

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT NO. 7
	TO LEASE NO. GS-11B-12583
ADDRESS OF PREMISES 2415 EISENHOWER AVENUE ALEXANDRIA, VA 22314 (SEE ¶ I)	PDN Number:

THIS AMENDMENT is made and entered into between: [REDACTED]

whose address is:
 c/o US Government Fund Open-End Operating Partnership, LP
 9830 Colonnade Boulevard, Suite 600
 San Antonio, Texas 78230-2239

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, significant delays have impacted the Project and have and will continue to increase Lessor's costs.

WHEREAS, Lessor submitted a Request For Equitable Adjustment ("REA") dated February 23, 2015, alleging among other things Government delay and breach of contract and seeking the establishment of a framework to be compensated for the impact of delays, to address other fee and cost issues, and to memorialize a new schedule for the Project that accounts for the delays and accommodates a Government-requested acceleration.

WHEREAS, Lessor and the Government jointly wish to (a) avoid the filing of a Lessor "claim" under the Contract Disputes Act with respect to the matters raised in the REA; (b) resolve amicably the issues raised in the REA as well as related issues concerning the Lease; and (c) achieve a successful completion of the Project.

WHEREAS, following the submission of the REA, the parties entered into good faith discussions and have agreed to a revised project schedule to accelerate the design and construction in a manner that reduces the impact of the delays and provides for a September 1, 2017 substantial completion date, and have agreed to the other items set forth below.

WHEREAS, the parties hereto, for the consideration hereinafter mentioned, desire to amend the above Lease.

NOW THEREFORE, these parties for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree that the said Lease is amended, effective UPON FULL EXECUTION of this Lease Amendment as follows:

This Lease Amendment contains 5 pages plus the attached Revised Project Schedule (Exhibit A) and Revised Draw Down Schedule (Exhibit B).

All other terms and conditions of the Lease shall remain in force and effect.
 IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:
 [SEE ATTACHED FOR LESSOR SIGNATURE]
 Signature: SEE ATTACHED
 Name: _____
 Title: _____
 Date: August 10, 2015

FOR THE GOVERNMENT:
 Signature: [REDACTED]
 Name: James J. Phelan
 Title: Lease Contracting Officer
 GSA, Public Buildings Service
 Date: 8/24/15

WITNESSED FOR THE LESSOR BY:
 Signature: [REDACTED]
 Name: James K. Hardin
 Title: Assistant Secretary
 Date: August 10, 2015

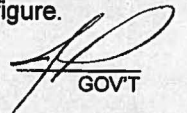
- A. Project Schedule and Liquidated Damages.** Notwithstanding anything to the contrary set forth in the Lease, including without limitation, Section 4.01, Section 4.07, Section 7.08, Exhibit L and Lease Amendment No. 3, the parties hereby adopt and incorporate into the Lease a new, revised project schedule attached hereto as Exhibit A and made a part hereof (the "Revised Project Schedule"). From and after the date of this Lease Amendment, all references to a project schedule in the Lease shall refer to the Revised Project Schedule. Accordingly, any schedule previously attached or referenced in the Lease or exchanged and used by the parties outside of the Lease is hereby deleted in its entirety and replaced with the Revised Project Schedule. In the event of any conflict between the Revised Project Schedule and any provision in the Lease, the Revised Project Schedule shall govern. The parties agree that, as of August 1, 2015, neither the Government nor the Lessor is in delay under the Revised Project Schedule and that, from and after August 1, 2015, delay shall be determined solely in accordance with the attached Revised Project Schedule. Section 4.14 of the Lease is hereby amended to provide that liquidated damages shall not apply to the first 45 days of Delay beginning on or after August 1, 2015 that are attributable solely to Lessor.
- B. Settlement of Delay Claims and Costs.** In full and final settlement of any claims for delay or other costs arising from or related to the adoption of the attached Revised Project Schedule, including the REA, the parties hereby stipulate and agree as follows:
1. The Government shall pay to Lessor the sum of \$14,508,743, subject to any reduction in real estate taxes as set forth below. Such amount shall be due upon substantial completion of the leased Premises and shall be payable, at the Government's election, by lump sum or as additional rent (amortized at 10% over the 15 year firm term of the Lease) or through a combination thereof. If a lump sum payment is chosen by the Government for all or a portion of the amount due, the Government shall pay the full or partial lump sum within 60 days of substantial completion. The Government shall make a binding election concerning the manner of payment in writing to Lessor no later than March 1, 2017. If such binding election is not issued to Lessor on or before March 1, 2017, the Government shall be deemed to have made a lump sum election and shall make a lump sum payment of the full amount (\$14,508,743, subject to any reduction in real estate taxes as set forth below) within 60 days of substantial completion. The Government's election and the terms of payment shall be memorialized in a Lease Amendment. The Government may not offset the amount due in whole or part without the written agreement of Lessor, except that any unused portion of the tenant improvement allowance, warm lit shell allowance¹, or move-in allowance may be applied to pay all or part of such lump sum payment in the Government's absolute discretion.
 2. The foregoing sum of \$14,508,743 includes \$2,633,760 for real estate taxes that Lessor expects to pay to the City of Alexandria (the City) for the full calendar year 2017, it having been stipulated by the City that the abatement of taxes would commence on January 1st of the year following the year in which [REDACTED] actually occupies the building. Lessor hereby agrees, in good faith, to approach the City and to request the City's agreement to commence the previously agreed tax abatement upon the date that the leased Premises are actually accepted and occupied by the Government rather than on January 1 of the year following such acceptance and occupancy, thereby enabling the Government to receive the benefit of the tax abatement for the portion of calendar year 2017 during which the building is occupied by [REDACTED]. In the event that such efforts are successful, the foregoing sum of \$14,508,743 shall be reduced by the amount of the reduction achieved in the real estate taxes due for calendar year 2017 minus expenses reasonably incurred by Lessor in undertaking such effort. In the event such efforts are not successful, the Government shall reimburse the expenses reasonably incurred by Lessor in undertaking such effort. Notwithstanding the foregoing, the Government's responsibility to pay the Lessor for real estate taxes under this Lease Amendment shall (a) not exceed the amount of real estate taxes actually owed and paid by the Lessor to the City attributable to calendar year 2017; and (b) increase in the event the actual amount of taxes paid by Lessor to the City is more than estimated.²
 3. In further consideration of payment by the Government of the foregoing sum of \$14,508,743 and for Lessor's waiver set forth in Section F below, Lessor and the Government stipulate and agree that Lessor's Project Management Fee in Section 1.10 of the Lease is hereby amended: (1) for the initial build-out of the space, to

¹ The term "Warm Lit Shell Allowance" used in this Lease Amendment is synonymous with the term "Warm Lit Shell Credit" referenced in Lease § 7.02, Lease Agency Special Requirements ¶ 8, SLA 1, and SLA 6.

² To clarify, the \$2,663,760 figure is a benchmark to be used by the parties. In the event Lessor pays less taxes to the City, the Government will receive a credit from Lessor for the difference between \$2,663,760 and the amount paid to the City. In the event Lessor pays more to the City, the Government will make a lump sum payment to Lessor for the difference between the amount paid to the City and \$2,663,760. Any such adjustment under this provision shall be memorialized in Lease Amendment and will not impact the \$14,508,743 settlement figure established in this Lease Amendment, which is a fixed figure.

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provide for a Lessor's Project Management Fee of 0% of total TI design and construction costs for up to \$80 million, a Lessor's Project Management Fee of 3% on total project costs funded by the Warm Lit Shell Allowance (which, per SLA No. 6, is \$13,847,090.40), and a Lessor's Project Management Fee of 3% of total project costs in excess of \$93,847,090.40 (\$80 million plus the Warm Lit Shell Allowance); and (2) for subsequent tenant improvements implemented during the lease term after initial occupancy by the Government, to increase the Lessor's Project Management Fee from 3% to 5% of TI project costs. Section 1.10 of the Lease shall remain in full force and effect with respect to all other fees, including architectural/engineering fees, general contractor overhead and profit, and general conditions for the initial build-out of the premises. Lessor's Project Management Fee includes compensation for Lowe Enterprises for any and all services rendered by it in connection with the design and construction of the leased premises, excluding prospective Government delay under the attached Revised Project Schedule.

4. As further consideration for the Government's payment of the fixed settlement figure of \$14,508,743, the following amounts, which were previously accounted for as a draw against the Government's Tenant Improvement Allowance ("TIA"), will be credited back to the TIA:
 - i. NTP #36: \$250,000.00
 - ii. NTP #52: \$96,000.00
 - iii. NTP #54: \$34,998.20
 - iv. NTP #55: \$350,000.00
5. In further consideration of payment by the Government of the foregoing sum of \$14,508,743, the Move-In Allowance quarterly draw schedule included as Exhibit A to Lease Amendment No. 1 is hereby deleted in its entirety and replaced with the quarterly draw schedule attached hereto as **Exhibit B**.

C. Items Not Impacted. Notwithstanding anything to the contrary in the Lease, the following items are not being adjusted in connection with this Lease Amendment: Broker Commission, Tenant Improvement Allowance ("TIA"), Building Specific Amortized Capital ("BSAC"), Warm Lit Shell Allowance, and the Move-In Allowance (except, with respect to the Move-In Allowance, the draw schedule is adjusted in accordance with Section B.5 and Exhibit B, and with respect to the TIA, a credit to the balance will be provided in accordance with Section B.4).

D. [Intentionally left blank].

E. HVAC During Construction. Section 3.50F of the Lease is hereby deleted in its entirety and replaced with the following language:

HVAC during Construction. If air handlers are used during construction, the Lessor shall provide filtration media with a Minimum Efficiency Reporting Value (MERV) of eight (8) return air grille, as determined by ASHRAE (American Society of Heating, Refrigeration and Air-Conditioning Engineers (52.2-199, HVAC Use During Construction). [The remainder of Section 3.50F has been struck from the Lease.]

F. Settlement, Reciprocal Waiver, and Reservation of Rights. This Lease Amendment is intended to settle all outstanding issues related to delays through August 1, 2015 for which Lessor or the Government has actual or constructive knowledge, including: (1) the delay-related costs set forth in Lessor's REA of February 23, 2015, as adjusted during the renegotiation of the project schedule attached to this Lease Amendment; and (2) the Lessor costs that were included in Lessor proposals and denied by the Government for the Lessor PM Fee, Lowe Enterprises expenses, Balfour Beatty fees and mark up, and WDG additional services related to the delay and changes, that were set forth in Lessor's REA of February 23, 2015, as adjusted by proposals submitted for which Notices to Proceed have been issued through June 23, 2015. All other claims of delay arising or occurring on or before August 1, 2015, for which Lessor or the Government has actual or constructive knowledge are hereby expressly waived by the party with actual or constructive knowledge. Any other claims of delay arising or occurring after August 1, 2015, are hereby reserved and shall be determined in accordance with the Lease and the attached Revised Project Schedule.

G. Authority, Arms-Length Negotiations, No Broker, and Integration. The individuals from the parties signing this Lease Amendment warrant that they have authority and authorization to execute and effectuate this Lease Amendment. Further, the parties agree that this Lease Amendment, its provisions, and the agreement it reflects have been negotiated by the parties at arms-length. Notwithstanding anything to the contrary contained in the Lease, Lessor and the Government each represents and warrants that it has not entered into any agreement with, or otherwise had any dealing with, any broker, agent or finder in connection with the negotiation or execution of this Lease Amendment which could form the basis of any claim for a brokerage fee or commission, finder's fee, or any other compensation of any kind or nature. This Lease Amendment represents the parties' integrated agreement

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concerning the matters referenced herein. It stands alone and supersedes any previous agreement, representations, or communications concerning these matters. The terms/conditions set forth herein may only be modified by a written agreement executed by both parties.

- H. **Precedence.** In the event of any conflict between the specifically noted terms of the Lease Amendment and any other term or condition of the Lease, the terms of this Lease Amendment shall govern.
- I. **Change to Address of Premises.** Pursuant to Lowe's letter to GSA of March 20, 2015, the Parties hereby agree that the address of the Premises is hereby changed from 2401 Eisenhower Avenue, Alexandria, VA 22314 to 2415 Eisenhower Avenue, Alexandria, VA 22314. The Lease and all Lease-related correspondence and documents shall use the new address moving forward, and past references to the address in the Lease and Lease-related correspondence and documents shall be read to include the new street number.

[Remainder of page left blank.]

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██████████, LLC,
a Delaware limited liability company

By: US Government Building Open-End Operating Partnership, L.P.,
a Delaware limited partnership
its sole member

By: US Government Building Open-End REIT, LLC,
a Delaware limited liability company
its general partner

By: US Government Building Open-End Feeder 1, LP,
a Delaware limited partnership, and
US Government Building Open-End Feeder 2, LP,
a Delaware limited partnership
both, as managers

By: US Government Building GP, LLC,
a Delaware limited liability company
general partner of both Feeder 1 and Feeder 2

By: USAA Equity Advisors, Inc.,
a Delaware corporation
its sole member

By: _____
Name: Dirk P.D. Mosis III
Title: Executive Managing Director

By: US Government Building Open-End Feeder 3, LP,
a Delaware limited partnership,
its general partner

By: US Government Building GP, LLC,
a Delaware limited liability company
its general partner

By: USAA Equity Advisors, Inc.,
a Delaware corporation
its sole member

By: _____
Name: Dirk P.D. Mosis III
Title: Executive Managing Director

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