

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2015 Legislative Session

Legislative Day No. **6**

Bill No. 19-2015

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

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Second Amendment to Lease Agreement between Howard County, Maryland and LSOP 3 MD 3 LLC for the lease of space located at 9770 Patuxent Woods Drive, Columbia, Maryland; and authorizing the County Executive to take certain actions in connection with the Agreement.

Introduced and read first time _____, 2015. 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 _____, 2015.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2015 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2015 at ____ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2015

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 space for the Board of
2 Elections; and

3
4 **WHEREAS**, on or about June 15, 2010, the County and Liberty Property Limited
5 Partnership (the “Initial Landlord”), a Pennsylvania limited partnership, entered into a one-year
6 Lease Agreement (the “Lease”) for approximately 8,188 rentable square feet of space known as Suite
7 200 located at 9770 Patuxent Woods Drive, Columbia, Maryland (the “Property”); and

8
9 **WHEREAS**, prior to the end of the first term, the County Council passed Council Bill. No.
10 18-2011 that approved a First Amendment to Agreement of Lease extending the term of the Lease by
11 48 months, to expire on June 30, 2015; and

12
13 **WHEREAS**, on or about January 30, 2014, the Initial Landlord sold the Property to LSOP 3
14 MD 3, LLC (the “Current Landlord”), a Delaware limited liability company, and assigned its right,
15 title and interest in the Lease to the Current Landlord pursuant to an Assignment and Assumption of
16 Leases; and

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18 **WHEREAS**, the County and the Current Landlord desire to amend the Lease by entering into
19 a Second Amendment to Lease Agreement, substantially in the form attached as Exhibit A; and

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21 **WHEREAS**, the Second Amendment to Lease Agreement proposes to extend the lease term
22 for an additional 10 years and 3 months, commencing on July 1, 2015 and expiring on September 30,
23 2025, and provides for a five-year renewal option; and

24
25 **WHEREAS**, such a multi-year term requires the payment by the County of funds from an
26 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year
27 agreement pursuant to Section 612 of the Howard County Charter.

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29 **NOW, THEREFORE,**

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Section 1. Be It Enacted by the County Council of Howard County, Maryland that in accordance with Section 612 of the Howard County Charter, it approves the Second Amendment to Lease Agreement between Howard County and LSOP 3 MD 3, LLC for the 10-year, 3 month term, and the renewal option, substantially in the form of Exhibit A attached to this Act.

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 Second Amendment to 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 Second Amendment to Lease Agreement, may make such changes or modifications to the Second Amendment to 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 Second Amendment to Lease Agreement by the County Executive shall be conclusive evidence of the approval by the County Executive of all changes or modifications to the Second Amendment to Lease Agreement, and the Second Amendment to 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.

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement (“Amendment”) is made effective as of June ____, 2015, by and between **LSOP 3 MD 3, LLC** (“Landlord”) and **HOWARD COUNTY, MARYLAND** (“Tenant”) with reference to the following facts and circumstances.

- A. Landlord is the owner of that certain building located at 9770 Patuxent Woods Drive, Columbia, Maryland 21046 (the “Building”).
- B. Liberty Property Limited Partnership, predecessor in interest to Landlord, and Tenant entered into that certain Lease Agreement dated June 15, 2010, as amended by that certain First Amendment to Agreement of Lease dated June 20, 2011 (collectively, the “Lease”) for certain premises containing approximately 8,188 rentable square feet (the “Premises”) located in Suite 200 in the Building.
- C. Landlord and Tenant desire to amend the Lease upon terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and after good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties do hereby agree to the following:

- 1. Definitions. Each capitalized term used in this Amendment shall have the same meaning as is ascribed to such capitalized term in the Lease, unless otherwise provided for herein.
- 2. Term. The term of the Lease is hereby extended for a term commencing on July 1, 2015 and ending on September 30, 2025 (the “Extended Term”). All references to the Term in the Lease shall be deemed to mean the Term as extended pursuant to this Section 2. Except as expressly set forth in Section 4 below, Tenant shall have no option to renew the Lease following the Extended Term and as of the full execution of this Amendment the renewal option set forth in Section 6 of that certain First Amendment to Agreement of Lease dated July 20, 2011 (the “First Amendment”) is hereby deleted and of no further force and effect.
- 3. Minimum Annual Rent. Minimum Annual Rent for the Extended Term shall be as follows:

<u>Months</u>	<u>Monthly Installment</u>	<u>Annual</u>
July 1, 2015 – June 30, 2016	\$14,329.00*	\$171,948.00
July 1, 2016 – June 30, 2017	\$14,723.05	\$176,676.57
July 1, 2017 – June 30, 2018	\$15,127.93	\$181,535.18
July 1, 2018 – June 30, 2019	\$15,543.95	\$186,527.40
July 1, 2019 – June 30, 2020	\$15,971.41	\$191,656.90

July 1, 2020 – June 30, 2021	\$16,410.62	\$196,927.47
July 1, 2021 – June 30, 2022	\$16,861.92	\$202,342.98
July 1, 2022 – June 30, 2023	\$17,325.62	\$207,907.41
July 1, 2023 – June 30, 2024	\$17,802.07	\$213,624.86
July 1, 2024 – June 30, 2025	\$18,291.62	\$219,499.54
July 1, 2025 – September 30, 2025	\$18,794.65	\$56,383.95**

*Provided that Tenant has faithfully performed all of the terms and conditions of the Lease, Landlord agrees to abate Tenant's obligation to pay Minimum Annual Rent for the months of July, August and September of 2015 (the "Conditional Rent"). Upon the occurrence of an Event of a Default at any time during the Extended Term, in addition to any other remedies to which Landlord may be entitled, Landlord shall be entitled to recover the Conditional Rent (i.e., the Conditional Rent shall not be deemed to have been abated, but shall become immediately due and payable as unpaid rent earned, but due at the time of such Event of Default).

** Represents three (3) months of Minimum Annual Rent.

4. Renewal Option. Tenant shall have a personal and non-transferable option to renew the term of the Lease for one (1) term of five (5) years. Such renewal term shall begin the first day following the expiration of the Extended Term. Tenant shall have the right to exercise the renewal option conferred herein by giving Landlord notice at least two hundred seventy (270) days written notice prior to the expiration of the Extended Term; provided that, at the time of exercise and as of the commencement of the renewal term (a) no Event of Default has occurred; and (b) Tenant has not sublet or assigned any portion of the Premises, with the exception of a sublease or assignment to the Agency. The renewal option shall be subject to all of the terms and conditions contained in the Lease, except that Minimum Annual Rent during each year of the renewal term (including, but not limited to the first year of such renewal term) shall be the Minimum Annual Rent in effect immediately prior to such year escalated by three percent (3%). Failure of Tenant to properly exercise the option herein granted shall be construed as a waiver of such option, and the Lease shall then terminate at the expiration of the Extended Term.

5. Expense Stop. Effective as of July 1, 2015 and only as it relates to periods from and after such date, Tenant's Expense Stop, as such term is defined in Section 5 of the First Amendment, shall be Tenant's Share of Operating Expenses incurred by Landlord during the 2015 calendar year.

6. Broker. Tenant and Landlord each represents to the other that except for Cushman & Wakefield of Maryland, Inc. (the "Broker"), it has not dealt with any real estate broker, salesperson or finder in connection with this Amendment, and no other such person initiated or participated in the negotiation of this Amendment or is entitled to any commission in connection herewith. Landlord agrees to pay the Broker a commission in accordance with a separate agreement.

7. Submission. Submission of this Amendment by Landlord to Tenant for examination and/or execution shall not in any manner bind Landlord and no obligations on

Landlord or Tenant shall arise under this Amendment unless and until this Amendment is fully signed and delivered by Landlord and Tenant.

8. Miscellaneous.
 - a. Time of Essence. Time is of the essence of this Amendment and each and every term and provision hereof.
 - b. Modification. A modification of any provision herein contained, or any other amendment to this Amendment, shall be effective only if the modification or amendment is in writing and signed by both Landlord and Tenant.
 - c. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
 - d. Number and Gender. As used in this Amendment, the neuter includes the masculine and the feminine, and the singular includes the plural.
 - e. Construction. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of this Amendment. Except as otherwise provided in this Amendment, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. Unless otherwise indicated, all references herein to Articles, Section, subsections, paragraphs, subparagraphs or provisions are to those in this Amendment. Any reference to a paragraph or Section herein includes all subparagraphs or subsections thereof. This Amendment shall not be construed as if it had been prepared by only Landlord or Tenant, but rather as if both Landlord and Tenant had prepared the same. In the event any portion of this Amendment shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Amendment, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Amendment.
 - f. Integration of Other Agreements. This Amendment, the Lease and prior amendments set forth the entire agreement and understanding of the parties with respect to the matters set forth herein and supersede all previous written or oral understandings, agreements, contracts, correspondence and documentation with respect thereto. Any oral representation or modifications concerning this Amendment shall be of no force or effect.
 - g. Duplicate Originals; Counterparts. This Amendment may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this Amendment may be executed in counterparts, but shall become effective only after a counterpart hereof has been executed by each party; all said counterparts shall, when taken together, constitute the entire single agreement between parties.

- h. No Waiver. No failure or delay of either party in the exercise of any right given to such party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude other or further exercise thereof or of any other right. No waiver by any party hereto of any breach or default shall be considered to be a waiver of any other breach or default. The waiver of any condition shall not constitute a waiver of any breach or default with respect to any covenant, representation or warranty.
- i. Further Assurances. Landlord and Tenant each agree to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions contemplated hereby.
- j. No Third Party Beneficiaries. Except as otherwise provided herein, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Amendment, (either expressed or implied) is intended to confer upon any person or entity, other than Landlord and/or Tenant (and their respective nominees, successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Amendment.
- k. Full Force and Effect. The Lease, as amended hereby, shall continue in full force and effect, subject to the terms and provisions thereof and hereof. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, this Amendment is executed as of the day and year aforesaid.

LANDLORD:

LSOP 3 MD 3, LLC

By: _____
Barry P. Marcus, Senior Vice President

Date: _____

TENANT:

HOWARD COUNTY, MARYLAND

By: _____ (SEAL)
Allan H. Kittleman
County Executive

Date: _____

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

APPROVED:

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
this ____ day of _____, 2015.

Margaret Ann Nolan
County Solicitor

Reviewing Attorney:

Morenike Oyenusi, Sr. Assistant County Solicitor