FIRST AMENDMENT TO
DEED OF LEASE

THIS **FIRST AMENDMENT TO DEED OF LEASE** (this "**First Amendment**") is entered into as of September 26, 2000, by and between **ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC,** a Delaware limited liability company ("**Landlord**"), and **MONTGOMERY COUNTY, MARYLAND,** a body corporate and politic ("**Tenant**"), with reference to the following Recitals:

R E C I T A L S:

A. Richtree Corporation, Landlord's predecessor-in-interest, and Tenant have entered into that certain Deed of Lease dated as of November 10, 1999 (the "**Original Lease**"). All initially-capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Lease unless the context clearly indicates otherwise. References to "**the Lease**" or "**this Lease**" in the Original Lease or in this First Amendment shall mean and refer to the Original Lease, as amended by this First Amendment.

B. Landlord and Tenant desire to amend the Original Lease as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Prior Amendment.** Tenant and Landlord acknowledge and agree that Landlord previously delivered to Tenant a First Amendment to Lease dated June 27, 2000 (the "**Prior Amendment**") executed by Landlord. Tenant and Landlord acknowledge and agree that the Prior Amendment shall be null and void and of no force or effect.

2. **Tenant Improvements.** Tenant desires to have the Leased Premises improved with certain improvements and desires to have Landlord cause such tenant improvements to be constructed. Landlord is willing to cause such tenant improvements to be constructed in the Leased Premises upon the terms and conditions contained herein. Landlord and Tenant hereby agree that their respective understandings regarding such tenant improvements shall be governed by the terms and conditions contained in the Tenant Improvements Work Letter (the "**Work Letter**") attached hereto as Exhibit D. The Original Lease is hereby amended by adding Exhibit D attached hereto as Exhibit D thereto.

3. **Sovereign Immunity.** Tenant hereby agrees that any legal action or proceeding arising from or under the Lease, for purposes of enforcing the provisions thereof, may be brought in any state or federal court in the State of Maryland, and Tenant hereby unconditionally submits to the jurisdiction of such court for itself and with respect to its property. Tenant hereby represents and warrants that the employee or official executing this First Amendment and the Work Letter is acting within the scope of authority of such official or employee and that all actions necessary to authorize such official or employee to execute this First Amendment and the Work Letter have been taken. Nothing

contained herein shall limit the right of Landlord to serve process on Tenant in any manner permitted by law or to commence any such legal action or proceeding in any other proper jurisdiction.

4. **Effect of this First Amendment.** Except as amended and/or modified by this First Amendment, the Original Lease is hereby ratified and confirmed and all other terms of the Original Lease shall remain in full force and effect, unaltered and unchanged by this First Amendment. In the event of any conflict between the provisions of this First Amendment and the provisions of the Original Lease, the provisions of this First Amendment shall prevail. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the Original Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

5. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this First Amendment attached thereto.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this First Amendment as of the date first above written.

LANDLORD: **ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC,**
a Delaware limited liability company

By: **ARE-GP/VI HOLDINGS QRS CORP.,**
a Delaware corporation,
its managing member

By: _____
Name: PETER J. NELSON
Title: SENIOR VICE PRESIDENT & CHIEF FINANCIAL OFFICER

TENANT: **MONTGOMERY COUNTY, MARYLAND,**
a body corporate and politic

By: _____
William Mooney,
Assistant Chief Administrative Officer

APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: _____ 9/25/2000
Name: Eileen T. Basaman
Assistant County Attorney

RECOMMENDED

By: _____
J. Ronald Smith,
FSS Section Chief

EXHIBIT D

TENANT IMPROVEMENTS WORK LETTER

This **TENANT IMPROVEMENTS WORK LETTER** (this "**Work Letter**") is made by **ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC,** a Delaware limited liability company ("**Landlord**"), and **MONTGOMERY COUNTY, MARYLAND,** a body corporate and politic ("**Tenant**") and covers the Leased Premises at 1300 Quince Orchard Road, Gaithersburg, Maryland and is attached to and made a part of the Deed of Lease dated as of November 10, 1999, by and between Richtree Corporation, Landlord's predecessor-in-interest, and Tenant, as amended by that certain First Amendment to Lease dated as of the date hereof (as so amended, the "**Lease**"). Any initially capitalized terms used but not defined shall have the meanings given them in the Lease.

1 General Requirements

1.1 Tenant's Authorized Representative. Tenant designates Stephen C. Nash and/or David Heltemes (either such individual acting alone, "**Tenant's Representative**") as the persons authorized to initial all plans, drawings and change orders on Tenant's behalf pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any such item until such item has been initialized or approved in writing by Tenant's Representative. Neither Tenant nor Tenant's Representative shall be authorized to direct Landlord's contractors in the performance of the Work (as defined in Section 3.1 of this Work Letter) other than as specifically provided herein.

1.2 Development Schedule. The schedule for design and development of the Work, including, without limitation, the time periods for preparation and review of construction documents, approvals and performance, whether by Landlord or by Tenant, shall be in accordance with that certain Time and Responsibility Schedule prepared by Landlord and Tenant and attached as Schedule A to this Work Letter, subject to adjustment as mutually agreed to in writing by the parties or as provided in this Work Letter (the "**Development Schedule**"). Landlord and Tenant acknowledge and agree that the dates set forth in Schedule A attached hereto and by this reference incorporated herein shall serve as target dates for achieving the matters set forth therein. Landlord and Tenant shall each proceed with all necessary due diligence and in good faith to complete such matters as require action or approval on the part of the Landlord and Tenant. Landlord and Tenant agree to promptly and diligently respond to all questions and concerns raised by architects, contractors, engineers and other consultants in order to ensure to the greatest extent practicable that the Work is designed, constructed and completed on or before the dates set forth in Schedule A hereto.

1.3 Architects and Consultants. The architect, engineering consultants, design team, general contractor and all subcontractors responsible for construction of the Work shall be mutually selected by Landlord and Tenant. The architect so selected and retained for the Work is hereinafter referred to as the "**Architect**." The general contractor so selected and retained for the Work is hereinafter referred to as the "**Contractor**."

2 Tenant Improvement Funding.

2.1 Landlord Funding Obligation. Landlord shall advance the funds required for the construction, design, engineering, fixturing or other costs directly or indirectly incurred by Landlord in connection with the Work (the "**Funding Obligation**"). Tenant shall reimburse Landlord for all advances of the Funding Obligation as provided in Section 12 below.

2.2 Preliminary Cost Estimates for the Work. At the same time as Landlord delivers Tenant the Schematic Drawings, Design Drawings and Construction Drawings (collectively, the "**Drawings**") as provided in Sections 3.3, 3.4 and 3.5, respectively, Landlord shall cause the Architect and/or the Contractor to prepare and deliver to Tenant a cost estimate for the Work, broken down by discipline (*i.e.*, mechanical, electrical, plumbing, etc.) for items proposed in the Drawings. The cost estimate for the Work shall include all costs of the project, including contingency, sales tax and permits and administrative rent ("**Supervision Administrative Rent**") payable to Landlord in the amount of five and one-half percent (5.5%) of the total actual cost of the Work.

2.3 Cost Estimate for the Work.

2.3.1 At the same time as Landlord delivers the Schematic Drawings, Design Drawings and Construction Drawings to Tenant, pursuant to Sections 3.3, 3.4 and 3.5, respectively, Landlord shall provide Tenant with a cost estimate for the Work broken down by discipline (*i.e.*, mechanical, electrical, plumbing, etc.), and shall include all costs of the project, including contingency, sales tax and permits and shall include the Supervision Administrative Rent.

2.3.2 Tenant shall review the cost estimate, project construction schedule and other pertinent information provided by Landlord (collectively called "**Project Data**") for conformity with the scope and intent of the Construction Drawings and shall approve same or state the changes, if any, which Tenant reasonably believes are required to make them conform with the Construction Drawings. This review shall be accomplished within 14 calender days after Tenant receives the Project Data. If Tenant reasonably believes that additional information is required for its review of the Project Data, Tenant shall so notify Landlord setting forth the additional information requested and Landlord shall promptly provide same. Tenant shall have an additional 7 calendar days from receipt of such information to review and comment thereon.

3 Plans and Specifications for the Work.

3.1 Definitions. As used herein, the "**Work**" shall mean all improvements to the Leased Premises desired by Tenant of a fixed and permanent nature to be completed by Landlord pursuant to this Work Letter, as generally described in

Tenant's Program of Requirements dated February 15, 2000 (the "**POR**"). Except as expressly set forth in the Lease, other than the Work, Landlord shall not have any obligation to improve or alter the Leased Premises for Tenant's use and occupancy, which has not already been fully performed and satisfied.

3.2 **Approval of the POR.** Landlord hereby approves the POR.

3.3 **Schematic Drawings.** Not later than 30 calendar days following the date of this Work Letter, Landlord shall cause the Architect to prepare and deliver to Tenant for review and comment schematic drawings for the Work ("**Schematic Drawings**"), which Schematic Drawings shall be prepared substantially in accordance with the POR. Tenant shall be solely responsible for ensuring that the Schematic Drawings reflect Tenant's requirements for the Work. Tenant shall deliver its written comments on the Schematic Drawings to Landlord not later than 14 calendar days after Tenant's receipt of the same; provided, however, that Tenant may not disapprove any matter that conforms to the requirements set forth in the POR without submitting a Change Request. Landlord and the Architect shall consider all such comments in good faith and shall, within 14 calendar days after receipt, notify Tenant how Landlord proposes to respond to such comments, but Tenant's review rights pursuant to the foregoing sentence shall not delay the design or construction schedule for the Work. Any disputes in connection with such comments shall be resolved in accordance with Section 3.6 hereof. Provided that the design reflected in the Schematic Drawings substantially conforms with the requirements set forth in the POR, Tenant shall approve the Schematic Drawings submitted by Landlord, unless Tenant submits a Change Request. Once approved by Tenant, subject to the provisions of Section 4 below, Landlord shall not materially modify the Schematic Drawings except as may be reasonably required in connection with the issuance of any permits (as set forth in Section 6 below).

3.4 **Design Drawings.** Not later than 30 calendar days following the approval of the Schematic Drawings, Landlord shall cause the Architect to prepare and deliver to Tenant for review and comment design drawings for the Work ("**Design Drawings**"), which Design Drawings shall be prepared substantially in accordance with the Schematic Drawings. Tenant shall be solely responsible for ensuring that the Design Drawings reflect Tenant's requirements for the Work. Tenant shall deliver its written comments on the Design Drawings to Landlord not later than 14 calendar days after Tenant's receipt of the same; provided, however, that Tenant may not disapprove any matter that substantially conforms to the requirements set forth in the POR without submitting a Change Request. Landlord and the Architect shall consider all such comments in good faith and shall, within 14 calendar days after receipt, notify Tenant how Landlord proposes to respond to such comments, but Tenant's review rights pursuant to the foregoing sentence shall not delay the design or construction schedule for the Work. Any disputes in connection with such comments shall be resolved in accordance with Section 3.6 hereof. Provided that the design reflected in the Design Drawings is consistent with the POR, Tenant shall approve the Design Drawings submitted by Landlord, unless Tenant submits a Change Request. Once approved by Tenant, subject to the provisions of Section 4 below, Landlord shall not materially modify the Design Drawings except as may be

reasonably required in connection with the issuance of any permits (as set forth in Section 6 below).

3.5 **Construction Drawings.** Not later than 45 calendar days following approval of the Design Drawings, Landlord shall cause the Architect to prepare and deliver to Tenant for review and comment construction plans, specifications and drawings for the Work ("**Construction Drawings**"), which Construction Drawings shall be prepared substantially in accordance with the requirements set forth in the POR. Tenant shall be solely responsible for ensuring that the Construction Drawings reflect Tenant's requirements for the Work. Tenant shall deliver its written comments on the Construction Drawings to Landlord not later than 14 calendar days after Tenant's receipt of the same; provided, however, that Tenant may not disapprove any matter that is consistent with the POR without submitting a Change Request. Landlord and the Architect shall consider all such comments in good faith and shall, within 14 calendar days after receipt, notify Tenant how Landlord proposes to respond to such comments, but Tenant's review rights pursuant to the foregoing sentence shall not delay the design or construction schedule for the Work. Any disputes in connection with such comments shall be resolved in accordance with Section 3.6 hereof. Provided that the design reflected in the Construction Drawings substantially conforms with the requirements set forth in the POR, Tenant shall approve the Construction Drawings submitted by Landlord, unless Tenant submits a Change Request. Once approved by Tenant, subject to the provisions of Section 4 below, Landlord shall not materially modify the Construction Drawings except as may be reasonably required in connection with the issuance of any permits (as set forth in Section 6 below).

3.6 **Approval and Completion.** It is hereby acknowledged by Landlord and Tenant that the Construction Drawings must be completed and approved not later than April 12, 2001, in accordance with Schedule A, in order for the Work to be Substantially Completed by August 26, 2001. Upon any dispute regarding the design of the Work, which is not settled within 7 calendar days after notice of such dispute is delivered by one party to the other, and Tenant shall make the final decision regarding the design of the Work, provided Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute, provided further that all costs and expenses resulting from any such decision by Tenant shall be payable out of the Fund (as defined in Section 5 below). Any changes to the Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

4 **Changes.** Any changes requested by Tenant to the Work after approval by Landlord and Tenant of the Drawings, shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord and the Architect, such approval not to be unreasonably withheld, conditioned or delayed.

4.1 **Tenant's Right to Request Changes.** If Tenant shall request changes to the Work ("**Changes**"), Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form (a "**Change**

Request"), which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall, before proceeding with any Change, use commercially reasonable efforts to respond to Tenant as soon as is reasonably possible with an estimate of: (i) the time it will take, and (ii) the architectural and engineering fees and costs which will be incurred, to analyze such Change Request (which costs shall be paid from the Fund to the extent actually incurred, whether or not such change is implemented). Landlord shall thereafter submit to Tenant in writing, within 7 calendar days of receipt of the Change Request (or such longer period of time as is reasonably required depending on the extent of the Change Request), an analysis of the additional cost or savings involved, including, without limitation, architectural and engineering costs and the period of time, if any, that the Change will extend the date on which the Work will be Substantially Complete. The date for Substantial Completion of the Work will be extended by one day for each day that a delay in Substantial Completion of the Work is caused by a Change, including, without limitation, any suspension of the Work while any such Change is being evaluated and/or designed (a "**Tenant Delay**").

4.2 **Implementation of Changes.** If Tenant approves in writing the cost or savings and the estimated extension in the time for completion of the Work, Landlord shall cause the approved Change to be instituted; provided, however, if the cost of such Change will cause the total cost of the Work to exceed the Budget (the "**Excess**"), Tenant shall either deposit such Excess with Landlord or provide Landlord with such other satisfactory assurance that the Fund is sufficient and remains available to cover such Excess before such Change is implemented. Notwithstanding any approval or disapproval by Tenant of any estimate of the delay caused by such proposed Change, the Architect's determination of the amount of Tenant Delay in connection with such Change shall be final and binding on Landlord and Tenant.

5 **Costs.**

5.1 **Budget For the Work.** Before the commencement of construction of the Work, Landlord shall obtain a detailed breakdown, by trade, of the costs incurred or which will be incurred in connection with the design and construction of the Work (the "**Budget**"). The Budget shall be based upon the Construction Drawings approved by Tenant and shall include a payment to Landlord of the Supervision Administrative Rent for monitoring and inspecting the construction of the Work, which sum shall be payable from the Fund. Such Supervision Administrative Rent shall include, without limitation, all out-of-pocket costs, expenses and fees incurred by or on behalf of Landlord arising from, out of, or in connection with, such monitoring of the construction of the Work, and shall be payable out of the Fund. Prior to the date hereof, Tenant has processed an appropriation to cover the cost of the design and construction of the Work (the amount of such appropriation, together with any amounts later appropriated for the Work or otherwise made available to Tenant to pay the costs of the design and construction of the Work (including payment of the Supervision Administrative Rent) is hereinafter referred to as the "**Fund**"). Upon receipt of the Budget, Tenant shall confirm to Landlord that the amount of the Fund equals or exceeds the amount of the Budget.

6 **Permits; Compliance with Legal Requirements.** Landlord shall cause the building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Work as required by applicable laws, ordinances or regulations. The cost of obtaining all such building and other permits, licenses, and approvals are included as part of the Work. Landlord shall use commercially reasonable efforts to timely obtain all applicable building permits. Tenant shall cooperate with Landlord in all of Landlord's activities with respect to the foregoing.

7 **Architectural and Construction Contracts.**

7.1 Landlord shall contract directly or indirectly (through the Contractor) with the Architect for architectural services required in connection with the construction of the Work. Landlord shall also contract for the construction of the Work; provided, however, that Tenant shall have the right to review such contracts and the bids submitted by potential contractors and subcontractors prior to Landlord's entry into such contracts, for its own information and to determine that any architectural agreement and/or construction contract is consistent with the requirements of the Lease, this Work Letter and the Construction Drawings. With respect to the general contract and all subcontracts exceeding $250,000, Tenant shall approve or specify its objection to any such contracts and/or bids (with Tenant's approval not to be unreasonably withheld) as soon as possible and not later than 7 calendar days after Tenant's receipt of the terms of such contracts and/or bids. If Tenant fails to respond within said 7 calendar day period, Tenant shall be deemed to have approved such contracts and/or bids. The Construction Drawings, the Architect's agreement, and the construction contract for construction of the Work shall hereinafter be referred to as the "**Construction Documents**." There shall be no amendment of any of the Construction Documents without the prior written approval of Tenant, which shall not be unreasonably withheld.

7.2 Where more than one type of material or structure is indicated on the Construction Drawings approved by Landlord and Tenant, the option will be within Landlord's sole discretion. As to all building materials and equipment which Landlord is obligated to supply under this Work Letter, Landlord shall select the manufacturer thereof in its sole discretion.

7.3 If required, the construction contract shall provide for payment and performance bonds issued by a surety reasonably acceptable to Tenant pursuant to which Landlord and Tenant shall be named as obligees pursuant to a rider or riders reasonably acceptable to Landlord and Tenant. The cost of such bonds, if required, shall be a cost of the Work.

7.4 Landlord shall require the Contractor and subcontractors of the Contractor to pay the prevailing wage to workers, laborers and mechanics as may then be determined by the Maryland State Department of Labor and Industries for the particular craft in the particular geographic area. Landlord agrees to comply with the non-discrimination in employment policies in Montgomery County contracts, as required

by Sections 118-3 and 27-19 of the Montgomery County Code, 1994 as amended, as well as all applicable state and federal laws and regulations regarding employment discrimination. Landlord assures Tenant that in accordance with applicable law it does not and agrees that it will not discriminate in any manner on the basis of age, color, national origin, race, religious belief, sexual preference or disability.

7.5 The construction contract shall provide a warranty of materials and workmanship for a period of one year with respect to each major component of the Work following Substantial Completion (as defined in Section 9 below). In order to evaluate the cost benefits of receiving a two-year warranty on some or all of the major components of the Work, Landlord, at Tenant's request, will include as a bid item alternative, a two year warranty on appropriate subcontracts. At Tenant's request, Landlord shall negotiate with Contractor and/or suppliers for extended warranties and/or maintenance contracts for portions of the Work. The cost of such extended warranties and/or maintenance contracts shall be included as part of the cost of the Work.

8 **Construction of the Work.** Landlord shall use its reasonable efforts to commence construction of the Work following receipt of the building permit on or before the date set forth in Schedule A and shall thereafter diligently and continuously prosecute the construction of the Work in a good and workmanlike manner and in strict accordance with the Construction Drawings. Landlord shall use its reasonable best efforts to cause the Work to be Substantially Completed on or before the date set forth in Schedule A. The Work shall be constructed in accordance with all legal requirements applicable to the Work and/or the Leased Premises. Tenant shall cooperate with Landlord in all of Landlord's activities with respect to the foregoing.

9 **Substantial Completion of the Work.** The Work shall have achieved "**Substantial Completion**" or be considered "**Substantially Completed**" when the following events have occurred:

9.1 **Architect's Certification.** The Architect shall have issued its "Certificate of Substantial Completion AIA Document G704," stating that the construction of the Work is substantially completed in strict accordance with the Construction Documents.

9.2 **Certificate of Occupancy.** The City of Gaithersburg and/or Montgomery County shall have issued a temporary certificate of occupancy permitting the use and occupancy of the Leased Premises for the purposes identified in the POR.

9.3 **Tenant Acceptance.** Tenant shall have accepted the Work as complete subject to completion of customary Punch List items jointly developed by Tenant and Landlord.

10 **Final Completion.** The Work shall have achieved "**Final Completion**" when the following events have occurred:

10.1 **Certificate of Occupancy.** The City of Gaithersburg and/or Montgomery County shall have issued a final unconditional certificate of occupancy permitting the use and occupancy of the Leased Premises for the purposes identified in the POR.

10.2 **Contractor's Certification.** The Contractor shall have issued its "Certificate of Substantial Completion," together with its "Affidavit of Payment of Debts and Claims," AIA Forms 706 and 706A, together with final unconditional waivers and releases of liens in form satisfactory to Landlord and Tenant from such materialmen, laborers, contractors and subcontractors as Landlord and Tenant may require.

10.3 **Punch List Items Completed.** All Punch List items have been completed to the satisfaction of Landlord and Tenant.

10.4 **Construction Costs Paid.** Landlord shall have provided Tenant with evidence reasonably satisfactory to Tenant that all construction costs for the Work have been paid in full.

10.5 **No Construction Liens.** The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to Landlord and Tenant have been obtained by the Contractor in accordance with the articles and conditions of the construction contract for the Work.

11 **Correction of Work.** Landlord shall promptly cause to be corrected work rejected by Tenant or known by Landlord to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall cause to be corrected work found to be defective or non-conforming. Following Substantial Completion of the Work, the cost to correct such defective work (to the extent not borne by insurance, covered by warranty or the responsibility of the Architect or Contractor under the Construction Documents) shall be treated as part of the cost of the Work or passed through to Tenant as an Operating Expense payable solely by Tenant and not other tenants of the Building.

12 **Invoicing and Payment of Work Costs.** At least once each month Landlord shall be invoiced by the Architect, the Contractor and all other suppliers, materialmen and other persons providing services, supplies or labor in connection with the Work) for the previous month in an amount reflective of the work completed through the date of such invoice. Such costs shall be approved and paid as follows:

12.1 A final budget for the Work shall be determined by Landlord and approved by Tenant (which approval shall not be unreasonably withheld) on the basis of the approved Construction Drawings.

12.2 Within 5 calendar days following receipt of any invoice or request for payment from the Architect or the Contractor, Landlord shall provide a copy of such invoice or request to Tenant's Representative along with the following additional information and documentation:

12.2.1 A "**Draw Request**" requesting payment of a specified dollar amount, which shall constitute a portion of the cost of the Work, reasonably detailed to reflect (i) the work performed and material furnished to the Work (and showing the amount of "retention" withheld with respect thereto if the work for which payment is requested has arisen through the Contractor) or, if the matter for which payment is requested has arisen through any consultant, engineer, supplier, materialmen or municipality other than the Contractor, then providing a copy of the invoice or other supporting documentation for such matter; and (ii) the amount of the Work costs expended in each category of the budget as of the date of such Draw Request;

12.2.2 A partial lien release from the Contractor to become effective upon payment of the amount of the payment specified in the Draw Request;

12.2.3 A reconciliation between the total of all draw amounts requested (including such draw request) and the then current budget for the Work; and

12.2.4 Certification of a Draw Request from the Contractor by the Architect or other inspecting architect.

12.3 Tenant shall have 10 calendar days in which to review and approve each such Draw Request and supporting documentation. Any objections regarding a Draw Request or other invoice submitted for payment shall be made by providing Landlord detailed written comments explaining the nature of Tenant's disapproval within 10 calendar days following receipt of the Draw Request and all supporting documentation, but if no such comments or approvals are received within such 10 calendar day period, the same shall be deemed approved. If Tenant disapproves all or any portion of a Draw Request or other invoice submitted for payment, the undisputed portion shall be paid as described in Section 12.5 below and Landlord and Tenant shall meet within 7 calendar days to resolve the disputed portion of such Draw Request or other invoices submitted for payment. If the parties have been unable to resolve such dispute within thirty days following Tenant's receipt of the Draw Request and all supporting documentation, Landlord may pay such disputed amount and recover the amount of such payment from Tenant pursuant to Sections 12.4 and 12.5 hereof.

12.4 Following approval by Landlord and Tenant of a Draw Request or other invoice for payment, Tenant shall pay Landlord, pursuant to wire instructions to be provided by Landlord, the amount so approved for payment, together with the Supervision Administrative Rent in an amount equal to 5.5% of the amount so approved for payment, and Landlord shall promptly pay the approved amount by wire transfer to the party or parties to whom payment is due.

12.5 If Tenant shall fail to pay any amounts approved for payment by Landlord and Tenant pursuant to Section 12.4 hereof within thirty (30) days of the date of approval, Landlord may pay such amount and such amount, plus the Supervision Administrative Rent due Landlord and a "**Cost of Funds Administrative Rent**" (in an amount equal to one percent (1.0%) of the amount so advanced by Landlord and

the Supervision Administrative Rent due Landlord) shall be immediately due and payable from Tenant pursuant to wire instructions to be provided by Landlord. All amounts not paid by Tenant within 60 days of approval of such amount for payment by Landlord and Tenant pursuant to Section 12.3 shall be subject to: (i) "**Late Payment Administrative Rent**" in an amount equal to one twentieth of one percent (0.05%) of the late amount per day, from such sixtieth day following approval of such amount for payment pursuant to Section 12.3 until but not including the day such funds are reimbursed by Tenant if such funds are received by Landlord before 3:00 p.m. Eastern Standard or Daylight time, as applicable ("**Local Time**"), and including the day such funds are reimbursed by Tenant if such funds are received by Landlord after 3:00 p.m. Local Time, and (ii) a late payment charge of five percent (5%) of such amount. Any failure of Tenant to reimburse Landlord for any amounts advanced by Landlord pursuant to Section 12.4 hereof within ninety (90) days of the date of approval of such amount for payment pursuant to Section 12.3 shall constitute a Default under the Lease, and shall entitle Landlord to cease any further work hereunder until such Default has been cured.

13 **Insurance.** Prior to the Substantial Completion of the Work, Landlord shall obtain, or cause the Contractor to obtain and keep in full force and effect as part of its construction contract, builder's risk insurance, and shall include Landlord and Tenant as insureds in an amount equal to their interest with a loss payable clause in favor of Landlord, commercial general liability in the amount of $5,000,000 combined single limit and $5,000,000 in the aggregate, which insurance shall list Landlord and Tenant as insureds, and such worker's compensation insurance or employee industrial insurance as may be required under Maryland law.

14 **Tenant Access.**

14.1 Landlord hereby agrees to permit Tenant access, at Tenant's sole risk and expense, to the Leased Premises (i) to operate Tenant's emergency communications training center in the entire first floor of the Leased Premises; provided that the activities at such training center shall in no way interfere with the Work and (ii) prior to the completion of the Work, to inspect and observe work in process; all such access shall be during normal business hours or at such other times as are reasonably designated therefor or agreed to by Landlord, and provided that Tenant's Work is coordinated with the Architect and complies with such reasonable restrictions and conditions as Landlord may impose. So long as Tenant shall engage only in the activities enumerated by the preceding sentence, such access shall not constitute acceptance of possession, nor occupancy or use of the Leased Premises. Notwithstanding the foregoing, Tenant shall have no right to enter onto the Leased Premises unless and until Tenant shall deliver to Landlord evidence reasonably satisfactory to Landlord evidencing the insurance reasonably required by Landlord in connection with such pre-commencement access (including, but not limited to, any insurance which Landlord may require pursuant to Section 11 of the Lease); provided, however, that Tenant shall have the right to self-insure pursuant to the terms set forth in Section 11(E) of the Original Lease.

14.2 In no event shall Tenant or its employees, consultants, agents, contractors, and suppliers interfere with the performance of the Work, nor with any inspections or issuance of final approvals by the City of Gaithersburg and/or Montgomery County. Should Landlord provide Tenant with notice that Tenant is interfering with any of the foregoing, Tenant shall immediately cease, or cause its employees, consultants, agents, contractors or suppliers to immediately cease, such interference.

14.3 The fact that Tenant may, with Landlord's consent, enter into the Leased Premises prior to the date that the Work is Substantially Completed for the purpose of performing any Tenant's Work shall not be deemed an acceptance by Tenant of possession of the Leased Premises, but in such event Tenant shall indemnify and hold Landlord harmless from any loss of or damage to Tenant's or Landlord's property, completed work, fixtures, equipment, materials or merchandise, and from liability for death of, or injury to, any person, caused by the willful misconduct or negligence of Tenant or its agents, to the extent permitted under the Local Government Tort Claims Act, Md. Cts & Jud. Proc. Code Ann., § 5-301, et seq.

15 Miscellaneous.

15.1 **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth herein to the contrary.

15.2 **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

15.3 **Counterparts.** This Work Letter may be executed in any number of counterparts but all executed counterparts taken together shall constitute a single document.

15.4 **Governing Law.** This Work Letter shall be governed by, construed and enforced in accordance with the laws of the State of Maryland.

15.5 **Time of the Essence.** Time is of the essence in this Work Letter and of each and all provisions thereof.

15.6 **Default.** Notwithstanding anything set forth herein or in the Lease to the contrary, Landlord shall not have any obligation to perform any work hereunder or to advance any amounts under Section 2.1 during any period Tenant is in Default under the Lease.

15.7 **Severability.** If any term or provision of this Work Letter is declared invalid or unenforceable, the remainder of this Work Letter shall not be affected by such determination and shall continue to be valid and enforceable.

15.8 **Merger.** All understandings and agreements, oral or written, heretofore made between the parties hereto and relating to Work are merged in this Work Letter, which alone (but inclusive of provisions of the Lease incorporated herein and the

final approved constructions, drawings and specifications prepared pursuant hereto) fully and completely expresses the agreement between Landlord and Tenant with regard to the matters set forth in this Work Letter.

15.9 **Entire Agreement.** This Work Letter is made as a part of and pursuant to the Lease and, together with the Lease, constitutes the entire agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Work Letter to be executed by their duly authorized representatives as of September 26, 2000.

LANDLORD: **ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC,**
a Delaware limited liability company

By: **ARE-GP/VI HOLDINGS QRS CORP.,**
a Delaware corporation,
its managing member

By: _____
Name: PETER J. NELSON
Title: SENIOR VICE PRESIDENT & CHIEF FINANCIAL OFFICER

TENANT: **MONTGOMERY COUNTY, MARYLAND,**
a body corporate and politic

By: _____
William Mooney,
Assistant Chief Administrative Officer

APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: _____
Name: _____
County Attorney

RECOMMENDED

By: _____ 9/25/00
J. Ronald Smith,
FSS Section Chief

SCHEDULE A TO WORK LETTER

Development Schedule

Event	Date
Execution of Work Letter	09/26/00
Delivery of Schematic Drawings	10/26/00
Delivery of Design Drawings	12/26/00
Delivery of Construction Drawings	03/12/01
Commence Work	04/12/01
Substantial Completion of Work	08/26/01
Issuance of Temporary Certificate of Occupancy	08/26/01