**MONTGOMERY COUNTY, MARYLAND**

**AND**

**ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD LLC**

**SECOND AMENDMENT TO LEASE AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT made and executed this 23rd day of April, 2003 (the "Second Amendment") by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic, (Tenant) and ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD LLC, (hereinafter referred to as Landlord), (Tenant and Landlord together the "Parties").

WITNESSETH

WHEREAS, Landlord and Tenant are Parties to a Lease Agreement dated November 10, 1999, amended by a First Amendment to Deed of Lease dated September 26, 2000, copies of which are attached to this Lease collectively as Exhibit A and incorporated as if fully set forth, under which Lease the Tenant occupies the premises known as 1300 Quince Orchard Boulevard, located in Gaithersburg, Maryland and identified in the Lease as the Leased Premises; and

WHEREAS, Landlord and Tenant wish to amend the Lease to provide certain options for the benefit of the Tenant, including an option to purchase the Leased Premises and an option to extend the term of the Lease;

NOW, THEREFORE, in consideration of the covenants mutually made in the Lease, and for other good and valuable consideration as set forth below, Landlord and Tenant agree as follows:

I. ESTABLISHMENT OF MINIMUM VALUE: Within sixty (60) days following the date of execution of this Second Amendment, Landlord shall each select and pay for the services of a certified appraiser, who shall appraise the market value of the Leased Premises for its highest and best

use. The appraiser shall be instructed to value the Leased Premises for general office use, and shall not include the value of any equipment or fixtures that Tenant has installed in connection with its use and operation of the Leased Premises. The Tenant shall have the right to approve such appraiser and may disapprove any appraiser at its sole and absolute discretion; provided, however, that if Tenant fails to respond to Landlord's written request for such approval within 20 business days following Landlord's delivery of such request, then Tenant shall be deemed to have approved such appraiser. Once an appraiser has been approved and the appraisal completed, the value conclusion shall be established as the "Minimum Value" for purposes set forth in Section III. Said value conclusion shall be attached to this Second Amendment as Exhibit B.

II. OPTION TO PURCHASE:

A. At any time after August 11, 2007 and until expiration of the term of the Lease or any extensions thereof, the Tenant shall have the option to purchase the Leased Premises, (the "Purchase Option") by sending written notice to the Landlord stating the Tenant's intent to exercise its Purchase Option, not less than two hundred seventy (270) days prior to the date on which Tenant intends to close on the purchase of the Leased Premises. Upon notification to the Landlord of Tenant's intent to exercise its Purchase Option, the Parties will attempt to negotiate a purchase price. In the event that the Landlord and Tenant are unable to agree on a purchase price through negotiations, within a period of one hundred eighty (180) days following Tenant's notice to Landlord, then the purchase price shall be established by means of independent commercial appraisals of the Leased Premises, but in no event shall be less than the Minimum Value (hereinabove defined). In order to establish the purchase price, the Landlord and Tenant shall each select and pay for the services of a certified appraiser, each of which shall be instructed to value the Leased Premises for general office use, and shall not include the value of any equipment or fixtures that Tenant has installed in connection with its use and operation of the Leased

Premises. The two appraisers so selected shall agree on the selection of a third certified appraiser, the cost of which shall be equally shared between Landlord and Tenant, and who shall receive the same instructions to appraise the Leased Premises. The purchase price shall be the greater of: (i) the average of the two closest values reported by the three appraisers or (ii) the Minimum Value. If Tenant exercises its option to purchase the Leased Premises in accordance with the terms of this Lease Amendment, the conveyance of the Leased Premises by Landlord to Tenant shall be on an "as is" basis.

B. In the event of acceptance of this Option by the Tenant, the Landlord agrees as follows:

(i.) Upon notice of acceptance, a reasonable time shall be allowed for examination of the title by the Tenant; thereafter settlement is to be made promptly by both Parties. Title is to be good and marketable. If title is satisfactory, Tenant shall prepare and furnish a deed to be promptly executed and delivered by Landlord to Tenant. The Leased Premises are to be conveyed by special warranty deed, in fee simple (except easements), free and clear of all liens and encumbrances; subject only to covenants, restrictions, and conditions of record which will not in any way interfere with Tenant's proposed use of property. If the title is defective, Landlord will promptly take necessary action to remedy. If title cannot be remedied, Landlord will pay title search. Property shall be conveyed free of notices of violations of any municipal orders or requirements, unless Tenant consents.

(ii.) Rent, operating expenses, water rent, and interest on existing encumbrances, if applicable, shall be adjusted to date of settlement. Taxes, general, and special, are to be adjusted to date of settlement (according to the certification of taxes issued by the Director of Finance).

(iii.) Risk of loss or damage to the said property by fire or other casualty is assumed by Landlord until the deed is recorded.

(iv.) Settlement hereunder will be at the Office of the County Attorney, 101 Monroe Street, Rockville, Maryland or other such settlement office as designated by the Office of the County Attorney. The deed and such other papers, as are required of either Party by the terms hereof, shall be considered good and sufficient tender of performance of the terms hereof. Payment will be by County check or wire transfer. If required, funds arising out of this transaction may be used to pay off existing encumbrances.

III. PRORATIONS AND CLOSING COSTS: The Tenant shall be responsible for all transfer taxes. The Tenant will pay fro the preparation of the deed, recording fees and all of Tenant's closing costs and expenses. Tenant will pay for the settlement agent, whom the Tenant will select. Landlord agrees to pay for Landlord's closing costs and expenses and will pay any agricultural taxes due. All other closing costs shall be allocated to each Party based upon customary real estate transfer practices. Appropriate pro-rations of rent, real estate taxes, utilities and other costs shall be made among the Parties at the time of closing.

IV. OPTION TO EXTEND THE TERM OF THE LEASE: In the event the Tenant does not exercise its Purchase Option as provided above on or before November 9, 2014 (expiration date of the original Lease term), the Tenant shall have the right, by written notice to the Landlord delivered on or before May 9, 2014, to extend the term of the Lease for an additional term of ten (10) years, until November 9, 2024. All of the terms and conditions of the Lease as amended will remain in full force and effect during such extension, including the three percent (3%) annual escalation in rent.

V. EFFECT OF SECOND AMENDMENT: Except as amended and/or modified by this Second Amendment, the original Lease, as amended, is hereby ratified and confirmed and all other terms of the original Lease, as amended, shall remain in full force and effect, unaltered and unchanged by this Second Amendment. In the event of any conflict

between the provisions of this Second Amendment and the provisions of the original Lease, as amended, the provisions of this Second Amendment shall prevail.

VI. 1031 EXCHANGE CORPORATION: In the event that Tenant exercises its Purchase Option, Tenant must cooperate with Landlord, at Landlord's election and to the degree allowed by law, to structure the transaction as part of a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code, subject to the terms of this Section. Tenant understands and acknowledges that under no circumstances shall any exchange (a) delay, prevent or constitute a condition to closing of the transfer; (b) require Tenant to take title to any other property; or (c) cause, create or result in the assumption by Tenant of greater obligations, liabilities or responsibilities than those expressly provided for Tenant elsewhere in this Second Amendment or in the Lease, as amended. If and to the extent that Landlord requests Tenant to take any additional actions in connections with such exchange, Landlord agrees to reimburse Tenant upon request for any reasonable additional costs or expenses, including reasonable out-of pocket expenses and attorney's fees incurred by Tenant in connection with such a request. Landlord acknowledges it is relying solely upon its own tax advisors, experts and counsel in connection with any such exchange transaction.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed as of the above written date.

WITNESS:

By:_____

LANDLORD:

ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC

By: Signature on following page

ATTEST:

By: Rebecca S Domaruk

TENANT:

MONTGOMERY COUNTY, MARYLAND

By: Joseph F Beach

Joseph F. Beach
Assistant Chief Administrative Officer

Approved as to Form & Legality
Office of the County Attorney

By: Eileen O. Brennan

Recommended
Office of Real Estate

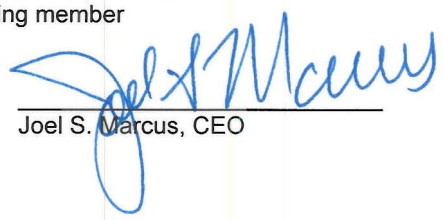
By: Cynthia Brenneman

Cynthia L. Brenneman, Director
Office of Real Estate

ECC Amendment

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

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

By: 
Joel S. Marcus, CEO