

## LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is entered into by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (“**County**” or “**Tenant**”) and 264 NORTH MORRISON, LLC a California limited liability company (“**Landlord**”). The “**Effective Date**” of this Lease shall be the last date signed by all Parties on the signature page hereto. As referred to herein, County and Landlord are each a “**Party**” to this Lease and collectively the “**Parties**” to this Lease.

## RECITALS

- A. Landlord is the owner of certain real property and all structures, parking areas and improvements thereon located at 264 North Morrison Avenue, San José, California (APN 261-01-093), including that certain building (the “**Building**”) consisting of approximately 7,500 gross square feet (collectively, the “**Premises**”).
- B. The Parties desire to enter into this Lease on the terms and conditions set forth herein, pursuant to which Tenant shall lease from Landlord, and Landlord shall lease to Tenant, the entire Premises.
- C. Tenant desires to lease the Premises for use as government office space, as authorized by Cal. Gov. Code § 25353.

**NOW THEREFORE**, in consideration of the foregoing, and of other good and valuable consideration, the Parties agree as follows:

### 1. **Grant of Lease; Premises.**

- a. Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises in its entirety for Tenant’s exclusive use and control. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. Tenant is advised to verify the actual size prior to executing this Lease. Tenant shall be entitled to the quiet enjoyment and use of the Premises at all times during the Term.

### 2. **Term.**

- a. Term. The term of this Lease is for five (5) years (“**Initial Term**”), commencing on the later of the Effective Date or delivery of the Premises to Tenant as required in Section 4 below (the “**Commencement Date**”).
- b. Extended Term. Subject to the terms and conditions of this Section 2b, Tenant shall, in Tenant’s sole and absolute discretion, have the option (“**Option**”) to extend the Term of this Lease for two (2) separate periods of five (5) years each, on the

same terms and conditions as stated in this Lease, except for adjustments in Base Rent (if any) as more fully described in Section 3.b. below (each extended period may be referred to as an “**Extended Term**”; “**Term**” shall mean the Initial Term together with any exercised Extended Term). Each Extended Term may be exercised by written notice from Tenant to Landlord given at least ninety (90) days prior to the end of the then-existing Term. Tenant shall have no right to exercise an Option: (i) during any period during which an Event of Default exists; or (ii) the period commencing with the giving of any notice of default and continuing until said default is cured. An Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, Tenant commits an Event of Default. If timely and proper notification of the exercise of an Option is not given by Tenant and/or received by Tenant, such Option shall automatically expire. Except as specifically modified, the terms, conditions and provisions of the Lease shall apply during Option Terms but the amount of Rent during Option Terms shall be as stated in this Section 3b.

- c. Holdover. Except as provided in this Section 2c, Lessee has no right to retain possession of the Premises or any part thereof beyond the Term of this Lease. At or prior to the expiration or termination of this Lease, Lessee shall deliver exclusive possession of the Premises to Landlord. For purposes of this provision, exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. Notwithstanding the foregoing, Tenant shall have the option to hold possession of the Premises on a thirty-day, periodic basis after the expiration of the Term upon the same terms and conditions of this Lease except that the Base Rent shall be 150% of the Base Rent payable during such last full month before the expiration or termination of this Lease. In the event Tenant remains in possession of the Premises after the expiration of the Term, either Party may terminate the periodic tenancy by giving thirty (30) days’ prior notice to the other for any or no reason.
- d. Tenant Obligations at Termination. Upon expiration of the Term or other termination of the Lease, the Tenant shall surrender the Premises in compliance with the following terms:
  - i. Tenant shall return the Premises to Landlord in good, clean condition and repair, ordinary wear and tear and damage by casualty excepted, free of all personal property, debris and garbage.
  - ii. If Landlord had previously notified Tenant in accordance with Section 6(b) of the requirement to remove certain Alterations, then Tenant shall remove such Alterations at the end of the Term. Tenant will be responsible to repair any damage to the Premises caused by the installation and/or removal of any Alterations.

### 3. Rent.

All monetary obligations of Lessee to Landlord under the terms of this Lease are deemed to be rent ("Rent"). Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Operating Expenses, Insurance and Real Property Taxes, Base Rent, and any remaining amount to any other outstanding charges or costs.

- a. Base Rent. Starting with the month in which the Commencement Date occurs, Tenant shall pay Landlord "**Base Rent**" in the amounts set forth in the table below. Base Rent shall be due on or before the first (1st) day of each calendar month during the Term to Landlord, without offset or deduction, at the address stated in Section 14 below. In the event the Event the Commencement Date does not occur on the first day of a calendar month, Base Rent shall be prorated for the number of days in such first calendar month and shall be due with the Base Rent due for the first full calendar month of the Term.

Lease Year	Rent psf of Building	Monthly Base Rent	Annual Base Rent
1	\$2.80	\$21,000	\$252,000
2	\$2.86	\$21,420	\$257,040.00
3	\$2.91	\$21,848.40	\$262,180.80
4	\$2.97	\$22,285.37	\$267,424.42
5	\$3.03	\$22,731.08	\$272,772.90

- b. Base Rent During an Extended Term. For any Extended Term, Tenant will pay Base Rent equal to 102% of the Base Rent in effect for the lease year immediately preceding the commencement of such Extended Term for the first year of the Extended Term, which shall increase by 2% per year for each subsequent year of the Extended Term.
- c. Operating Expenses. In addition to Base Rent, Tenant shall pay to Landlord, as Additional Rent, Operating Expenses (as defined below) as provided in this subsection c.
- i. Tenant shall pay to Landlord on or before the first (1st) day of each calendar month during the Term an amount reasonably estimated by Landlord to be the monthly amount attributable to Operating Expenses (the "**Estimated Monthly Expense**"). The Estimated Monthly Expense may be adjusted by Landlord providing thirty (30) days written notice to Tenant of the adjusted Estimated Monthly Expense. Landlord estimates that Operating Expenses are currently **\$2,557.81** per month.
  - ii. The term "**Operating Expenses**" shall mean all commercially reasonable costs and disbursements which Landlord shall pay or become obligated to

pay in connection with Real Estate Taxes, Insurance Expenses, and any maintenance and repair of the Premises for which Landlord is responsible under this Lease (including those items set forth in Section 9(b) below).

- iii. The term “**Real Estate Taxes**” shall mean all taxes, rates, and assessments, general or special, levied or imposed with respect to the land, the Premises including all improvements and Alterations constructed thereon (including all taxes, rates and assessments, general or special, levied or imposed for school, public betterment and/or general or local improvements), but shall not include Landlord’s general net income taxes, estate taxes, inheritance taxes, and documentary transfer taxes, and any tax penalties incurred as a result of Landlord’s negligence, inability or unwillingness to pay Real Property Taxes when due or any taxes for which Landlord is not required to pay due to Tenant’s tax-exempt status.
- iv. “**Insurance Expenses**” shall mean premiums for any insurance obtained by Landlord pursuant to Section 7.b. and any deductibles payable in connection with such insurance, subject to the provisions of Section 3.c.v. below.
- v. Notwithstanding anything to the contrary in the Lease, in no event shall Operating Expenses include: (i) any repair or maintenance costs incurred by Landlord to comply with the delivery requirements of Section 4 below; (ii) costs occasioned by fire, acts of God, or other casualties, or insurance deductibles related to casualty or damage except for the portion of deductibles related to casualty or damage occurring during the Term in an amount not to exceed ten thousand dollars \$10,000 per occurrence; (iii) costs occasioned by the exercise of the power of eminent domain; (iv) costs for which Landlord has a right of reimbursement from others; (v) costs to correct any construction defect in the Premises, or construction or repair costs to comply with any CC&R’s, underwriter’s requirement or law applicable to the Premises on the Commencement Date or costs arising from the gross negligence or willful misconduct of Landlord; (vi) depreciation, amortization or other expense reserves; (vii) interest, charges and fees incurred on debt payments, on mortgages and rent with respect to ground leases; (viii) costs incurred in connection with Premises Hazardous Materials except as required to be paid by Tenant under Section 15; (ix) property or asset management fees; (x) the cost of any capital repair or replacement to the Premises, excepting only an amortized portion of such capital expenses for the relevant period of the Operating Expenses charge based on the useful life of such capital expense, amortized in accordance with generally accepted accounting principles, (xi) costs associated with any damage or repairs necessitated by the gross negligence or willful misconduct of Landlord or Landlord’s employees, agents, contractors or invitees; and (xiii) any late payment penalties or fees assessed on overdue payments for expenses Landlord is responsible for paying.

- vi. Within one hundred twenty (120) days after the expiration of each calendar year included in the Term, Landlord shall make a determination of the actual Operating Expenses for such year. Landlord shall submit to Tenant a written statement, certified by Landlord, in sufficient detail for verification by Tenant and a summary showing Operating Expenses on a line item basis by category (“**Statement**”), which Statement shall include the amount of actual Operating Expenses for such calendar year compared to estimated Operating Expenses paid by Tenant. Within thirty (30) days after delivery of such Statement, including any Statement delivered after the expiration or termination of this Lease (provided Tenant shall not be responsible to pay any Statement provided more than two years after the expiration or termination of this Lease), Tenant shall pay to Landlord the positive difference, if any, between the amount owed by Tenant for the actual Operating Expenses and the amount paid by Tenant as estimated Operating Expenses for such calendar year. If Tenant’s payment of the estimated Operating Expenses was greater than the amount owed by Tenant of the actual Operating Expenses, then Landlord shall credit such amount against the next due installments of Rent or, at Tenant’s election, pay the same to Tenant all within thirty (30) days after Tenant’s request. Notwithstanding the foregoing, Tenant may give Landlord written notice of its intent to inspect, examine and audit Landlord’s records pertaining to Operating Expenses for the calendar year covered by such Statement (“**Audit Notice**”). Tenant shall have the right, upon delivery of an Audit Notice to Landlord within 180 days after receipt of the Statement, to inspect, audit and/or copy Landlord’s books, records and accounts pertaining to Operating Expenses for the calendar year covered by such Statement, and Landlord shall make such books, records and accounts available to Tenant and its agents, and accountants for review during regular business hours at Landlord’s principal place of business. Unless Tenant objects to Landlord’s Statement in writing within 180 days after receipt of the Statement after receipt of the same, setting out in detail the amounts and basis of the objection, Tenant shall have no further right to inspect, audit and/or copy Landlord’s books, records and accounts pertaining to Operating Expenses for the calendar year covered by such Statement. Any overpayment or underpayment of Operating Expenses revealed by Tenant’s audit shall be adjusted within thirty (30) days after Tenant delivers written notice of such overpayment or underpayment to Landlord. In the event such an audit reveals an overpayment by Tenant of more than 5% of actual Operating Expenses, Landlord shall reimburse Tenant for Tenant’s out of pocket costs for such audit. Unless Tenant takes written exception to any Operating Expenses reflected in any Statement from Landlord within 180 days after receipt of such Statement, such Statement shall be considered as final and accepted by Tenant.
- vii. Late Charges and Interest. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs and expenses not contemplated by this Lease, the exact amount of which will be extremely

difficult to ascertain. Such costs and expenses include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any lender. Accordingly, if any Rent shall not be received by Landlord within five (5) business days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall immediately pay to Landlord a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Landlord's option, become due and payable quarterly in advance (subject to approval of any lender who then holds a lien against the Premises). Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord, when due shall bear interest from the Event of Default. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in this Section 3c. Notwithstanding the foregoing, with any Additional Rent, no late charge shall be due or Interest shall accrue unless Tenant failure to make a timely payment of Additional Rent continues for five (5) days after Landlord provides notice of such failure.

- viii. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law.

Additional Rent. The term "**Additional Rent**" may be used to mean Operating Expenses and/or any other amounts due to Landlord from Tenant under this Lease except for Base Rent.

- d. Security Deposit. None.

#### 4. **Delivery of the Premises.**

Notwithstanding anything to the contrary herein contained, except as provided in this Section 4, the Premises are leased in its present "AS IS" condition "with all faults," and Tenant acknowledges that Tenant has agreed to lease the Premises in its present condition and that Tenant is relying solely on its own examination and inspections of the Premises and not on any statements or representations made by Landlord or any agents or representatives of Landlord. The Premises are not new and Tenant has been advised to carefully inspect the Premises and to obtain written inspection reports from qualified experts regarding all systems and features of the Premises including size, roof, plumbing, electrical, appliances, sewers, septic systems, foundation, heating, air conditioning, structural components and any possible environmental hazards, pest infestation or infection. Neither Landlord nor the Landlord's Agent(s) warrant the condition of the

Premises, except that: (1) Landlord shall deliver the Premises to Tenant broom clean and free of debris; and (2) the following existing Premises systems shall be in good working order at time of delivery: electrical, plumbing, fire sprinkler, lighting, loading door, and heating, ventilation, and air conditioning ("HVAC") systems (collectively, the "Building Systems"). The existing Premises and Premises systems are not warranted as appropriate for the Permitted Use. Tenant understands and acknowledges that regardless of what is disclosed by Landlord or anyone else, or what is or could be discovered by the Tenant or the Tenant's experts, Landlord will not correct, replace or repair anything except as otherwise provided in this Lease with respect to the Building Systems, unless Tenant provides Landlord with written notice that any of the foregoing elements of the Premises are not in good working condition or in compliance with law prior to the Commencement Date, then Landlord, at its cost, shall complete such required repair as soon as practical following receipt of such notice. Prior to the Commencement Date, Landlord shall provide Tenant with at least ten (10) business days' notice that the Premises are ready for delivery to Tenant and during which time Tenant shall be given the opportunity to inspect the Premises, including the working order of the Building Systems.

## **5. Permitted Use.**

The Premises may be used for any legally permissible use.

## **6. Alterations; Signage.**

- a. Definition. "**Alterations**" shall mean any improvement, alteration, replacement, repair or addition made to or installed in the Premises during the Term.
- b. Authority. Subject to the provisions of this Section 6, Tenant may make Alterations to the Premises necessary for the accommodation of Tenant's uses, subject to the approval of the Landlord which shall not be unreasonably withheld. Tenant shall notify Landlord of any material Alteration Tenant elects to make, including a written description of the Alterations, prior to the start of work. Tenant's requested Alterations shall be deemed approved if Landlord has not responded to Tenant's request for approval within ten (10) business days of Landlord's receipt of Tenant's request. Landlord shall notify Tenant in writing, prior to the construction of any Alterations, whether Tenant will be required to remove such Alterations from the Premises at the expiration of the Term and restore such portions of the Premises to their condition existing as of the Commencement Date.
- c. Landlord's Cooperation. Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease, including Landlord's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Premises is required by law.

- d. Liens. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant and hereby indemnifies and holds Landlord harmless from all liability and cost, including reasonable attorneys' fees and costs, in connection with or arising out of any such lien or claim of lien. Tenant shall cause any such lien that is imposed to be released of record by payment or posting of a proper bond acceptable to Landlord within thirty (30) days after written request by Landlord. Tenant shall give Landlord written notice of Tenant's intention to perform work on the Premises which might result in any claim of lien at least ten (10) days prior to the commencement of such work to enable Landlord to post and record a Notice of Non-responsibility. If Tenant fails to so remove any such lien within the prescribed thirty (30) day period, then Landlord may do so at Tenant's expense and Tenant shall reimburse Landlord for such amounts upon demand. Such reimbursement shall include all costs incurred by Landlord including Landlord's reasonable attorneys' fees with interest thereon at the Interest Rate if not paid within thirty (30) days after Landlord's demand therefor.
- e. Signage. Tenant shall have the right to install identification signage in, on or about the Building or the Premises, provided the same is in compliance with applicable laws.

## **7. Insurance and Indemnification.**

- a. Tenant Insurance. Tenant shall obtain and keep in force a Commercial General Liability policy of insurance protecting Landlord as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Tenant shall add Landlord as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Landlords of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. Tenant shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. Tenant further agrees that it shall, during the Term of this Lease, and at its own expense, keep its contents, any personal property located on the Premises, and any Alterations to the Premises made by Tenant fully insured against loss or damage by fire or other casualty, under a policy of standard all risk or special from property insurance including, at Tenant's option, flood coverage. Valuation shall be on a

replacement cost basis. Notwithstanding the foregoing, as an alternative to obtaining the insurance coverage required herein, Tenant may elect to self-insure for any of the risks that would be covered by such insurance so long as the County of Santa Clara is the tenant in possession of the Premises. In the event Tenant elects to self-insure, Tenant shall at Landlord's request provide Landlord with a certificate setting forth the existence and coverage amounts (which shall be primary and no less than required above) of such insurance.

- b. Landlord Insurance. Landlord agrees that it shall, during the Term of this Lease, keep the Premises and the Building insured in sufficient amounts against loss or damage by fire and other casualty commonly covered by a standard all risk or special form policy of property insurance including, at Landlord's option flood and/or earthquake insurance. In addition, at Landlord's option, Landlord shall maintain a policy of rent loss insurance with loss payable to Landlord covering all Rent payable under this Lease for a period of 12 months from the date of loss ("Rental Value Insurance"). Valuation for any all risk or similar insurance shall be on a replacement cost basis. Landlord does hereby release and waive on behalf of itself and its insurer by subrogation or otherwise, all claims against Tenant on account of any fire or other casualty insured against whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of Tenant. Landlord shall maintain commercial general liability insurance covering the Premises. Landlord's liability insurance coverage shall be not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence for injury or property damage. Upon the request of Tenant, Landlord shall furnish a certificate substantiating the fact that Landlord has taken out the insurance herein set forth for the Term with an insurance carrier(s) with an A.M. Best financial rating of not less than A-:VII and authorized to do business in the State of California. Tenant shall not be named as an additional insured therein.
- c. Subject to the waiver in Section 7.d., Tenant shall indemnify, defend, and hold harmless Landlord, its partners, officers, agents and employees from and against any and all damage, loss, liability or expense including attorneys' fees and legal costs (collectively, "**Claims**") suffered directly or by reason of any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury and property damage sustained by such person or persons which arises out of, is occasioned by or in any way attributable to (i) the use or occupancy of the Premises by Tenant, (ii) the acts or omissions of Tenant, its agents, employees, licensees, invitees, or any contractors brought onto the Premises or the Premises by Tenant, or (iii) any breach or default of this Lease by Tenant, except to the extent any such Claims arise from the negligence or willful misconduct of Landlord, its agents, employees, or contractors.
- d. Exemption of Landlord and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Landlord or its agents, neither Landlord nor its agents shall be liable under any circumstances for: (1) injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's

employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Landlord or from the failure of Landlord or its agents to enforce the provisions of any, or (iii) injury to Tenant's operations or business or for any loss of income or profit therefrom. Instead, it is intended that Tenant's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Tenant is required to maintain pursuant to the provisions of paragraph 7.

- e. Except as may be specifically provided for elsewhere in this lease, County and Landlord/Lessor hereby each mutually waive any and all rights of recovery from the other in event of damage to the premises or property of either caused by acts of God, perils of fire, lightning, and all other all-risk perils as defined in insurance policies and forms approved for use in the state of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver.

## **8. Utilities; Taxes.**

- a. All utilities or services for the Premises shall be registered in the name of Tenant and Tenant shall pay directly for the costs of all such utilities or services. Any utilities which are furnished to the Premises but are not separately metered to the Premises, or separately charged to Tenant by the providers thereof, shall be paid by Landlord, and Tenant shall reimburse Landlord for such charges to the extent the same are Operating Expenses. In no event shall Tenant be entitled to any abatement of Rent as a result of any failure or interruption of any utilities or services, nor shall Landlord be liable to Tenant for any such failure or interruption of utilities or services unless such failure or interruption was caused by the willful misconduct of Landlord, its agents, or employees; provided, however, notwithstanding anything to the contrary in this Lease, in the event the Premises or any portion thereof is rendered untenantable and Tenant ceases the operation of its business within the Premises or portion thereof due to any failure or interruption of utilities or services or lack of access to the Premises (and such untenantability is not due to condemnation or casualty [which shall be governed by Sections 12 and 13] or due to the act or omission of Tenant), then (i) if such interruption or failure of utilities or services or lack of access is due to the negligence or willful misconduct of Landlord or is within Landlord's reasonable ability to correct, and such interruption or failure of utilities or services or lack of access continues for more than one (1) business day, Base Rent and Operating Expenses (or a portion thereof commensurate with the untenantable portion of the Premises) shall abate starting on the date the Premises (or portion thereof) became untenantable and

ending on the date that any such utilities or services to the Premises and/or access to the Premises is restored, or (ii) if such interruption or failure of utilities or services or lack of access is due to circumstances outside Landlord's reasonable control to prevent or remedy, Base Rent and Operating Expenses (or a portion thereof commensurate with the untenable portion of the Premises) shall abate starting on the thirtieth (30<sup>th</sup>) day after the Premises (or portion thereof) became untenable and ending on the date that any such utilities or services to the Premises and/or access to the Premises is restored.

- b. Tenant to pay all taxes, if any, associated with Tenant's personal property. Landlord shall pay all Real Estate Taxes when due, subject to reimbursement as Operating Expenses.

## 9. Maintenance and Repairs.

- a. Tenant's Maintenance and Repair. Subject to any specific obligations of Landlord under this Lease (including subsection (b) below), Tenant shall be responsible for the repair and maintenance of the Premises.
- b. Landlord's Maintenance and Repair. Landlord shall be responsible for the repair and replacement of any portion of the Premises which requires Major Capital Work (as defined below), and Landlord shall be reimbursed for the cost of such work on an amortized basis as an Operating Expense to the extent provided in Section 3(c) above. "**Major Capital Work**" shall mean a capital repair or replacement to the roof, roof membrane, building slab, building structure (including interior structural walls), exterior walls, and the plumbing, sewer, electrical, and HVAC systems serving the Premises, (ii) which is reasonably necessary for the use and operation of the Premises in good, safe condition, and in compliance with applicable laws, and (iii) the expense of which exceeds \$5,000.

## 10. Assignment or Subletting.

- a. Tenant's Assignment/Subletting. Tenant may, at its option sublet any portion of or all the Premises and may assign this Lease, in each instance with the prior consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord may reasonably withhold consent to a proposed assignment or subletting (i) if, at the time consent is requested, an Event of Defaults exists; (ii) during the period commencing with the giving of any notice of default and continuing until said default is cured, (iii) during the period of time any Rent is past due and unpaid (without regard to whether notice thereof is given Tenant).
- b. Consent. If Tenant desires at any time to sublet or assign this Lease, Tenant shall first notify Landlord of its desire to do so and shall submit in writing to Landlord: (i) the name of the proposed subtenant or assignee; (ii) the nature of the proposed subtenant's or assignee's business to be carried on in the Premises; (iii) the terms and provisions of the proposed sublease or assignment and a copy of the proposed

sublease or assignment containing a description of the subject premises; and (iv) such financial information, including financial statements, as Landlord may reasonably request concerning the proposed subtenant or assignee.

- c. Terms and Conditions Applicable to Assignment and Subletting. Regardless of Landlord's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Tenant under this Lease, (ii) release Tenant of any obligations hereunder, or (iii) alter the primary liability of Tenant for the payment of Rent or for the performance of any other obligations to be performed by Tenant. Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for an Event of Default. Landlord's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting. In the event of an Event of Default, Landlord may proceed directly against Tenant, or anyone else responsible for the performance of Tenant's obligations under this Lease, including any assignee or sublessee, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord. Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Landlord's considering and processing said request. Tenant agrees to provide Landlord with such other or additional information and/or documentation as may be reasonably requested. Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Landlord has specifically consented to in writing. Landlord's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Tenant by this Lease unless such transfer is specifically consented to by Landlord in writing. The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein: (a) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all Rent payable on any sublease, and Landlord may collect such Rent and apply same toward Tenant's obligations under this Lease; provided, however, that until an Event of Default shall occur in the performance of Tenant's obligations, Tenant may collect said Rent. In the event that the amount collected by Landlord exceeds Tenant's then outstanding obligations any such excess shall be refunded to Tenant. Landlord shall not, by reason of the foregoing or any assignment of such sublease,

nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Tenant to perform and comply with any of Tenant's obligations to such sublessee. Tenant hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Landlord stating that an Event of Default exists in the performance of Tenant's obligations under this Lease, to pay to Landlord all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Landlord and shall pay all Rents to Landlord without any obligation or right to inquire as to whether such Event of Default exists, notwithstanding any claim from Tenant to the contrary. In the event of an Event of Default, Landlord may, at its option, require sublessee to attorn to Landlord. No sublessee shall further assign or sublet all or any part of the Premises without Landlord's prior written consent.

- d. Government Use. Notwithstanding anything to the contrary in this Lease, but subject to the provisions of Section 5, Landlord acknowledges and agrees that County may use the Premises for the performance of public services and to utilize the services of other governmental agencies, contractors or nonprofit organizations as contractors or subcontractors to perform these services on the Premises without requiring County to enter into a sublease or license with such parties and without Landlord's consent. County's authority to allow any such parties to perform these services on the Premises without a lease, sublease or license is authorized pursuant to Section 25227 of the California Government Code.

## **11. Entry by Landlord or Landlord Representatives.**

Upon at least two (2) business days' prior written notice to Tenant (except in case of emergency, where no prior notice shall be required) and subject to Landlord's compliance with Tenant's security regulations and the protection and security of PHI (defined in Section 25.b. below) pursuant to the terms of this Lease, Tenant shall permit Landlord and Landlord's designated agents, employees, assigns, affiliates, managers, officers, directors, contractors and subcontractors (each and together the "**Landlord Representatives**") to enter into and upon the Premises (excluding inside certain secure or restricted areas of the Premises designated by Tenant) at all reasonable times during normal Tenant operating hours Monday through Friday, excluding Tenant holidays, and without any rent abatement or reduction for the following purposes only: (i) inspecting the Premises to the extent reasonably necessary for the administration of this Lease; (ii) performing any obligations of Landlord under the Lease including Major Capital Work and remediation of any Premises Hazardous Materials (as defined below), (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof, as required or permitted by any law, and (iv) placing "For Sale" signs, and showing the Premises to Landlord's existing or potential successors, purchasers, lenders and tenants (except that Landlord may only show the Premises to potential tenants during the last 12 months of the Lease Term). Landlord shall use commercially reasonable efforts to minimize any disruption of Tenant's use of and access to the Premises as a result of any entry. Tenant shall have the right to have a representative present during any entry by Landlord. Notwithstanding any provision of the use to the contrary, if Landlord's entry materially interferes with Tenant's use of the Premises for more than three (3) business days, then

Tenant shall be entitled to an abatement of the Rent for the portion of the Premises so affected. Landlord's written notice shall designate by name, title, address, email and phone number, each Landlord Representative who will be entering the Premises and the reasons for such entry.

## 12. **Destruction.**

- a. Insured Casualty. If the Premises are damaged or destroyed during the Term by an Insured Casualty, Landlord shall diligently repair or rebuild the damaged or destroyed areas to substantially the condition in which they existed immediately prior to such damage or destruction, provided, however, Landlord shall not be required to (i) expend any funds in excess of the insurance proceeds actually received (or the amount of proceeds that likely would have been received had such insurance been carried) plus the applicable deductible amount for such purpose, or (ii) repair or rebuild any Alterations to the Premises made by or for Tenant. As used in this Lease, "**Insured Casualty**" means damage or destruction that either (a) is covered by insurance carried by Landlord, or (b) is not covered by insurance solely due to Landlord's failure to maintain the insurance required to be carried by Landlord pursuant to this Lease.
- b. Uninsured Casualty.
  - i. Minor Damage. If the Premises are damaged by a casualty which is not an Insured Casualty, and reconstruction costs do not exceed five percent (5%) of the total cost immediately prior to the casualty of replacing the Premises as it was constructed, Landlord shall promptly commence and diligently prosecute to completion all work necessary to reconstruct the Premises to a condition substantially equivalent to its condition immediately prior to the casualty.
  - ii. Substantial Damage. If the Premises are damaged by a casualty which is not an Insured Casualty and reconstruction costs exceed five percent (5%) of the total cost immediately prior to the casualty of replacing the Premises as it was constructed, Tenant or Landlord may elect, but shall not be obligated to elect, to reconstruct the Premises. Landlord shall notify Tenant within forty-five (45) days after such casualty whether or not Landlord elects to perform such reconstruction. If Landlord fails to notify Tenant within such forty-five (45) day period, Landlord shall be deemed to have elected not to perform such reconstruction. Within twenty (20) days after the earlier of (i) Landlord's election (if Landlord elects not to perform the reconstruction) or (ii) the end of such 45-day period (if Landlord fails to make any election), Tenant shall notify Landlord whether or not Tenant elects to perform such reconstruction. If Tenant fails to give notice to Landlord within such twenty (20) day period, Tenant shall be deemed to have elected not to perform such reconstruction. If neither Party elects to perform such reconstruction, this Lease shall terminate as of the later of date

of such casualty or the date Tenant ceases to use the Premises for its business. A Party electing to perform such reconstruction shall promptly commence and diligently prosecute to completion all work necessary to reconstruct the Premises to a condition substantially equivalent to its condition immediately prior to the casualty. In the event Tenant is the reconstructing Party, Landlord shall contribute up to five percent (5%) of the cost of such reconstruction.

- c. Rent Abatement. In the event the Premises is substantially damaged as provided in Section 12bii, the Base Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, but not to exceed the proceeds Landlord is entitled to receive from the rental value insurance (or would be entitled to receive if Landlord maintained the insurance required by this Lease). All other obligations of Tenant hereunder shall be performed by Tenant, and Landlord shall have no liability for any such damage, destruction, remediation, repairer restoration except as provided herein.
- d. Termination.
  - i. If Landlord or Tenant becomes obligated or elects to perform reconstruction work under the provisions of this Section 12 (the “**Reconstructing Party**”) and does not commence, in a substantial and meaningful way, such reconstruction within ninety (90) days after such obligation accrues or such election is made, the other may, at any time prior to the commencement of such repair or restoration, give written notice to the Reconstructing Party of its election to terminate this Lease on a date not less than thirty (30) days following the giving of such notice. If the other party gives such notice to the Reconstructing Party and such reconstruction is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If the Reconstructing Party commences the reconstruction within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. “**Commence**” as used in this Section shall mean either the unconditional authorization of the preparation of the required plans or the beginning of the actual work.
  - ii. Landlord and Tenant each shall have the right to terminate this Lease if a casualty causing damage to the Premises cannot be repaired within two hundred seventy (270) days.
  - iii. Unless this Lease is terminated pursuant to an express provision of this Section 12, any casualty damage or destruction shall in no way annul or void this Lease and Tenant (to the extent it was operating its business prior to the causality damage or destruction) may continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant hereby expressly

waives the provisions of California Civil Code Sections 1941 and 1942 and specifically acknowledges that the provisions of this Section 16 are intended to constitute the parties' express intent with regard to this Lease and the Premises in the event of damage or destruction.

**13. Condemnation.**

In the event of a condemnation of the Premises or of any portion of the Common Areas which materially affects Tenant's access to the Premises or use of the parking facilities, each of the parties hereto shall have and retain their separate and independent rights for loss, costs, and damages against the condemning authority. Should more than ten percent (10%) of the Premises, or of any other rights be taken so as to render the remaining Premises impractical for use of Tenant (as solely determined by Tenant), and Landlord does not, within a reasonable time, reconfigure the remaining property so that Tenant's usability of the Premises shall be substantially the same (as solely determined by Tenant), then Tenant may terminate the Lease by giving Landlord thirty (30) days' written notice, without additional liability, cost or expense and without the obligation to pay any further Rent. In the event less than all of the Premises are condemned, and the balance remaining after any reconfiguration, may reasonably be devoted to the use of Tenant, and Tenant does not elect to terminate, then the Rent shall thereafter be reduced to the extent that the market rental value of the Premises is reduced by such taking and any reconfiguration.

**14. Notices.**

Any notices which are required to be given hereunder, or which either Party may wish to give to the other, shall be in writing and may be personally delivered, given by mailing the same by registered or certified mail, or delivered by overnight commercial courier, postage prepaid, addressed as follows:

To TENANT:

County of Santa Clara  
Facilities and Fleet Department  
2310 N. 1st Street, Suite 200  
San Jose, CA 95131  
Attention: Property Management

With a copy to:

County of Santa Clara  
Office of the County Counsel  
70 West Hedding Street, 9<sup>th</sup> Floor, East Wing  
San José, CA 95110

To LANDLORD:

264 North Morrison, LLC  
1202 Meridian Avenue  
San Jose, CA 95125  
Attention: Robert Norton, Chief Executive Officer

Or to such other place as either Party may designate on their own behalf by advance written notice to the other Party. Any notice shall be deemed to have been received on the date of actual delivery for personal delivery, the next business day after depositing with an overnight commercial courier, or three days after depositing notice in the United States mail.

15. **Environmental Liability.**

Landlord represents and warrants that, to the best of Landlord's current, actual knowledge, the Premises is free from and does not contain any regulated hazardous materials, hazardous substances or hazardous waste of any nature, kind, quantity or amount in, on, upon, under, over or within the Premises and/or any of the structures, buildings, equipment, materials or facilities located on or under the Premises (collectively and each referred to as the "**Premises Hazardous Material**" or "**Premises Hazardous Materials**") as of the Effective Date of this Lease, other than any materials, substances or wastes that may have been used, stored or disposed of in, on or from the Premises by Tenant and/or Tenant's predecessors-in-interest ("**Excluded Premises Hazardous Materials**"). If any Premises Hazardous Materials other than Excluded Premises Hazardous Materials exist as of the Effective Date of this Lease, then Landlord shall be solely and exclusive liable and responsible for all liability, claims, damages, lawsuits, actions, enforcement, clean up, penalties, charges, allegations, mitigation, mediation, containment, removal, storage, handling, deaths, injuries, illnesses and all other losses of any kind related to or caused by any and all such Premises Hazardous Materials (collectively and each an "**Environmental Claim**") and shall indemnify, defend and hold harmless Tenant, and each of its agents, representatives, employees, Board of Supervisors, officers, agents and assigns (collectively and each "**Tenant Representatives**") for any and all such Environmental Claim regardless of when or where the Claim is brought.

Tenant agrees to indemnify and hold harmless Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, reasonable attorneys' fees) arising during or after the Term from or in connection with the presence of Premises Hazardous Materials, which are present on the Premises solely as a result of any storage, use, disposal or release of such Premises Hazardous Materials by Tenant, Tenant's agents, employees, or contractors or by Tenant's predecessors-in-interest.

16. **Consequential Damages.**

At no time shall Landlord or Tenant be responsible or liable for any lost profits, lost

economic opportunities, punitive damages or any form of consequential damage of any kind or nature resulting from or related to this Lease.

**17. Force Majeure.**

Landlord and Tenant shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or causes beyond their respective absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or Acts of God (collectively, "**Force Majeure Delay**"; provided, however, in no event shall Tenant be excused from the payment of Rent.

**18. Estoppel.**

Within ten (10) business days after Landlord's written request, Tenant shall deliver to Landlord a written statement containing the following information, current as of the date of the statement: whether the Lease has been terminated or not; what is the effective date, commencement date and/or rent commencement date of the Lease; what is the current monthly Base Rent and Additional Rent and through what date such amounts have been paid; whether there are any extension or renewal rights or purchase options; whether there is any unpaid tenant improvement allowance or outstanding free rent credits; and whether to Tenant's knowledge Landlord is in default of any terms of the Lease.

**19. Subordination.**

- a. This Lease is and shall be prior to any encumbrance recorded after the date of this Lease affecting Premises.
- b. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance, only if Landlord first obtains from the lender a written agreement that provides the following (or language substantially similar):
  - i. As long as Tenant pays Rent when due under this Lease and no Event of Default has occurred that remains uncured, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease. Tenant's rights under this Lease shall not be disturbed and shall remain in full force and effect for the Term, and Tenant shall not be joined by the holder of any mortgage or deed of trust in any action or proceeding to foreclosure thereunder. All terms and conditions in the Lease shall remain unchanged and in full force and effect.

- ii. Tenant shall attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure provided all terms and conditions in the Lease remain unchanged and in full force and effect.

Tenant shall execute the subordination and non-disturbance agreement, in a form reasonably acceptable to Tenant, and any other documents reasonably required by the lender to accomplish the purpose of this subparagraph provided all terms and conditions in the Lease remain unchanged and in full force and effect.

- c. Landlord shall provide Tenant, within thirty (30) days after the Effective Date, a commercially reasonable non-disturbance, subordination and attornment agreement in favor of Tenant from any ground lessors, mortgage holders or lien holders having an interest in or lien against the Premises as of the Effective Date. Such non-disturbance agreement shall be in recordable form and may be recorded at Tenant's election and expense.

## 20. **Defaults.**

- a. Tenant Event of Default. The occurrence of any of the following events shall constitute an "**Event of Default**" of this Lease by Tenant:
  - i. The failure by Tenant to make any payment of Rent or any other required payment, as and when due, and such failure shall not have been cured within five (5) business days after written notice thereof from Landlord;
  - ii. Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; provided that where such failure cannot reasonably be cured within said thirty (30) day period, Tenant shall not be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues all reasonable efforts to completion of said cure within ninety (90) days of such notice; or
  - iii. Tenant's assignment of its assets for the benefit of its creditors; the filing of a petition by or against Tenant, where such action is not dismissed within thirty (30) days, seeking adjudication or reorganization under the Bankruptcy Code; the appointment of a receiver to take possession of, or a levy by way of attachment or execution upon, substantially all of Tenant's assets at the Premises.
- b. Landlord Remedies. Upon any Event of Default, Landlord shall have the following remedies, in addition to all other remedies now or hereafter provided by law or equity:
  - i. terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately

surrender possession to Landlord. In such event Landlord shall be entitled to recover from Tenant: (A) the unpaid Rent which had been earned at the time of termination; (B) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (C) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and (D) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (C) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by Landlord to mitigate damages caused by an Event of Default shall not waive Landlord's right to recover any damages to which Landlord is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 20a was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also constitute the notice required by Paragraph 20b. In such case, the applicable grace period required by Paragraph 20b and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

- ii. continue the Lease and Tenant's right to possession and recover the Rent as it becomes due, in which event Tenant may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests, shall not constitute a termination of the Tenant's right to possession.
- iii. pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Tenant's occupancy of the Premises. No remedy or election hereunder shall be deemed exclusive but shall,

wherever possible, be cumulative with all other remedies available.

- c. Landlord's Default. In the event of any failure by Landlord to perform any of Landlord's obligations under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default; provided that where such failure cannot reasonably be cured within said thirty (30) day period, Landlord shall not be in default if Landlord commences such cure within said thirty (30) day period and thereafter diligently pursues all reasonable efforts to completion of said cure within ninety (90) days of such notice.
- d. Tenant's Remedy. In the event Landlord does not so cure its default, then, in addition to remedies under law and equity, and except as provided in Section 7, Tenant shall have the right to cure the default and recover all reasonable sums expended by Tenant in effecting such cure.

## 21. **CASp.**

The Premises has not undergone inspection by a Certified Access Specialist (“CASp”). California Civil Code Section 1938 also requires that this Lease contain the following statement:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction related accessibility standards within the premises.”

In accordance with the foregoing, Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Tenant requires a CASp inspection of the Premises, then Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period.

## 22. **Warranty of Title.**

Landlord represents and warrants to Tenant that Landlord is well seized of and has good title to the Premises and has the right to lease the Premises, will defend the title thereto, and will indemnify Tenant against any damage and expense which Tenant may suffer by reason of any lien, encumbrance, restriction or defect in the title to or description herein of the Premises (other than liens, encumbrances or restrictions which are recorded against the Premises as of the Effective Date). Landlord shall immediately provide to Tenant a copy

of the grant deed which shows title to the Premises vested in Landlord within ten (10) business days of Tenant's request.

**23. OFAC.**

Each Party represents and warrants to the other that: (i) it is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

**24. General Contract Provisions.**

- a. Time is of the Essence. Time is of the essence in the performance of obligations under this Lease.
- b. Waiver. The failure of a Party to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that a Party may have, and shall not be deemed a waiver of a Party's right to require strict performance of all terms, covenants, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants, or conditions.
- c. Estoppel Certificates.
- d.
- e.
- f. Severability and Governing Law. Any non-material provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect. This Lease, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Lease, shall be enforced, governed by and construed in accordance with the laws of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Landlord expressly agrees that any and all disputes, lawsuits or proceedings arising out of, relating to or in connection with this Lease, including any and all mediation or other alternative dispute resolution proceedings or settlements or negotiations, shall be brought, disputed and litigated only in the Superior Court of the State of California in the County of Santa Clara (and in no other), and Landlord hereby consents to the exclusive personal jurisdiction and venue of said court.
- g. Entire Agreement. It is understood and agreed that there are no oral agreements

between the Parties hereto affecting this Lease and this Lease (including all exhibits and addenda) supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto or displayed by Tenant to Landlord with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any separate agreement executed by County and Landlord in connection with this Lease and dated of even date herewith (a) contain all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the rental, use and occupancy of the Premises, and (b) shall be considered to be the only agreement between the Parties hereto and their representatives and agents. This Lease may not be modified, deleted or added to except by a writing signed by the Parties hereto. All negotiations and oral agreements have been merged into and are included herein. There are no other representations or warranties between the Parties other than as set forth in this Lease, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. The Parties acknowledge that (i) each Party and/or its counsel have reviewed and revised this Lease, and (ii) no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall be employed in the interpretation or enforcement of this Lease or any amendments or exhibits to this Lease or any document executed and delivered by either Party in connection with this Lease. Titles, section or subsection headings shall not be used in construing this Lease.

- h. Warranty of Authority. Each person executing this Lease on behalf of a Party represents and warrants that (i) such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (ii) if such Party is a limited liability company, partnership, corporation or trustee, that such limited liability company, partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder. Each Party hereby warrants that this Lease is legal, valid and binding upon such Party and enforceable against such Party in accordance with its terms.
- i. Joint and Several; Covenants and Conditions. If Landlord consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Landlord hereunder shall be deemed to be both a covenant and a condition.
- j. Waiver of Jury Trial. To the extent permitted by applicable law, the Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Tenant and Landlord and/or any claim of injury, loss or damage.
- k. Counterparts; Electronic/Digital Signatures. This Lease may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall

be deemed to be an original provided all of the Parties have fully executed the Lease. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of this agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by the County.

- l. No Third-Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Lease or of any duty, covenant, obligation, or undertaking established herein. This Lease shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.
- m. Tenant and Landlord warrants and represents that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Landlord and Tenant each agrees to indemnify, defend and hold the other and their respective agents harmless from and against any and all liabilities or expenses, including attorneys’ fees and costs, arising out of or in connection with claims made by any broker or individual for commissions or fees resulting from the indemnitor’s execution of this Lease.
- n. In computing any period of time pursuant to this Lease, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, “business day” shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.
- o. If any Party brings an action or proceeding involving the Premises whether founded in tort, contractor equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, arbitration, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

## 25. **County Specific Provisions.**

Compliance with Law. Landlord shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “**Laws**”) relating to Landlord’s ownership and operation of the Premises. Without limiting the foregoing, Landlord shall comply with all applicable wage and hour Laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any other jurisdiction in which the Premises are located. In addition, Landlord shall comply with all Laws concerning nondiscrimination and equal opportunity in contracting, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code sections 1101 and 1102. Landlord shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sex or gender identity, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation, nor shall Landlord discriminate in the provision of services provided under this Lease because of age, race, color, national origin, ancestry, religion, sex/gender, sex or gender identity, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Tenant shall comply with all applicable Laws relating to the conduct of Tenant’s business and/or Tenant’s use and occupancy of the Premises, including without limitation the Americans with Disabilities Act of 1990.

- a. Notice of Health Insurance Portability and Accountability (HIPAA) and Patient Privacy Law Compliance.
  - i. While accessing the Premises, Landlord acknowledges that it may have direct or incidental access to “Protected Health Information” or “PHI” or contact with patients. For purposes of this section of the Lease, “Protected Health Information” or “PHI” shall have the meaning provided by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the “Privacy Standards”) as promulgated by the Department of Health and Human Services (“HHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 U.S.C. Section 1320d, et seq.), California Civil Code Section 56.20 et seq. and other applicable California laws (each and collectively, the “HIPAA Laws”).
  - ii. Within the Premises, Tenant will endeavor to implement reasonable safeguards to protect the PHI from any intentional or unintentional disclosure to third parties in violation of the Privacy Standards by implementing appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, and will endeavor to implement appropriate administrative, technical and physical safeguards to limit incidental disclosures of PHI, including disclosures to Landlord and Landlord Representatives. The parties agree that neither the Landlord nor Landlord Representatives shall need access to, nor shall they use or disclose,

any PHI of Tenant. In the event, however, PHI is disclosed to Landlord or Landlord Representatives, either directly or indirectly and regardless of whether the disclosure is inadvertent or otherwise, Landlord agrees to take reasonable steps to maintain, and to require Landlord Representatives to maintain, the privacy and confidentiality of such PHI, including that no PHI will be removed from the Premises by Landlord or Landlord Representatives, and no PHI will be discussed with or otherwise disclosed to any other person or entity. Landlord agrees to immediately notify Tenant upon learning of any disclosure of PHI to Landlord or to the Landlord Representatives. The parties agree that the foregoing does not create, and is not intended to create, a “business associate” relationship between the parties as that term is defined by the Privacy Standards.

- b. California Public Records Act. The County is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Landlord’s proprietary information is contained in documents submitted to County, and Landlord claims that such information falls within one or more CPRA exemptions, then Landlord must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information before providing these documents to County. In the event of a CPRA request for such information or documents, the County will provide notice to Landlord at least five (5) business days prior to the deadline for the request for such CPRA disclosure. If Landlord contends that any documents or information are exempt from the CPRA and wishes to prevent disclosure, Landlord is required, at its sole cost, liability and expense, to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County and properly serve notice on County of such court-provided remedy at least two (2) business days before the County’s deadline for responding to the CPRA request. If Landlord fails to obtain such court-provided remedy before County’s deadline for responding to the CPRA request, County may disclose the requested information even if marked “CONFIDENTIAL AND PROPRIETARY” without any liability or obligation to Landlord or any third parties.
- c. County Regulatory Authority. Landlord acknowledges and agrees that County, acting not as Tenant but in its governmental regulatory or enforcement capacity, has certain governmental regulatory or enforcement authorities or police powers over the Premises, Landlord and other third parties and that nothing in this Lease binds the County to exercise any of its discretionary governmental authority in any particular manner nor does this Lease preclude the County from exercising any of its discretionary governmental authority in any manner and for any lawful purpose.
- d. No Smoking; Alcohol; Nutrition.
  - i. Smoking or vaping any substance are prohibited on the Premises.
  - ii. The consumption, sale or distribution of alcohol in any form is prohibited

on the Premises.

- iii. All food and beverages sold or offered for sale on the Premises shall comply with the County of Santa Clara's nutrition standards as amended from time to time.

## 26. **Option to Purchase.**

- a. Subject to the terms and conditions of this Section 26, Landlord hereby grants to Tenant an option to purchase the Premises ("Purchase Option") for Three Million Seven Hundred Thousand Dollars (\$3,700,000). Tenant may exercise the Option by providing written notice to Landlord, together with submitting to Landlord the sum of Twenty-Five Thousand Dollars (\$25,000.00) as a non-refundable money deposit, any time starting on the date which is ninety (90) days prior to the expiration of the Initial Term and continuing until the expiration the Term (as may have been extended).
- b. If Tenant exercises the Purchase Option, Tenant and Landlord shall use diligent and good faith efforts to negotiate and enter into an agreement for the purchase and sale of the Premises upon terms consistent with the provisions of this Section 26 and reasonably acceptable to both Landlord and Tenant, within the thirty (30) days following Tenant's exercise of the Purchase Option. If the Parties are unable to enter into such a contract within such time period after good faith efforts to do so, the Purchase Option shall terminate and be considered null and void. The Terms and conditions of a C.A.R. Commercial Property Purchase Agreement and Joint Escrow Instructions, as last revised, are deemed reasonable. Following the execution of such agreement, the parties shall open an escrow ("Escrow") with a national commercial title company with a national office in San José, California and reasonably approved by Tenant ("Escrow Holder"), by depositing with Escrow Holder the executed purchase agreement. Landlord and Tenant shall execute such additional instructions, not inconsistent with the provisions of this Section 26 or the executed purchase agreement, which may be required by Escrow Holder. Escrow shall close on or before the date which is ninety (90) calendar days after the date of delivery of the notice of exercise by Tenant to Landlord. For purposes of this Lease, the "Close of Escrow" shall mean the date on which the grant deed conveying the Premises to Tenant is recorded in the Official Records of Santa Clara County, California.
- c. Upon the Close of Escrow, Tenant shall pay the purchase price in full in immediately available funds, Landlord shall convey the Premises to Tenant by grant deed, subject only to the following:
  - i. Nonmonetary Existing Exceptions. Nonmonetary easements, reservations, rights and rights-of-way of record existing or recorded concurrently at the time this Lease is executed;
  - ii. Nonmonetary Development Encumbrances. Nonmonetary encumbrances, easements, rights and rights-of-way placed against the Premises by Landlord and to which Tenant has consented;

- iii. Taxes. Nondelinquent general, special and supplemental real property taxes and assessments;
- iv. Title Insurance. Landlord shall cause to be delivered to Tenant at the Close of Escrow, at Landlord's expense, an extended coverage ALTA owner's policy of title insurance on the Premises issued by Escrow Holder with policy limits equal to the Purchase Price insuring title to the Premises vested in Tenant, subject only to the matters set forth above;
- v. Prorations. All real property taxes, rents, and assessments shall be prorated as of the Close of Escrow;
- vi. Costs. Tenant shall pay for one-half (1/2) of the Escrow fee, the cost of recording the deed conveying the Premises to Tenant, and any other costs which, in the opinion of Escrow Holder, are customarily borne by purchasers of real property in Santa Clara County, California. Landlord shall pay for the cost of the title insurance policy issued to Tenant, documentary transfer taxes, one-half (1/2) of the Escrow Fee, and any other costs which, in the opinion of Escrow Holder, are customarily borne by sellers of real property in Santa Clara County, California.
- vii. This Lease shall terminate upon Close of Escrow. Upon the expiration or earlier termination of this Lease, Tenant shall, upon demand by Landlord, execute, acknowledge, and deliver to Landlord a quitclaim deed or such other document as may be reasonably required by Landlord or by Landlord's title insurance company, to verify the termination of the Option.

*///SIGNATURES FOLLOW ON NEXT PAGE///*

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27. **Survival.**

The terms of this Lease which by their nature should survive cancelation, expiration or termination of this Lease shall so survive.

**IN WITNESS WHEREOF**, each Party has executed this Lease as of the date set forth below such Party's signature below:


Tenant:

Landlord:

**COUNTY OF SANTA CLARA**, a political  
subdivision of the State of California

**264 NORTH MORRISON, LLC**, a California  
limited liability company

\_\_\_\_\_  
SUSAN ELLENBERG, President  
Board of Supervisors

DocuSigned by:  
By:   
EE19756C3A91425...  
Name: Robert Norton  
Title: Chief Executive Officer

Date: \_\_\_\_\_

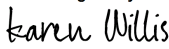
Date: 2/5/2024  
\_\_\_\_\_

Signed and certified that a copy of this  
document has been delivered by electronic  
or other means to the President, Board of  
Supervisors.

Attest:

\_\_\_\_\_  
CURTIS BOONE  
Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:  
  
F089A276B9EB463...  
KAREN M. WILLIS  
Deputy County Counsel