

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 14\_\_

### Bill No. 79-2017

Introduced by: The Chairperson at the request of the County Executive

**AN ACT** pursuant to Section 612 of the Howard County Charter, approving a Lease Agreement between Howard County, Maryland and Merritt- HR, LLC for the lease of space located at 9515 Gerwig Lane, Columbia, Maryland to be used by the Board of Elections; and authorizing the County Executive to take certain actions in connection with the Agreement.

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Introduced and read first time \_\_\_\_\_, 2017. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2017.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

This Bill was read the third time on \_\_\_\_\_, 2017 and Passed \_\_\_\_, Passed with amendments \_\_\_\_, Failed \_\_\_\_.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for his approval this \_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive \_\_\_\_\_, 2017.

\_\_\_\_\_  
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1           **WHEREAS**, Howard County, Maryland (the “County”) is in need of storage space for the  
2 Board of Elections to store its voting machines; and

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4           **WHEREAS**, Merritt- HR, LLC, a Maryland Limited Liability Company, (the “Landlord”) is the current owner of approximately 11.98 acres of real property shown as Parcel 386 on Tax  
5 Map 42 and shown on Plat Number 6725 as Parcel A-3 which plat is recorded in the Land Records  
6 and improved with an industrial building known as 9515 Gerwig Lane, Columbia, Maryland 21046  
7 (the “Property”); and

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10           **WHEREAS**, the County would like to lease a portion of the Property for use by the Board  
11 of Elections to store its voting machines; and

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13           **WHEREAS**, specifically, the County would like to lease suites 113 and 115 of the building  
14 known as 9515 Gerwig Lane, comprising approximately 13,500 square feet of rentable space and  
15 the loading docks and parking areas (collectively, the “Leased Premises”); and

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17           **WHEREAS**, the County and the Landlord desire to enter into a Lease Agreement,  
18 substantially in the form attached as Exhibit A, for a term of seven years and six months with one  
19 three-year option to renew; and

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21           **WHEREAS**, such a multi-year term requires the payment by the County of funds from an  
22 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year  
23 agreement pursuant to Section 612 of the Howard County Charter.

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25           **NOW, THEREFORE,**

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27           *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in accordance*  
28 *with Section 612 of the Howard County Charter, it approves the Lease Agreement between*  
29 *Howard County and Merritt- HR, LLC for the seven-year, six-month term, and the renewal option,*  
30 *substantially in the form of Exhibit A attached to this Act.*

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**Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that the County Executive is hereby authorized to execute the Lease Agreement for such term in the name of and on behalf of the County.

**Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that the County Executive, prior to execution and delivery of the Lease Agreement, may make such changes or modifications to the Lease Agreement as he deems appropriate in order to accomplish the purpose of the transactions authorized by this Act, provided that such changes or modifications shall be within the scope of the transactions authorized by this Act; and the execution of the Lease Agreement by the County Executive shall be conclusive evidence of the approval by the County Executive of all changes or modifications to the Lease Agreement, and the Lease Agreement shall thereupon become binding upon the County in accordance with its terms.

**Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that this Act shall be effective immediately upon its enactment.

**LEASE AGREEMENT**

**MERRITT- HR, LLC**

**Landlord**

**HOWARD COUNTY, MARYLAND**

**Tenant**

**9515 Gerwig Lane Suites 113-115**

**Columbia, MD 21046**

## LEASE AGREEMENT

THIS **LEASE AGREEMENT** (the "Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between **MERRITT- HR, LLC**, a Maryland limited liability company (the "Landlord"), registered with and in good standing with the Maryland State Department of Assessments and Taxation and **HOWARD COUNTY, MARYLAND** (the "County"), a body corporate and politic.

WITNESSETH, that County covenants and agrees with Landlord as follows:

1. **LEASED PREMISES.** Landlord by the deed dated December 12, 1997 and recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 4142, folio 210 is the owner of approximately 11.98 acres of real property shown as Parcel 386 on Tax Map 42 and shown on Plat Number 6725 as Parcel A-3 which plat is recorded in the Land Records, which real property is improved with an industrial building known as 9515 Gerwig Lane, Columbia, Maryland 21046 (the "Building"). The Building has a total of 156,500 square feet of leasable space including related amenities and any additional facilities in subsequent years as may be determined by Landlord to be reasonably necessary or desirable for the management, maintenance or operation of the building including the improvements constructed for the County herein (collectively the "Property"). Landlord hereby leases unto County, and County hereby leases from Landlord, a portion of the Building consisting of: the entirety of suites 113-115, comprising a total of approximately 13,500 square feet of rentable space (the "Leased Premises"), which are described in the Exhibit A attached hereto and a part hereof. County shall have the right of access to the Leased Premises twenty-four (24) hours per day, seven (7) days per week during the Term.

2. **TERM.** The initial term of this Lease (the "Initial Term") shall commence on the latter of two dates: (i) January 1, 2018, or (ii) date the Landlord delivers the Leased Premises with the Landlord's Work Substantially Completed (as defined in Section 5) (the "Commencement Date"), and end at 11:59 p.m. on September 30, 2025 (the "Term Expiration Date"), unless the Lease is earlier terminated or extended pursuant to any other provision of this Lease or applicable law. The parties acknowledge that this Lease has been approved by the County Council of Howard County as a multi-year obligation in accordance with «Council Legislation Number».

Promptly after Landlord delivers possession of the Leased Premises, Landlord will send an occupancy confirmation letter to County establishing the Commencement Date and Term Expiration Date and making any necessary adjustments to Annual Rent or other provisions of this Lease that are affected based upon any changes to such dates. Absent manifest error, such letter shall be deemed to be correct and binding on Landlord and County regardless of whether County executes and returns such letter, unless County challenges the provisions thereof by written notice to Landlord within thirty (30) days after it is sent to County.

County shall have access to the Leased Premises thirty (30) days prior to anticipated Commencement Date on a rent-free basis for the installation of furniture, fixtures and equipment. These 30 days shall not be considered as part of the rent abatement concession provided that (i) County shall give Landlord at least twenty-four (24) hours' advance notice of its intention to seek such access; (ii) neither County nor County's employees, contractors, agents, or representatives shall unreasonably interfere with Landlord's Work; (iii) all such furniture, fixtures and equipment shall have been approved in advance by Landlord; (iv) County shall deliver to Landlord evidence of the insurance required to be maintained by County pursuant to this Lease before County's entry into the Leased Premises; and (v) all terms of this Lease shall be deemed to be in effect as of the first day of County's early access to the Leased Premises hereunder except that County shall have no obligation to pay any Rent prior to the Commencement Date.

Extension Option. If, at the end of the Initial Term of this Lease, (a) County is not in default of any of the terms, conditions or covenants of this Lease, beyond any applicable notice and cure period, and (b) County has not assigned or sublet the Leased Premises, except as permitted herein, then County shall have the option to extend the Term (the "Extension Option") for one (1) additional period of five (5) years (the "Option Period"). Such Option Period shall be under the same terms and conditions as are herein set forth except that the annual rental for the Option Period shall be adjusted as follows:

RENTAL FOR THE FIRST YEAR OF THE OPTION PERIOD SHALL BE THE THEN CURRENT MARKET RATE, BUT IN NO EVENT LESS THAN THE THEN CURRENT RENTAL RATE. THE RENTAL SHALL INCREASE ANNUALLY AT A RATE OF THREE PERCENT (3%) THROUGHOUT THE OPTION PERIOD.

The Extension Option is personal to the County and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the County or if this Lease has been assigned to another governmental or quasi-governmental department, division or agency of Howard County, Maryland or the State of Maryland (a "Government Agency") as permitted hereunder, the Extension Option may be exercised by the Government Agency.

a. Extension Notice. If County desires to exercise the Extension Option to extend the Term (subject to County's compliance with the standards set forth herein), County shall notify Landlord in writing of County's intention to do so at least 270 days prior to the expiration date of the Term. After proper and timely exercise of the Extension Option by County, all references in this Lease to "Term" shall be considered to mean the Initial Term or Option Period as extended, and all references in this Lease to the expiration date or to the end of the Term shall be considered to mean the termination or end of the applicable Option Period.

b. Surrender of Leased Premises. County shall, at the expiration of the Term or at the sooner termination thereof by forfeiture or otherwise, surrender the Leased Premises in the same good order and condition as existed at the beginning of the tenancy, reasonable wear and tear excepted; provided that the Landlord's Work shall remain.

**3. RENT.**

a. Annual Rent. County shall pay to Landlord, in twelve equal monthly installments, an annual base rental (“Annual Rent”) as shown in the rent schedule below. The Annual Rent shall be increased annually at the rate of three percent (3%) after the 1<sup>st</sup> year.

Period	Base Rent	Monthly Based on 13,500 square feet	Annual Based on 13,500 square feet
Year 1 (one month of rent abatement)	\$9.20 per square foot	\$10,350	\$113,850 (indicates only 11 months of payment because of abatement)
Year 2	\$9.48 per square foot	\$10,665	\$127,980
Year 3	\$9.76 per square foot	\$10,980	\$131,760
Year 4	\$10.05 per square foot	\$11,306.25	\$135,675
Year 5	\$10.35 per square foot	\$11,643.75	\$139,725
Year 6	\$10.66 per square foot	\$11,992.50	\$143,910
Year 7	\$10.98 per square foot	\$12,352.50	\$148,230
Year 8 (partial)	\$11.31 per square foot	\$12,723.75	Payments monthly until lease end date

\* The County shall receive one month of Annual Rent abatement as to the Leased Premises (i.e. Annual Rent for the initial Leased Premises abates for the first month following the Commencement Date). County covenants and agrees to pay all Annual Rent reserved hereunder to Landlord, without notice or demand, in advance, on the first (1st) day of each month during the Term, without setoff or deduction. The Rent (as defined below) for any fractional monthly periods at the beginning or at the end of the Term shall be prorated on a per diem basis and shall be payable on the Commencement Date, and on the first (1st) day of the last partial month of the Term, respectively. County covenants and agrees that it will not prepay any Rent more than one (1) month in advance without Landlord’s prior written consent.

b. All Rent shall be paid to MERRITT PROPERTIES, LLC c/o Merritt, 2066 Lord Baltimore Drive, Baltimore, Maryland 21244, or at such other place or to such appointee of Landlord as Landlord may from time to time designate in writing.

c. All sums, charges, and amounts of whatever nature to be paid by County to Landlord hereunder other than Annual Rent shall be deemed and referred to as "Additional Rent." Every amount payable by County to or on behalf of Landlord under this Lease, whether or not expressly denominated as Annual Rent or Additional Rent, shall constitute and shall be referred to as "Rent" for the purposes of this Lease and Section 502(b)(6) of the Bankruptcy Code, 11 U.S.C. § 502(b)(6). County shall pay all Additional Rent simultaneously with County's payment of Annual Rent unless otherwise specified hereunder.

d. **Late Payment Charge.** If County fails to pay any Rent, within five (5) days after the date due, then Landlord may, in its discretion, charge Tenant a late charge equal to ten percent (10%) of the Rent payment or other such charge, which late charge shall be collectible as Additional Rent and shall be immediately due and payable by County. Notwithstanding the foregoing, the Rent due on July 1<sup>st</sup> of each year shall not accrue a late charge unless such Rent is still outstanding after July 15<sup>th</sup> of such year.

#### **4. MANAGEMENT FEE; OPERATING EXPENSES.**

a. Landlord shall receive a management fee for managing the Building and all common areas and facilities within the Property in the amount of three percent (3%) of the Rent as defined in Section 3(c) above), which shall be paid as Additional Rent.

b. "Operating Expenses" are the costs of operating, maintaining, repairing, redecorating, refurbishing, and insuring the Building and all common areas and facilities within the Property (including, but not limited to, loading areas, parking areas, pavements and walkways, landscaping, gardening, storm drainage and other utility systems; and County's trash removal provided it is placed in a common dumpster provided by Landlord; the cost of utilities for such common areas and facilities); fire protection and security services, if any; traffic control equipment; repairs and maintenance of all building systems and equipment (except for HVAC covered under Section 12(b)); parking lot striping; lighting; sanitary control; removal of snow and ice, and all costs associated with such snow and ice removal, trash, rubbish, garbage and other refuse from the parking and common areas; all insurance of whatsoever nature kept, or caused to be kept, by Landlord out of, or in connection with, the ownership of the Building and common areas, including, but not limited to, insurance insuring the same against loss or damage by, or abatement of rental income resulting from, fire and other such hazards, casualties, and contingencies, and liability and indemnity insurance; depreciation on, or rentals of, machinery and equipment used in any such maintenance; and the cost of personnel to implement any such services.- Operating Expenses shall not include (i) the cost of any capital improvements and capital repairs and replacements to the Building as determined under generally accepted accounting principles consistently applied (except that if any repair or replacement is of such a nature that it should be considered under good accounting practice as a deferred expense and spread over a period of not more than ten (10) years; provided, however, that Operating Expenses for a year shall include the proportionate share of such deferred expense appropriately allocated to such year);



and (ii) work that Landlord performs specifically for, or at the expense of, any tenant of the Building. The initial Operating Expenses and Management Fee are estimated at \$2.45 per square foot per annum for the 2017 calendar year.

Landlord specifically agrees that Controllable Operating Expenses shall not increase by more than four percent (4%) per year in the aggregate over the Initial Term of the Lease on a non-cumulative and non-compounding basis. "Controllable Operating Expenses" means all Operating Expenses except for Taxes, utility costs, insurance premiums, security costs, snow removal costs, costs of services provided under a union contract, costs associated with repairs due to casualty or vandalism, or any other costs outside of Landlord's reasonable control.

Notwithstanding anything to the contrary set forth herein, to the extent that any capital expenditure is made or capital equipment is purchased or leased for the purpose of reducing operating expenses (including, without limitation, energy conservation or labor-saving devices) that would otherwise be included in Operating Expenses, then the costs (including financing costs, if any) of such capital expenditure or capital equipment may be included in Operating Expenses if amortized over the useful life of the item on straight-line basis. Additionally, Landlord may lease or purchase any items of capital equipment that Landlord determines may result in savings, reductions or provide a system or information that Landlord reasonably deems necessary to create energy efficiency in the Building and a reduction of Operating Expenses, and the cost of such lease or purchase may be included in Operating Expenses (provided that, in the case of a purchase, the cost shall be amortized over the useful life of the equipment).

Notwithstanding anything to the contrary above, Operating Expenses shall not include: (i) leasing commissions, attorneys' fees, costs, disbursements and other expenses incurred in leasing or procuring new tenants or in connection with rent collection or disputes with tenants, other occupants, or prospective tenants, or in connection with negotiations or disputes with regulatory agencies, consultants, management agents, purchasers or mortgagees of the Building; (ii) costs of special services, tenant improvements and concessions, repairs, maintenance items, or utilities, and repairs or maintenance of equipment and utilities specifically provided for individual tenants of the Building; (iii) costs incurred in connection with the sale, financing, refinancing, mortgaging, selling or change of ownership of the Building; (iv) costs, fines, interest, penalties, legal fees or costs of litigation incurred due to the late payment of taxes, utility bills and other costs incurred by Landlord's failure to make such payments when due or to collect rent from tenants; (v) costs incurred by Landlord for trustee's fees, partnership organizational expenses and accounting fees, except accounting fees relating solely to the ownership and operation of the Building; (vi) Landlord's general corporate overhead and general and administrative expenses; (vii) any rent for any Landlord on-site leasing or maintenance office; (viii) Landlord's income and franchise taxes, special assessments and other business taxes except those business taxes that relate solely to the operation of the Building; (ix) increased insurance premiums caused by Landlord's or any other tenant's hazardous acts; (x) advertising and promotional costs associated with the leasing of the Building, and costs of signs in or on the Building identifying the owners of the

Building or any tenant of the Building; (xi) any costs actually reimbursed under the warranty of any general contractor, subcontractor or supplier and realized by Landlord; and (xii) wages and salaries for off-site employees and employees at the Building above the level of Building manager.

c. "Taxes" shall mean all taxes and assessments (as hereinafter defined) levied or assessed against the Property and Building, including all such taxes resulting from an increase in the tax rate, or the levy, assessment or imposition of any tax on real estate as such not now levied, assessed or imposed, including, without limitation, assessments, fees or charges imposed under any declaration of protective covenants, or similar covenants affecting the Property or any charges or assessments of any community or neighborhood association, all of which assessments, taxes and charges shall be considered "taxes" for the purposes of this paragraph and shall be included in Operating Expenses. Notwithstanding the foregoing, in the event of any new taxes or increases in real estate taxes resulting from improvements, alterations or additions made by County, Landlord may, but is not obligated to, require County to pay the entire amount of any increase in taxes resulting from such improvements, alterations or additions. "Taxes" as used herein shall also include, but not by way of limitation, all paving taxes, special paving taxes, special taxing district assessments and any and all other benefits or assessments that may be levied on the Property or the Building, but shall not include any Franchise Taxes, Estate taxes, Business and Professional License Taxes, Inheritance taxes or any other taxes based upon the net income of Landlord or rent payable hereunder. "Taxes" shall also include all reasonable expenses incurred by Landlord (including attorneys' fees and costs) in contesting any increase in, or applying for any reduction of, a tax assessment. Any tax credit for the Building that results in a tax reduction or credit shall inure to the benefit of Landlord, provided such reduction or credit resulted from investment in the Building by Landlord, at Landlord's expense (including, by way of example and not limitation, tax credits resulting from the installation of energy-efficient Building systems).

d. County covenants and agrees to pay Landlord, as Additional Rent, County's proportionate share of Operating Expenses and Taxes, The County's "proportionate share" shall be a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the Leased Premises (13,500 square feet) and the denominator of which is the total rentable square footage of the Building (156,500 square feet) or eight and sixty-three hundredths percent (8.63%). With respect to the costs of managing the Building, County's proportionate share shall be equal to the management fee calculated as set forth in Section 4(a) above. County's proportionate share of Operating Expenses and Taxes may each change from time to time based upon the total rentable square footage of the Building or Property.

e. Instead of requiring an annual payment by County, Landlord shall have the right to notify County from time to time of the amount that Landlord estimates will be the amount payable by County in accordance with subparagraph (c) above, and County shall pay such amount to Landlord in equal monthly installments, in advance, on the first (1st) day of each month, simultaneously with payments of the Annual Rent reserved pursuant to Section 3 hereof. Within a reasonable period of time following the

end of each calendar year (or tax year, as applicable) of the Term, Landlord shall submit to County a statement showing the actual amounts incurred by Landlord as set forth in subparagraph (c), the amount theretofore paid by County, and the amount of the resulting balance due thereon, or overpayment thereof, as the case may be (an "Expense Statement"). In the event any balance may be due by County, County shall pay said balance within fifteen (15) days from the date of such Expense Statement. In the event County has made any overpayment, such overpayment shall be credited by Landlord against the next installment, or installments, of Rent that are due and payable hereunder, or if the Term has expired, such overpayment shall be refunded by Landlord to County, without interest, within fifteen (15) days after the date of such Expense Statement. Each such Expense Statement submitted by Landlord shall be final and conclusive between the parties hereto as to the matters therein set forth if no objection is raised with respect thereto within sixty (60) days after submission of each such Expense Statement.

f. County, at its sole cost and expense, shall have the right, upon not less than fifteen (15) days' prior written notice given within sixty (60) days after County's receipt of an Expense Statement, to inspect Landlord's books and records relating to Landlord's determination of the Operating Expenses as shown in the Expense Statement in accordance with this Section 4(e). This review right shall be personal to the party named herein as tenant. No review shall be permitted at any time during which a default exists under this Lease. If a default occurs at any time during the pendency of a review of records then the review right shall immediately cease, and the matters set forth in the Expense Statement under review shall be conclusively deemed correct. Any such review shall be conducted by County or by an independent certified public accountant of County's choosing, reasonably acceptable to Landlord, that is not being compensated by County on a contingency fee basis. If County employs such an independent certified public accountant then, as a condition precedent to such review, County shall deliver to Landlord a copy of County's written agreement with such accountant, which shall include provisions that state the accountant will maintain in strict confidence any and all information obtained in connection with the review and will not disclose the fact of the review or any results of it to any person or entity other than County. Any such review shall be conducted at Landlord's office at the Building or at Landlord's principal offices, or at such other location as Landlord may reasonably designate. County shall deliver to Landlord a copy of the results of any such review promptly following its completion or receipt by County, which results shall be kept strictly confidential by County. Should County's inspection reveal that County overpaid its share of Operating Expenses, Landlord agrees to refund or credit to County the amount of such overpayment within thirty (30) days after the results of such review are made available to Landlord. If the inspection reveals that County was undercharged, then within thirty (30) days after the results of such review are made available to County, County shall reimburse Landlord the amount of such undercharge. Should the inspection reveal that County overpaid its share of Operating Expenses by more than five percent (5%), Landlord shall further reimburse County the reasonable costs incurred by County for such inspection up to Two Thousand Dollars (\$2,000).

f. For avoidance of doubt, both parties hereby acknowledge and agree that the costs of security and utilities service (excluding water and sewer) and janitorial to

the Leased Premises are not included in Operating Expenses. Instead, the County is responsible for obtaining such services in its own name and paying such costs in full.

**5. DELIVERY OF POSSESSION.** Landlord agrees to deliver to County, and County agrees to accept from Landlord, possession of the Leased Premises when Landlord advises County in writing that the Landlord's Work has been "Substantially Completed" and the mechanical (including HVAC), plumbing, electrical, and fire suppression systems in the Leased Premises are operating as designed. The parties intend for the Leased Premises to be delivered to the County as a "turn-key" build out (subject to the cost limitations set forth herein) ready for the intended use as warehouse and office space.

"Substantially Completed" shall mean the date that either (i) the certificate of use and occupancy is issued by the Department of Inspections, Licensing and Permits of Howard County, Maryland ("DILP") or (ii) final inspection of the Leased Premises by the applicable county agency has occurred, and the nature of the improvements are such that a use and occupancy certificate is not issued by the DILP.

If Landlord encounters delays in delivering possession of the Leased Premises to County due to Events of Force Majeure, this Lease will not be void or voidable, nor will Landlord be liable to County for any loss or damage resulting from such delay. As used herein, the term "Events of Force Majeure" shall mean any delay encountered by Landlord in carrying out its obligations under this Section 5 resulting from strikes, lockouts, earthquakes, floods, unavailability of labor, inclement weather, unavailability of standard materials, customary facilities, equipment or supplies, governmental building moratoriums, governmental or administrative action or inaction, riot, insurrection, mob violence or civil commotion, war, acts of God, delays or inaction by utility providers, or other acts beyond the reasonable control of Landlord and not due to Landlord's acts or omissions or financial condition (individually or collectively "Events of Force Majeure"). Notwithstanding anything contained herein to the contrary, the date of Substantial Completion (and thus the Commencement Date) shall be accelerated by one (1) day for each day of "County Delay" as such term is defined below.

A "County Delay" shall mean a delay caused directly or indirectly by any of the following: (a) the County's failure to comply with any deadlines specified herein; (b) County's request for changes or additions to the Landlord's Work, or failure to timely pay for the additional amounts due as a result of a change order requested by County; (c) the County's failure to pay when due any amounts required pursuant to this Lease; (d) the County's request for materials, finishes or installations which are not available as needed to meet the general contractor's schedule for Substantial Completion; (e) the County's interference with the general contractor's schedule; (f) the performance or completion of any work, labor or services by a party employed by the County; or (g) any other County caused delay. Notwithstanding the forgoing, a County Delay shall not occur if the County is acting in a regulatory role: for example, the County performs an inspection of the Landlord's Work and notes that it does not comply with the County's building code.

As used herein, the term "Landlord's Work" shall mean the tenant improvements to be completed by Landlord to build-out the Leased Premises in accordance with the plans attached hereto as Exhibit B, attached hereto and incorporated herein. The Landlord's Work shall also include removing walls as shown on Exhibit C, and providing paint and flooring (type to be agreed upon between County and Landlord) (1) mechanical pit leveler, 20 electrical drops in the warehouse space and additional electrical outlets inside the office space, adjacent to the warehouse space and the new HVAC system meeting the specifications herein. The new HVAC system shall provide output that meets the climate controlled thresholds provided by the Board of Elections, the County's agency occupying the Leased Premises for the voting machines (which will be stored in the warehouse area) which must be stored at no more than 80 degrees Fahrenheit and the humidity cannot be higher than 85% relative humidity and for the paper (which will be stored in the non-warehouse area) which shall be stored at no more than 65% relative humidity and with a temperature range of 64 to 72 degrees Fahrenheit. Unless otherwise agreed by the parties in writing, the Landlord's Work and other initial tenant improvements shall remain on the Leased Premises after the expiration or earlier termination of this Lease and shall become the property of Landlord as soon as they are affixed to the Leased Premises, and all right, title and interest thereof of County shall immediately cease.

All of Landlord's Work shall be performed at Landlord's expense in a good and workmanlike manner and consistent with the plans attached hereto as Exhibit B. Landlord's Work shall comply with all applicable governmental permits, laws, ordinances and regulations. Landlord shall obtain, at Landlord's expense, and comply with all permits required by all public authorities in connection with the performance of the Landlord's Work. "Punch list" items, as referred to in this Section 5, are items that will require correction but that will not materially interfere with, or cause a delay to, County's occupancy of the Leased Premises as contemplated herein. Within fifteen (15) days following the date of delivery of possession of the Leased Premises, County shall deliver a punch list, if any, to Landlord. Landlord agrees to correct all such punch list items as soon as reasonably practicable.

6. **USE.** The Landlord acknowledges and agrees that the Leased Premises shall be used by the Howard County Board of Elections for the storage and safe keeping of ballots and voting machines and ancillary equipment.. County shall use and occupy the Leased Premises for general warehouse and office use and such other uses legally permitted by a government. County agrees not to make, or cause or permit to be made, any use of the Leased Premises that shall constitute a nuisance or interfere with the rights of other tenants in the Building to quietly enjoy, use and occupy the premises leased by them and the common areas of the Building or Property. County will not permit, allow or cause any public or private auction sales or sheriffs' or constables' sales to be conducted on or from the Leased Premises.

7. **LAWS AND REGULATIONS.** Landlord and County shall observe and comply with all laws, orders, rules, requirements, ordinances and regulations of the United States and the State and City or County in which the Leased Premises are located, and of all governmental authorities or agencies and of any board of the fire underwriters or

other similar organization (collectively the "Legal Requirements"), with respect to the Property and the manner in which the Property is used by Landlord, County and, as applicable, other tenants of the Building. In no way limiting the generality of this section, Landlord shall complete the Landlord's Work in accordance with the Americans with Disability Act of 1990 (42 U.S.C., Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as amended and supplemented from time to time, (collectively the "ADA"). In the event that any improvements or renovations are required to the Building or Leased Premises for compliance with applicable Legal Requirements (including the Americans with Disabilities Act), it shall be the obligation of Landlord to make such improvements or renovations; provided that if such improvements or renovations is required because of County's special or unique use of, or activity in, the Leased Premises (other than general warehouse or office use), or (ii) the performance of any alterations within the Leased Premises (other than Landlord's Work), then the responsibility for the costs of such improvements or renovations shall belong to County.

8. **ASSIGNMENT AND SUBLET.** The Landlord acknowledges that the County may allow agencies of the State of Maryland, quasi-governmental agencies and non-profits entities serving the citizens of the County to utilize a portion of the Leased Premises from time to time, subject to the terms and conditions of Section 6 above. County shall not assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer this Lease or permit the use of the Leased Premises by any persons other than a non-profit serving the citizens of the County, a County or a government agency, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

9. **INSURANCE, SUBROGATION AND INDEMNIFICATION.**

a. County's Insurance. Landlord acknowledges that County is self-insured and will maintain or appropriate reasonable reserves or funds, as the case may be, to cover claims, losses and damages that might arise or be incurred during its occupancy of the Leased Premises which otherwise may be covered by Business Personal Property Insurance covering Special Causes of Loss, Commercial General Liability insurance (written on an occurrence basis) which, unless approved by Landlord in writing, in no event shall be for coverage less than One Million Dollars (\$1,000,000) combined single limit per occurrence with a One Million Dollar (\$1,000,000) annual aggregate, and Workers' Compensation insurance including Employer's Liability insurance, which, unless approved by Landlord in writing, such Workers' Compensation insurance shall be for the statutory benefits in the jurisdiction in which the Leased Premises are located.

b. Landlord's Insurance. Throughout the term of this Lease, Landlord shall obtain and maintain

(i) Real Property Insurance against Special Causes of Loss and said insurance shall be subject to Replacement Cost valuation covering the building and all of

Landlord's property therein in an amount required by its insurance company to avoid the application of any coinsurance provision, and

(ii) Commercial General Liability insurance (written on an occurrence basis) and said insurance shall include Contractual Liability coverage insuring the obligations assumed by Landlord under this Lease, Leased Premises and Operations coverage, Personal Injury Liability coverage, Independent Contractor's Liability coverage. Such Commercial General Liability insurance shall be in amounts not less than One Million Dollars (\$1,000,000) combined single limit per occurrence with a Two Million Dollar (\$2,000,000) annual aggregate.

c. Waiver of Subrogation and Indemnity.

(i) If either party hereto is paid any proceeds under any policy of insurance naming such party as an insured on account of any loss or damage, then such party and its insurer hereby releases the other party, to the extent of the amount of such proceeds including applicable deductibles, from any and all liability for such loss or damage, notwithstanding that such loss, damage or liability may arise out of the negligent or intentionally tortious act or omission of the other party, its agents, invitees or employees; provided that such release shall be effective only as to loss or damage occurring while the appropriate policy of insurance of the releasing party provides for the insured's ability to recover thereunder. Each party shall assure that its insurance carriers agree to waive subrogation in the event of a loss.

(ii) Subject to Maryland's Local Government Tort Claims Act, approved budget appropriations and applicable law, County shall indemnify and hold harmless Landlord from and against all claims, damages, losses, liabilities, judgments, costs and/or expenses relating to or arising out of (i) County's sole acts or omissions from the use and occupancy of the Leased Premises, (ii) County's breach of any of its obligations hereunder, or (iii) any mechanic's lien filed against the Building, or any part thereof, for labor performed or for materials furnished or claimed to be furnished to County, which have not been bonded by the County or contested by the County in accordance with the State court procedures. Notwithstanding anything to the contrary contained in this section, County will act in good faith to secure appropriations sufficient to meet its obligations under this Section. Nothing contained in this Section or this Lease shall be construed as the County having waived any of the defenses of immunity provided to it under law. Landlord shall notify County, of any suits, claims or potential claims as soon as possible after its own notice of such suits, claims or potential claims.

10. **ALTERATIONS.** Except for improvements required to maintain and repair the interior of the Leased Premises for its intended use by the Board of Elections, or the installation of trade fixtures, furniture and equipment, the County shall make no alterations, installations, additions or improvements beyond the Landlord's Work in the Leased Premises (herein collectively referred to as "Alterations") in or to the Leased Premises without the Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed in the case of non-structural alterations,

and may be withheld in Landlord's sole and absolute discretion in the case of structural alterations, and then only by contractors or mechanics reasonably approved by Landlord, and at such times and in such manner as Landlord may from time to time reasonably designate. Unless Landlord elects that all or part of any alteration or installation (including cabling and wiring) made or installed by County to the Leased Premises (including any alteration consented to by Landlord) shall remain on the Leased Premises after the termination of this Lease, the Leased Premises shall be restored to its original condition (as delivered by Landlord to County on the Commencement Date) by County before the expiration of this Lease at County's sole expense. Upon such election by Landlord, any such alterations, installations, improvements, betterments or mechanical equipment, including but not limited to, heating and air conditioning systems, shall become the property of Landlord as soon as they are affixed to the Leased Premises, and all right, title and interest thereof of County shall immediately cease, unless otherwise agreed to in writing by Landlord. County shall promptly pay any franchise, minor privilege or other tax or assessment resulting directly or indirectly from any alterations or improvements made by County to the Leased Premises. County shall repair promptly, at its own expense, any damage to the Leased Premises or Building caused by bringing into the Leased Premises any property for County's use, or by the installation or removal of such property, regardless of fault or by whom such damage shall be caused.

#### **11. REPAIRS AND MAINTENANCE.**

a. Except as expressly provided on Exhibits B and C, Landlord shall be under no liability, nor have any obligation to do any work or make any repairs in or to the Leased Premises, and any work that may be necessary to outfit the Leased Premises for County's occupancy, or for the operation of County's business therein, is the sole responsibility of County and shall be performed by County at its own cost and expense. County acknowledges that it has fully inspected the Leased Premises prior to the execution of this Lease, and County further acknowledges that Landlord has made no warranties or representations with respect to the condition or state of repairs of the Leased Premises.

b. County, at County's sole expense, shall maintain the Leased Premises in good order, condition, and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, building standard furnishings and special items and equipment installed by or at the expense of County. County also agrees not to store any items outside of the Leased Premises, except as otherwise expressly permitted hereunder.

c. County shall be responsible for all repairs and alterations in and to the Leased Premises and Building and the facilities and systems thereof, the need for which arises out of (i) County's use or occupancy of the Leased Premises; (ii) the installation, removal, use or operation of County's property in the Leased Premises; (iii) the moving of County's property into or out of the Building; or (iv) any act, omission, misuse or negligence of County, its agents, contractors, employees or invitees.



d. County shall not place a load upon any floor of the Leased Premises that exceeds the load per square foot that such floor was designed to carry, as determined by Landlord's structural engineer. Landlord reserves the right to consult with its structural engineer, if necessary in Landlord's opinion, to resolve any questions concerning this matter, in which event, the determination of the engineer shall be conclusive and the cost of any such determination shall be paid for by County upon demand as Additional Rent. County shall not install business machines or mechanical equipment that cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

e. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to County, nor shall County's obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any damage, inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes that Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in, or to, any portion of the Building or the Leased Premises. Landlord shall, nevertheless, use reasonable efforts to minimize any interference with County's business in the Leased Premises.

f. County shall give Landlord prompt notice of any damage to, or defective condition in, any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through, the Leased Premises.

g. Upon the expiration or earlier termination of this Lease, County shall return the Leased Premises to Landlord clean and in the same condition as on the date County took possession, except for normal wear and tear. Any damage to the Leased Premises, including any structural damage, resulting from County's use or from the removal of County's fixtures, furnishings and equipment shall be repaired promptly by County at County's expense. Landlord shall bill County, as promptly as is practicable, for the costs of any cleanup and/or repairs to the Leased Premises necessitated by County's use and occupancy thereof (normal wear and tear excepted) and such costs shall constitute Additional Rent, notwithstanding any expiration or termination of this Lease.

12. **SERVICES.** All Landlord's services to be provided to the Leased Premises twenty- four (24) hours per day three hundred sixty-five (365) days per year.

a. **Electricity.** Landlord shall maintain the electrical service to the Leased Premises. The electricity for the Leased Premises shall be separately metered (or sub-metered) at Landlord's expense and the cost of the electricity supplied paid for directly by County.

b. **HVAC.** Landlord shall maintain, repair and replace the HVAC system and equipment for the Leased Premises such that heating and air conditioning are supplied for the Leased Premises at the specified temperatures of 80 degrees Fahrenheit and the humidity cannot be higher than 85% relative humidity in the warehouse area and 64 to 72

degrees Fahrenheit and the humidity cannot be higher than 65% relative humidity in the non-warehouse area. County shall have sole control over the temperature of the Leased Premises to regulate heating and air conditioning from within the Leased Premises. Landlord agrees to provide for the maintenance of the primary HVAC mechanical equipment serving the Premises pursuant to a maintenance agreement with Merritt Management Corporation or other vendor selected by Landlord in its sole discretion. Landlord's obligation to furnish HVAC maintenance pursuant to such maintenance agreement shall not include any specialty HVAC equipment, which shall be County's responsibility, or any regular inspections, cleaning, or maintenance of the ductwork system. County shall pay, as Additional Rent, the costs of such maintenance agreement, which payments shall be due and payable annually in advance upon commencement of this Lease and on the first day of each lease year throughout the Term and any extension thereof.

c. Water and Sewer. Landlord shall maintain and supply adequate water and sewer services for the building, including without limitation the Leased Premises, the cost of which shall be part of Operating Expenses unless such utilities are separately metered in which event County shall pay the metered charges..

d. Voice and Data. County shall contract directly for the installation and maintenance of its voice and data systems and a telecommunications service provider for all phone, internet and network services. County and Landlord shall coordinate during the period of Landlord's Work to determine if voice and data installation should take place during this time. Landlord shall have reasonable approval rights for wiring installation.

e. Miscellaneous. Landlord shall furnish, supply and maintain, repair and replace, as applicable, all hallways, common area light fixtures (including light bulbs), stairways, lobbies, restroom facilities and maintain the Property, parking facilities and other common areas of the Property, in a safe and sanitary condition. The Landlord shall use its commercially reasonable efforts to clear snow and ice from the driveways and sidewalks within the Project in a manner to allow the continued business operations of the County. The cost of the above services shall be included in Operating Expenses.

Landlord shall have no liability or responsibility to supply heat, air conditioning, plumbing, cleaning, and/or electric service, when prevented from so doing by laws, orders or regulations of any Federal, State, County or Municipal authority or by strikes, accidents, or by any other cause whatsoever, beyond Landlord's control and shall have no liability whatsoever for any interruptions in utility services.

13. **DEFAULT.** If County fails (i) to pay installments of Rent and such failure continues for five (5) days after Landlord has given written notice to County; provided, however, that Landlord shall not be required to give any such written notice more than one (1) time in any consecutive twelve (12) month period, or (ii) to perform any other obligation of County under this Lease and such failure continues for thirty (30) days after Landlord has given written notice to County then, upon the happening of such event Landlord may terminate the Lease and repossess the Leased Premises and be entitled to recover as

damages a sum of money equal to the total of the following amounts: (i) any unpaid rent or any other outstanding monetary obligation of County to Landlord under the Lease for the remainder of the then current Term of the Lease and (ii) all reasonable costs incurred in recovering the Leased Premises, and restoring the Leased Premises to good order and condition. The foregoing shall not limit any other remedies Landlord may have as a result of such default, it being acknowledged and agreed that Landlord shall be entitled to all remedies available at law and equity for any default by the County hereunder.

14. **DAMAGE.** In the case of the Leased Premises becoming wholly untenable (including failure of the HVAC to control the temperature as provided in Section 5 herein) by fire, other casualties, the elements, or other cause, or of such damage thereto as shall render the same totally unfit for occupancy by County for more than two hundred seventy (270) days, this Lease, upon ninety (90) days prior written notice from County and the surrender and delivery to Landlord by County of the Leased Premises, together with the payment of the Rent to the date of such occurrence, shall terminate, and the parties shall have no further obligations or liabilities under this Lease from the date of said termination, except as provided for in provisions of this Lease which by their terms survive the expiration or earlier termination of the Term. If the Leased Premises are rendered partly untenable by any cause mentioned in the preceding sentence, Landlord shall, at its own expense, within two hundred seventy (270) days from the date of the damage restore the Leased Premises with reasonable diligence, including without limitation modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building, and the Rent shall be abated proportionately for the period of said partial untenability and until the Leased Premises are fully restored by Landlord to the prior or better condition. In the event the Leased Premises become wholly untenable as set forth above, Landlord shall use commercially reasonable efforts to temporarily relocate County to a replacement premises of comparable or better size and condition as the Leased Premises hereunder, within Howard County, Maryland, and meeting the temperature requirements set forth in Section 5 herein in a building now owned or hereafter acquired by Landlord or an affiliate of Landlord as soon as possible. If Landlord is unable to relocate County within one hundred and eighty days from the occurrence, County may terminate this Lease as of the date of the damage to the Building.

Notwithstanding the terms of the foregoing paragraph, Landlord may elect not to rebuild and/or restore the Leased Premises and instead terminate this Lease by notifying County in writing of such termination within sixty (60) days after the date of damage, such notice to include a termination date giving County ninety (90) days, from the date of said notice, to vacate the Leased Premises. Notwithstanding the foregoing, Landlord may elect this option of termination only if the Building is damaged by fire or other casualty or cause, whether or not the Leased Premises are affected, and one or more of the following conditions is present: (i) repairs cannot reasonably be completed within one hundred twenty (120) days from the date of damage (when such repairs are made without the payment of overtime or other premiums), (ii) the holder of any mortgage on the Building or ground or underlying lessor with respect to the Property and/or the Building shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground or underlying lease, as the case may be, or (iii) the damage is

not fully covered, except for deductible amounts, by Landlord's insurance policies. In addition, if the Leased Premises or the Building is destroyed or damaged to any substantial extent during the last year of the Term, then notwithstanding anything contained in this Section, Landlord or County shall have the option to terminate this Lease by giving written notice to the other of the exercise of such option within thirty (30) days after such damage or destruction, in which event this Lease shall terminate as of the date of such notice. Upon any such termination of this Lease pursuant to this section, County shall pay the Rent properly apportioned up to such date of damage, and thereafter both parties shall be released and discharged of all further obligations hereunder, except as provided for in provisions of this Lease which by their terms survive the expiration or earlier termination of the Term.

15. **BANKRUPTCY.** In the event of the appointment of a receiver or trustee for County by any Federal or State court, in any legal proceedings under any provision of the Bankruptcy Act, which is not vacated within sixty (60) days, or in the event County is adjudicated bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, then in any of said events, Landlord may, at its option, terminate this Lease by ten (10) days written notice, and re-enter upon said Leased Premises.

16. **PARKING AND GROUNDS.** During the Term, County, at no additional charge, shall have the non-exclusive, unreserved right to use up to 30 parking spaces in the parking lot serving the Property, including oversized trailer parking spaces for storage of trailer vehicles. County shall have the right to park an 8x40 shipping container next to the drive-in-ramp that services the Leased Premises throughout the Lease term and extension options. Landlord shall permit the County to install bike racks and outdoor seating areas on the grounds adjacent to the Buildings in a location and design approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

17. **SIGNS.** Landlord, at Landlord's sole expense shall provide the County, with building-signage on the Building's entrance directory and/or suite entry door if required by the County. County covenants and agrees that it will not place or permit any window display, sign, billboard, marquee, lights, awning, poles, placard, advertising matter, or other thing of any kind, in or about the exterior of the Leased Premises or the Building (including without limitation any displays on or in any motor vehicles used by County, its employees, agents and servants), nor paint or make any change in, to or on the exterior of said Leased Premises to change the uniform architecture, paint or appearance of the Building, without in each such instance obtaining the prior written consent of Landlord and, if applicable, of any owners' association or similar entity that may govern the use of the Leased Premises. In the event such consent is given, County agrees to pay any minor privilege or other tax arising as a result of any such installation immediately when due. County shall obtain, at County's expense, all permits required for such installation. County further agrees to maintain any sign, billboard, marquee, awning, decoration, placard, or advertising matter or other thing of any kind as may be approved by Landlord in good condition and repair at all times.

18. **RIGHT OF ENTRY.** It is understood and agreed that Landlord, and its agents, servants, and employees, including any builder or contractor employed by Landlord, shall only enter the Leased Premises if there is a representative from the Board of Elections at the Leased Premises and if such entry has been arranged upon reasonable advance notice to County, upon established reasonable times, (i) to inspect the Leased Premises for maintenance and repair, (ii) to show the Leased Premises to any prospective purchaser or, within six (6) months of the Term Expiration Date, any prospective tenant, or (iii) to make any alteration, improvement or repair to the Leased Premises. Notwithstanding the foregoing, in the event of an emergency that threatens imminent damage to property or persons and such emergency requires access to the Leased Premises during non-business hours, the Landlord shall notify the County by calling 911, and then when the County's emergency personnel arrives the Landlord may enter the Leased Premises.

19. **EXPIRATION.** It is agreed that the Term expires on the Term Expiration Date, without the necessity of any notice by or to any of the parties hereto. If County occupies the Leased Premises after such expiration, it is understood that, in the absence of any written agreement to the contrary, County shall hold the Leased Premises as a holdover "Tenant from month to month", subject to all the other terms and conditions of this Lease, at one and one-half (1<sup>1/2</sup>) times the highest monthly rental installments reserved in this Lease or agreed to by Landlord and County in writing with respect to the Option Period, if applicable; provided that Landlord shall, upon such expiration, be entitled to the benefit of all public general or public local laws relating to the speedy recovery of the possession that may be now in force or may hereafter be enacted. As used in this Lease, a "month-to-month" tenancy shall mean that during such period either Landlord or County may terminate this Lease upon thirty (30) days' notice to the other party.

Not more than seven (7) days prior to the Term Expiration Date, County agrees to schedule an inspection with Landlord to confirm that the Leased Premises will be in the condition as provided in this Lease.

20. **CONDEMNATION.** It is agreed in the event that condemnation proceedings are instituted against a material portion of the Leased Premises and title taken by any Federal, State, or the County, then this Lease shall become null and void at the date of settlement of condemnation proceedings and County shall not be entitled to recover any part of the award which may be received by Landlord. A "material portion of the Leased Premises" shall mean such part that the remainder thereof is rendered inadequate for County's business and that such remainder cannot practicably be repaired and improved so as to be rendered adequate to permit County to carry on its business with substantially the same efficiency as before the taking.

21. **SUBORDINATION; ATTORNMENT; NOTICE TO MORTGAGEES; RECORDATION OF LEASE.** This Lease shall be subject to and subordinate at all times to the lien of any mortgages and/or deeds of trust upon the Building and Property now or hereafter to be made, unless the mortgagee or holder of the deed of trust elects to have County's interest hereunder superior to the interest of the mortgagee or holder of such deed of trust. This subordination provision shall be self-operative and no further

instrument of subordination shall be required. County agrees to execute any documents, subsequent to the execution of this Lease, that are required to effect such subordination. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to (a) cause any existing mortgagee to execute a subordination, non-disturbance and attornment agreement ("SNDA") on the lender's standard form, and (b) deliver such executed SNDA to Tenant; provided, however, that Landlord's failure to deliver such SNDA notwithstanding its commercially reasonable efforts to do so shall in no way affect the self-operative subordination and non-disturbance provisions of this Section to the existing deed of trust encumbering the Property. Landlord shall also use commercially reasonable efforts, upon request, to secure, from any future mortgagee of Landlord, SNDAs during the initial Term or any renewal periods, if exercised; provided, however, that Landlord's failure to deliver such SNDA, notwithstanding its commercially reasonable efforts to do so, shall in no way affect the self-operative subordination and non-disturbance provisions of this Section to any future deeds of trust encumbering the Property. If Landlord assigns this Lease or the Rent hereunder to a creditor as security for a debt, County shall, after notice of such assignment and upon demand by Landlord or the assignee, pay all sums thereafter becoming due to Landlord hereunder either to Landlord or to such assignee, as required by such notice. County shall also, upon receipt of such notice, have all policies of insurance required hereunder endorsed so as to protect the assignee's interest as it may appear and shall deliver such policies, or certificates thereof, to the assignee. In the event this Lease continues in full force and effect following the sale of the Leased Premises at any foreclosure sale by virtue of any judicial proceedings or otherwise, County agrees, upon the request of the foreclosure purchaser, to attorn to and acknowledge the foreclosure purchaser at such sale as the landlord hereunder. County agrees that a copy of any notice of default from County to Landlord shall also be sent to the holder of any mortgage or deed of trust on the Leased Premises, provided County has been given written notice of the fact that such mortgage or deed of trust has been made; and County shall allow said mortgagee or holder of the deed of trust a reasonable time, not to exceed ninety (90) days from the receipt of said notice, to cure, or cause to be cured, any such default. If such default cannot reasonably be cured within the time specified herein, then such additional time as may be necessary shall be allowed, provided the curing of such default is commenced and diligently pursued (including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure), in which event, this Lease shall not be terminated while such remedies are being thus diligently pursued. The parties agree that this Lease shall not be recorded among the Land records of Howard County; however, a memorandum of this Lease may be recorded in the land records of Howard County at the County's cost.

22. **NOTICES.** Any written notice required by this Lease shall be deemed sufficiently given, on the day it is hand delivered if there is a verified signed receipt, or within three (3) business days if sent via first class mail, postage pre-paid, certified mail and there is a signed return receipt, or on the next business day if sent by overnight courier service if there is a verified signed receipt.

Any notice required by this Lease is to be sent to Landlord at:

c/o Merritt Properties, LLC,  
2066 Lord Baltimore Drive,  
Baltimore, Maryland 21244

Any notice required by this Lease is to be sent to County at the Leased Premises with a copy to:

Chief Real Estate Services Division  
Department of Public Works  
George Howard Building  
3430 Court House Drive  
Ellicott City, Maryland 21043

Chief of Bureau of Facilities  
Department of Public Works  
Dorsey Building  
9250 Bendix Road  
Columbia, Maryland 21045

Board of Elections  
9770 Patuxent Woods Drive #200  
Columbia, MD 21046

23. **REMEDIES NOT EXCLUSIVE.** No remedy conferred upon either Landlord or County at law or in equity shall be considered exclusive of any other remedy, but shall be in addition to every other remedy available to Landlord or County as to claims arising under this Lease. Every remedy available to Landlord or County may be exercised concurrently or from time to time, as often as the occasion may arise.

24. **WAIVERS.** It is understood and agreed that nothing shall be construed to be a waiver of any of the terms, covenants and conditions herein contained, unless the same be in writing, signed by the party to be charged with such waiver, and no waiver of the breach of any covenant shall be construed as the waiver or the covenant of any subsequent breach thereof.

25. **PERFORMANCE.** It is agreed that the failure of either Landlord or County to insist in any one or more instances upon a strict performance of any covenant of this Lease or to exercise any right provided for herein shall not be construed as a waiver or relinquishment for the future of such covenant or right, but the same shall remain in full force and effect, unless otherwise expressed in writing by Landlord or County.

26. **FINAL AGREEMENT.** This Lease contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

27. **QUIET ENJOYMENT.** County, upon paying the Rent, and observing and keeping all of its covenants, agreements, and conditions in this Lease, shall have the right of quiet enjoyment to the Leased Premises during the Term without hindrance or molestation by anyone claiming by, through or under Landlord, subject to the terms and conditions of this Lease, any mortgage or deed of trust.

28. **ESTOPPEL CERTIFICATE.** County shall, at any time and from time to time during the Term or any renewal thereof, upon request of Landlord, execute, acknowledge, and deliver to Landlord (or its designee) a statement in writing, certifying that this Lease is unmodified and in full force and effect if such is the fact (or if there have been any modifications thereof, that the same is in full force as modified and stating the modifications), the dates to which the Rent and other charges have been paid in advance, if any, and any other information reasonably requested by Landlord or any prospective purchaser, mortgagee or the trustee or beneficiary of any deed of trust constituting a lien on the Leased Premises. Any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the estate of Landlord or by the mortgagee or any assignee of any mortgagee or the trustee or beneficiary of any deed of trust constituting a lien on the Leased Premises or the Building.

29. **ENVIRONMENTAL REQUIREMENTS.** County shall not use or allow another person or entity to use any part of the Leased Premises for the storage, use, treatment, manufacture or sale of Hazardous Material. Landlord acknowledges, however, that County will maintain products in the Leased Premises which are incidental to the operation of its general office use, including, without limitation, photocopy supplies, secretarial supplies and limited janitorial supplies, which products contain chemicals which are categorized as Hazardous Materials. Landlord agrees that the use of such products in the Leased Premises in the manner in which such products are designed to be used and in compliance with applicable laws shall not be a violation by County of this section. As used in this Lease, the term "Hazardous Materials" shall mean any substance that is or contains petroleum, asbestos, polychlorinated biphenyls, lead, or any other substance, material or waste which is now or is hereafter classified or considered to be hazardous or toxic under any federal, state or local law, rule, regulation or ordinance relating to pollution or the protection or regulation of human health, natural resources or the environment (collectively, "Environmental Laws"). County shall use and operate the Leased Premises, the Building and the Property, respectively, at all times during the Term, under and in compliance with all Environmental Laws. Subject to Maryland's Local Government Tort Claims Act, approved budget appropriations and applicable law, County hereby indemnifies, defends and saves Landlord harmless from all liabilities and claims arising from the use, storage or placement of any Hazardous Materials upon the Leased Premises or elsewhere within the Building or Property (if brought or placed thereon by County, its agents, employees, contractors or invitees); and County shall (i) within fifteen (15) days after written notice thereof, take or cause to be taken, at its sole expense, such actions as may be necessary to comply with all Environmental Laws, and (ii) within fifteen (15) days after written demand therefor, reimburse Landlord, as Additional Rent, for any amounts expended by Landlord to comply with any Environmental Laws with respect to the Leased Premises or with respect to any other portions of the Building or Property as



the result of the placement or storage of Hazardous Materials by County, its agents, employees, contractors or invitees, or in connection with any judicial or administrative investigation or proceeding relating thereto, including, without limitation, reasonable attorneys' fees, fines or other penalty payments.

30. **EXCULPATION CLAUSE.** Subject to applicable law, no principal, partner, member, officer, director, or trustee of Landlord (collectively, "Landlord Affiliates") shall have any personal liability under any provision of this Lease and the County shall look solely to the equity of Landlord in the Property for the satisfaction of any claim by the County against Landlord.

31. **BROKERS.** Landlord and County hereby warrant to each other that it has not dealt with any broker, agent or finder entitled to any commission, fee or others compensation by reason of the execution of the Lease, except that the County has retained Chartwell Enterprises, LLC as the County's broker ("County's Broker"), and that they know of no other real estate agent broker or agent who is entitled to a commission or fee in connection with this Lease. Landlord shall pay County's Broker in accordance with the terms of a separate commission agreement entered into between the Landlord and County's Broker. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Broker.

32. **RIGHT OF FIRST OFFER TO LEASE.**

a. In the event Landlord wishes to market Suite 112 (+/- 4,500 square feet) or Suites 116-118 (+/- 13,500 square feet) (the "ROFO Premises") for lease, and (i) the Property remains under common ownership with the Leased Premises, (ii) no default has occurred under this Lease, (iii) the County has not assigned or sublet any portion of its interest under this Lease, (iv) at least two (2) years remain on the Term of the Lease and (v) the County has provided Landlord with prior written notice of its desire to lease the ROFO Premises, the County shall have a right of first offer to lease the ROFO Premises pursuant to the terms of this Section (the "Lease ROFO"). Prior to entering into any agreement to lease the ROFO Premises Landlord shall send the County a written agreement setting forth the terms upon which Landlord is willing to lease the same (such an agreement being referred to herein as a "Lease Agreement"). The County shall have five (5) days after its receipt of a Lease Agreement to notify Landlord, in writing, of whether or not the County desires to lease the ROFO Premises on the terms set forth therein; provided the County may endeavor to negotiate the terms of a Lease Agreement with Landlord during such five (5) day period. In the event the County notifies Landlord that it desires to lease the ROFO Premises on the terms set forth in any Lease Agreement within such five (5) day period, the County and Landlord shall promptly enter into such Lease Agreement, with such modifications thereto as may have been agreed upon, and the County shall have up to sixty (60) days to obtain, if required, the requisite County Council approval.

b. If the County shall fail to exercise the Lease ROFO, after notice by Landlord of, as provided herein, such right shall be deemed to have lapsed and expired and shall be of no further force or effect. Thereafter, Landlord may freely lease the ROFO Premises to any other party, at any time, on any terms, in Landlord's sole discretion. If the County shall fail to timely perform any of its obligations as set forth herein or in the Lease Agreement, or if the County shall opt not to exercise the Lease ROFO or otherwise fails to close on the lease of the ROFO Premises pursuant to the terms of the Lease Agreement, the Lease ROFO shall lapse and Landlord shall be free to lease the ROFO Premises and such lease shall be free and clear of the Lease ROFO.

c. The Lease ROFO is personal to the County and may not be assigned by the County in connection with an assignment of the Lease or otherwise. The Lease ROFO may not be exercised by anyone other than the County. Any attempted assignment of the Lease ROFO shall be of no effect and the Lease ROFO shall become forever null and void as of the date of the purported assignment.

d. The Lease ROFO shall be subject and subordinate to any mortgage now, or hereafter placed, upon the Property and to any renewals, modifications, consolidations, replacements, extensions, and re-financings thereof. The Lease ROFO shall not apply to any foreclosure of Landlord's interest in the Property, and upon any such foreclosure, the Lease ROFO shall terminate and be of no further force and affect.

32. **RULES AND REGULATIONS.** County shall faithfully observe and comply with the rules and regulations attached hereto as Exhibit D, and with any amendments or modifications thereto that Landlord shall, from time to time, promulgate with respect to the Building or Property. Any such amendments or modifications to the rules and regulations shall be binding upon County upon delivery of a copy of them to County. Landlord shall not be responsible to County for the nonperformance of any of said rules and regulations by any other tenants or occupants.

33. **LANDLORD'S RIGHT TO PERFORM COUNTY COVENANTS.** Subject to Landlord's Right of Entry set forth herein, if County shall fail to perform any covenant or duty required of it by this Lease, exclusive of the obligation to pay Rent, after thirty (30) days from actual notice from Landlord, Landlord shall have the right (but not the obligation) to perform the same, and, if necessary, to enter the Leased Premises. The reasonable and actual cost thereof to Landlord (including any reasonable attorneys' fees and expenses) shall be deemed to be Additional Rent hereunder payable by County, shall be due and payable by County upon demand, and Landlord shall have the same rights and remedies with respect to such Additional Rent as Landlord has with respect to the Annual Rent reserved hereunder. Landlord shall provide reasonable supporting documentation for any such costs.

34. **GENERAL**

a. Governing Law. The provisions of the Lease shall be governed by the laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder.

b. Efficiency Standards. Whenever reasonable, as determined in Landlord's discretion, Landlord shall make efforts to apply green-building standards in its management of the Building; provided, however, that in no event shall Landlord be liable for any failure to comply with any efficiency standards or other green-building standards unless specifically required to do so by law as such laws apply to general office and warehouse space.

c. Political Contribution Disclosure. The Landlord shall comply with Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland.

d. Intentionally Deleted.

e. Retention of Records. The Landlord shall retain and maintain all records and documents relating to this Lease for three years after final payment by the County hereunder or for such time period specified under any applicable statute of limitations, whichever is longer, and shall make said records available for inspection and audit by authorized representatives of the County or its designee, at all reasonable times.

f. Representations and Warranties. The Landlord hereby represents and warrants that:

(i) It is qualified to do business in and in good standing with the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

(ii) It is not in arrears with respect to the payment of any monies due and owing Howard County, Maryland or the State of Maryland, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Lease;

(iii) It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Lease; and

(iv) It shall obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Lease.

g. Intentionally Deleted.

h. Final Agreement/Lease Amendments. This Lease contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be

bound by any terms, conditions or representations not herein written. County acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Leased Premises, Building or Property, except as expressly set forth herein. Any representation, inducement, warranty, understanding or agreement that is not contained in this Lease shall not be of any force or effect. This Lease may be amended, but only in writing, signed and executed with all formalities and signatures with which this Lease is signed and executed.

i. Interpretation. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed made in all such genders, (b) in the singular or plural number shall be deemed made in the plural or singular number as well, (c) to Landlord or County shall be deemed to refer to each person so named above and its successors and assigns, and (d) to a Section, subsection, paragraph or subparagraph shall, unless expressly stated to the contrary therein, be deemed made to such part of this Lease. The headings of such parts are provided herein only for convenience of reference, and shall not be considered in construing their contents. Any writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof. The Lease may be signed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Time is of the essence for all purposes in this Lease.

j. Successors and Assigns. Except as herein provided, this Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord its successors and assigns; shall be binding upon County, its successors and assigns (including without limitation any trustee in bankruptcy or debtor-in-possession, and any assignee of the same); and shall inure to the benefit of County and only such assignees to whom an assignment is permitted hereunder. In the event more than one person, firm or corporation is named herein as County, the liability of all parties named herein as County shall be joint and several. In the event Landlord's interest under this Lease is transferred or assigned and written notice thereof is given to County, Landlord (or any subsequent assignee or transferee of Landlord's interest under this Lease who gives such notice to County) shall automatically be relieved and released from and after the date of such transfer or conveyance from all liability hereunder.

k. Authority. The person executing and delivering this Lease on behalf of each party hereby covenants and warrants that such person is duly authorized to execute and deliver this Lease on behalf of such party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties execute this lease, under seal, the day and year first above written:

**LANDLORD:**

**WITNESS/ATTEST:**

**MERRITT- HR, LLC**

a Maryland limited liability company

By: MERRITT MANAGEMENT CORPORATION,  
AGENT

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_  
Lonnie Robbins  
Chief Administrative Officer

By: \_\_\_\_\_(SEAL)  
Allan H. Kittleman  
County Executive

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
James M. Irvin, Director  
Department of Public Works

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

Approved for Form and Legal Sufficiency  
on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

\_\_\_\_\_  
Lisa S. O'Brien  
Senior Assistant County Solicitor

**EXHIBIT A**  
**DEPICTION OF LEASED PREMISES**

**EXHIBIT B**  
**LANDLORD'S WORK**

Landlord's Work prepared by Architect



**EXHIBIT C**  
**(demo work to be done by landlord)**

**EXHIBIT D**  
**Rules and Regulations**