



# EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

## AGENDA

Special Meeting of the Board of Directors

*September 10, 2020*

*11:30 AM*

Join [Zoom](#) Meeting

Meeting ID: 832 5350 1890

Password: 535626

### **Chair**

*Geoffrey Sears,  
Wareham Development*

### **Vice Chair**

*Betsy Cooley, At-Large  
Residential Member*

### **Secretary**

*Vacant*

### **Treasurer**

*Andrew Allen  
At-Large Business  
Member*

### **Directors**

*Peter Schreiber,  
Pixar*

*Colin Osborne*

*At-Large Business  
Member*

*Kassandra Kappelos*

*Public Market*

*Bobby Lee, At-Large*

*Residential Member*

1. Call to Order
2. Public Comment
3. Business Items
  - A. Review and Consider Approval of Amendment 2 to License Agreement with BioMed for a term extension through December 14, 2020 (*Attachment*)
4. Confirm date of Next Meeting – September 17, 2020 @ 9:00 AM
5. Adjournment

## SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (this “Amendment”) is entered into as of this \_\_\_\_ day of August, 2020, by and between BRE-BMR 4563 HORTON LP, a Delaware limited partnership (“Licensor,” as successor-in-interest to BRE-BMR Emeryville Center of Innovation Holdco LP, f.k.a. BRE-BMR 53<sup>rd</sup> LP, as successor-in-interest to Novartis Vaccines and Diagnostics, Inc.), and EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION, a California nonprofit corporation (“Licensee”).

### RECITALS

A. WHEREAS, Licensor and Licensee are parties to that certain License Agreement dated as of April 6, 2018 as amended by that certain First Amendment to License Agreement dated as of March 30, 2020 (collectively, and as the same may have been further amended, amended and restated, supplemented or modified from time to time, the “Existing Agreement”), whereby Licensee licenses certain property (the “Space”) from Licensor at 4555 Horton Street in Emeryville, California;

B. WHEREAS, Licensor and Licensee desire to extend the term of the Existing Agreement; and

C. WHEREAS, Licensor and Licensee desire to modify and amend the Existing Agreement only in the respects and on the conditions hereinafter stated.

### AGREEMENT

NOW, THEREFORE, Licensor and Licensee, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Definitions. For purposes of this Amendment, capitalized terms shall have the meanings ascribed to them in the Existing Agreement unless otherwise defined herein. The Existing Agreement, as amended by this Amendment, is referred to collectively herein as the “Agreement.” From and after the date hereof, the term “Agreement,” as used in the Existing Agreement, shall mean the Existing Agreement, as amended by this Amendment.

2. Extension Term. The term of the Existing Agreement is hereby extended until December 14, 2020. Accordingly, Paragraph 3(a) of the Existing Agreement is deleted in its entirety and replaced with the following:

“3. (a) The term of this Agreement shall commence on April 6, 2018 (the “Commencement Date”) and expire on the earlier to occur of (i) the termination of this Agreement by Licensor (1) following a default by Licensee under this Agreement, and/or (2) in accordance with the provisions of Paragraph 10 of this Agreement or (ii) December 14, 2020 (the “Expiration Date”).”

The period of time commencing on September 15, 2020 and ending on the new Expiration Date shall be referred to herein as the “Extension Term.”

3. Fee and Other Payments.

3.1. Commencing on the first (1<sup>st</sup>) day of the Extension Term and continuing through the new Expiration Date, Licensee shall continue to pay to Licensor the Fee in an amount equal to Six Thousand Dollars (\$6,000) per month and in accordance with Paragraph 4(a) of the Existing Agreement. For purposes of clarity, prior to the first (1<sup>st</sup>) day of the Extension Term, Licensee shall continue to pay the Fee to Licensor in accordance with the Existing Agreement.

3.2. In addition to the Fee, commencing on the first (1<sup>st</sup>) day of the Extension Term and continuing through the new Expiration Date, Licensee shall remain responsible for (and shall timely pay to Licensor) all other payments required of Licensee under the Existing Agreement (including, without limitation, those payments set forth in Paragraphs 4(b) and 4(c) of the Existing Agreement). For purposes of clarity, prior to the first (1<sup>st</sup>) day of the Extension Term, Licensee shall continue to remain responsible for (and shall timely pay to Licensor) all other payments required of Licensee under the Existing Agreement (including, without limitation, those payments set forth in Paragraphs 4(b) and 4(c) of the Existing Agreement).

4. Condition of Space. Licensee acknowledges that (a) it is in possession of and is fully familiar with the condition of the Space and, notwithstanding anything contained in the Agreement to the contrary, agrees to take the same in its condition “as is” as of the first day of the Extension Term, and (b) Licensor shall have no obligation to alter, repair or otherwise prepare the Space for Licensee’s continued occupancy for the Extension Term or to pay for any improvements to the Space, except as may be expressly provided in the Agreement.

5. CASp. The Space has not undergone inspection by a Certified Access Specialist (“CASp,” as defined in California Civil Code Section 55.52). Even if not required by California law, the Space may be inspected by a CASp to determine whether the Space complies with the ADA, and Licensor may not prohibit a CASp performing such an inspection. If Licensee requests that such an inspection take place, Licensor and Licensee shall agree on the time and manner of the inspection, as well as which party will pay the cost of the inspection and the cost to remedy any defects identified by the CASp. A Certified Access Specialist can inspect the Space and determine whether the Space complies with all of the applicable construction-related accessibility standards under State law. Although State law does not require a Certified Access Specialist inspection of the Space, Licensor may not prohibit Licensee from obtaining a Certified Access Specialist inspection of the Space for the occupancy or potential occupancy of Licensee, if requested by Licensee. Licensor and Licensee shall agree on the arrangements for the time and manner of the Certified Access Specialist inspection, the payment of the fee for the Certified Access Specialist inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Space.

6. Broker. Licensee represents and warrants that it has not dealt with any broker or agent in the negotiation for or the obtaining of this Amendment and agrees to reimburse, indemnify, save, defend (at Licensor’s option and with counsel reasonably acceptable to Licensor, at Licensee’s

sole cost and expense) and hold harmless Licensor and its affiliates and their respective shareholders, members, partners, directors, officers, employees, lenders, ground lessors, successors and assigns, and Licensor's contractors and agents for, from and against any and all cost or liability for compensation claimed by any such broker or agent employed or engaged by it or claiming to have been employed or engaged by it.

7. No Default. Licensee represents, warrants and covenants that, to the best of Licensee's knowledge, Licensor and Licensee are not in default of any of their respective obligations under the Existing Agreement and no event has occurred that, with the passage of time or the giving of notice (or both) would constitute a default by either Licensor or Licensee thereunder.

8. Notices.

8.1. Licensee confirms that, notwithstanding anything in the Agreement to the contrary, notices delivered to Licensee pursuant to the Agreement should be sent to:

Emeryville Transportation Management Association  
c/o Gray Bowen Scott  
1211 Newell Avenue, Suite 200  
Walnut Creek, CA 94596

8.2. Licensor confirms that, notwithstanding anything in the Agreement to the contrary, notices delivered to Licensee pursuant to the Agreement should be sent to:

BRE-BMR 4563 Horton LP  
4570 Executive Drive, Suite 400  
San Diego, California 92121  
Attn: Legal Department

9. Effect of Amendment. Except as modified by this Amendment, the Existing Agreement and all the covenants, agreements, terms, provisions and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. In the event of any conflict between the terms contained in this Amendment and the Existing Agreement, the terms herein contained shall supersede and control the obligations and liabilities of the parties.

10. Successors and Assigns. Each of the covenants, conditions and agreements contained in this Amendment shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns and sublicensees. Nothing in this Section shall in any way alter the provisions of the Agreement restricting assignment or sublicensing.

11. Miscellaneous. This Amendment becomes effective only upon execution and delivery hereof by Licensor and Licensee. The captions of the paragraphs and subparagraphs in this Amendment are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof. All exhibits hereto are incorporated herein by reference. Submission of this instrument for examination or signature by Licensee does not

constitute a reservation of or option for a license, and shall not be effective as a license, license amendment or otherwise until execution by and delivery to both Licensor and Licensee.

12. Authority. Licensee guarantees, warrants and represents that the individual or individuals signing this Amendment have the power, authority and legal capacity to sign this Amendment on behalf of and to bind all entities, corporations, partnerships, limited liability companies, joint venturers or other organizations and entities on whose behalf such individual or individuals have signed.

13. Counterparts; Facsimile, Electronic and PDF Signatures. This Amendment may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document. A facsimile, electronic or portable document format (PDF) signature on this Amendment shall be equivalent to, and have the same force and effect as, an original signature.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Licensor and Licensee have executed this Amendment as of the date and year first above written.

**LICENSOR:**

BRE-BMR 4563 HORTON LP,  
a Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE:**

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION,  
a California nonprofit corporation

By: \_\_\_\_\_  
Name: Geoffrey Sears  
Title: Chair of the Board