

### THIRD AMENDMENT TO 2015 LEASE AGREEMENT

THIS THIRD AMENDMENT TO 2015 LEASE AGREEMENT (the “Third 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 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”).
- B. The term of the 2015 Lease will expire on June 30, 2029.
- C. Pursuant to a separate 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”.
- D. Landlord and County have entered into a certain Second Amendment to 2008 Lease Agreement, of even date herewith, by which, inter alia, the 2008 Leased Premises will be expanded to include and incorporate as a part thereof, approximately 8,350 square feet of adjacent industrial warehouse space within the

Building identified as Bays 204, 203 and a portion of Bay 202, as more particularly described therein (the “Expansion Premises”) and further extending the term of the 2008 Lease for an additional five (5) years (the “2008 Second Extension”), all as more fully set forth in the Second Amendment to 2008 Lease Agreement.

- E. 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 the Second Amendment to 2008 Lease Agreement, 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 2015 Lease shall have the same meaning as specified in such lease unless otherwise specifically provided for herein.

3. Legal Effect and Conditions Precedent. The Landlord and County agree that this Third Amendment will be effective upon full execution thereof, but expressly acknowledge that this Third Amendment, and the binding effect of the amendments to the 2015 Lease contained herein, are subject to the satisfaction of Condition Precedent set forth in the Second Amendment to 2008 Lease Agreement. In the event that the Second Amendment to 2008 Lease is rendered null and void because the Condition Precedent contained therein has not been satisfied or mutually waived by the County and Landlord, then this Third Amendment shall be null and void and of no force and effect and the provisions of the 2015 Lease shall continue in force and effect as if this Third Amendment had not been executed.

4. Appropriations Requirement. Section Rent 5.E. of the 2015 Lease is hereby deleted in its 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."

4. Conditional Amendments to 2015 Lease. Subject to the satisfaction or mutual waiver of the Condition Precedent to the Second Amendment to 2008 Lease, the Landlord and County agree that the 2015 Lease shall be amended as follows:

- A. Extension of Term. The term of the 2015 Lease shall be extended for an additional period of five (5) years from July 1, 2029, and will expire on June 30, 2034 (the "2<sup>nd</sup> Extended Term").
- B. 2<sup>nd</sup> Extended Term Base Rent. The annual Base Rent payable during the first Lease Year of the 2<sup>nd</sup> 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%).

C. Continuing Effect of Emergency Power Source Amendment. The Emergency Power Source Amendment shall continue in effect, and will be applicable to the 2015 Leased Premises, for the duration of the 2<sup>nd</sup> Extended Term, unless modified or terminated by the Landlord and County.

6. Miscellaneous. All other terms and provisions of the 2015 Lease shall remain in force and effect except as expressly provided herein.

7. Counterparts. This Third 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 Third 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

*Monisola Brobbey*  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Name: Fariba Kassiri  
Title: Deputy Chief Administrative Officer

Approved as to form and legality  
Office of the County Attorney

Recommended

By: *Neal Anker*  
\_\_\_\_\_  
Name: Neal Anker  
Title: Assistant County Attorney

By: *Cynthia Brenneman*  
\_\_\_\_\_  
Name: Cynthia Brenneman  
Title: Director, Office of Real Estate