# FIRST AMENDMENT TO LEASE AGREEMENT

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** (the "Amendment") is made and entered into as of June 1 2006, by and between (i) **1335 PICCARD LLC**, a Maryland limited liability company ("Landlord"), indirect successor in interest to SOLAR BUILDING ASSOCIATES ("SBA"), and (ii) **MONTGOMERY COUNTY, MARYLAND,** a body corporate and politic ("Tenant").

## RECITALS

**WHEREAS,** Tenant and SBA, the predecessor-in-interest to Briarpath Properties, Inc., Landlord's immediate predecessor-in-interest, did enter into that certain Lease Agreement dated July 25, 1994, pursuant to which Tenant leased certain premises located at 1335 Piccard Drive, Rockville, Maryland (the "Leased Premises"), all as more particularly described in the Lease; and

**WHEREAS,** Landlord and Tenant desire to extend the term of the Lease and amend and add certain other terms and conditions of the Lease.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties mutually agree as follows:

1. **Recitals Incorporated; Certain Defined Terms.** The recitals set forth above are incorporated herein by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully set forth in this Paragraph 1. Capitalized terms that are not otherwise defined herein shall be deemed to have the same meanings herein as are ascribed to such terms in the Lease. As used herein, the "Lease" hereafter shall be deemed to mean the Lease, as amended by this Amendment.

2. **Landlord.** All references in the Lease to SOLAR BUILDING ASSOCIATES, INC., as Landlord, shall now apply to 1335 PICCARD LLC.

3. **Extension of Lease.** Landlord and Tenant hereby agree to extend the term of the Lease through the last day of the 60th calendar month following the month during which Tenant shall have delivered to Landlord a counterpart of this Amendment executed on behalf of Tenant (the last 60 months of such period being hereinafter referred to as the "Extension Term"), on the terms and conditions set forth in the Lease, inclusive of the amendments and modifications described below except as otherwise provided in this Paragraph 3. Landlord and Tenant hereby confirm that the Tenant shall vacate the Leased Premises and remove its exterior signage, if any, on or before the last day of the Extension Term. The parties hereto acknowledge that subject to the provisions of the succeeding sentence, Tenant has been a month-to-month hold-over Tenant and the Lease has remained in effect, in accordance with its terms and conditions (before giving effect to the provisions of this Amendment other than those set forth in this Paragraph 3 and Paragraph 5) during the time period (the "Hold-over Term") that commenced on the day following the expiration of its original 10-year term and will end on the day preceding the commencement of the Extension Term. During that portion of Hold-over Term occurring in calendar year 2005 and that portion occurring during calendar year 2006, the Base Rent was accruing at the respective monthly rates set forth in Paragraph 5 below, while Tenant continued paying Base Rent at the monthly rate of $45,891.22, the rate last in effect during the original 10-year term of the Lease. The aggregate deficiency (the "Hold-over Deficiency Amount") resulting from this underpayment accruing through May 31, 2006 is equal to $29,828.90 (of which $15,854.70 is attributable to calendar year 2005 and $13,974.20 is attributable to the first five (5) months of calendar year 2006); for each month that the Hold-over Term shall extend beyond May 2006, the Hold-over Deficiency Amount shall increase by $2,794.84. Tenant shall pay Landlord,

simultaneously with delivery of this Amendment to Landlord the entire Hold-over Deficiency Amount.

4. **Tenant Improvement Allowance; Landlord Work.** Tenant expressly acknowledges, by its execution hereof, that it accepts the Leased Premises as of the first day of the Extension Term in their then as-is condition and Landlord will have no obligation to make any improvements therein or provide any redecorations thereto except as otherwise set forth in Exhibit A attached hereto and incorporated herein. If the cost of the improvements described in Exhibit A shall exceed $50,000, then no work on such improvements shall commence until Tenant shall pay to Landlord the amount of the excess following Tenant's receipt of notice from Landlord specifying the amount of such excess and the proposals supporting such amount. The foregoing to the contrary notwithstanding, Landlord further agrees that, promptly after the start of the Extension Term, it will complete the work specified in Part II of Exhibit A hereof and the cost thereof shall be born by Landlord and shall not be included within the foregoing allowance.

5. **Base Rent.** In lieu of the annual base rent and the adjustments thereto specified in Paragraph 3 of the Lease, the Base Rent applicable to the Hold-over Term and the Extension Term shall be as follows:

| Lease Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| 1/16/05 - 12/31/05 | $567,216.24 | $47,268.02 |
| 1/1/06 - 12/31/06 | $584,232.72 | $48,686.06 |
| 1/1/07 - 12/31/07 | $601,759.68 | $50,146.64 |
| 1/1/08 - 12/31/08 | $619,812.48 | $51,651.04 |
| 1/1/09 - 12/31/09 | $638,406.84 | $53,200.57 |
| 1/1/10 – 12/31/10 | $657,559.04 | $54,796.59 |
| 1/1/11 – 6/30/11* | $677,285.85 | $56,440.48 |

*(or such later date as shall be the last day of the Extension Term)

Notwithstanding any provision of the Lease to the contrary, if Tenant shall hold over after the expiration of the Extension Term, the Base Rent during the first three (3) months of such holdover shall be 103% of the Base Rent in effect during the last month of the Extension Term (the "Preceding Base Rent") and thereafter shall be 150% of the Preceding Base Rent.

6. **Real Estate Taxes.** The provisions of Paragraph 5 of the Lease shall remain in full force and effect, without modification of the Base Year.

**7.** **Services.** Notwithstanding the provisions of Paragraph 6 of the Lease, entitled "Services", Tenant acknowledges that (other than as set forth in Part I of Exhibit A hereto) Landlord will not be responsible for (i) repainting the interior of the Building or any portion thereof or (ii) replacing all or any portion of the carpeting therein during the Extension Term, nor shall Landlord be responsible for the repairs or replacements on or about the Leased Premises that are the result of improper use or extraordinary wear and tear. Tenant shall pay on demand to Landlord the reasonable cost incurred by Landlord in making such repairs or replacements.

**8.** **Insurance and Liability.** Paragraph 13 of the Lease is hereby amended to delete the same in its entirety and substitute the following in lieu thereof:

13. Insurance and Liability.

I. Tenant's Liability and Property Insurance; Indemnity.

A. Tenant shall obtain and maintain during the Extension Term, a policy of commercial general liability insurance with limits of not less than $200,000 for injury or death to one person, $500,000 per occurrence and property damage with a limit of $200,000 or such higher limits as may be required from time to time to cover the Tenant's maximum liability under the LGTCA (as defined in the next sentence). Notwithstanding the foregoing, Tenant shall have the right to self insure to the limits set forth by the Local Government Tort Claims Act, 1986 (LGTCA), Md. Ann. Code, Cts & Jud. Proc. Sect. 5-301 et seq. (2002 Repl. Vol) as amended or to such higher limits as it may from time to time determine, in its sole discretion. Landlord acknowledges that at the present time such limits are those set forth in the first sentence of this subparagraph IA.

B. Tenant further agrees that all personal property in the Leased Premises, whether owned by Tenant, its employees, guests or invitees, shall be and remain at the sole risk of Tenant and Landlord shall have no liability for loss of or damage thereto from the use or operation of elevators, the heating, cooling, electrical or plumbing apparatus, or from water, steam, theft or any other cause except for loss or damage resulting from the sole negligence of Landlord. Tenant shall either self-insure its personal property (including, without limitation, its dental equipment) or obtain commercial property insurance to the extent it shall see fit, in its sole discretion.

C. Tenant hereby indemnifies and holds harmless Landlord from and against all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of an occurrence upon or at the Leased Premises, or the occupancy and use by Tenant thereof or Tenant's use of the exterior areas caused by Tenant's sole negligence and/or that of Tenant's employees, subject to any applicable statutory limit on such indemnity.

II. Landlord's Liability and Property Insurance; Landlord's Indemnity.

A. Landlord shall cause to be maintained, during the Extension Term, a policy of commercial general liability policy with limits of $1,000,000 per occurrence/$10,000,000 aggregate per policy year, which coverage shall be provided pursuant to a "blanket policy" covering other properties owned by Landlord or its affiliates Montgomery County, Maryland will be named as an additional insured on such policy, in respect of the Leased Premises only, provided such naming shall not result in an increase in the cost of Landlord's insurance. Landlord shall notify Tenant in writing of any such increase and Landlord's obligation to name Tenant as an additional insured shall terminate as of the date specified in such notice and for the remainder of the Extension Term, Tenant shall not be so named unless Tenant pays, on demand, the amount of such increase as additional rent. If Landlord's then existing insurance carrier refuses to permit Tenant to be named as an additional insured, then Landlord shall so notify Tenant in writing and thereafter be relieved of its obligation to cause Tenant to be so named. In determining the cause of any increase in insurance premiums, the schedule or rate of the organization issuing the insurance or rating procedures shall be conclusive evidence of the items and charges which comprise such insurance rates and premiums and the changes therein.

B. Landlord shall also obtain and maintain, during the Extension Term, a so-called "special form" or other "all-risk" type of property insurance to protect the interest of Landlord in such amounts as Landlord shall determine as a reasonable estimate of the insurable value of the improvements located on the Leased Premises and owned by Landlord. Such policy shall include such extensions as are determined by Landlord, in its sole discretion.

C. Landlord hereby indemnifies and holds harmless Tenant from and against all claims, actions, damages, liability and expense (collectively, "Claims") in connection with loss of life, personal injury and/or damage to property arising from or out of an occurrence upon or at the Leased Premises caused by Landlord's sole negligence and/or that of Landlord's employees, provided, that in no event shall Landlord's liability to Tenant pursuant to this indemnity exceed $2,000,000 in any policy year of the commercial general liability blanket liability referred to in Subparagraph IIA above. Notwithstanding the foregoing, Claims in connection with any loss of life, personal injury and/or damage to property that is caused, or alleged to have been caused, in whole or in part by Medical Wastes generated or located at the Leased Premises shall not be covered by this indemnity.

**9. Termination Fees.** The second sentence of Paragraph 28 of the Lease is hereby amended to provide that Tenant shall pay to Landlord, in lieu of the amount specified therein, an amount equal to the product of (a) the number of months remaining in the Extension Term and (b) the sum of $833.33. In addition, in lieu of the lump sum payment specified in the last sentence of Paragraph 28 of the Lease in the event of

Tenant's termination of the Lease pursuant to Paragraph 34 thereof, Tenant shall pay to Landlord, within 30 days of such termination, the lump sum of $108,000.

**10.** **Assignment and Subletting.** If Tenant shall request Landlord's approval to assign this Lease or sublet all or any part of the Leased Premises to an entity that is not a municipality or state or branch or division thereof or for a use not primarily for purpose of providing health and/or dental care and Landlord shall not grant its consent, then for all purposes of the Lease, Landlord's approval shall not be deemed to have been unreasonably withheld.

**11.** **Interest on Past-due Obligations; Additional Rent.** Except as expressly herein provided, any amount due to Landlord hereunder that is not paid within 10 days after its due date shall thereafter bear interest at the Wall Street Journal Prime Rate as in effect from time to time plus two percent; provided, however, that interest shall not commence to accrue on the Hold-over Deficiency until ten (10) days after the Deficiency Due Date, if not paid by then. Payment of such interest shall not excuse or cure any default by Tenant under this Lease. All monetary obligations of Tenant to Landlord under the terms of this Lease shall be deemed to be rent.

**12.** **Medical Waste; Compliance with Law.** Section 38 of the Lease is hereby amended to delete the same in its entirety and substitute the following in lieu thereof:

38. Medical Waste; Compliance with Law. Tenant acknowledges complete responsibility for all Medical Wastes (as hereinafter defined) generated or located on the Leased Premises and hereby agrees, at Tenant's sole expense, to handle, store and dispose of its Medical Waste in compliance with all federal, state and local laws, rules and regulations relating thereto and in a prudent and reasonable manner. Tenant shall not place any Medical Waste in refuse containers emptied by Landlord's janitorial service or in the Leased Premises' refuse containers. Within ten (10) days following Landlord's written request, Tenant shall provide Landlord with any information reasonably requested by Landlord concerning the existence, generation, exposure, storage or disposal of Medical Waste at the Leased Premises, including, but not limited to, the following information (the "Medical Waste Records"): (a) the name, address and telephone number of the person or entity employed or contracted by Tenant to dispose of its Medical Waste, including a copy of any contract with said person or entity, (b) a list of each type of Medical Waste generated by Tenant at the Leased Premises and a description of how Tenant handles, stores and disposes of said Medical Waste after it is generated, (c) a Medical Waste disposal "manifest" and a blood-borne pathogens exposure plan or other plan setting forth Tenant's procedures for prevention of exposure to Medical Waste, including its storage, disposal and transport, (d) a copy of any laws, rules or regulations in Tenant's possession relating to the disposal of the Medical Waste generated by Tenant, and (e) copies of any licenses or permits obtained by Tenant in order to generate or dispose of said Medical Waste. The foregoing information shall be maintained at the Leased Premises for a period of five (5) years after the later of the first day of the Extension Term or the date on which such information is generated or recorded. Tenant shall also immediately provide to Landlord (without demand by Landlord) written notice of any known discharges or exposures to Medical Waste or failure by Tenant to comply with its exposure prevention procedures. Tenant shall also immediately provide to Landlord (without demand by Landlord) a copy of any notice, registration, application, permit, or license given to or received from any governmental authority

or private party, or persons entering or occupying the Leased Premises, concerning the existence, release, exposure or disposal of any Medical Waste in or about the Leased Premises.

Landlord and Landlord's employees, agents and Qualified Consultants (as hereinafter defined) shall have the right to enter the Leased Premises at any time in the case of a discharge or exposure or other emergency arising in connection with the release, storage, handling or disposal of Medical Waste, and otherwiseat reasonable times for the purpose of reviewing and copying all or any part of the Medical Waste Records and for the purpose of verifying compliance by Tenant with its obligations pursuant to this Paragraph 12; provided, however, that such non-emergency visits shall not be conducted more frequently than once per calendar year until a discharge or non-compliance is discovered. Following any such discovery, non-emergency visits may be scheduled at such times and intervals as Landlord's consultants shall deem appropriate. Landlord shall have the right to employ Qualified Consultants in connection with its examination of the Leased Premises and/or the Medical Waste Records and with respect to the existence, generation and disposal of Medical Waste on or from the Leased Premises. Landlord shall pay the cost and expenses of such Qualified Consultants, unless such consultants have determined that a discharge has occurred or that Tenant is not complying with its obligations concerning Medical Waste and Medical Waste Records as set forth herein, in which case Tenant shall immediately reimburse Landlord for the cost of such inspection. A Qualified Consultant shall be a person with recognized expertise in medical waste management practices, including audits and assessments.

Tenant hereby indemnifies and holds harmless Landlord from and against all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of or related to Medical Wastes generated or located at the Leased Premises that is not caused solely by Landlord's negligence, subject to any applicable statutory limit on such indemnity. The preceding indemnity shall apply in lieu of Tenant's indemnity set forth in Paragraph 13.I.C of the Lease if the indemnity obligation shall in whole or in part arise from or out of or be related to Medical Wastes generated or located at the Leased Premises.

For all purposes of this Lease, Medical Waste shall mean Bloodborne Pathogens, Regulated Waste and other potentially Infectious Materials as defined in applicable Federal regulations, in effect from time to time.

In addition, Tenant covenants and agrees that it will not do or permit anything to be done in the Leased Premises or keep any article therein which shall in any way increase the rate of fire or other insurance on the Building or which is prohibited by fire laws or regulations or by any other applicable statutes, rules or regulations nor will Tenant use or permit the Leased Premises or any part thereof to be used for any disorderly or extra hazardous purpose or for any other purpose than specified in Paragraph 7 of the Lease. It is agreed that Tenant's existing dental and health care operations, except to the extent not in compliance with any of the foregoing laws, rules, regulations and statutes, shall be deemed in compliance with Landlord's property insurance.

**13.** **Brokers**. Tenant represents and warrants to Landlord that Tenant has not had dealings with any real estate broker or agent in connection with this Amendment and knows of no other brokers or agents who may be entitled to a commission in connection herewith by virtue of any agreement with Tenant. Tenant shall indemnify and defend Landlord against, and hold Landlord harmless from, any and all claims, demands, losses,

liabilities, law suits, judgments, costs and expenses (including, without, limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of Tenant's dealings with any real estate broker or agent in connection with this Amendment.

**14.** **Notices.** Paragraph 35 of the Lease is hereby amended to delete Landlord and Tenant's respective addresses for notices and to substitute the following addresses in lieu thereof:

Address for Notices:

| | |
|---|---|
| Landlord: | 1335 PICCARD LLC<br>c/o Well Stone Properties<br>2228 Tackett's Mill Drive<br>Lake Ridge, VA. 22192 |
| Tenant: | MONTGOMERY COUNTY GOVERNMENT<br>Facilities and Services Division<br>101 Orchard Ridge Drive, 2nd Floor<br>Gaithersburg, Maryland 20878 |

**15.** **Reaffirmation of Terms.** Except as expressly modified herein, all of the terms, covenants and provisions of the Lease are hereby confirmed and ratified and shall remain unchanged and in full force and effect.

**16.** **Counterpart Copies.** This Amendment may be executed in two or more counterpart copies, via facsimile and/or hard copy, each of which shall be deemed an original and all of which counterparts shall have the same force and effect as if the parties hereto had executed a single copy hereof

**IN WITNESS WHEREOF,** the parties hereto have caused this Amendment to be executed under seal as of the date first above written.

**LANDLORD:**

**1335 PICCARD LLC**

By: Paulette J'Sen
Paulette J'Sen, Manager

Date of Execution: 8-16-06

**TENANT:**

**MONTGOMERY COUNTY, MARYLAND**

By: Joseph F Beach
Print Name: Joseph F. Beach
Title: Asst. Chief Admin. Officer
Date of Execution: 6/1/06

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY
BY: [illegible]
DATE: 5/31/06

# EXHIBIT A

## LANDLORD WORK

Part I

Part II

(a) Install air fresheners in all bathrooms;

(ii) Repair the concrete walkway at rear entry; and

(iii) Refurbish the exterior emergency exit stairwell on the south side of the Leased Premises