of Market Rent ("Landlord's Determination"). Tenant shall have thirty (30) days after receipt of Landlord's Determination in which to notify Landlord of any objection to Landlord's Determination. If Landlord and Tenant cannot agree on a Market Rent within sixty (60) days of Tenant's receipt of Landlord's Determination, Landlord and Tenant will mutually appoint a certified Member of the Appraisal Institute (MAI) who has at least ten (10) years' full-time commercial appraisal experience. If Landlord and Tenant are unable to agree on an appraiser, either Party, after giving five (5) days' prior written notice to the other Party, may request the President of the San Diego, California Board of Realtors (or an alternate acceptable to both Parties if the President of the Board of Realtors is unable or unwilling to serve) to select an appraiser who meets the foregoing qualifications, which selection will be made within three (3) days. The appraiser selected by the President of the Board of Realtors (or alternate) must be a person who has not previously acted in any capacity for either Party. The appraiser will, within ten (10) days of appointment, review both Landlord's and Tenant's estimates of the Market Rent and such other information as the appraiser deems necessary and will decide which of the two is closer to the actual Market Rent. The appraiser will not establish the appraiser's own Market Rent figure; instead, the appraiser must select either the Landlord's or the Tenant's figure and will immediately notify the parties of the selection. The Market Rent estimated by Landlord or Tenant and selected as the one closer to the actual Market Rent by the appraiser, will be the Market Rent used to establish the Monthly Base Rent payable for the Option Term. The Party whose estimate is not selected will pay for the entire cost of the appraiser. The appraiser's decision will be binding on Landlord and Tenant.

7.4 Exercise of Option. Provided the Amended Lease remains in full force and effect, and no uncured Event of Default then exists, Tenant may exercise the Option by delivering written notice ("Exercise Notice") to Landlord not more than nine (9) months nor less than six (6) months prior to the expiration of the Term, stating that Tenant is exercising the Option. Once delivered, Tenant shall have no right to revoke the Exercise Notice or its exercise of the Option. If Tenant timely and properly exercises its Option, the Term shall be extended for the Option Term upon all of the terms and conditions set forth in the Amended Lease, except that the Option Rent shall be determined as set forth above in Section 7.3. If Tenant fails to deliver the Exercise Notice on or before the date specified in this Section 7.4 Tenant shall be deemed to have waived its rights under this Section 7, and any such rights shall automatically terminate and be of no further force or effect.

8. Miscellaneous Provisions.

8.1 Broker. Landlord and Tenant warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Second

Amendment other than Colliers International, on behalf of Landlord ("Broker"), and that they know of no real estate broker or agent other than Broker who is entitled to a commission in connection with this Second Amendment. Each Party agrees to indemnify and defend the other Party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent other than Broker occurring by, through, or under the indemnifying Party in connection with this Second Amendment. In connection with this Second Amendment, Landlord agrees that it will pay a commission to the Broker according to a separate agreement.

8.2 Counterparts. This Second Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

8.3 Electronic Signatures. The Parties agree that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

8.4 Full Force and Effect. Except as set forth in this Second Amendment, all the terms and conditions of the Lease remain in full force and effect. The Lease, as amended by this Second Amendment, represents the entire understanding between the Parties as to the subject matter of the Lease, as so amended.

8.5 Effective on Delivery. This Second Amendment will only be effective when an original or copy of this Second Amendment signed by the respective authorized representative(s) of both Landlord and Tenant and approved as to form by the San Diego City Attorney is delivered to both Landlord and Tenant.

8.6 Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Second Amendment, without application of conflicts of laws principles or statutes.

8.7 Binding on Successors and Assigns. This Second Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

8.8 No Other Representations or Warranties. Except as expressly set forth in this Second Amendment, no Party makes any representation or warranty material to this Second Amendment to any other Party.

8.9 Incorporation of Defined Terms. All terms, phrases, and words indicated to be defined terms by initial capitalization in this Second Amendment that are not specifically defined in this Second Amendment (if any) shall have the meaning scribed to the same term, phrase, or word in the Lease.

8.10 Incorporation of Recitals. The recitals set forth preceding this Second Amendment are true and correct and are incorporated into this Second Amendment in their entirety.

**SIGNATURE PAGE TO
SECOND AMENDMENT TO OFFICE LEASE
(4025 Camino Del Rio South)**

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Second Amendment as of the Amendment Effective Date by and through the signatures of the respective authorized of Landlord and Tenant set forth below.

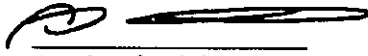
"LANDLORD"

B.H. CAMINO DEL RIO, LLC,
a California limited liability company

By: B.H. Partnership B, L.P.,
a Delaware limited partnership
Its: Sole Member

By: B.H. Holding Company I, Inc.,
a Delaware corporation
Its: General Partner

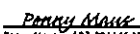
TN

By: 
Name: Arsalan Gozini
Its: President

Date: 7/7/2023

"TENANT"

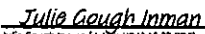
THE CITY OF SAN DIEGO,
a California municipal corporation

By: 
Penny Maus (eod 27, 2023 16 18 PD1)
Name: Penny Maus
Title: Director, Department of Real Estate and
Airport Management

Date: _____

Approved as to form this 27th day
of July, 2023.

MARA W. ELLIOTT, City Attorney

By: 
Julie Gough Inman (eod 27, 2023 16 22 PD1)

Name: Julie Gough Inman

Title: Deputy City Attorney