

### THIRD AMENDMENT TO DEED OF LEASE

~~December~~ THIS THIRD AMENDMENT TO DEED OF LEASE ("this Third Amendment") is dated as of ~~November 11~~, 2012 ("Effective Date"), by and between ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC., a Delaware limited liability company, having an address at 385 E. Colorado Blvd., Suite 299, Pasadena, California 91101 ("Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body politic and corporate, having an address at Executive Office Building, 101 Monroe Street, Rockville, Maryland 20850 ("Tenant").

#### RECITALS

A. Richtree Corporation, Landlord's predecessor in interest, and Tenant have entered into that certain Deed of Lease ("**Original Lease**") dated as of November 10, 1999, as amended by a First Amendment to Deed of Lease ("**First Amendment**") dated September 26, 2000, and a Second Amendment to Lease Agreement ("**Second Amendment**"; together with the Original Lease and the First Amendment, the "**Lease**") dated April 23, 2004, wherein Landlord leased to Tenant certain premises located at 1300 Quince Orchard Boulevard, Gaithersburg, Maryland 20879, as more particularly described in the Lease.

B. Landlord and Tenant desire to amend the Lease, among other things, to extend the Term of the Lease and to provide a tenant improvement allowance.

#### AGREEMENT

Now, therefore, the parties hereto agree that the Lease is amended as follows:

1. **Amendment to Section 2 (Lease Term).** Effective as of the Effective Date, Section 2 of the Lease is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 2:

2. **LEASE TERM.** Subject to the terms hereof, the term hereby created ("**Initial Lease Term**") shall commence on November 10, 1999 ("**Lease Commencement Date**"), and shall expire at 11:59 p.m. on November 30, 2014 ("**Initial Lease Expiration Date**"), unless earlier terminated pursuant to the terms of this Lease. The Initial Lease Term shall be automatically extended for a period of 7 years, commencing on December 1, 2014 ("**Second Lease Term**") and shall expire at 11:59 p.m. on November 30, 2021 ("**Second Lease Term Expiration Date**"; the Initial Lease Expiration Date, the Second Lease Term Expiration Date, and the expiration date of any Extension Term [as hereinafter defined] are hereinafter referred to as the "**Lease Expiration Date**"), unless earlier terminated or extended pursuant to the terms of this Lease.

A. Extension Options. Tenant shall have the right to extend the Lease Term upon the following terms and conditions:

i. Extension Rights. Tenant shall have 2 consecutive rights (each, an "**Extension Right**") to extend the Lease Term for 5 years each (each, an "**Extension Term**"; the Initial Lease Term, the Second Lease Term, and any Extension Term are hereinafter collectively referred to as the "**Lease Term**") on the same terms and conditions as this Lease (other than Base Annual Rent) by giving Landlord written notice of its election to exercise each Extension Right at least 12 months prior, and no earlier than 9 months prior, to the expiration of the Second Lease Term or the expiration of any prior Extension Term. The first Extension Term shall be for the period commencing on December 1, 2021 and expiring, unless earlier terminated or extended, on November 30, 2026. The second Extension Term shall be for the period commencing on December 1, 2026 and expiring, unless earlier terminated, on November 30, 2031.



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ii. Market Rate. Upon the commencement of any Extension Term, Base Annual Rent shall be payable at the Market Rate (as defined below). Base Annual Rent shall thereafter be adjusted on each anniversary of the commencement of such Extension Term by a percentage as determined by Landlord and agreed to by Tenant at the time the Market Rate is determined. As used herein, "Market Rate" shall mean the then market rental rate and prevailing market rent escalations taking into consideration comparable buildings of similar age, size, and location within a radius of one mile of the Building and for transactions and prevailing market concessions being negotiated at the time for tenants of similar size and credit as mutually agreed to by Landlord and Tenant.

iii. Arbitration. If, on or before the date that is 120 days prior to the expiration of the Second Lease Term, or the expiration of the then effective Extension Term, Tenant has not agreed with Landlord's determination of the Market Rate and the market rent escalations during such subsequent Extension Term after negotiating in good faith, Tenant may by written notice to Landlord not later than 120 days prior to the expiration of the Second Lease Term, or the expiration of any then effective Extension Term, elect arbitration as described in this Section. If Tenant and Landlord have not agreed on the Market Rate and the market rent escalations or Tenant does not elect such arbitration, Tenant shall be deemed to have waived any right to extend, or further extend, the Lease Term and all of the remaining Extension Rights shall terminate.

(a) Within 10 business days of Tenant's notice to Landlord of its election to arbitrate Market Rate and escalations, each party shall deliver to the other a proposal containing the Market Rate and escalations that the submitting party believes to be correct ("**Extension Proposal**"). If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Base Annual Rent and escalations for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within 7 business days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate and escalations. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 10 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's Arbitrator shall determine the Base Annual Rent and escalations for the Extension Term. The 2 Arbitrators so appointed shall, within 5 business days after their appointment, appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent.

(b) The decision of the Arbitrator(s) shall be made within 30 days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The average of the two closest Arbitrators in a three Arbitrator panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate and escalations are not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Annual Rent in an amount equal to the Base Annual Rent in effect immediately prior to the Extension Term and increased by 103%



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until such determination is made. After the determination of the Market Rate and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute and deliver an amendment recognizing the Market Rate and escalations for the Extension Term.

(c) An "Arbitrator" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in the appraisal of improved office and high tech industrial real estate in the greater Gaithersburg-Rockville, Maryland metropolitan area, or (B) a licensed commercial real estate broker with not less than 15 years' experience representing landlords and/or tenants in the leasing of office and flex space in the greater Gaithersburg-Rockville, Maryland metropolitan area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

iv. Rights Personal. Extension Rights are personal to Tenant and are not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in this Lease.

v. Exceptions. Notwithstanding anything set forth above to the contrary, Extension Rights shall not be in effect and Tenant may not exercise any of the Extension Rights: (i) during any period of time that Tenant is in default under any provision of this Lease; or (ii) if Tenant has been in default under any provision of this Lease 3 or more times, regardless of whether the defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise an Extension Right, regardless of whether the defaults are cured.

vi. No Extensions. The period of time within which any Extension Rights may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Rights.

vii. Termination. The Extension Rights shall terminate and be of no further force or effect even after Tenant's due and timely exercise of an Extension Right, if, after such exercise, but prior to the commencement date of an Extension Term, (i) Tenant fails to timely cure any default by Tenant under this Lease after written notice by Landlord; or (ii) Tenant has been in default 3 or more times during the period from the date of the exercise of an Extension Right to the date of the commencement of the Extension Term, regardless of whether such defaults are cured.

**2. Amendment to Section 3.C (Interest).** Effective as of the Effective Date, Section 3.C of the Lease is hereby amended by deleting the reference to "15% per annum" and adding in its place "10% per annum."

**3. Amendment to Section 4 (Annual Rent Escalation).** Effective as of the Effective Date, Section 4 of the Lease is hereby amended by deleting that Section in its entirety and replacing it with the following new Section 4:

4. **ANNUAL RENT ESCALATION.** For the period between the Lease Commencement Date and November 9, 2014, Base Annual Rent (and corresponding installments of Base Monthly Rent) payable by Tenant shall be adjusted on each anniversary of the Rent



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Commencement Date to equal 103% of the Base Monthly Rent in effect immediately prior to such adjustment.

A. Commencing on November 10, 2014 and continuing to December 31, 2015, the Base Annual Rent shall be an amount equal to \$960,295, and each corresponding installment of Monthly Base Rent shall be an amount equal to \$80,024.58.

B. Commencing on January 1, 2016 and on each anniversary thereafter for the balance of the Second Lease Term, the Base Annual Rent shall be increased (each an "Adjustment Date") by multiplying the Base Annual Rent payable immediately before such Adjustment Date by 103% and adding the resulting amount to the Base Annual Rent payable immediately before such Adjustment Date. Base Annual Rent, as so adjusted, shall thereafter be due as provided herein. Base Annual Rent adjustments for any fractional calendar month shall be prorated.

**4. Amendment to Section 6 (Landscaping).** Effective as of the Effective Date, Section 6 of the Lease is hereby amended by adding the following new Section 6.E immediately after Section 6.D:

E. Landscaping. During the Lease Term, (i) Landlord shall, at its expense, perform routine landscaping services at the Leased Premises comparable to the quality and nature of landscaping services that owners of comparable office building projects provide to their projects in the Gaithersburg, Maryland area, and (ii) Tenant shall, at its expense, replace any trees, shrubs, bushes, and similar landscaping in need of replacement with trees, shrubs, bushes, and similar landscaping of comparable quality ("**Landscaping Replacement**"). Pursuant to the Work Letter attached to the Third Amendment to Deed of Lease dated November \_\_, 2012 ("**Third Amendment**") between Landlord and Tenant, Landlord has provided a TI Allowance (as defined in the Work Letter). On the Effective Date of the Third Amendment, Landlord shall deduct an amount equal to \$20,000 of the TI Allowance that shall be placed by Landlord into a reserve ("**Landscaping Reserve**") for Landscaping Replacement. Tenant shall have the right to draw on these funds to pay for the costs incurred in connection with any Landscaping Replacement. As long as Tenant is not in default hereunder, any unused funds in the Landscaping Reserve in existence as of the expiration of the Second Lease Term shall, at Tenant's sole option, be refunded to Tenant within 30 days or form a part of the TI Allowance (as defined in the Third Amendment) and be used in accordance with the terms and conditions thereof. Tenant may request such funds from the Landscaping Reserve by submitting reasonably detailed invoices for the costs incurred in connection with the Landscaping Replacement.

**5. Amendment to Section 10.B (Recapture).** Effective as of the Effective Date, Section 10.B of the Lease is hereby amended by deleting that paragraph in its entirety and replacing it with "Intentionally Deleted."

**6. Amendment to Section 21.** Effective as of the Effective Date, Section 21 of the Lease is hereby amended by adding the following new Section 21.C immediately after Section 21.B:

C. Subordination, Non-Disturbance, and Attornment. Attached hereto as a part hereof as **Exhibit F** is the form of subordination, non-disturbance, and attornment agreement that Landlord shall submit, in response to Tenant's written request, to the Holder (as defined below) of a first lien Mortgage (as defined below) at any time during the Lease Term covering any or all of the Leased Premises or the land on which the Leased Premises are located. Landlord makes no guaranty, representation, or warranty that the Holder will execute and deliver such form or, if the Holder agrees to execute and deliver such form, that the Holder



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will not make material changes thereto. If Holder does not agree to use such form, on Tenant's written request, Landlord shall use its commercially reasonable efforts (but with no obligation to pay any out-of-pocket fees or sums) to obtain from such Holder a non-disturbance agreement on a commercially reasonable form (which shall be reasonably acceptable to Tenant) in favor of Tenant assuring Tenant of the provisions of the last sentence of Section 21.A. above. The term "Mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "Holder" of a Mortgage shall be deemed to include the beneficiary under a deed of trust.

**7. Amendment to Section 22.** Effective as of the Effective Date, Section 22.B of the Lease is hereby amended by adding the following language at the end of Section 22.B:

Notwithstanding any contrary provision contained in this Section 22, **Exhibit G** attached hereto as a part hereof shall constitute the form of estoppel certificate that Tenant is obligated to execute and deliver to Landlord (as defined below) under this Section 22.

**8. Amendment to Section 33.** Effective as of the Effective Date, Section 33 of the Lease is hereby amended by deleting that section in its entirety and replacing it with the following new Section 33

A. Landlord acknowledges that (i) Tenant has appropriated funds only for payment of Base Annual Rent and other rent payable by Tenant under this Lease (collectively, "Rent") for the period July 1, 2012 to June 30, 2013, and (ii) Tenant's obligations under this Lease to pay Rent in future years is subject to the appropriation of funding for such purpose in future years by Tenant. The term "Tenant", as used herein, includes the County Executive, the County Council, and all County employees and agents of the County. 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. With the exception of Section 8.D below, Landlord irrevocably waives any claim for unpaid Rent in future years against Tenant if funds are not appropriated in future years for payment of such 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 that arise from or relate to the County's performance or non-performance of its obligations under this Lease prior to the later to occur of the County's surrender and vacation of the Premises in accordance with the terms of this Lease and the last day for which funding is appropriated for the payment of Rent.

B. 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.

C. 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 15<sup>th</sup> and the 31<sup>st</sup> of the month. Tenant shall give Landlord written notice 7 business days after Tenant makes 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 Leased Premises. Except as otherwise provided in Section 7.D below, if this Lease is terminated under this Section,



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Landlord, in addition to waiving all claims against Tenant for unpaid Rent in future years if funds are not appropriated in future years for payment of such Rent, shall not be entitled to reimbursement for the cost of unamortized build-out, finishes, or other similar expenses incurred by Landlord under this Lease.

D. Notwithstanding the foregoing, if this Lease is terminated for any reason at any time prior to November 30, 2021, Tenant shall pay to Landlord as of the effective date of such termination of this Lease an amount equal to the sum of the unamortized costs remaining at the time of the effective date of such termination of: (a) the TI Allowance (as defined in the Third Amendment), and (b) the brokerage commission paid by Landlord to Jones Lang LaSalle in connection with the Third Amendment. The unamortized costs of both the TI Allowance and the brokerage commission shall be calculated by multiplying \$0.30 times 54,874 square feet times the remaining months of the term of this Lease ("**Termination Fee**"). Landlord and Tenant agree that the Termination Fee fully and fairly compensates Landlord for any unamortized commissions and build-out, fit, finishes, or other similar expenses incurred by Landlord under this Lease.

**9. Amendment to Section II.A (Option to Purchase) in Second Amendment.** Effective as of the Effective Date, Section II.A of the Second Amendment is hereby amended by deleting that provision in its entirety and replacing it with the following new Section 11.A:

A. Tenant shall have the option to purchase the Leased Premises ("**Purchase Option**") within a period of 180 days commencing on each fifth (5<sup>th</sup>) anniversary of the Effective Date of the Third Amendment by sending written notice to Landlord evidencing Tenant's exercise of the Purchase Option ("**Exercise Notice**"). To illustrate the timing, assume the Effective Date of the Third Amendment is November 1, 2012. Based on this assumption, Tenant's first opportunity to exercise the Purchase Option would arise during the period November 1, 2017 to April 30, 2018. Closing on the purchase shall take place within 180 days after the date of Landlord's receipt of the Exercise Notice. On Landlord's receipt of the Exercise Notice, Landlord and Tenant will meet and negotiate in good faith a purchase price. If Landlord and Tenant are unable to agree on a purchase price through negotiations within a period of 60 days after the date of Landlord's receipt of the Exercise Notice, then the purchase price will be established by means of independent commercial appraisals of the Leased Premises, but in no event shall be less than the Minimum Value (as defined in the Second Amendment). To establish the purchase price, Landlord and Tenant shall each select and pay for the services of a certified appraiser, each of whom 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 whom 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 the Purchase Option in accordance with the terms of the Second Amendment (as amended by the Third Amendment), the conveyance of the Leased Premises by Landlord to Tenant shall be on an "as is" basis.

- i. Notwithstanding any contrary provision contained in this Lease, if the Property is encumbered by financing at the time of Tenant's exercise of the Purchase Option ("**Existing Financing**"), the closing on the Purchase Option shall be held on the first business day after the maturity date of the Existing Financing. If the maturity date of the Existing Financing is more



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than 270 days from the date of Landlord's receipt of the Exercise Notice, the parties shall, within 180 days before such maturity date, re-establish the purchase price in accordance with the provisions set forth in this Section II.A. Such purchase price, as re-established, shall constitute the purchase price for the Leased Premises. If Tenant elects to close before such maturity date, the closing shall be held 30 days after the date of Landlord's receipt of the Exercise Notice but only if Tenant pays any prepayment premium, penalty, breakup fee, or other cost or expense incurred by Landlord in causing the lien of any Existing Financing encumbering the Property to be satisfied and released of record in connection with the closing of the Purchase Option.

**10. Amendment to Section IV (Option to Extend the Term of the Lease) in Second Amendment.** Effective as of the Effective Date, Section IV of the Second Amendment is hereby amended by deleting that provision in its entirety and replacing it with "Intentionally Deleted."

**11. 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 ("**Work Letter**") attached hereto as a part hereof as **Exhibit E**. The Original Lease is hereby amended by adding **Exhibit E** attached hereto as **Exhibit E** thereto.

**12. Miscellaneous.**

a. Terms used in this Third Amendment and not otherwise defined shall have the meanings ascribed to them in the Lease.

b. This Third Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Third Amendment may be amended only by an agreement in writing, signed by the parties hereto.

c. This Third Amendment is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

d. This Third 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 Third Amendment attached thereto.

e. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with this Third Amendment and that no Broker brought about this transaction, other than Jones Lang LaSalle Brokerage, Inc. ("**Jones Lang**"). Jones Lang shall be paid by Landlord pursuant to a separate agreement between Landlord and Jones Lang. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than Jones Lang, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this Third Amendment.



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f. Except as amended and/or modified by this Third Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Third Amendment. In the event of any conflict between the provisions of this Third Amendment and the provisions of the Lease, the provisions of this Third Amendment shall prevail. Regardless of whether specifically amended by this Third Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Third Amendment.

**[Signatures on Next Page]**



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IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment under seal as of the day and year first above written.

TENANT:

MONTGOMERY COUNTY, MARYLAND,  
a Maryland corporation

By: Ramona Bell Pearson (SEAL)  
Name: Ramona Bell-Pearson  
Title: Asst. Chief Administrative Officer

Approved as to Form and Legality  
Office of the County Attorney

Recommended

By: Dale Dwyer  
Name: Alexandra Thompson  
Title: Assistant County Attorney

By: Cynthia Bennemon  
Name: Cynthia Bennemon  
Title: Director, office of Real Estate

LANDLORD:

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: Jackie Clem (SEAL)  
Name: Jackie Clem  
Title: VP Real Estate Legal Affairs



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EXHIBIT E  
WORK LETTER

WORK LETTER

**THIS WORK LETTER** dated November \_\_, 2012 (this "**Work Letter**") is made and entered into by and between **ARE-20/22/1300 FIRSTFIELD QUINCE ORCHARD, LLC.**, a Delaware limited liability company ("**Landlord**"), and **MONTGOMERY COUNTY, MARYLAND**, a body politic and corporate ("**Tenant**"), and is attached to and made a part of the Third Amendment to Deed of Lease dated November \_\_, 2012 ("**Third Amendment**"), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Third Amendment.

**1. General Requirements.**

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

b. **Landlord's Authorized Representative.** Landlord designates Lawrence J. Diamond and Perry Finney (either such individual acting alone, "**Landlord's Representative**") as the only persons authorized to act for Landlord pursuant to this Work Letter. Tenant 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 Work Letter unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than 5 business days advance written notice to Tenant. Landlord's Representative shall be the sole persons authorized to direct Landlord's contractors in the performance of the Tenant Improvements.

c. **Architects, Consultants, and Contractors.** Landlord and Tenant hereby acknowledge and agree that: (i) any subcontractors for the Tenant Improvements (as defined below) shall be selected by Landlord, subject to Tenant's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, (ii) the architect ("**TI Architect**") for the Tenant Improvements shall be selected on a competitive basis from one of the following: Gaudreau, Inc., and two other architect's to be proposed by Landlord subject to Tenant's approval (such approval not to be unreasonably withheld, delayed, or conditioned), and (iii) the general contractor shall be selected on a competitive bid basis from one of the following: Riparius Construction, Edgley Construction, Forrester Construction, The Whiting-Turner Contracting Company, Coakley Williams, and Kane Construction (each a "**Pre-Approved General Contractor**," and collectively, the "**Pre-Approved General Contractors**"). Tenant shall have the right, but not the obligation, to submit the names of not more than 3 of the Pre-Approved General Contractors (each a "**Tenant Designated General Contractor**") to submit bids for the Tenant Improvements. The selection and award of the Tenant Improvements to the successful Pre-Approved General Contractor shall be made (A) jointly by Landlord and Tenant based on the most qualified lowest bid if made by a Pre-Approved Contractor other than a Tenant Designated General Contractor, and (B) solely by Tenant based on the most qualified lowest bid if made by a Tenant Designated General Contractor. Notwithstanding anything to the contrary, Landlord shall hold all contracts and reimburse the General Contractor directly. Landlord and Tenant shall cooperate and work with each other to develop



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and issue a comprehensive bid format that will allow Tenant to readily identify and understand all material cost elements in the Pre-Approved General Contractor bid responses, including, but not limited to, subcontractor costs, add alternates and deducts, clarifications, exclusions, general conditions, fees and change order mark-ups. The contractor format for the Pre-Approved General Contractor shall be on a stipulated sum format on Landlord's standard form.

## 2. Tenant Improvements.

a. **Tenant Improvements Defined.** As used herein, "Tenant Improvements" shall mean all improvements to the Leased Premises of a fixed and permanent nature as shown on the TI Construction Drawings, as defined in Section 2(c) below. Other than the Tenant Improvements, Landlord shall not have any obligation whatsoever with respect to any improvements to the Leased Premises.

b. **Tenant's Space Plans.** Tenant and TI Architect shall deliver to Landlord schematic drawings and outline specifications ("**TI Design Drawings**") detailing Tenant's requirements for the Tenant Improvements. Not more than 10 days thereafter, Landlord shall deliver to Tenant the written reasonable objections, questions, or comments of Landlord and the TI Architect with regard to the TI Design Drawings. Tenant shall cause the TI Design Drawings to be revised to address such written comments and shall resubmit such drawings to Landlord for approval within 10 business days thereafter. Such process shall continue until Landlord has approved the TI Design Drawings.

c. **Working Drawings.** Not later than 30 business days following the approval of the TI Design Drawings, Landlord shall cause the TI Architect to prepare and deliver to Tenant for review and comment construction plans, specifications, and drawings for the Tenant Improvements ("**TI Construction Drawings**"), which TI Construction Drawings shall be prepared substantially in accordance with the TI Design Drawings. Tenant shall be solely responsible for ensuring that the TI Construction Drawings reflect Tenant's requirements for the Tenant Improvements. Tenant shall deliver its written comments on the TI Construction Drawings to Landlord not later than 20 business days after Tenant's receipt of the same; provided, however, that Tenant may not disapprove any matter that is consistent with the TI Design Drawings without submitting a Change Request. Landlord and the TI Architect shall consider all such comments in good faith and shall, within 10 business days after receipt, notify Tenant how Landlord proposes to respond to such comments, but Tenant's review pursuant to the foregoing sentence shall not delay the design or construction schedule for the Tenant Improvements. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Provided that the design reflected in the TI Construction Drawings is consistent with the TI Design Drawings, Tenant shall approve the TI 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 TI Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(b) below).

d. **Approval and Completion.** Upon any dispute regarding the design of the Tenant Improvements, which is not settled within 10 business days after notice of such dispute is delivered by one party to the other, Tenant may make the final decision regarding the design of the Tenant Improvements, provided (i) 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, (ii) that all costs and expenses resulting from any such decision by Tenant shall be payable out of the TI Fund (as defined in Section 5(d) below), and (iii) Tenant's decision will not affect the base Building, structural components of the Building or any Building systems. Any changes to the TI Construction Drawings after Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

## 3. Performance of Tenant Improvements.



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a. **Commencement and Permitting.** Landlord shall commence construction of the Tenant Improvements upon obtaining a building permit ("TI Permit") authorizing the construction of the Tenant Improvements consistent with the TI Construction Drawings approved by Tenant. The cost of obtaining the TI Permit shall be payable from the TI Fund. Tenant shall assist Landlord in obtaining the TI Permit. If any Governmental Authority having jurisdiction over the construction of the Tenant Improvements or any portion thereof shall impose terms or conditions upon the construction thereof that: (i) are inconsistent with Landlord's obligations hereunder, (ii) increase the cost of constructing the Tenant Improvements, or (iii) will materially delay the construction of the Tenant Improvements, Landlord and Tenant shall reasonably and in good faith seek means by which to mitigate or eliminate any such adverse terms and conditions.

b. **Completion of Tenant Improvements.** Landlord shall substantially complete or cause to be substantially completed the Tenant Improvements in a good and workmanlike manner, in accordance with the TI Permit subject, in each case, to Minor Variations and normal "punch list" items of a non-material nature that do not interfere with the use of the Premises ("**Substantial Completion**" or "**Substantially Complete**"). Upon Substantial Completion of the Tenant Improvements, Landlord shall require the TI Architect and the general contractor to execute and deliver, for the benefit of Tenant and Landlord, a Certificate of Substantial Completion in the form of the American Institute of Architects ("**AIA**") document G704. For purposes of this Work Letter, "**Minor Variations**" shall mean any modifications reasonably required: (i) to comply with all applicable Legal Requirements (as defined below) and/or to obtain or to comply with any required permit (including the TI Permit); (ii) to comply with any request by Tenant for modifications to the Tenant Improvements; (iii) to comport with good design, engineering, and construction practices that are not material; or (iv) to make reasonable adjustments for field deviations or conditions encountered during the construction of the Tenant Improvements. For purposes of this Work Letter, "**Legal Requirements**" means all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Leased Premises, and to the use and occupancy thereof.

c. **Selection of Materials.** Where more than one type of material or structure is indicated on the TI Construction Drawings approved by Landlord and Tenant, the option will be mutually selected by Landlord and Tenant. As to all building materials and equipment that Landlord is obligated to supply under this Work Letter, Landlord shall select the manufacturer thereof in its sole and absolute subjective discretion. All construction materials used, other than Tenant preapproved reuse of any existing materials on the floor of the Leased Premises, shall be new and shall be subject to Landlord's and industry standard warranties.

d. **Delivery of the Premises.** When the Tenant Improvements are Substantially Complete, subject to the remaining terms and provisions of this Section 3(e), Tenant shall accept the Leased Premises as improved by the Tenant Improvements. Tenant's taking possession and acceptance of the Leased Premises shall not constitute a waiver of: (i) any warranty with respect to workmanship (including installation of equipment) or material (exclusive of equipment provided directly by manufacturers), (ii) any non-compliance of the Tenant Improvements with applicable Legal Requirements, or (iii) any claim that the Tenant Improvements were not completed substantially in accordance with the TI Construction Drawings (subject to Minor Variations and such other changes as are permitted hereunder) (collectively, a "**Construction Defect**"). Landlord shall promptly cause any Construction Defect to be corrected, whether observed before or after Substantial Completion and regardless of whether fabricated, installed, or completed, and shall cause to be corrected Tenant Improvements found to be defective or non-conforming. After Substantial Completion of the Tenant Improvements, the cost to correct such defective Tenant Improvements (to the extent not borne by insurance, covered by warranty or the responsibility of the TI Architect or General Contractor under their respective construction documents for the Tenant Improvements) shall be treated as part of the cost of the Tenant Improvements or passed through to Tenant as an Operating Expense payable solely by Tenant and not other tenants of the Building.



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e. **Warranties.** Tenant shall be entitled to receive the benefit of all construction warranties and manufacturer's equipment warranties relating to equipment installed in the Leased Premises. If requested by Tenant, Landlord shall attempt to obtain extended warranties from manufacturers and suppliers of such equipment, but the cost of any such extended warranties shall be borne solely out of the TI Fund. Landlord shall promptly undertake and complete, or cause to be completed, all punch list items.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements after the delivery and approval by Landlord of the TI Design 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 TI Architect, such approval not to be unreasonably withheld, conditioned or delayed.

a. **Tenant's Request For Changes.** If Tenant shall request changes to the Tenant Improvements ("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 that will be incurred, to analyze such Change Request (which costs shall be paid from the TI Fund to the extent actually incurred, regardless of whether such change is implemented). Landlord shall thereafter submit to Tenant in writing, within 5 business 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 Tenant Improvements will be Substantially Complete. Any such delay in the completion of the Tenant Improvements caused by a Change, including any suspension of the Tenant Improvements while any such Change is being evaluated and/or designed, shall be Tenant Delay.

b. **Implementation of Changes.** If Tenant: (i) approves in writing the cost or savings and the estimated extension in the time for completion of the Tenant Improvements, if any, and (ii) deposits with Landlord any Excess TI Costs required in connection with such Change, Landlord shall cause the approved Change to be instituted. Notwithstanding any approval or disapproval by Tenant of any estimate of the delay caused by such proposed Change, the TI 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.**

a. **Budget for Tenant Improvements.** Before the commencement of construction of the Tenant Improvements, Landlord shall obtain a detailed breakdown by trade of the costs incurred or that will be incurred in connection with the design and construction of the Tenant Improvements ("Budget"). The Budget shall be based on the TI Construction Drawings approved by Tenant and shall include a payment to Landlord, as additional rent, of an administrative fee ("Administrative Fee") equal to 1.5% of the actively managed hard and soft TI Costs for monitoring and inspecting the construction of the Tenant Improvements and Changes, which sum shall be payable from the TI Fund (as defined in Section 5(d)); provided, however, that Administrative Fee shall not be assessed or imposed on that portion of the Tenant Improvements relating to the Furniture Allowance (as defined below). Administrative Fee 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 monitoring the construction of the Tenant Improvements and Changes, and shall be payable out of the TI Fund. If the Budget is greater than the TI Allowance, Tenant shall deposit with Landlord the difference, in cash, prior to the commencement of construction of the Tenant Improvements or Changes, for disbursement by Landlord as described in Section 5(d).



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**b. TI Allowance and Furniture Allowance.**

- i. **TI Allowance.** Landlord shall provide to Tenant a tenant improvement allowance (“TI Allowance”) of \$20 per rentable square foot of the Premises, or \$1,097,480 in the aggregate, which is included in the Base Annual Rent set forth in the Third Amendment. The TI Allowance shall be disbursed by Landlord to the General Contractor in accordance with this Work Letter. Tenant shall have no right to the use or benefit (including any reduction to or payment of Base Annual Rent) of any portion of the TI Allowance not required for the construction of (i) the Tenant Improvements described in the TI Construction Drawings approved pursuant to Section 2(d) or (ii) any Changes pursuant to Section 4. Tenant shall have the right to use and requisition all or any part of the TI Allowance for the Tenant Improvements until November 30, 2019, it being understood and agreed that Tenant shall have no further right to use and requisition all or any part of the TI Allowance from and after November 30, 2019; provided, however, that if any portion of the Landscaping Allowance automatically reverts and becomes a part of the TI Allowance at the end of the Second Lease Term, Tenant shall have the right to use all or any portion of such balance for Tenant Improvements for a period of one year after the expiration of the Second Lease Term.
  
- ii. **Furniture Allowance.** In addition to the TI Allowance, Landlord shall provide to Tenant an allowance in the amount not to exceed \$600,000 (“Furniture Allowance”) for the purpose of purchasing furniture for installation in the Leased Premises. Within 180 days after the Effective Date of the Third Amendment, Tenant shall deliver to Landlord a reasonably detailed list of furniture that Landlord shall purchase on behalf of Tenant, the cost of which furniture (including sales taxes and delivery charges) shall not exceed the Furniture Allowance along with verification from funding sources. With authorization from Tenant to Landlord for each milestone payment, Landlord will make payments directly to the furniture vendor from the Furniture Allowance in accordance to the furniture milestone payment schedule below and Tenant shall then reimburse Landlord, as additional rent for each milestone payment made by Landlord, within 45 business days from Tenant’s receipt of Landlord’s invoice. If Tenant fails to reimburse Landlord within 45 business days for any authorized payment, then Landlord, in addition to any other right or remedy Landlord may have under the Lease or otherwise for the non-payment of Rent, may charge interest on the unpaid balance from the 46<sup>th</sup> business day until such milestone payment reimbursement has been paid. Interest shall be calculated at 7% per annum, payable daily. By way of example, the daily amount due to Landlord for a \$100,000 balance would be \$19.18 ( $\$100,000 \times 7\% / 365$ ).

	Milestone	\$ Value	%	Comment
1.	Receipt of contract to secure order, completion of shop drawings, up front engineering, technical support, and ordering of raw material		35%	To be invoiced upon receipt of order
2.	Supply and deliver power		4.5%	To be



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	distribution units (PDU)			invoiced upon receipt of PDU shipment
3.	Supply and Install Consoles on Truck 1		12.5%	To be invoiced upon receipt of shipment
4.	Supply and Install Consoles on Truck 2		12.5%	To be invoiced upon receipt of shipment
5.	Supply and Install Consoles on Truck 3		12.5%	To be invoiced upon receipt of shipment
6.	Supply and Install Consoles on Truck 4		12.5%	To be invoiced upon receipt of shipment
7.	Supply Owners Manuals and punch list		10.5%	To be invoiced upon sign off
<b>TOTAL</b>			<b>100%</b>	

c. **Costs Includable in TI Fund.** The TI Fund shall be used solely for the payment of design, permits and construction costs in connection with the construction of the Tenant Improvements, including, without limitation, the cost of electrical power and other utilities used in connection with the construction of the Tenant Improvements, the cost of preparing the TI Design Drawings and the TI Construction Drawings, all costs set forth in the Budget, including Landlord’s Administrative Rent, Landlord’s out-of-pocket expenses, costs resulting from Tenant Delays and the cost of Changes (collectively, “**TI Costs**”). Notwithstanding anything to the contrary contained herein and except as set forth in Section 5.b.ii above, the TI Fund and other funds of Landlord shall not be used to purchase any furniture, personal property or other non-Building system materials or equipment, including, but not limited to, Tenant’s voice or data cabling, non-ducted biological safety cabinets and other scientific equipment not incorporated into the Tenant Improvements.

d. **Excess TI Costs.** Landlord shall have no obligation to bear any portion of the cost of any of the Tenant Improvements except to the extent of the TI Allowance. If at any time the remaining TI Costs under the Budget exceed the remaining unexpended TI Allowance, Tenant shall deposit with Landlord, as a condition precedent to Landlord’s obligation to complete the Tenant Improvements, 100% of the then current TI Cost in excess of the remaining TI Allowance (“**Excess TI Costs**”). If Tenant fails to deposit any Excess TI Costs with Landlord, Landlord shall have all of the rights and remedies set forth in the Lease for nonpayment of Rent (including, but not limited to, the right to interest at the default rate set forth in Section 3.C of the Lease and the right to assess a late charge). For purposes of any litigation instituted with regard to such amounts, those



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amounts will be deemed Rent under the Lease. The TI Allowance and Excess TI Costs are herein referred to as the "TI Fund." Funds deposited by Tenant shall be the first disbursed to pay TI Costs. Notwithstanding anything to the contrary set forth in this Section 5(d), Tenant shall be fully and solely liable for TI Costs and the cost of Minor Variations in excess of the TI Allowance. If upon Substantial Completion of the Tenant Improvements and the payment of all sums due in connection therewith there remains any undisbursed portion of the TI Fund, Tenant shall be entitled to such undisbursed TI Fund solely to the extent of any Excess TI Costs deposit Tenant has actually made with Landlord.

#### 6. Tenant Access.

a. **Tenant's Access Rights.** Landlord hereby agrees to permit Tenant access, at Tenant's sole risk and expense, to the Leased Premises to review, monitor, and oversee ("**Oversight Activities**") the construction of the Tenant Improvements, provided that such Oversight Activities (i) are coordinated with the TI Architect and the general contractor, and comply with the Lease and all other reasonable restrictions and conditions Landlord may impose, (ii) do not interfere with the Tenant Improvements, or (iii) cause any delays in the construction of the Tenant Improvements.

b. **No Interference.** Neither Tenant nor any agents, employees, or contractors shall interfere with the performance of the Tenant Improvements, nor with any inspections or issuance of final approvals by applicable Governmental Authorities, and upon any such interference, Landlord shall have the right to exclude Tenant and any agents, employees, or contractors from the Leased Premises until Substantial Completion of the Tenant Improvements.

c. **No Acceptance.** The fact that Tenant may, with Landlord's consent, enter into the Leased Premises prior to the date the Tenant Improvements are Substantially Complete for the purpose of the Oversight Activities shall not be deemed an acceptance by Tenant of possession of the Leased Premises, but in such event Tenant shall defend with counsel reasonably acceptable by Landlord, indemnify and hold Landlord harmless from and against any loss of or damage to Tenant's property, completed work, fixtures, equipment, materials or merchandise, and from liability for death of, or injury to, any person, caused by the act or omission of Tenant or any agents, employees, or contractors.

#### 7. Miscellaneous.

a. **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, unless expressly set forth herein to the contrary

b. **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.



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**EXHIBIT F**

Form of Subordination, Non-Disturbance, and Attornment Agreement

**SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ among \_\_\_\_\_ (the "Lender"), \_\_\_\_\_ a \_\_\_\_\_ [state], [type of entity] ("Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "Tenant") (the Lender, the Landlord, and the Tenant together the "Parties").

**RECITALS**

A. Landlord and Tenant have entered into a certain lease agreement dated \_\_\_\_\_ (the "Lease") for the premises consisting of \_\_\_\_\_ square feet, more or less (the "Leased Premises"). The Leased Premises are part of the property located in Montgomery County, Maryland known as \_\_\_\_\_ on Tax Map \_\_\_\_\_, commonly known as 1300 Quince Orchard Boulevard, Gaithersburg, Maryland, and more particularly described on **EXHIBIT A**, attached and incorporated as if fully set forth (the "Property").

B. Lender and the Landlord have represented to the Tenant that the Lender will make a loan to the Landlord in the principal amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (the "Loan"), secured by a mortgage or deed of trust which will be recorded among the Land Records for Montgomery County, Maryland, and which may be amended or modified from time to time (the "Mortgage") and an assignment of leases and rents from the Landlord to the Lender, which covers the Property, including the Leased Premises.

C. Tenant has agreed that the Lease shall be subject to and subordinate to the Mortgage held by the Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants made among the Parties in this Agreement, and the payment of the sum of \$10.00 by the Lender to the Tenant, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Subordination and Consent. The Parties agree that the Lease is and shall continue to be subject and subordinate to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage and to all advances made under the Mortgage. Tenant acknowledges that Landlord will execute and deliver to the Lender an assignment of the Lease as security for the Loan, and Tenant expressly consents to the assignment. Tenant agrees that if there is a default by the Landlord in performance of the terms of the Loan that Lender may, at Lender's option, demand in writing sent to the Tenant by first class mail, postage prepaid and certified mail to the address provided below, that all payments of rent and additional rent due under the Lease must be paid directly by Tenant to the Lender at the address specified below or as otherwise specified in writing by the Lender to the Tenant. Tenant agrees that not more than 30 days after receiving the Lender's written demand for payment of rent directly to the Lender that Tenant will remit all payments of rent and additional rent due under the Lease to the Lender at the address provided by the Lender in writing. **THE PARTIES AGREE THAT PAYMENTS MADE TO LENDER IN ACCORDANCE WITH THE REQUIREMENTS OF THE LEASE AND THIS AGREEMENT WILL CONSTITUTE PERFORMANCE OF THE TENANT'S PAYMENT OBLIGATIONS UNDER THE LEASE, AND THAT NEITHER THE LANDLORD NOR THE LENDER WILL HAVE ANY CLAIMS AGAINST THE COUNTY FOR ANY RENT, ADDITIONAL RENT, OR OTHER PAYMENTS MADE BY TENANT IN CONFORMANCE WITH**



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THE TERMS OF THE LEASE AND THIS AGREEMENT AT THE WRITTEN DIRECTION OF THE LENDER. The Landlord and the Lender fully indemnify the Tenant for any such payments made under this Paragraph, and the Lender will provide a defense to any claim for payment made by the Landlord or any party claiming through the Landlord for payments made by Tenant to the Lender under this Agreement.

2. Nondisturbance. The Lender agrees with the Tenant that, in the event that the Lender becomes the fee simple owner of the Property, so long as Tenant complies with and performs all of Tenant's material obligations under the Lease, (a) the Lease will remain in full force and effect as a direct Lease between the Lender, including the Lender's successors and assigns, and the Tenant, subject to all of the terms, covenants and conditions of the Lease, for the balance of the Lease Term, and that Lender and Lender's successors and assigns will not disturb Tenant's possession of the Leased Premises, and (b) the Lender and the Lender's successors and assigns will recognize Tenant as the tenant of the Leased Premises for the remainder of the Lease Term in accordance with the provisions of the Lease. THE PARTIES AGREE THAT IF THE LENDER OR THE LENDER'S SUCCESSORS OR ASSIGNS BECOMES THE FEE SIMPLE OWNER OF THE PROPERTY, LENDER WILL NOT BE: (I) SUBJECT TO ANY CLAIMS, OFFSETS, OR DEFENSES WHICH TENANT MIGHT HAVE AGAINST LANDLORD; OR (II) LIABLE FOR ANY ACT OR OMISSION OF LANDLORD; OR (III) BOUND BY ANY RENT OR ADDITIONAL RENT PAID MORE THAN ONE MONTH IN ADVANCE OR ANY SECURITY DEPOSIT OR OTHER PREPAID CHARGE PAID TO LANDLORD; OR (IV) BOUND BY ANY AMENDMENT OR MODIFICATION OF THE LEASE UNLESS WRITTEN NOTICE OF THE AMENDMENT OR MODIFICATION WAS PROVIDED TO THE LENDER IN ADVANCE.

3. Attornment. The Tenant agrees that if Lender becomes the fee simple owner of the Property and provides the Tenant with written notice of the change in ownership, the Tenant will attorn to and recognize Lender or Lender's successors or assigns as the landlord under the Lease for the remainder of the Lease Term, and the Tenant will perform all of its obligations under the Lease.

4. Lender's Option to Cure Lease Defaults. If Landlord fails to perform or observe any of the terms, conditions, or agreements in the Lease, Tenant will give written notice to the Lender and the Lender will have the right, but not the obligation, to cure the default or defaults on behalf of the Landlord. Tenant will not terminate or rescind the Lease or withhold payments of rent or additional rent under the Lease for a period of 30 days following receipt of written notice from the Lender of Lender's intention to cure the default so long as the Lender proceeds to promptly cure the default. If Lender acts promptly upon notice from the Tenant to cure the default and, despite the Lender's prompt, diligent, and continuous efforts to cure the default Lender is unable to complete the cure within 30 days, then the Lender and the Tenant may agree that the time within which the cure must be completed may be extended for a reasonable period of time not to exceed 60 days as may be necessary for the Lender to complete the cure.

5. Obligations and Liability of Lender. Unless otherwise agreed in writing, the Lender shall have no obligations under the Lease unless Lender becomes the fee simple owner of the Property. So long as the Lender remains a mortgagee with bare legal title to the Property securing repayment of the Loan to the Landlord, then the Lender is not responsible for any of Landlord's obligations under the Lease other than the Lender's voluntary efforts to cure defaults as provided above in this Agreement. If Lender becomes the fee simple owner of the Property, then Lender will step into the shoes of the Landlord with respect to the Landlord's obligations under the Lease until such time as the Lender transfers fee simple ownership of the Property to a new owner, who will assume all of Landlord's obligations under the Lease.

6. Severability. If any provision of this Agreement is found by a court to be unenforceable, then all provisions not invalidated or found by the court to be unenforceable will remain in full force and effect



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7. Governing Law and Choice of Forum. This Agreement is governed by and must be construed under the laws of the State of Maryland without regard to conflicts of laws principles. Any claim or action to enforce, interpret, or invalidate this Agreement must be filed and maintained in a court of competent jurisdiction located in Montgomery County, Maryland.

8. Notices. All notices required to be given under this Agreement will be deemed to be satisfactorily given if mailed, first class, postage prepaid and certified with return receipt or hand delivered by a nationally recognized receipted delivery service to:

If to the Lender, to:

If to the Landlord, to:

If to the County, to: Montgomery County Government  
Department of General Services  
Office of Real Estate  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville, MD 20850

Attn: Director, Office of Real Estate

with a copy that does not constitute notice to:

Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850

Attn: County Attorney

Notices will be deemed effective three (3) business days following deposit of first class and certified mail copies with the U.S. Postal Service or on the business day of hand delivery to the addressee. Parties must provide written notice of address changes to all other Parties as provided in this Paragraph. Any notice of address change provided as required in this Paragraph will be effective 30 days after it is deemed to be effective.

9. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties, their successors, and assigns.

10. Tenant's Personal Property. The Mortgage may not, under any circumstances, be construed to encumber any of Tenant's moveable trade fixtures, business equipment, furniture, signs, or other personal property placed or kept at any time on the Leased Premises.

11. Headings. The headings and captions used in this Agreement are for convenience only, and shall not affect interpretation of this Agreement..

IN WITNESS WHEREOF, the Parties have executed this document effective the date first written above.



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LENDER

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Notary jurat for Lender

LANDLORD

By: \_\_\_\_\_  
General Partner

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, a notary public in and for the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the [title]of [name of corporation] a [state] [type of corporation], and that s/he, as such [title], being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the [type of corporation] by himself as its' [title].

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:

\_\_\_\_\_

TENANT



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Montgomery County, Maryland  
a body corporate and politic and a  
political subdivision of the State of  
Maryland

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me the undersigned officer, personally appeared \_\_\_\_\_, known to me to be an Assistant Chief Administrative Officer for Montgomery County, Maryland, and that s/he, as such Assistant Chief Administrative Officer, being authorized to do so, executed the foregoing Agreement by signing the name of Montgomery County, Maryland by him/herself as Assistant Chief Administrative Officer.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:  
\_\_\_\_\_



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**EXHIBIT G**  
Form of Estoppel Certificate

**TENANT ESTOPPEL CERTIFICATE**

To: \_\_\_\_\_, its successors and/or assigns ("**Lender**")  
\_\_\_\_\_, its successors and/or assigns ("**Purchaser**")

Re: **Property Address: ("Property")**  
Lease Date: \_\_\_\_\_  
Between \_\_\_\_\_ ("**Landlord**") and  
Montgomery County, Maryland ("**County**")  
Square Footage Leased: \_\_\_\_\_  
Suite No./Floor: \_\_\_\_\_ ("**Premises**")

Landlord has requested that the County provide Landlord with an Estoppel Certificate as permitted from time to time under the terms of the above-referenced lease ("**Lease**"). The County hereby acknowledges the following:

- (1) The Lease and all amendments to the Lease attached as Exhibit "A" is a true, correct, and complete copy of the Lease, as amended; is in full force and effect; and has not been modified, supplemented, or amended in any way other than in writing attached as part of Exhibit A. The Lease as amended in Exhibit A represents the entire agreement between the Landlord and Tenant as to the Premises or any part of the Premises.
- (2) The Lease Term commenced on \_\_\_\_\_, and expires on \_\_\_\_\_. The Lease provides for \_\_\_\_\_ renewal/extension option(s) of \_\_\_\_\_ (months/years) each. The County has exercised \_\_\_\_\_ renewal/extension options on the date that this Certificate is issued by the County.
- (3) The amount of fixed monthly rent is \$ \_\_\_\_\_; the monthly common area or other charges are \$ \_\_\_\_\_. The base year for operating expenses and real estate taxes, as defined in the Lease, is calendar year 20\_\_\_. Except the first installment of rent, no rent has been paid more than one (1) month in advance of its due date.
- (4) The County paid no security deposit under the terms of the Lease. The County has paid rent for the Premises through \_\_\_\_\_, 201\_\_.
- (5) The County currently occupies the Premises.
- (6) All work to be completed by Landlord for the County prior to occupancy has been performed as required and has been accepted by the County; and any payments, free rent, or other payments, credits, allowances or abatements required to be given by Landlord up to the date of issuance of this Certificate have been credited or paid to the County.
- (7) As of the date that this Certificate is issued by the County, the County has no knowledge of any default by Landlord other than those specified in Exhibit B, attached. As of the date that this Certificate is issued by the County, the County has no knowledge of any offset, defense, deduction or claim against Landlord other than those listed in Exhibit B, attached.



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- (8) The County is not in default under the Lease.
- (9) The County has not assigned the Lease or sublet all or any portion of the Premises, except as listed in Exhibit C, attached. Any sublease or assignment documents are attached as part of Exhibit C.
- (10) Any notices to be sent to the County should be sent in the form required in the Lease to:

Montgomery County, Maryland  
Office of Real Estate  
101 Monroe Street  
9th Floor  
Rockville, MD 20850

With a copy that does not constitute notice to:

Office of the County Attorney  
101 Monroe Street, 3rd Floor  
Rockville, MD 20850

- (11) The undersigned is duly authorized to execute this Certificate.

COUNTY:  
**Montgomery County, Maryland**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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EXHIBIT A  
Copy of Lease



ALEXANDRIA.

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EXHIBIT B  
Defaults Under Lease



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EXHIBIT C  
Assignment/Sublet Information and Copies of Documents



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