

FIRST AMENDMENT TO LEASE

This First Amendment (the "**Amendment**") to Lease is made as of December 20, 2012, by and between **ARE-25/35/45 W. WATKINS CORP.**, a Maryland corporation ("**Landlord**"), and **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland ("**Tenant**").

RECITALS

A. Landlord and Tenant have entered into that certain Lease (the "**Lease**") dated as of July 29, 2009 (the "**Lease**"), wherein Landlord leased to Tenant certain premises (the "**Premises**") located at 45 West Watkins Mill Road, Gaithersburg, Maryland as more particularly described therein. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

B. The Term of the Lease expires on December 31, 2014.

C. Tenant desires to extend the term of the Lease for a period commencing on January 1, 2015 and ending on December 31, 2018 ("**Extension Term**").

D. Subject to the terms and conditions set forth herein, Landlord and Tenant desire to amend the Lease to, among other things, extend the Term of the Lease for the Extension Term.

AGREEMENT

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

1. **Term.** Notwithstanding anything to the contrary in the Lease, the Term of the Lease is hereby extended to expire, unless terminated earlier pursuant to the Section 3 and Section 5 below, on December 31, 2018.

2. **Base Rent.**

(a) Tenant shall continue to pay Base Rent as set forth in the Lease through December 31, 2012. Notwithstanding anything to the contrary in the Lease, Base Rent for the period commencing on January 1, 2013 and ending on December 31, 2018 (subject to Section 2(b) below) shall be payable as follows:

Period	Annual Base Rent	Monthly Base Rent Installment
January 1, 2013 - December 31, 2013	\$312,246.00	\$26,020.50
January 1, 2014 - December 31, 2014	\$321,613.38	\$26,801.12
January 1, 2015 - December 31, 2015	\$331,261.78	\$27,605.15
January 1, 2016 - December 31, 2016	\$341,119.63	\$28,426.64
January 1, 2017 - December 31, 2017	\$351,353.21	\$29,279.43
January 1, 2018 - December 31, 2018	\$361,893.80	\$30,157.82

(b) Provided that Tenant is not then in default under the Lease, Base Rent for the calendar months of January, 2013, February, 2013, January, 2014 and February, 2014 shall be abated.

3. **Tenant's Termination Right.** Tenant shall have the right to terminate this Lease effective at anytime on or after January 1, 2018 ("**Early Termination Right**"), provided that Tenant (i) provides written notice ("**Termination Notice**") to Landlord of its intent to exercise the Early Termination Right at least 6 months prior to the date upon which Tenant desires to terminate the Lease ("**Early Termination Date**"), which Early Termination Date shall be specified in the Termination Notice and (ii) delivers payment to Landlord, together with such Termination Notice, of the Termination Fee (defined below). The "**Termination Fee**" shall be an amount equal to (i) 2 months Base Rent at the rate in effect on the Early Termination Date, plus (ii) the unamortized balance of any leasing commissions paid by Landlord with respect to this Amendment which unamortized leasing commission shall be calculated by multiplying \$.06 times 18,924 square feet times the remaining months on the Term of the Lease. By way of example, if Tenant delivers the Termination Notice together with the Termination Fee in accordance with this Section 3 on or before July 1, 2017, then the Early Termination Date shall be January 1, 2018 (or such later date as Tenant specifies in the Termination Notice). If Tenant timely and properly exercises the Early Termination Right (including, without limitation, paying the Termination Fee), Tenant shall vacate the Premises and deliver possession thereof to Landlord in the condition required by the terms of the Lease on or before the Early Termination Date and neither Landlord nor Tenant shall have any further obligations under the Lease except for those accruing prior to the Early Termination Date and those which, pursuant to the terms of the Lease, survive the expiration or early termination of the Lease.

4. **Notices.** Effective as of the date of this Amendment, Section 31 of the Lease, "Mailing Notices" shall be amended by deleting the County's Mailing Notice Address and adding the following in lieu thereof:

"To the County: MONTGOMERY COUNTY, MARYLAND,
Department of General Services, Office of Real Estate,
101 Monroe Street, 9th Floor,
Rockville, Maryland 20850

With a copy that does not constitute notice:

Office of the County Attorney
Attn: County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850"

5. **Non-Appropriation.** Effective as of the date of this Amendment, Section 33 of the Lease, "Non-Appropriation" shall be amended by deleting the section in its entirety and adding the following in lieu thereof:

Section 33. Non-Appropriation.

A. Landlord acknowledges that (i) Tenant has appropriated funds only for payment of Base 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 33.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 Tenant's performance or non-performance of its obligations under this Lease prior to the later to occur of the Tenant'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 15th and the 31st 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 Premises. Except as otherwise provided in Section 33.D below, if this Lease is terminated under this Section, 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 December 31, 2018, Tenant shall pay to Landlord as of the effective date of such termination of this Lease an amount equal to the unamortized brokerage commission paid by Landlord in connection with the Amendment which shall be calculated by multiplying \$0.06 times 18,924 square feet times the remaining months of the Term of this Lease ("**Non-Appropriation Termination Fee**"). Landlord and Tenant agree that the Non-Appropriation Termination Fee fully and fairly compensates Landlord for any unamortized commissions or other similar expenses incurred by Landlord under this Lease."

For clarification purposes, notwithstanding anything to the contrary in this Section 5, if Tenant exercises the Early Termination Right in Section 3 above, Tenant shall be required to pay the Termination Fee as set forth therein.

6. Miscellaneous.

(a) This 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 Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This 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.

(c) This 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 Amendment attached thereto.

(d) Landlord and Tenant each represent and warrant that it has not dealt with any broker, agent or other person (collectively "**Broker**") in connection with this transaction other than Jones Lang LaSalle and that no Broker other than Jones Lang LaSalle, who shall be paid by Landlord pursuant to a separate agreement, brought about this transaction. 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 LaSalle claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

(e) Except as amended and/or modified by this 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 Amendment. In the event of any conflict between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall prevail. Whether or not specifically amended by this 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 Amendment.

(Signatures on Next Page)

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

TENANT:

MONTGOMERY COUNTY, MARYLAND,
a body corporate and politic and a political
subdivision of the State of Maryland

By: Ramona Bell-Pearson

Name: Ramona Bell-Pearson

Title: Assistant Chief Administrative Officer

Approved as to Form and Legality
Office of the County Attorney

Recommended

By: Alexandra Thompson

Name: Alexandra Thompson

Title: Assistant County Attorney

By: Cynthia Breneman

Name: Cynthia Breneman

Title: Director, Office of Real Estate

LANDLORD:

ARE-25/35/45 W. WATKINS CORP.,
a Maryland corporation

By: Jackie Ciern
VP Real Estate Legal Affairs