

## SECOND AMENDMENT TO LEASE

**Health Services Department  
2500 Bates Avenue, Suite B  
Concord, California**

This Second Amendment to Lease is dated November 10, 2020, 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, as amended by a First Amendment to Lease dated February 28, 2017, 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**”).
- B. County and Lessor desire to amend the Lease to extend its term and modify certain provisions.

The parties therefore agree to amend the Lease as follows:

### **Agreement**

- 1. The following terms have the following meanings:
  - a. “**Additional Rent**” means in each calendar year (or portion thereof) during the Term, an amount equal to the sum of (i) the Excess Amount of Premises Charges, plus (ii) the County’s Proportionate Share of the Excess Amount of Insurance Expense, plus (iii) the County’s Proportionate Share of the Excess Amount of Real Property Taxes, plus (iv) the County’s Proportionate Share of the Excess Amount of CAM Charges.
  - b. “**Base Year**” means calendar year 2020.
  - c. “**Building**” means the single-story building located on the Property.
  - d. “**CAM Charges**” means common area maintenance charges and includes (i) all actual costs and expenses incurred by Lessor to operate, repair and maintain the Common Area, clean and remove trash from the Common Area and to provide security to the Common Area, and (ii) a property management fee that is equal to no more than 10% of the total CAM Charges, excluding the property management fee; provided, however, CAM Charges excludes Excluded Expenses.

- e. **“Common Area”** means those areas within the Building and the real property upon which the Building is sited, including the Building’s entrances, walkways, sidewalks, drives, parking facilities, exterior lighting, landscaping and other areas that are not leased or held for lease that serve the Building and are necessary or desirable for County’s full use and enjoyment of the Premises.
- f. **“Excess Amount of CAM Charges”** means the amount by which the cost of CAM Charges actually paid by Lessor in any calendar year (or portion thereof) exceeds the amount Lessor actually paid for CAM Charges in the Base Year.
- g. **“Excess Amount of Insurance Expense”** means the amount by which the cost of Insurance actually paid by Lessor in any calendar year (or portion thereof) exceeds the amount Lessor actually paid for Insurance in the Base Year.
- h. **“Excess Amount of Premises Charges”** means the amount by which the cost of Premises Charges actually paid by Lessor in any calendar year (or portion thereof) exceeds the amount Lessor actually paid for Premises Charges in the Base Year.
- i. **“Excess Amount of Real Property Taxes”** means the amount by which the cost of Real Property Taxes actually paid by Lessor in any calendar year (or portion thereof) exceeds the amount Lessor actually paid for Real Property Taxes in the Base Year.
- j. **“Excluded Expenses”** means (i) payments on any loans or ground leases affecting the Building or Property, (ii) depreciation of the Building or any major systems of the Building service equipment, (iii) all costs and expenses associated with leasing to other tenants, including tenant improvement allowances, attorneys’ fees, brokerage commissions, and architectural fees, (iv) any costs incurred in complying with hazardous materials laws, (v) income taxes, corporate taxes, corporation capital taxes, excise taxes, profits taxes or other taxes personal to Lessor, and (vi) costs to maintain or repair the roof or exterior shell of the Building.
- k. **“Insurance”** means the insurance required by Section 16.b. (Commercial General Liability Insurance), Section 16.d. (Excess Liability), and Section 16.e. (Property Insurance).
- l. **“Premises Charges”** means charges for (i) utilities provided to the Premises, including gas, electricity, and water, (ii) janitorial services and cleaning supplies provided to the Premises, (iii) trash collection from receptacle(s) designated to the Premises, (iv) building systems that are separately metered to, or used exclusively by, the Premises, including lighting, plumbing, HVAC, security, data, fire/life safety, and UPS and electrical systems, including a backup power generator, (v) pest and rodent control provided to the Premises and (vi) other costs to maintain or repair the Premises that are not Excluded Expenses and are approved in advance by the County.

- m. “**Property**” means the real property located at 2500 Bates Avenue in Concord, California that is identified as “Parcel 2” on Exhibit A attached hereto.
- n. “**Proportionate Share**” means the ratio, expressed as a percentage, of the square feet of the Premises to the total square footage of the Building and any other building(s) that utilize any portion of the Common Area. As of the date of this Lease, the parties estimate that County’s Proportionate Share of the Building is 33.02%.
- o. “**Real Property Taxes**” means and includes all taxes and assessments levied or assessed upon the Building and the real property upon which it is situated, any state or local business taxes or fees measured by or assessed upon gross rentals or receipts, and other governmental charges, general and special, including, without limitation, assessments for public improvements or benefits that are, during the Term of this lease, assessed, levied, and imposed by any government authority upon the Building and the real property upon which it is situated. Real Property Taxes do not include any late fees or penalties, any municipal, county, State or Federal net income, estate, succession, inheritance, sales, use, or franchise taxes of Lessor or documentary transfer taxes.

2. 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 thirteen years, commencing on July 1, 2013, and ending on June 30, 2026.
  - b. Renewal Term. The County has two options to renew this Lease for a term of three years for each option (each, a “**Renewal Term**”) upon all the terms and conditions set forth herein.
    - 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. 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.

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
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 June 30, 2021	\$62,071
July 1, 2021 through June 30, 2022	\$64,244
July 1, 2022 through June 30, 2023	\$66,492
July 1, 2023 through June 30, 2024	\$68,819
July 1, 2024 through June 30, 2025	\$71,228
July 1, 2025 through June 30, 2026	\$73,721

- b. First Renewal Term. Rent payable during the first year of the First Renewal Term will be equal to (i) the fair market rental value of the property, or (ii) \$75,933 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 First Renewal Term (that is, the years beginning July 1, 2027, and July 1, 2028) will increase by three percent (3%) over the monthly Rent payable in the immediately preceding year.
  - 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) an amount that is equal to 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 First Renewal Term (that is, the years beginning July 1, 2030, and July 1, 2031) will increase by three percent (3%) over the monthly Rent payable in the immediately preceding year.
  - 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 5. Use, is deleted in its entirety and replaced with the following:

Additional Rent. In addition to the Rent set forth above, County shall pay Lessor Additional Rent. Lessor shall invoice County for any Additional Rent due within ninety days after the end of each calendar year during the Term. County shall pay the amount so invoiced within thirty days of receipt of the invoice. County has the right, exercisable upon reasonable prior written notice to Lessor, to inspect Lessor's books and records relating to the amounts

charged to County as Additional Rents. County shall cause any such inspection to occur within ninety days of receipt of the annual invoice.

5. Section 6. Full-Service Lease, is deleted in its entirety and replaced with the following:
  6. Use. County may use the Premises for the purpose of conducting various functions of County and any other purposes permitted by law.
  6. Lessor, at its sole expense, shall install a new Uninterruptable Power Supply (“**UPS**”) battery backup system for the data room in the Premises in accordance with County’s reasonable specifications. The work must be performed within 120 days of the execution of this Second Amendment by both parties. Lessor shall maintain the new UPS system in accordance with Section 9 of the Lease (Maintenance and Repairs – Building Operating System) through the Term of the Lease.
  7. Lessor, at its sole cost and expense, is represented by Birtcher Anderson Realty Management, Inc. in this transaction. Tenant, at its sole cost and expense, is representing itself in this transaction.

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8. All other terms of the Lease remain unchanged.

The parties are executing this second 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: \_\_\_\_\_  
Brian M. Balbas  
Director of Public Works

By: \_\_\_\_\_  
Authorized Representative

**RECOMMENDED FOR APPROVAL:**

By: \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

By: \_\_\_\_\_  
Julin E. Perez  
Supervising Real Property Agent

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

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

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