

SECOND AMENDMENT TO 2008 LEASE AGREEMENT

THIS SECOND AMENDMENT TO 2008 LEASE AGREEMENT (the “Second Amendment”) is made this 21 day of June, 2024, between **SENECA CENTER II, LLC** a Maryland limited liability company (the “Landlord”) and **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland (the “County”).

RECITALS

- A. Pursuant to that certain Lease Agreement, dated November 3, 2008, between Landlord and County (the “Original Lease”), Landlord demised to the County, and the County leased from the Landlord, approximately 54,190 square feet of warehouse space located at 18753 North Frederick Avenue, Gaithersburg, Maryland (the “Building”) consisting of multiple Bays as more particularly depicted on Exhibit A to the Original Lease and also those Bays depicted on Exhibit A-1 to the Original Lease (collectively, the “2008 Leased Premises”). The Original Lease was subsequently amended by a certain Amendment to Lease, dated April 26, 2018 (the “2008 Lease Renewal Amendment”) to extend the term for an additional period of ten (10) years, expiring on June 30, 2029. The Landlord and County further amended the Original Lease pursuant to the Emergency Power Source Addendum. The Original Lease, as extended by the 2008 Lease Renewal Amendment and the Emergency Power Source Addendum are referred to together as the “2008 Lease”.
- B. Pursuant to a separate Lease Agreement, dated February 20, 2015, between the Landlord and the County (the “Lease Agreement”), as amended by that certain First Amendment to Lease Agreement, dated November 25, 2015 (the “First Amendment”), and extended by that certain Amendment to Lease, dated April 26, 2018 (the “Term Extension Amendment”) and further amended by that certain Temporary Emergency Power Source Addendum, dated October 31, 2022 (the “Power Source Addendum”) (the Lease Agreement, First Amendment, Term Extension Amendment and Emergency Power Source Addendum together referred to herein as the “2015 Lease”) the Landlord demised to the County, and the County leased from the Landlord, approximately 13,483 square feet of warehouse space located at 18753 North Frederick Avenue, Gaithersburg, Maryland (the “Building”) consisting of Bays 100 (aka “N”), 101 (aka “O”), 102 (aka “P”) and 103 (aka “Q”) as depicted on the attached Exhibit “A” of the 2015 Lease (the “2015 Leased Premises”).
- C. Landlord has advised County that it is negotiating with Bar-T Holdings, Inc., the current tenant in premises adjacent to the 2008 Leased Premises containing approximately 8,350 square feet of industrial warehouse space within the Building identified as Bays 204, 203 and a portion of Bay 202, as depicted on Exhibit A attached hereto (the “Expansion Premises”), for the early termination of such tenant’s lease. County desires, subject to the early termination of such lease, to lease the Expansion Premises from Landlord. Landlord is willing to commit to lease the

Expansion Premises to County, subject to and conditioned upon, the early termination of the lease with such tenant, and Landlord and County have entered into this Second Amendment to 2008 Lease Agreement, to confirm their understanding an agreement by which, inter alia, the 2008 Leased Premises will be expanded to include and incorporate the Expansion Premises as a part thereof, further extend the term of the 2008 Lease for an additional five (5) years (the "2008 Second Extension").

- D. As a condition to the Landlord's agreement to demise the Expansion Premises to County, and extend the term of the 2008 Lease for an additional five (5) years, County has agreed to extend the term of the 2015 Lease for an additional five (5) years to be coterminous with term of the 2008 Lease, as extended by this Second Amendment, subject to and on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual premises set forth above, and for the further consideration described below, the legal sufficiency of which is hereby acknowledged, the Landlord and the County agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by reference as is fully set forth herein.
2. Defined Terms. Any defined term that is used herein that is defined in the 2008 Lease shall have the same meaning as specified in such lease unless otherwise specifically provided for herein.
3. Legal Effect and Condition Precedent. The Landlord and County agree that this Second Amendment will be effective upon full execution thereof, but expressly acknowledge that this Second Amendment, and the binding effect of the amendments to the 2008 Lease contained herein, are subject to early termination of the existing lease between Landlord and Bar-T Holdings, Inc., the current tenant of the Expansion Premises, and surrender of the Expansion Premises by Bar-T Holdings, Inc. to Landlord on or before June 30, 2024 in accordance with the terms of a separate Lease Termination Agreement between Bar-T Holdings, Inc. and Landlord (the "Condition Precedent"). In the event that Bar-T Holdings, Inc. has not performed its required obligations to terminate its lease and surrender the Expansion Premises to Landlord in accordance with the terms of a separate Lease Termination Agreement between Bar-T Holdings, Inc. and Landlord by June 30, 2024, and unless mutually waived in writing by Landlord and County, this Second Amendment will be rendered null and void and of no force and effects and neither the Landlord or County shall have any further obligations or liabilities to each other under this Second Amendment; provided however, that the terms and provisions of the 2008 Lease shall continue in force and effect as if this Second Amendment had not been executed.
4. Tenant Improvements for the Expansion Premises. Subject to the Condition Precedent, Landlord and the County agree to the following Tenant Improvements:

a.) Demise of Expansion Premises. The County shall accept the Expansion Premises in its “where-is” and “as-is” condition, with the exception that Landlord shall perform, or cause to be performed, all modifications to the existing condition of the Expansion Premises (“Expansion Tenant Improvements”) as shall be described in construction drawings (“CDs”) to be prepared by Landlord’s architect on the basis of the space plan attached to this Lease as Exhibit “B”. Upon the earlier to occur of (i) delivery of the Expansion Premises to County with the Expansion Premises Improvements substantially complete, or (ii) the occupancy and use of any portion of the Expansion Premises by the County under subparagraph 4.f, if applicable (the “Expansion Premises Rent Commencement Date”), the Expansion Premises shall be incorporated into, and made a part of the 2008 Lease Premises.

b.) Description of Expansion Tenant Improvements. The “cost” of Expansion Tenant Improvements shall be all charges for architectural and engineering services for preparing all CDs (but not the test fit plans), all costs of permits or expediting or impact fees or other requirements of governmental authority to be paid or incurred to permit the Expansion Tenant Improvements to be performed, and all general contractor/construction manager and all subcontractor charges, including all costs of materials, supplies and equipment rental or other costs incurred by Landlord in order to the complete the Expansion Tenant Improvements. The Expansion Tenant Improvements shall be completed in accordance with the mutually agreed upon “Space Plan” and “Scope of Work” attached hereto and made a part hereof as Exhibit “B” and Exhibit “C” respectively, which the County has reviewed and approved as evidenced by its signature as further described in the CDs, which Landlord shall submit to County to confirm approval. The County shall, within ten (10) business days of receipt either approve the CDs or identify any errors therein or any inconsistencies between them and the Space Plans and the Scope of Work. If County has not identified any errors or inconsistencies in the CDs within ten (10) business days, such CDs shall be deemed to have been approved. If the County identifies any errors or inconsistencies between the CDs and the Space Plan and Scope of Work within ten (10) business days, Landlord’s architect shall correct such errors and the County shall have an opportunity to review the CDs for an additional ten (10) business day period (and if the County shall fail to identify any errors or inconsistencies within such ten (10) business days, the CDs shall be deemed approved and this process shall continue until the CDs are approved (or deemed to be so). Landlord shall construct all Expansion Tenant Improvements (hereinafter defined) in accordance with all applicable American Disabilities Act (“ADA”) codes, fire, life safety codes, and any federal, state and local codes for the Building. The County shall notify Landlord of any construction deficiencies in the Expansion Tenant Improvements within thirty (30) days after the applicable Expansion Premises Rent Commencement Date, and Landlord shall within thirty (30) days repair any such deficiencies. Landlord may deliver possession of the Expansion Premises to the County subject to customary punch list items to be completed after the applicable Expansion Premises Rent Commencement Date. Landlord shall deliver the Expansion Premises to the County broom clean in compliance with applicable laws relating to

the Expansion Tenant Improvements and with all systems existing as of the date hereof in good working order.

c.) Performance of Expansion Premises Improvements; Payment. Landlord shall be responsible for engaging contractors for the performance of work and, subject to the reimbursement and contribution obligation of County set forth below, shall initially be responsible for the payment to Landlord's contractor(s), supplier(s) and materialmen for the cost of the materials, equipment and labor required to complete the Expansion Premises Improvements (the "Improvement Costs"). Notwithstanding the foregoing, Landlord and County agree that the Improvement Costs will be shared equally between Landlord and County and County agrees to reimburse Landlord fifty percent (50%) of the Improvement Costs as Additional Rent within thirty (30) days following demand from Landlord. The Landlord and County acknowledge that the preliminary estimate obtained by Landlord for the Improvement Costs is Four Hundred Twenty-Two Thousand One Hundred Sixty Dollars (\$422,160.00) but such amount is a good faith estimate and subject to adjustment based on actual costs incurred to construct the Expansion Improvements. Landlord will provide County with a revised cost estimate prior to commencement of work on the Expansion Improvements and provide County with periodic status reports on the progress of construction of the Expansion Improvements as well as any revisions to the costs for materials, equipment and labor required to complete the Expansion Improvements.

d.) Change Orders. County shall pay for the cost of any change orders that it causes (i.e. the County modified a build out prerequisite or changes to any CDs after County's approval or deemed approval thereof). Except as provided in the preceding sentence, the County shall not be liable for any costs arising from change orders that occur as a result of negligence by either Landlord or its architect or engineer, or contractor. No change orders shall be permitted without Landlord approval, which shall not be unreasonably withheld, conditioned or delayed. However, Landlord need not approve any change order which may cause a material delay ("Material Delay") of the Expansion Premises Rent Commencement Date but it shall use reasonable efforts to minimize delays due to change orders. A Material Delay shall mean a delay in the Expansion Premises Rent Commencement Date beyond one hundred and fifty (150) days following the date of County approval of all required permits.

e.) Architectural Services for the Expansion Premises. Landlord has (or shall) provide architectural services required in connection with the final preparation of the Space Plan, Scope of Work and Construction Plans (as hereinafter defined). Within forty-five (45) business days after execution of this Second Amendment, Landlord shall furnish to the County completed construction drawings (the "CDs") reflecting the details as shown in the Space Plan and Scope of Work. County shall approve or disapprove the CDs, or any modifications of such, as soon as practical but not more than ten (10) business days following County's receipt of such. In the event that County fails to approve or disapprove the CDs, or any modifications of such, within such ten (10) business days after receipt of the same, County shall be deemed to have approved such. In the event that County disapproves the CDs, or any modifications,

within ten (10) business days after receipt, Landlord shall modify the disapproved CDs to satisfy County's reasonable objections and shall resubmit such CDs to County within ten (10) business days after receipt of County's objections. In no way does the County's approval indicate that the Landlord and/or architect have abided by all of the applicable governmental laws and codes. The County's approval signifies concurrence in principal to the design and layout of the build out (i.e. sizes of offices/other rooms, general layout, etc.).

f.) Permits. The Landlord shall be responsible for obtaining the construction permit and final inspections for the Expansion Tenant Improvements from the City of Gaithersburg for the Expansion Premises. If required, the County shall execute any affidavit and shall otherwise cooperate with Landlord to enable it to obtain the use and occupancy certificate following completion of each portion of the Expansion Tenant Improvements, and the County shall be responsible for any other permits or licenses necessary for its lawful occupancy of the Expansion Premises.

g.) Early Access. Landlord grants permission to the County to enter the Expansion Premises thirty (30) days prior to the applicable Expansion Premises Rent Commencement Date for the sole purposes of installing equipment, fixtures and related cabling therein, provided the County does not materially interfere, or cause any delay in, with the completion of the Expansion Tenant Improvements. All such periods of early access shall be approved by Landlord in its sole discretion and coordinated in advance with Landlord and/or its agents and the general contractor.

h.) County's Authorized Representative. County designates Brian Donohue and Boris Brajkovic (either such individual acting alone, "Tenant's Representative") as the only persons authorized to act for County pursuant to this Second Amendment. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry, or other communication ("Communication") from or on behalf of County in connection with this Lease unless such Communication is in writing from County's Representative. County may change either County's Representative at any time upon not less than five (5) business days advance written notice to Landlord. Neither County nor County's Representative shall be authorized to direct Landlord's contractors in the performance of the Expansion Tenant Improvements (as hereinafter defined).

i.) Landlord's Authorized Representative. Landlord designates Paul Klinedinst and Brad Klinedinst (either such individual acting alone, "Landlord's Representative") as the only persons authorized to act for Landlord pursuant to this Lease. County shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Lease unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than five (5) business days advance written notice to County. Landlord's Representative shall be the sole persons authorized to direct Landlord's contractors in the performance of the Expansion Tenant Improvements.

5. Expansion Premises Base Rent. Commencing upon the Expansion Premises Rent Commencement Date, County will pay Base Rent for the Expansion Premises at the per square foot rental rate then in effect for the 2008 Leased Premises; provided further, however, that Base Rent for the Expansion Premises will be abated for the first five (5) full calendar months following the Expansion Premises Rent Commencement Date. Subject to the foregoing abatement period, annual Base Rent for the Expansion Premises shall be paid by County in equal and consecutive monthly installments which shall be due payable on the first day of each calendar month following the Expansion Premises Rent Commencement Date, in advance, and shall be paid together with the Base Rent due for the entirety of the 2008 Leased Premises. Thereafter, Base Rent for the Expansion Premises shall adjust and increase annually by two (2%) on the date that the Base Rent for the 2008 Premises increases under the terms of the 2008 Lease, and on that date each successive Lease Year thereafter.

6. Adjustment to Pro Rata Share of Common Area Expenses and Taxes. From and after the satisfaction of the Condition Precedent, the County's pro-rate share of Common Area Expenses set forth in Section 6.D. of the 2008 Lease shall be revised and increased to 71.20%, and the County's pro-rata share of Real Estate Taxes as set forth in Section 6.E. of the 2008 Lease shall be revised and increased to 71.20%.

7. Services and Operating Expenses; Allocation of Responsibilities. The respective obligations and responsibilities of Landlord under Section 6.A. of the 2008 Lease and of the County under Section 6.B of the 2008 Lease, and under the Emergency Power Source Amendment shall be applicable to the Expansion Premises as a part of the parties respective obligations with respect to the 2008 Leased Premises.

8. Extension of Term. The term of the 2008 Lease is extended for an additional period of five (5) years from July 1, 2029 and will expire on June 30, 2034 (the "2nd Extended Term").

9. 2nd Extended Term Base Rent. The annual Base Rent payable during the first Lease Year of the 2nd Extended Term shall be equal to the Base Rent payable during the immediately preceding Lease Year, and increased by two percent (2%). Base Rent shall increase annually for each Lease Year thereafter by two percent (2%).

10. Appropriations Requirement. Sections Rent 5.E. & 5.F. of the 2008 Lease are hereby deleted in their entirety and replaced by the following:

"Any obligation or liability of the Tenant arising in any way under the executed Lease with the Landlord is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements provided for in state law, including the Local Government Tort Claims Act. Landlord specifically acknowledges that Tenant has appropriated funds for the payment of rent and any additional amount owing under the Lease including but not limited to utilities, common area maintenance and real estate taxes (collectively, "Rent") only for the first Lease year of the Lease Term. Landlord further acknowledges and agrees that Tenant's obligation under the Lease to pay Rent in

future years is subject to, limited by and contingent upon the appropriation and availability of funding for such purpose in future years. The term Tenant, as used herein, includes the County Executive, the County Council, and all County employees and agents of Tenant. Tenant makes no warranty, guarantee, or representation and undertakes no obligation to request or obtain an appropriation of funds in future years for payment of Rent. Landlord acknowledges and agrees that Tenant's budget constitutes an executive and legislative function that cannot be contracted away. Landlord irrevocably waives any claim for unpaid Rent or other damages of any kind or nature whatsoever against Tenant if funds are not appropriated in future years for payment of Rent, including any claim that the failure to appropriate such funds constitutes a breach of any express or implied covenant of good faith and fair dealing or any other implied obligation on the part of Tenant to appropriate funds. Landlord does not waive any claims which arise from Tenant's performance of its obligations under the Lease prior to the date of non-appropriation.

If Tenant, in its sole discretion, elects not to appropriate funds for payment of Rent in future years of this Lease, then this Lease shall automatically terminate at 11:59 p.m. on the last day for which funding is appropriated.

Tenant's fiscal year begins July 1 and ends June 30. It is anticipated that the final action on Tenant's budget will take place each May for the upcoming fiscal year, between the 15th and 31st of the month. Tenant shall give Landlord notice, in writing, thirty (30) days of a final decision not to appropriate funds sufficient for Tenant to pay Rent for a full fiscal year under this Lease. Such notice will clearly state the number of months, if any, in the upcoming fiscal year for which Tenant has appropriated funds sufficient to pay Rent and will state the date by which Tenant will vacate the Premises. This Lease is not intended to create any rights or causes of action in any third parties or to increase the Tenant's liability above the caps established by law."

11. Continuing Effect of Emergency Power Source Amendment. The Emergency Power Source Amendment shall continue in effect, and will be applicable to the 2008 Leased Premises, for the duration of the 2nd Extended Term, unless modified or terminated by the Landlord and County.

12. Miscellaneous. All other terms and provisions of the 2008 Lease shall remain in force and effect and will apply to the Expansion Premises, except as expressly provided herein.

13. Counterparts. This Second Amendment may be executed in two or more counterparts each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. The parties agree that signatures scanned into PDF format and sent by e-mail or facsimile signatures shall be deemed original signatures.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the first date written above.

LANDLORD:

SENECA CENTER II, LLC, a Maryland limited liability company



Witness

By: 

Paul L. Klinedinst
Manager

COUNTY:

MONTGOMERY COUNTY, MARYLAND
a political subdivision of the State of Maryland



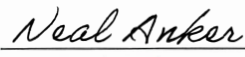
Witness

By: 


Name: Fariba Kassiri
Title: Deputy Chief Administrative Officer

Approved as to form and legality
Office of the County Attorney

Recommended

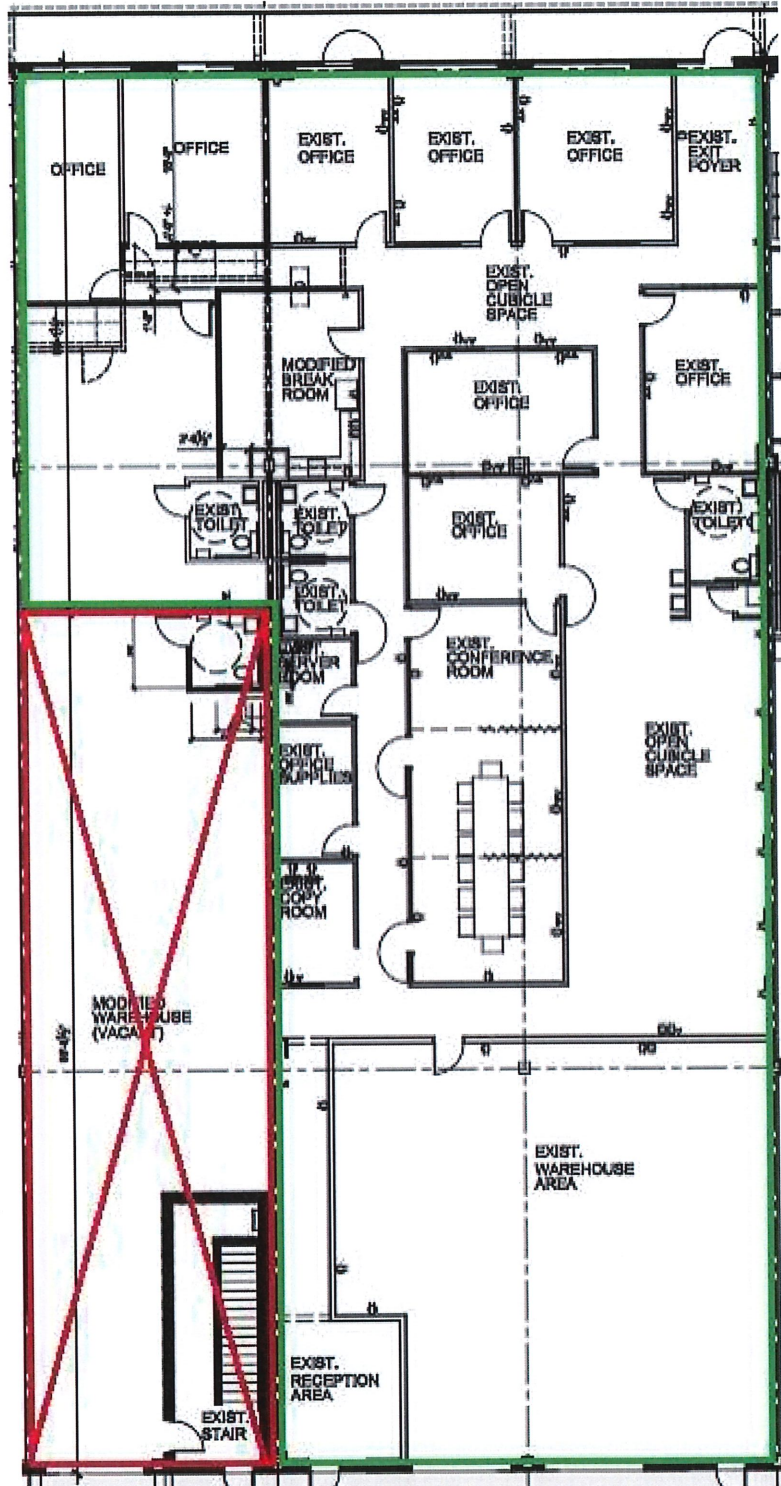
By: 

Name: Neal Anker
Title: Assistant County Attorney

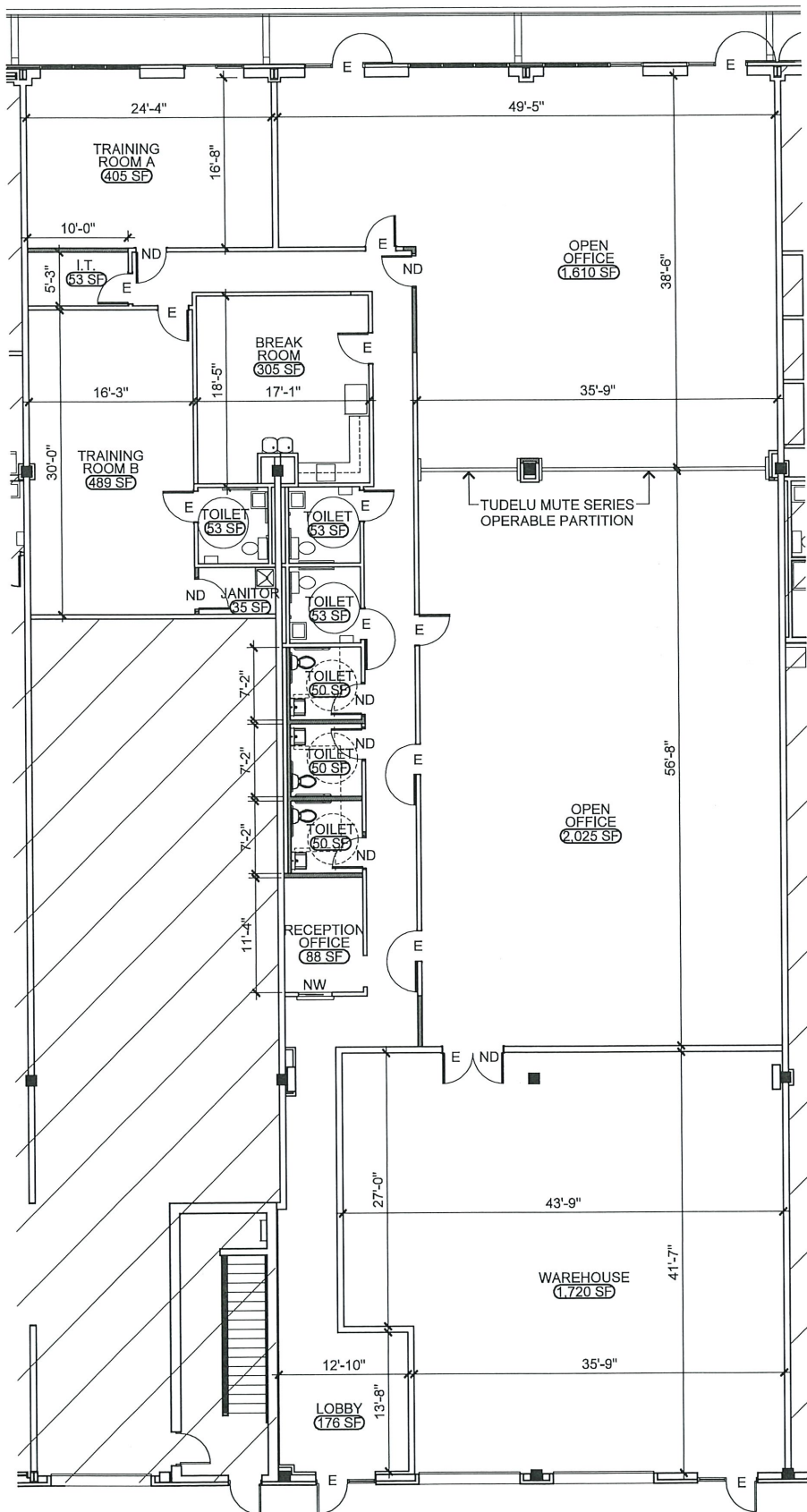
By: 

Name: Cynthia Brenneman
Title: Director, Office of Real Estate

SECOND AMENDMENT TO 2008 LEASE AGREEMENT
"Exhibit A"



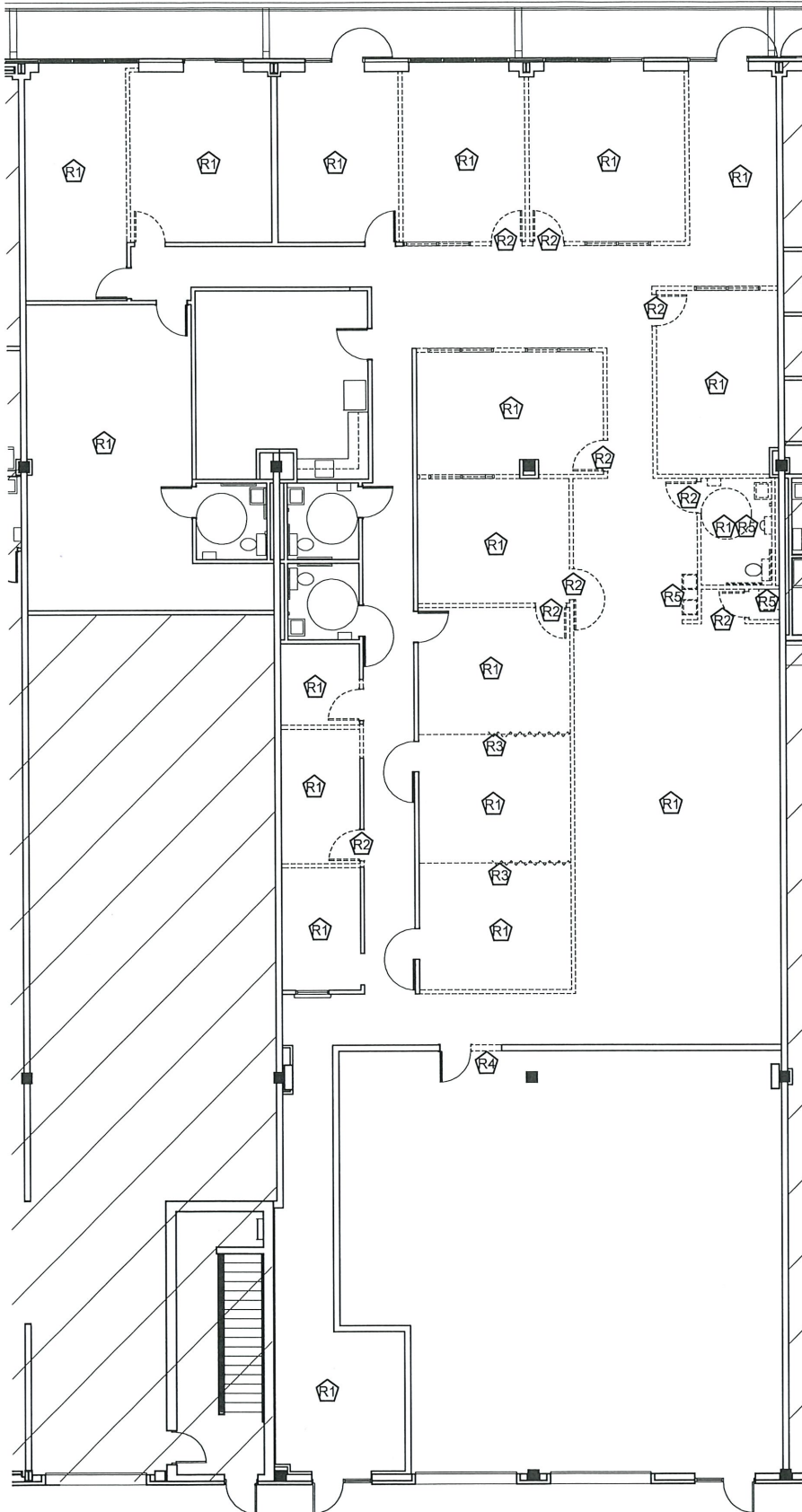
SECOND AMENDMENT TO 2008 LEASE AGREEMENT
“Exhibit B”



LEGEND

- EXISTING PARTITION TO REMAIN
- NEW PARTITION TO MATCH EXISTING
- E EXISTING DOOR TO REMAIN
- ND NEW DOOR TO MATCH EXISTING
- NW NEW SLIDING WINDOW





LEGEND

- EXISTING PARTITION TO REMAIN
- - - - - EXISTING TO BE REMOVED

KEY NOTES

- R1 EXISTING FLOORCOVERING AND BASE TO BE REMOVED. PREPARE FLOOR FOR NEW FLOORCOVERING.
- R2 EXISTING DOOR & DOOR FRAME TO BE REMOVED. SAVE FOR POSSIBLE REINSTALLATION.
- R3 REMOVE EXISTING FOLDING PARTITION, V.I.F.
- R4 PARTIAL REMOVAL OF EXISTING PARTITION FOR NEW DOUBLE DOOR FRAME.
- R5 REMOVE EXISTING PLUMBING.



SECOND AMENDMENT TO 2008 LEASE AGREEMENT
“Exhibit C”

Scope of Work

Walls & Doors

1. Modify the existing layout as shown on the attached plan
 - a. All walls will be constructed up to the height of the existing drop ceiling
 - b. Install new wood doors, metal frames, and door hardware; reuse existing doors, frame, and door hardware where possible
 - c. Install fiberglass-reinforced paneling (FRP) in new bathrooms to match existing bathrooms
2. Paint all walls and new doors & frames Tenant-selected color (except in the Warehouse)
3. Patch and replace exiting ceiling tiles as needed
4. Furnish and install two (2) ModernFold Acousti-Seal operable partitions as shown on the attached plan

Plumbing

1. Demolish one existing bathroom, mop sink, and water fountain
2. Construct three (3) new bathrooms with new fixtures and accessories
3. Install mop sink in new Janitor closet

(Plumber will require access below the new bathrooms, which is in the Board of Elections warehouse.)

Flooring

1. Remove all existing carpeting
2. Install new glue-down carpet with carpet base (Tenant-selected color) throughout (except in the Warehouse, breakroom, and bathrooms)
3. Install new ceramic tile and cove base in the three (3) new bathrooms to match existing bathrooms

Electrical

1. Relocate existing light fixtures, emergency lights, and fire alarm devices as needed as a result of new layout
2. Remove existing outlets from demolished walls
3. Add GFI outlets in 3 new bathrooms
4. Add approximately 10 new outlets as needed as a result of new layout
(Networking cabling & terminations to be addressed by others.)

HVAC

1. Add exhaust and supplies to three (3) new bathrooms
2. Relocate existing HVAC supply and returns as needed as a result of new layout
3. Provide initial preventative maintenance on exiting HVAC unit

Sprinkler System

1. Relocate and add sprinkler heads as needed as a result of new layout

Etc.

1. Provide space plan
2. Provide job site supervisor
3. Provide protection and clean-up
4. Provide dumpster for jobsite trash
5. Provide lifts as needed