

## FIRST AMENDMENT TO LEASE

### HEALTH SERVICES DEPARTMENT 2500 BATES AVENUE, SUITE B CONCORD, CALIFORNIA

This First Amendment is dated February \_\_\_\_, 2017, and is between MERCED BAR, LLC, a Delaware limited liability company (the “**Lessor**”) and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “**County**”).

#### **Recitals**

- A. Lessor and County are parties to a lease dated April 16, 2013, under which the County leases approximately 37,209 square feet of floor space in a building located at 2500 Bates Avenue, Concord, California (the “**Lease**”). Lessor became a party to the Lease by virtue of its February 9, 2016 acquisition of the real property from the original landlord.
- B. County is modifying its use of the leased premises. In connection with the change in use, County and Lessor desire to amend the Lease to (i) modify the number of parking spaces included in the definition of Premises, (ii) modify the lease renewal option, (iii) delete the lease termination provision, and (iv) modify the security system requirements.

The parties therefore agree as follows:

#### **Agreement**

1. Unless otherwise defined in this First Amendment, all defined terms used in this First Amendment have the meaning ascribed to them in the Lease.
2. The definition of “**Premises**,” which is set forth in Recital B of the Lease, is revised to mean that portion of the Building consisting of approximately 37,209 square feet of floor space and 263 parking spaces, as more particularly described in Exhibit A-2 – Floor Plan. The parties are not replacing Exhibit A-2 to the Lease, as the floor plan has not changed.
3. Section 2. Term, is deleted in its entirety and replaced with the following:
  2. Term. The “**Term**” of this Lease is comprised of an Initial Term and, at County’s election, a First Renewal Term and a Second Renewal Term, each as defined below.
    - a. Initial Term. The “**Initial Term**” is three years, commencing on July 1, 2013.
    - b. Renewal Term. The County has two options to renew this Lease upon all the terms and conditions set forth herein. The first option is for four and a half years, commencing July 1, 2016, and ending December 31, 2020 (the “**First Renewal**

**Term**”). The second option is for four years, commencing January 1, 2021, and ending December 31, 2024 (the “**Second Renewal Term**”).

- i. The County will provide Lessor with written notice of its election to renew the Lease (a “**Renewal Notice**”) at least one hundred eighty days prior to the end of the Term. However, if the County fails to provide such notice, its right to renew the Lease will not expire until fifteen working days after the County’s receipt of the Lessor’s written demand that the County exercise or forfeit the option to renew.
- ii. If the County elects to issue a Renewal Notice to extend the Lease through the Second Renewal Term, as soon as practicable following delivery of the Renewal Notice, the County and Lessor shall meet and endeavor in good faith to agree on the rent payable pursuant to Section 4.c. below. If the parties fail to reach agreement by September 30, 2020 (that is, 90 days prior to the end of the First Renewal Term), the Lease will expire at the end of the First Renewal Term.
- iii. Upon commencement of one or both of the renewal terms, all reference to the Term of this Lease will be deemed to mean the Term as extended pursuant to this Section.

2. Section 3. Termination of Lease, is deleted in its entirety and replaced with the following:

3. Intentionally omitted.

3. Section 4. Rent, is deleted in its entirety and replaced with the following:

4. Rent. Rent is payable on the first day of each month during the initial Term and, if applicable, the Renewal Terms, in the amounts set forth below (such amounts, “**Rent**”):

a. Initial Term

<u>Period</u>	<u>Monthly Rent</u>
July 1, 2013 through June 30, 2016	\$33,715

b. First Renewal Term

<u>Period</u>	<u>Monthly Rent</u>
July 1, 2016 through June 30, 2017	\$54,355
July 1, 2017 through June 30, 2018	\$55,985
July 1, 2018 through June 30, 2019	\$57,665
July 1, 2019 through June 30, 2020	\$59,972
July 1, 2020 through December 31, 2020	\$62,370

- c. Second Renewal Term. Rent payable during the first year of the Second Renewal Term will be equal to (i) the fair market rental value of the property, or (ii) \$64,241 per month (that is, a three percent (3%) increase over the monthly Rent payable in the immediately preceding year), whichever is greater. The monthly Rent payable in each subsequent year of the Second Renewal Term (that is, through December 31, 2025) will increase by three percent (3%) over the monthly Rent payable in the immediately preceding year. For example, if the monthly Rent payable in 2021 is \$64,241, the monthly Rent payable in 2022 will be \$66,168, and the monthly Rent payable in 2023 will be \$68,153, etc.
  - d. Fractional Month. Rent for any fractional month will be prorated and computed on a daily basis with each day's rent equal to one-thirtieth (1/30) of the monthly Rent.
  - e. Place of Payment. All rent and other payments due to Lessor pursuant to this Lease are to be made payable to Dept. LA 23821, Pasadena, CA 91185-3821 or to such other address as may be designated in writing by Lessor from time to time.
4. Section 7. Cubicles; Furnishings; White Noise; and Security Systems, is deleted in its entirety and replaced with the following:
7. Cubicles; Furniture and Furnishings; White Noise; and Security Systems. Throughout the Term, Lessor shall provide, at its sole cost, the following items to the Premises that are required by the County, as further specified in Schedule 1 – Tenant Improvements and the Final Plans, as defined in the Work Letter:
- a. Cubicles. Those 398 work station cubicles currently existing in the Premises (the “**Cubicles**”). At the County's election and sole expense, the County may remove and dispose up to twenty percent (20%) of the existing cubicles which is equivalent to eighty (80) work stations from the Premises without Lessor's approval. The County shall not be obligated to restore or replace any workstations removed by the County upon the termination of the Lease and surrender of the Premises. The Lessor is not obligated to replace any cubicles removed by the County nor shall the Lessor be obligated to provide any additional cubicle work stations.
  - b. Furniture. Lessor represents that six of the existing private offices in the Premises are furnished, and that existing furniture will be for County's use at no additional expense. All existing furniture provided to County by Lessor will be referred to as the “**Lessor's Furniture**.” County shall provide all other furniture. Lessor's Furniture does not include furniture purchased or provided by County.
  - c. “White noise” system. Lessor represents that a functioning “white noise” sound attenuation system (“**Sound System**”) exists in the Premises. Lessor shall provide the Sound System, or a sound system comparable to the Sound System, for County's use during the Term.

- d. Security systems and equipment. Lessor shall provide the security systems and equipment described in Schedule 1 - Tenant Improvements and the Final Plans (“**Security System**”). At no cost to the County, Lessor shall repair or replace, as needed, the interior and exterior roof security camera systems that serve the Premises and provide County with a working operating system to monitor security cameras.
5. Section 8. Maintenance and Repairs – Interior and Exterior of Building, is deleted in its entirety and replaced by the following:
    8. Maintenance and Repairs – Interior and Exterior of Building, is deleted in its entirety and replaced by the following:
      - a. Roof and Exterior of Premises. At no cost to the County, Lessor shall keep the roof and exterior of the Premises in good order, condition, and repair, and shall maintain the structural integrity of the Building, including the exterior doors and their fixtures, closers and hinges, exterior windows, glass and glazing used in the Premises. Lessor shall not be responsible for damages caused by the willful misconduct or the negligent acts, errors, or omissions of the County, its agents, employees, contractors or subcontractors. The Lessor shall maintain all locks and key systems used in the Premises, however, if a re-keying of locks is required during the Lease term or end of term, due to the loss of any keys to the Premises, County shall promptly reimburse Lessor for Lessor’s actual cost to re-key the Premises.
      - b. Interior of Premises. At no cost to the County, Lessor shall keep and maintain the interior of the Premises, including all pest and rodent control, in good order, condition and repair. Lessor shall repair any damage to the interior caused by Lessor’s failure to maintain the exterior in good repair, including damage to the interior caused by roof leaks and/or interior and exterior wall leaks. Lessor shall not be responsible for damages caused by the willful misconduct or the negligent acts, errors, or omissions of the County, its agents, employees, contractors or subcontractors. The County may install and maintain an interior alarm system.
      - c. Tenant Improvements. At no cost to the County, Lessor shall keep and maintain the Tenant Improvements, including the CAT 6 wiring, in good order, condition and repair. Lessor shall cause the Tenant Improvements to comply, throughout the Term, with the specifications set forth in the Final Plans. Lessor shall not be responsible for damages caused by the willful misconduct or the negligent acts, errors, or omissions of the County, its agents, employees, contractors or subcontractors.
      - d. Cubicles, Furniture and Furnishings, Sound System, and Security Systems. At no cost to the County, Lessor shall keep and maintain the Cubicles, Lessor’s Furniture, the Sound System, and the Security System in the Premises in good order, condition and repair. Lessor shall not be responsible for damages caused by the willful

misconduct or the negligent acts, errors, or omissions of the County, its agents, employees, contractors or subcontractors.

- e. Parking; Exterior Lighting; Landscaping. At no cost to the County, Lessor shall maintain the parking lot, exterior lighting system, and landscaping in good order, condition and repair.
- f. Fire Extinguishers; Smoke and Strobe Alarms. At no cost to the County, Lessor shall provide fire extinguishers, smoke and strobe alarms in the Premises as directed by the Fire Marshall. Lessor shall maintain, repair and replace the fire extinguishers, smoke and strobe alarms as needed.
- g. Services by Lessor. If at any time during the Term, the County's Director of Public Works or her designee (the "**County Representative**") determines that the Premises are in need of maintenance, construction, remodeling or similar service (collectively, "**Work**") that is beyond Lessor's responsibilities under this Lease, the County's Representative shall provide Lessor with a written request that the Work be performed by Lessor. If Lessor approves of the proposed Work, Lessor shall perform the Work at an agreed-upon cost to the County. In performing the Work, Lessor shall consult with the County's Representative and use either licensed insured contractors or employees of Lessor. Lessor shall obtain the County Representative's prior written approval of the scope, terms, and cost of any contracts. The County Representative may, by giving Lessor thirty days prior written notice, change the level of service, terminate any or all service, or require that a service be performed by a different contractor.

6. Section 9. Maintenance and Repairs - Building Operating Systems, is deleted in its entirety and replaced by the following:

- 9. Maintenance and Repairs – Building Operating Systems. At no cost to County, Lessor shall repair and maintain the electrical, lighting, water and plumbing systems, the heating, ventilating, and air-conditioning ("**HVAC**") systems, the Uninterruptible Power Supply ("**UPS**") equipment, and the generator servicing the Premises (together, such systems and equipment are the "**Operating Systems**") in good order, condition and repair. Lessor shall obtain and maintain all permits related to the Operating Systems.

If one or more Operating Systems fail, the County's Representative, will notify Lessor of such failure and Lessor shall use best efforts to correct the problem. The County Representative's notice of an Operating System failure may be delivered to Lessor by telephone or email as follows:

Contact:	Diane Bronner
Phone Number:	(916) 928-7511
Email Address:	diane.bronner@cushwake.com

If Lessor fails to respond and to diligently pursue the problem towards the completion within seventy-two hours after the County Representative's notice, County may attempt to correct the problem. Lessor shall reimburse County for any costs incurred by County in repairing, or attempting to repair, an Operating System upon receipt of County's invoice.

7. Section 10. Perilous Conditions, is deleted in its entirety and replaced by the following:

10. Perilous Conditions. If the County Representative becomes aware of a condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of County employees and/or invitees (a "**Perilous Condition**"), the County Representative will immediately notify Lessor of such Perilous Condition and Lessor shall use best efforts to immediately eliminate the Perilous Condition. The County Representative's notice of a Perilous Condition may be delivered to Lessor by telephone or email as follows:

Contact:	Diane Bronner
Phone Number:	(916) 928-7511
Email Address:	diane.bronner@cushwake.com

Lessor shall immediately address any condition reasonably constituting an emergency, whether Lessor learns of the condition through County or otherwise.

If Lessor fails to address a Perilous Condition within twenty-four hours after the County Representative's notice or to immediately address an emergency situation, the County may attempt to resolve the Perilous Condition or emergency situation. Lessor shall reimburse County for costs actually incurred by County in addressing the Perilous Condition or emergency situation promptly upon receipt of County's invoice.

Notwithstanding the provisions of Section 20 – Inspection, if an emergency occurs, Lessor may enter the Premises to address the emergency without having to provide advance notice to County.

8. Section 26. Notices, is deleted in its entirety and replaced by the following:

26. Notices. Except as provided in Section 9 – Maintenance and Repairs - Building Operating Systems and Section 10 – Perilous Conditions, any notice required or permitted under this Lease must be in writing and will be deemed to have been given if delivered by hand, or sent by facsimile with written transmission confirmation, overnight delivery services or deposited in the United States mail postage prepaid, certified or registered, return receipt requested and addressed to the other party as follows or as otherwise designated by written notice hereunder from time to time:

To Lessor: MERCED BAR, LLC  
31920 Del Obispo, Suite 260  
San Juan Capistrano, CA 92675  
Attention: Jeff Eales  
Facsimile: (949) 276-0552

With a copy to:  
Merced BAR, LLC  
601 Carlson Parkway, Suite 200  
Minnetonka, MN 55305  
Attention: General Counsel  
Facsimile: (952) 476-7201

With a copy to the following address, for as long as and the County are parties to a Subordination, Non-Disturbance and Attornment Agreement pursuant to Section 12 – Subordination, Non-Disturbance and Attornment.

PFP Holding Company IV, LLC  
c/o Prime Finance Partners  
233 N. Michigan Avenue. Suite 1915  
Chicago, IL 60601  
Facsimile: (312) 276-9649

To County: Contra Costa County  
Public Works Department  
c/o Real Estate Manager  
255 Glacier Drive  
Martinez, CA 94553  
Facsimile: (925) 646-0288

Either party may at any time designate in writing a substitute address for that set forth above and thereafter notices are to be delivered to such substituted address. If sent in accordance with this Section, all notices will be deemed effective (i) on the date delivered, if delivered by hand, (ii) upon confirmed facsimile transmission, (iii) the next business day, if sent by overnight courier and (iv) three (3) days after being deposited in the United States Postal system

9. All other terms of the Lease remain unchanged.

[Remainder of Page Intentionally Left Blank]

The parties are executing this first amendment as of the date set forth in the introductory paragraph.

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

MERCED BAR, LLC, a Delaware limited liability partnership

By: \_\_\_\_\_  
Julia R. Bueren  
Director of Public Works

By: Thomas G. Rock  
Thomas G. Rock  
Title: Authorized Representative

**RECOMMENDED FOR APPROVAL:**

By: Karen Laws  
Karen Laws  
Principal Real Property Agent

By: Veronica Whitfield  
Veronica Whitfield  
Assistant Real Property Agent

**APPROVED AS TO FORM:**  
SHARON L. ANDERSON, County Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel