



State of Rhode Island and Providence Plantations  
RHODE ISLAND BOARD OF EDUCATION  
COUNCIL ON POSTSECONDARY EDUCATION

560 Jefferson Boulevard  
Warwick, Rhode Island 02886

Enclosure 8b.  
October 14, 2015

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To: Members of the Council on Postsecondary Education

From: Commissioner Jim Purcell, Ed.D.

Date: September 26, 2015

Subject: Recommendation of the Proposed Amendments to the Lease Agreement for the Nursing Education Building and Related Documents.

**Background:**

As the Council is aware, the Board of Education authorized the resolution related to the legislation regarding the lease terms for the Nursing Education Center at its May 12, 2014 meeting.

At the Board of Education's June 16, 2014 meeting, the Board voted to authorize the Chair to execute the Lease Agreement between the Board (and now its successor, the Council on Postsecondary Education) and Commonwealth Ventures Master Tenant, LLC, which later went on to receive the appropriate approval of the State Properties Committee and the General Assembly in accordance with §37-6-2(d).

A Memorandum of Understanding which reinforces the language in the Lease that spoke to the inclusion of professional design and consultant services within the total capital design, construction, and financing for the RINEC Tenant Improvements was later approved by the Council at its meeting on April 1, 2015.

**Current issue for consideration:**

The Committee is now being requested to consider for recommendation to the full Council a few amendments to that original lease agreement along with additional documents to address issues raised by the project's financial partner, lender and tax credit investor. These amendments include:

1. A State Unit Purchase Credit for Retained Master Tenant Gross Profits (MGP)

2. The specification of the schedule of rent over the term of the lease from the original language (“at fair market value...based on comparable private garage rates”) to specific scheduled rental rates by year, but never more than fair market value.
3. Other amendments including:
  - a. Eliminates State opportunity to finance Tenant Improvements to ensure federal tax credit availability.
  - b. Options to renew Lease and purchase NEC unit added at end of NEC Lease following expiration of Master Lease.
  - c. Changes to conform arbitration process and determinations of fair market value for lease option periods and purchase options with provisions of Brown Lease.
  - d. Inclusion of the Memorandum of Understanding as an exhibit to the Nursing Education Center lease.

In addition, approval is being sought for the following related documents:

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|--------------|---|
| Attachment 1 | State Unit Parking Sublease   |
| Attachment 2 | Consent Recognition and Non-Disturbance Agreement (regarding Ground Lease) – with National Grid for purposes of the State Unit Parking Sublease |
| Attachment 3 | Master Lease Recognition Agreement  |
| Attachment 4 | Subordination, Attornment and Non-Disturbance Agreement (NEC Lease – Mortgagee)   |
| Attachment 5 | Memorandum of Lease (NEC space) – for recording purposes.   |
| Attachment 6 | Memorandum of Parking Garage Sublease – for recording purposes  |

Mr. Sean Coffey of Burns and Levinson, LLP and Mr. J. Vern Wyman attended the Finance and Facilities Committee meeting on September 30, 2015 to discuss the implications of these proposed amendments and related documents. Upon the completion of a question and answer session and discussion, the Finance and Facilities Committee has recommended that the Council accept these amendments as presented.

**Therefore, I recommend:**

**THAT** *The Council on Postsecondary Education approves the lease amendments to be included in the Lease Agreement and related documents as presented and pending the approval of the State Properties Committee.*

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between CV SSL MASTER TENANT LLC, a Rhode Island limited liability company ("Landlord"), and the RHODE ISLAND COUNCIL ON POSTSECONDARY EDUCATION, as successor in interest to the Rhode Island Board of Education, a public corporation established pursuant to Rhode Island General Laws Title 16, Chapter 59 ("Tenant").

### RECITALS:

WHEREAS, Landlord and Tenant entered into that certain Lease dated July 1, 2014 (the "Lease"), with respect to certain premises located at that certain redevelopment project located at 350 Eddy Street in Providence, Rhode Island (a/k/a A.P. 021, Lot 430), commonly known as "South Street Landing," as more particularly described in the Lease;

WHEREAS, the name of the Landlord was inadvertently typed in the Lease and Escrow Agreement as "CV South Street Landing Master Tenant, LLC"; and

WHEREAS, Landlord and Tenant desire to correct the name of the Landlord in the Lease and amend the Lease as hereinafter set forth in this First Amendment.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Defined Terms: Interpretation. In the event of any conflict between the provisions of the Lease and the provisions of this First Amendment, the provisions of this First Amendment shall control. The capitalized terms used herein which are not specifically defined in this First Amendment shall have the same meaning as given to such terms in the Lease.

3. Defined Terms. Section 1.1 is hereby amended and supplemented by adding the following definitions:

"Brown Unit" has the meaning given to it in Section 23.1.

"Brown Unit Parking Lease" means that certain "Brown Unit Parking Sublease Agreement" dated July 24, 2015 entered into between Owner (as a Lessee/Garage Tenant) and CV SSL Garage LLC (as owner of the Parking Garage), pursuant to which Owner (or Brown, as the case may be) has the right to rent Parking Spaces and issue or receive (as the case may be) Parking Passes for the parking of automobiles of Brown's

Authorized Users under the Brown Lease. Pursuant to the Brown Unit Master Lease, Owner's rights under the Parking Lease have been subleased to Landlord (as the Master Tenant under the Brown Unit Master Lease who, in turn, is providing the required parking (200 parking spaces) to Brown). The Brown Unit Parking Sublease Agreement is substantially in the same form as the State Unit Parking Sublease Agreement. In the event that Tenant purchases the Project, the Brown Unit Parking Lease will be assigned to Tenant.

"MTGP Funds" has the meaning given to it in Section 16.4.

"Net Federal HTC Proceeds" means the net proceeds of syndicating Federal Tax Credits with respect to the Project (or a portion thereof) after taking into account any adjustments, deductions, taxes, distributions, fees, payments or other charges made by or imposed on Landlord or any member or affiliate thereof, including any payments under guarantees or indemnifications, in connection with the syndication of such Federal Tax Credits.

"Net State HTC Proceeds" means the net proceeds of syndicating State Tax Credits with respect to the Project (or a portion thereof) after taking into account any adjustments, deductions, taxes, distributions, fees, payments or other charges made by or imposed on Landlord or any member or affiliate thereof, including any payments under guarantees or indemnifications, in connection with the syndication of such State Tax Credits.

"Purchase Price Credit(s)" shall mean the "First Purchase Price Credit" or the "Second Purchase Price Credit", as applicable, each with the meaning given to it in Section 23.1.

"Tenant Unit" has the meaning given to it in Section 23.1.

"Tenant's Borrowing Costs Differential" means an amount equal to the difference between, as of the closing date of the purchase by Tenant of the Project or the Tenant Unit, as the case may be, (i) the total aggregate TI Rent payments made by Tenant to Landlord minus (ii) the total aggregate TI Rent payments that Tenant would have been obligated to pay had the TI Rent been calculated based upon at a rate of interest equal to four percent (4%) per annum; provided, however, if such difference is a negative number, then Tenant's Borrowing Costs Differential shall be zero.

4. Declaration of ECCRs. Section 1.1 is hereby amended by deleting the definition of "Declaration of ECCRs" without substitution therefore.

5. Parking Garage Project. Section 1.1 is hereby amended by deleting the second sentence of the definition of "Parking Garage Project" and substituting therefor:

The Parking Garage is currently planned as an 8-level, approximately 744 +/-space above-ground structure including vertical transportation facilities (stairs and elevators).

6. Net TI Costs Section 1.1 is hereby amended by deleting the definition of "Net TI Costs" and substituting the following therefor:

"Net TI Costs" means (i) the total TI Costs, minus (ii) the Net Federal HTC Proceeds attributable to the TI Costs.

7. Proportionate Parking Share Section 1.1 is hereby amended by deleting the definition of "Proportionate Parking Share" and substituting the following therefor:

"Proportionate Parking Share" means, with respect to any party's share of additionally available Parking Spaces offered by the Landlord pursuant to Section 2.3, a fraction having as its numerator the number of Parking Spaces allocated to such party pursuant to Section 2.3 and having as its denominator 744. For example, as of the date hereof the Tenant's Proportionate Parking Share is 26.88% and Brown's Proportionate Parking Share is 26.88%."

8. Permitted Title Exceptions. Section 2.2 of the Lease is hereby amended by deleting the first and second sentences and replacing the same with the following:

The rights granted under this Lease are subject to all Permitted Title Exceptions, including without limitation, the Master Leases and that certain Environmental Land Use Restriction executed by Heritage Harbor Corporation dated June 4, 2007 and recorded in the City of Providence, Rhode Island Land Evidence Records in Book 8710 at Page 254; which Environmental Land Use Restriction will be amended upon the completion of the renovations to the Building to reflect the uses contemplated by this Lease.

9. Parking Rate. Section 2.3(a) of the Lease is hereby deleted in its entirety and the following is substituted therefor:

(a) Pursuant to the Parking Lease, Landlord shall make available to Tenant two hundred (200) Parking Spaces (the "Tenant Parking Spaces") in the Parking Garage and passes ("Parking Passes") for the parking in such Tenant Parking Spaces of automobiles of Tenant's employees, students and invitees ("Authorized Users") 7 days per week, 24 hours per day. Each Tenant Parking Space shall be an unassigned (i.e., not assigned or reserved) Parking Space in such portion(s) of the Parking Garage as may be designated by the Parking Garage Operator from time to time. Each Parking Pass will permit the parking of one automobile in one of the Tenant Parking Spaces. The parties acknowledge that the

Garage Operator will adopt procedures to insure that Tenant has access to 200 Parking Spaces at all times. Such procedures may include the issuance to Tenant of more than 200 Parking Passes with a limit of 200 Parking Spaces being occupied by Tenant's Authorized Users at any one time. By way of example, if, on a given day, 200 Tenant Parking Spaces are occupied by automobiles of Tenant's Authorized Users in the morning and at noon 50 of such automobiles vacate the Parking Garage, such 50 Tenant Parking Spaces will be available for use by Tenant's Authorized Users. Use of the Parking Garage shall be subject to such reasonable rules and regulations as may be established from time to time by the Parking Garage Operator. Each Tenant Parking Space will be provided at a monthly rate equal to the rate hereinafter set forth, which shall be adjusted from time to time (the "Parking Rate"). The parties hereto agree that the initial Parking Rate shall be \$150.00 per Tenant Parking Space during the first Lease Year; \$170 per Tenant Parking Space during the second Lease Year; \$175 per Tenant Parking Space during the third Lease Year; \$180 per Tenant Parking Space during the fourth Lease Year; \$185 per Tenant Parking Space during the fifth Lease Year; \$190 per Tenant Parking Space during the sixth Lease Year; and \$195 per Tenant Parking Space during the seventh Lease Year. Effective with the eighth Lease Year, and every Lease Year of the Term thereafter (and the Option Term, if applicable), the Parking Rate shall be adjusted to reflect the Percentage Increase (hereinafter defined), if any, in the Consumer Price Index for the immediately preceding Lease Year. The phrase "Percentage Increase" means the percentage equal to a fraction, the numerator of which shall be the Consumer Price Index in the Anniversary Month (hereinafter defined) less the Base Price Index (hereinafter defined) and the denominator of which shall be the Base Price Index. The phrase "Anniversary Month" means the month immediately preceding the commencement date of the Lease Year in question. The phrase "Base Price Index" means the Consumer Price Index in effect for the month, or other period for which the Consumer Price Index is calculated, if other than monthly, immediately preceding the date on which the prior Lease Year commenced. For example, if the Base Price Index is 200 and the Consumer Price Index for the Anniversary Month is 206, the adjusted Parking Rate would be the Parking Rate in effect for the immediately preceding Lease Year plus three percent (3%) of the Parking Rate. If the Consumer Price Index or Base Price Index is not published with respect to a month in question, the Consumer Price Index or Base Price Index, as the case may be, used shall be that in effect for the nearest preceding month. Notwithstanding the foregoing, in no event shall the Parking Rate for the eighth Lease Year or any Lease Year thereafter (i) be less than the Parking Rate for the prior Lease Year or (ii) be increased by more than three percent (3%) over the prior Lease Year. Commencing on the Rent Commencement Date and continuing on the first (1st) day of each month thereafter for the remainder of the Term, Tenant will pay to Landlord

"Parking Rent" (as Additional Rent under this Lease), in an amount equal to the then Parking Rate multiplied by the number of Tenant Parking Spaces (i.e., 200). Notwithstanding anything to the contrary contained in this Lease, if on or before the Rent Commencement Date, the Parking Garage has not been substantially completed and open for business, but the Tenant has elected to take occupancy of the Premises, the Landlord shall provide substitute parking for the Tenant Parking Spaces within 1,250 feet of the Premises at the then Parking Rate, discounted by twenty percent (20%), until the Parking Garage is substantially completed. Notwithstanding anything to the contrary contained in this Lease, at no time shall Parking Rent hereunder exceed the then prevailing "market rate", which shall be the average rate charged by comparable privately owned "public" parking garages in the City of Providence to a single monthly parker for a 7 days per week, 24 hours per day parking pass (the "Market Rate"). Disputes as to the Market Rate shall be determined by Expedited Arbitration (as defined in Section 21.17(b) below).

10. Parking Lease. Section 1.1 of the Lease is hereby amended by deleting the definition of "Parking Lease" in its entirety and substituting the following therefor:

"Parking Lease" means that certain "State Unit Parking Sublease Agreement" which has been entered into, between Owner (as a Lessee/Garage Tenant) and the CV SSL Garage LLC (as owner of the Parking Garage), pursuant to which Owner (or Tenant, as the case may be) has the right to rent Parking Spaces and issue or receive (as the case may be) Parking Passes for the parking of automobiles of Tenant's Authorized Users under this Lease. Pursuant to the Master Lease, Owner's rights under the Parking Lease have been subleased to Landlord who, in turn, is providing the required parking to Tenant.

11. Additional Parking Spaces. Section 2.3(c) is hereby deleted in its entirety and the following is hereby substituted therefor:

(c) As of the date of this Lease, the Parking Garage will have approximately seven hundred and forty four (744) Parking Spaces which are to be made available as follows: (i) 200 Parking Spaces are allocated to Brown, (ii) 200 parking spaces are allocated to Tenant as Tenant Parking Spaces under subsection (a) above, and (iii) 344 parking spaces are allocated to the River House Housing Project and the Davol Square Property, and other needs of Landlord (collectively, the "River House/Davol Parking Users"). To the extent any additional Parking Spaces become available, whether as a result of (i) any of the foregoing party's relinquishment of any of its originally-allocated Parking Spaces in the Parking Garage, (ii) the expansion of the Parking Garage and construction of additional Parking Spaces therein or (iii) the Landlord's having obtained access to additional parking areas which are available for use by the Project (the Landlord being under no obligation to obtain such

additional Parking Spaces under the immediately preceding clauses (ii) and (iii)), Landlord will offer them to the Tenant, Brown and the River House/Davol Parking Users in proportion to their respective Proportionate Parking Shares at a Parking Rate equal to the annually adjusted Parking Rate that would be applicable if calculated pursuant to Section 2.3(a) above.

12. NGRID Agreement. Section 2.4.1 of the Lease is hereby amended by deleting the first sentence and substituting the following therefor:

The Tenant acknowledges and agrees that pursuant to that certain Cooperation Agreement between Landlord and NGRID dated July 24, 2015 and that certain "Cost Reimbursement Agreement" to be entered into by and between NGRID and Owner and all supplements to either of such Agreements (collectively, the "NGRID Agreement"), (i) NGRID will remove the existing NGRID liner building and substation located therein, which NGRID Liner Building is attached to the northern wall of the Building (the "NGRID Liner Building") by not later than the later of December 30, 2018 or such other date as may approved by Landlord and Tenant (the "Substation Removal Deadline") and NGRID will complete the Power Line Burial Project in accordance with Section 2.4.2 below.

13. Failure to Meet Deadlines. Section 2.4.4 of the Lease is hereby deleted in its entirety and the following is hereby substituted therefor:

2.4.4 Failure to Meet Deadlines. In the event that NGRID fails to complete the Power Line Burial Project by the Power Line Burial Project Deadline or the Substation Relocation Project by the Substation Removal Deadline, subject to force majeure events defined under the NGRID Agreement, provided Tenant is occupying the Premises and is not in default under the terms of this Lease, the Tenant shall be entitled to a Base Rent credit in the amount of \$725.75 (i.e. two dollars (\$2.00) per RSF multiplied by 132,449 RSF divided by 365) for each day of delay from and after the later of the sixty-first (61<sup>st</sup>) day after the applicable deadline or the force majeure event(s), until such NGRID projects have been substantially completed; provided, however, that such Base Rent credits shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate, which is also the total penalty payable by Landlord under the Brown Lease for such delay. Such Base Rent credit shall be applied against Parking Rent next coming due until such credit is used in full.

14. Hazardous Materials Remediation. Section 2.5.1 is hereby amended by deleting the first sentence and substituting the following therefor:

Tenant acknowledges: (i) that Tenant is in receipt of copies of all documents listed in Exhibit L attached hereto and various documents submitted to the Rhode Island Department of Environmental Management

("DEM") and (ii) to the extent that the Environmental Reports identified Hazardous Materials or other environmental compliance obligations at the Project (hereinafter, the "Existing Environmental Conditions") requiring remedial and/or investigative activities pursuant to applicable laws, rules and regulations (collectively the "Required Remediation"), Landlord represents and warrants to Tenant that, as of the date on which Landlord shall deliver possession of the Premises to Tenant, the Existing Environmental Conditions shall have been remediated or be in the process of remediation to the extent required by applicable federal, state and local laws, rules and regulations, at Landlord's sole cost.

15. Hazardous Materials Indemnity. Section 2.5.2 is hereby deleted in its entirety and replaced with the following:

If, at any time during the Term, Hazardous Materials shall be found in or on the Project site, then: (i) with regard to the presence or release of any Hazardous Materials that Tenant shall not have caused, Landlord shall remove or remediate the same to the extent required by applicable federal, state and local laws, rules and regulations, at Landlord's sole cost; and Landlord agrees to defend, indemnify and hold Tenant harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Tenant may suffer as a result of the presence or release of any Hazardous Materials and any claim, suit, or action regarding the removal and remediation of any such Hazardous Materials and (ii) with regard to the presence or release of any Hazardous Materials caused by Tenant, Tenant's agents, employees, contractors, invitees or subtenants, Tenant shall, in accordance with the terms of Section 6.8 herein, remove or remediate same to the extent required by applicable federal, state and local laws, rules and regulations, at Tenant's sole cost; and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including reasonable attorneys' fees, reasonable consultant fees and reasonable expert fees) which arise during or after the Term as a result of such contamination and/or the removal and remediation of the same.

16. Original Term. Section 3.1.1 of the Lease is hereby deleted in its entirety and replaced with the following:

3.1.1 This Lease shall be for a term of approximately fifteen (15) years (the "Original Term") commencing on the Rent Commencement Date and expiring at 11:59 p.m. on the last day of the month in which the fifteenth (15th) anniversary of the Rent Commencement Date occurs, unless sooner terminated as hereinafter provided or renewed in accordance with Section 3.2 below (which date is hereinafter referred to as the "Termination Date").

17. Base Rent for the Option Term; Appraisal of Fair Market Rental Value of the Premises. Section 3.2.3 of the Lease is hereby deleted in its entirety and replaced with the following:

3.2.3 Upon the Tenant's exercising its option to extend for the Option Term, the parties shall attempt to agree in writing upon the Fair Market Rental Value of the Premises. In the event that the parties hereto cannot for any reason agree in writing to such Fair Market Rental Value on or before the date which is eight (8) months prior to the original Termination Date of this Lease (the "Adjustment Date"), the Fair Market Rental Value for the Option Term shall be determined by binding appraisal as follows:

(a) Either of Landlord or Tenant may give the other written notice after the Adjustment Date designating an independent appraiser ("First Appraiser"). The other party shall within twenty (20) days thereafter designate a second independent appraiser ("Second Appraiser") and the First Appraiser and Second Appraiser so designated or appointed shall meet within thirty (30) days after the Second Appraiser is appointed. The First Appraiser and the Second Appraiser shall attempt to determine in writing the Fair Market Rental Value of the Premises as of the date of appraisal, taking into consideration all relevant factors. A written decision joined in by both the First Appraiser and the Second Appraiser shall be binding on the parties. After reaching such a written decision, the appraisers shall give written notice thereof to Landlord and Tenant.

(b) If, within sixty (60) days after the Second Appraiser is appointed, the First Appraiser and Second Appraiser do not for any reason agree in writing upon the then Fair Market Rental Value of the Premises, as of the Adjustment Date, they shall themselves appoint a third independent appraiser ("Third Appraiser") who shall be a competent and impartial person; and in the event of their being unable to agree upon such appointment within fifteen (15) days after the time aforesaid, the Third Appraiser shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree then either party, on behalf of both, may request such appointment by the then Chairman of the Rhode Island Board of Real Estate Appraisers or any similar Board.

(c) The Third Appraiser shall conduct his own investigation of the Fair Market Rental Value, shall consider relevant information supplied to him by Landlord or Tenant, and shall be instructed not to advise either party of his determination of the Fair Market Rental Value except as follows: When the Third Appraiser has made his determination, which shall occur within thirty (30) days after the selection of the Third Appraiser, he shall so advise Landlord and Tenant and shall establish a date, at least five (5) days after the giving of notice by the Third Appraiser to Landlord and Tenant, on which he shall disclose at a meeting his determination of the

Fair Market Rental Value. Such meeting shall take place in the Third Appraiser's office unless otherwise agreed by the parties. After having initialed a paper on which his determination of Fair Market Rental Value is set forth, the Third Appraiser shall place his determination of the Fair Market Rental Value in a sealed envelope. Landlord's Appraiser and Tenant's Appraiser shall each set forth their determination of Fair Market Rental Value on a paper, initial the same and place them in sealed envelopes. Each of the three envelopes shall be marked with the name of the party whose determination is inside the envelope.

(d) In the presence of the Third Appraiser, the determination of the Fair Market Rental Value by Landlord's Appraiser and Tenant's Appraiser shall be opened and examined. If either party's envelope is blank, or does not set forth a determination of Fair Market Rental Value, the determination of the other party shall prevail and be treated as the Fair Market Rental Value. If both envelopes contain a determination of Fair Market Rental Value, the envelope containing the Third Appraiser's determination shall be opened. The "Fair Market Rental Value" for the purposes of this Lease shall be the Fair Market Rental Value proposed by either Landlord's Appraiser or Tenant's Appraiser, whichever is closest to the determination of Fair Market Rental Value by the Third Appraiser, provided that if the Third Appraiser's determination of Fair Market Rental Value is the average of the determination of Fair Market Rental Value by the Landlord's Appraiser and the Tenant's Appraiser, the Fair Market Rental Value for the purposes of this Lease shall be such average (i.e. the determination of Fair Market Rental Value by the Third appraiser.)

(e) In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act. Each party shall pay the fees and expenses of the one of the two original appraisers appointed by such party, or in whose stead, as above provided, such appraiser was appointed, and one-half of the fees and expenses of the Third Appraiser, and all other expenses, if any, shall be borne equally by both parties. Any appraiser designated to serve in accordance with the provisions of this option to extend shall be disinterested, shall be qualified to appraise commercial real estate in Providence, Rhode Island of the type covered by this option to extend, shall be a member of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such Institute is not then in existence), and shall have been actively engaged in the appraisal of commercial real estate in Rhode Island for a period of not less than ten (10) years immediately preceding his or her appointment. Each party will also pay their own attorneys' fees.

18. Financing TI Costs. Section 4.4(b) of the Lease is hereby deleted in its entirety without substitution therefor.

19. Shared Savings and Base Building Cap. Section 4.8 of the Lease is hereby amended by deleting the first sentence and replacing the same with the following:

"To the extent that the "Net Base Building Costs" are less than a cap in an amount (the "Base Building Cap") which shall be mutually agreed upon by Landlord and Tenant prior to nine (9) months after the completion of the final Base Building plans and specifications (as described in Section 10.1 below) due to buyout savings or efficiencies gained during construction, such savings (the "Shared Savings") shall be allocated 50% to Tenant and Brown (based upon the RSF in their respective premises) and 50% to Landlord."

20. Insurance. Section 7.3.2 is hereby deleted in its entirety and replaced with the following:

All commercial general liability, automobile liability, and umbrella/excess liability, and all-risk casualty insurance policies evidencing such insurance required under this Lease shall name the Landlord, Landlord's members, such affiliates thereof as Landlord may designate, and their respective officers, employees, agents, general partners, members, subsidiaries, affiliates and lenders (including, without limitation, any Mortgagee) or the Tenant and/or its designees, as the case may be, as additional insureds, and shall be primary and noncontributory.

21. Interruption. Section 8.3.1 is hereby amended by deleting the first sentence and substituting the following therefor:

Any failure by the Landlord to furnish any of the foregoing services or utilities, resulting from circumstances beyond the Landlord's reasonable control or from interruption of such services due to repairs or maintenance, shall not render the Landlord liable in any respect for damages to either person or property, nor be construed as an eviction of the Tenant, nor cause an abatement of rent hereunder (except as expressly set forth below), nor relieve the Tenant from any of its obligations hereunder, unless caused by the gross negligence of Landlord or its agents, employees and/or contractors.

22. Interruption. Section 8.3.2 is hereby deleted in its entirety and replaced with the following:

Notwithstanding the foregoing, if any such interruption of services or utilities described above directly results from the gross negligence of Landlord or its agents, employees and/or contractors, such interruption continues for five (5) or more consecutive business days, and Tenant is

unable to reasonably conduct and does not conduct any business in a material portion of the Premises as a result thereof, then Tenant shall be entitled to an abatement of Base Rent, which abatement shall commence as of the first day after the expiration of such five (5) business day period and terminate upon the cessation of such interruption and which abatement shall be based on the portion of the Premises rendered unusable for Tenant's business by such interruption.

23. Base Building; Tenant Improvements. Section 10.1 of the Lease is hereby amended by deleting the second and third sentences and replacing the same with the following:

"Landlord and Tenant agree that, among other things, the Landlord Work Letter, the Construction Milestones Schedule and the Final Tenant Improvement Plans and Specifications are subject to final approval by Tenant, and that: proposed drafts of the Landlord Work Letter and Construction Milestones Schedule shall be delivered to Tenant for its review not later than sixty (60) days after the start of construction of the Landlord's Work, and the Final Tenant Improvement Plans and Specifications shall be delivered to Tenant for its review not later than thirty (30) days prior to the anticipated start of construction of the Initial Tenant Improvements. The parties hereto acknowledge and agree that none of the construction of the Initial Tenant Improvements shall commence until (a) Tenant has approved in writing the Landlord Work Letter, the Final Tenant Improvement Plans and Specifications and the Construction Milestone Schedule, and (b) Landlord has, following Landlord's commercially reasonable efforts to do so, first received written approval of all Tenant Improvement Plans and Specifications from both the State of RI Historical Preservation & Heritage Commission ("SHPO") and the National Park Service."

24. Master Leases. Section 16.4 of the Lease is hereby deleted in its entirety and the following is substituted therefor:

16.4 Master Leases. (a) Landlord and Tenant acknowledge and agree that: (i) the Project is or will be owned in fee simple by CV South Street Landing, LLC, a Rhode Island limited liability company, an Affiliate of Landlord ("Owner" or "Master Landlord"); (ii) the Owner and the Landlord will enter into two separate but substantially similar Master Leases (each a "Master Lease" and jointly the "Master Leases") (a) pursuant to one of which Owner is the Master Landlord and leases the Premises to Landlord as Master Tenant (the "Tenant Unit Master Lease") and (b) pursuant to the second of which the Owner is the Master Landlord and leases the "premises" under the Brown Lease to Landlord as Master Tenant (the "Brown Unit Master Lease"); and (iii) pursuant to a Consent, Recognition and Non-Disturbance Agreement in form and substance reasonably mutually acceptable to and executed by the Master Landlord, the Master

Tenant and the Tenant (the "Master Lease Recognition Agreement"), the rights of the parties to this Lease will be made subject and subordinate to the Tenant Unit Master Lease. Within thirty (30) days after the execution of the Tenant Unit Master Lease, Landlord will provide Tenant with a copy thereof.

(b) The Tenant agrees that, upon the expiration or earlier termination of the Tenant Unit Master Lease, this Lease shall thereupon automatically become a direct lease by and between the Master Landlord (and its successors and assigns) and the Tenant. The Tenant agrees to execute any document reasonably requested by the Master Landlord to confirm the foregoing.

(c) The Master Leases shall each provide that (i) if Tenant exercises an option to purchase the Tenant Unit pursuant to the terms of this Lease and pays the purchase price therefor as determined hereunder, or if Brown exercises an option to purchase the Brown Unit pursuant to the terms of the Brown Lease and pays the purchase price therefor as determined thereunder, or if either Tenant or Brown does not exercise its respective option to purchase its respective Unit, Tenant or Brown (as the case may be) shall have the right to purchase the Unit not purchased by the other tenant, (ii) the Master Landlord shall, without regard to whether Landlord is in default under the Master Lease or Brown is in default under the Brown Lease, subordinate the Master Leases to, and recognize the terms and conditions of, the Condominium Documents as the same are established pursuant to Article 23 hereof, (iii) the Tenant Unit Master Lease and this Lease shall each automatically and without further action be deemed to have been amended to provide that the "Premises" covered thereby is the Tenant Unit under the Condominium Documents, (iv) the Brown Unit Master Lease and the Brown Lease shall each automatically and without further action be deemed to have been amended to provide that the "Premises" covered thereby is the Brown Unit under the Condominium Documents, (v) the Tenant Unit Master Lease shall automatically and without further action be deemed to have been amended to provide that Tenant is the Master Landlord thereunder, and (vi) if the Brown Unit is purchased by Brown or by Tenant, the Brown Unit Master Lease shall automatically and without further action be deemed to have been amended to provide that Brown or Tenant (as the case may be) is the Master Landlord thereunder.

(d) Tenant acknowledges and agrees (i) that its purchase of the Tenant Unit shall be expressly subject to the continued encumbrance of the Tenant Unit Master Lease on the Tenant Unit and that the lease of the Tenant Unit to Tenant pursuant to this Lease shall remain in full force and effect and shall not be modified (except as amended hereby) after its purchase of the Tenant Unit and (ii) that its purchase of the Project pursuant to Section 23.1(d) shall be expressly subject to the continued encumbrance of the Master Leases on the Project, that the lease of the Tenant Unit to Tenant pursuant to this Lease Agreement (as amended

hereby) shall remain in full force and effect after its purchase of the Project and shall not be modified (except as amended hereby) and the lease of the Brown Unit to Brown pursuant to the Brown Lease shall remain in full force and effect after its purchase of the Project and shall not be modified (except as amended hereby) after its purchase of the Brown Unit.

(e) Landlord and Tenant acknowledge and agree that (i) all Base Rent payable under this Lease shall be paid when due to Landlord, (ii) from each monthly installment of such Base Rent, Landlord shall retain for itself funds in an amount (as Master Tenant's gross profit from its leasing of the Tenant Unit, the "MTGP Funds") equal to one twelfth of the annual amount of MTGP Funds scheduled for the year in question in Exhibit O attached hereto, (iii) the balance of all Base Rent and all other Rent received by Landlord under this Lease shall be paid to Master Landlord under the Tenant Unit Master Lease promptly after Landlord's receipt of same, and (iv) for all purposes, the MTGP Funds shall be property of Landlord.

(f) If Tenant exercises the Tenant Unit Purchase Option pursuant to Article 23 hereof, Tenant shall be entitled to receive a credit (the "MTGP Credit") to be applied against the Purchase Price, in recognition of the diminution in the fair value of the Tenant Unit resulting from the continued encumbrance of the Tenant Unit Master Lease on the Tenant Unit and the retention of the MTGP Funds thereunder, equal to the net present value of the MTGP Funds from the date of purchase through the end of the remaining Term applying the same discount rate and other economic assumptions as used in the calculation of the Purchase Price; provided, however, there shall be no duplication of the MTGP Credit as an express credit against the Purchase Price if the diminution in the fair value of the Tenant Unit attributable to the continued encumbrance of the Tenant Unit Master Lease has already been taken into account in the calculation of fair value and/or the Purchase Price. If Tenant exercises its option to purchase the total Project pursuant to Section 23.1(d)(vii) of this Lease, Tenant shall be entitled to receive a credit to be applied against the Purchase Price, in recognition of the diminution in the fair value of the Project resulting from the continued encumbrance of the Master Leases on the Project, determined in the same manner as provided in the prior sentence. Nothing contained in this Section 16.4 shall be construed as requiring Tenant to exercise any options it may have to renew the Term of this Lease (under Section 3.2 hereof or otherwise)

(g) Landlord hereby covenants and agrees that it shall not, at any time during the Term of this Lease, cause or permit either Master Lease to be amended or modified in any manner which could have a material adverse effect on Tenant's rights under this Section 16.4 without the prior written consent of Tenant (which may not be unreasonably withheld, conditioned or delayed).

25. Consequential Damages. A new Section 17.7 of the Lease is added as follows:

"**17.7 Consequential Damages.** Notwithstanding anything in this Lease to the contrary, in no event shall either Landlord or Tenant be liable to the other for any consequential, special or indirect damages arising out of this Lease, including lost profits."

26. Notices. Section 20 is hereby amended to provide that a copy of any notice, demand, consent, approval, request or other communication or document to be provided under the Lease to Landlord shall be sent to:

Wexford Science & Technology, LLC  
801 W. Baltimore Street, Suite 505  
Baltimore, MD 21201  
Attention: President  
410.649.5629

27. Option to Purchase. Section 23.1 of the Lease is hereby deleted in its entirety and replaced with the following:

23.1. Option Dates; Fair Market Value; Minimum Purchase Price; Manner of Exercise.

(a) Purchase Option and Option Dates. After the end of all "recapture periods" for Historic Tax Credit purposes and, if NMTCS are utilized in the Project, for NMTCS purposes (all of which applicable recapture periods are anticipated to end during the sixth (6th) Lease Year) (the "First Option Date") and after the end of the twelfth (12th) Lease Year (the "Second Option Date"), the Tenant shall have the option to purchase the fee interest in the Tenant Unit (the "Tenant Unit Purchase Option"), subject to the terms and conditions set forth herein, at a price (the "Purchase Price") equal to the "Fair Market Value" (determined as provided in subsection (d) below) of the "Tenant Unit" (as herein defined in Section 23.1(c)), but in any event with respect to the option exercised, as of the First Option Date, at a price not less than the "Tenant Unit Minimum Purchase Price" (as hereinafter defined). For the purpose of determining the actual First Option Date, as soon as practical but no later than eighteen (18) months after the Rent Commencement Date, Landlord shall provide written notice to Tenant of the final date upon which all recapture periods for all tax credit purposes shall end, and such date shall be the actual First Option Date for all purposes under the Lease. The option exercisable after the First Option Date is referred to herein as the "First Purchase Option" and the option exercisable after the Second Option Date is referred to herein as the "Second Purchase Option". In the event that Tenant exercises its First Purchase Option or its Second Purchase Option and closes on the purchase of the Project or the Tenant Unit, as applicable, at closing, in

addition to the Purchase Price, Tenant shall pay to Landlord an amount equal to the then unamortized Net TI Costs and, (i) in connection with the First Purchase Option, Tenant shall be allowed a credit in an amount equal to the Tenant's Borrowing Costs Differential (if any), as defined in Section 1.1 (the "First Purchase Price Credit") and to the extent that TI Rent payable by Tenant under this Lease was utilized in determining the Fair Market Value of the Project or the Tenant Unit, as applicable, pursuant to a calculation under the capitalized income method, a credit (the "Second Purchase Price Credit") in an amount equal to the portion of such Fair Market Value attributable to such TI Rent, and (ii) in connection with the Second Purchase Option, Tenant shall be allowed a credit in an amount equal to the Second Purchase Price Credit. Provided, however, in no event shall the Purchase Price minus the above-referenced Purchase Price Credits be less than the "Project Minimum Purchase Price" or the "Tenant Unit Minimum Purchase Price" as applicable, as such terms are defined in Section 23.1(e).

(b) Time and Manner of Exercise of Options. The Tenant Unit Purchase Option may be exercised only during the first sixty (60) days after the First Option Date (the "First Purchase Option Period") and the Second Option Date (the "Second Purchase Option Period") respectively, by written notice to the Landlord from the Tenant ("Tenant's Option Notice").

(c) Condominium.

(i) In the event that either Brown properly exercises its option to purchase or right of first offer under the Brown Lease, or the Tenant properly exercises its option to purchase or right of first offer under this Lease, and either of such parties enter into a binding purchase and sale agreement, the Project will be subjected to a two-unit (each a "Unit") condominium regime having the premises then leased by Brown as one Unit (the "Brown Unit") and the Premises then leased by the Tenant (including, any Additional Space, if any, leased in connection with the Additional Space ROFR) as the second Unit (collectively, the "Tenant Unit"). Notwithstanding that only one tenant may exercise its option or right of first offer and enter into a binding purchase and sale agreement with Landlord to purchase its Unit, Landlord agrees that it will nevertheless be obligated to subject the Project to a two-unit condominium regime effective as of the closing of such purchase, with Landlord retaining title to the other Unit until such time as Landlord conveys such other Unit. Within forty-five (45) days after the exercise by Tenant or Brown of the Tenant Unit Purchase Option, Landlord will submit to Brown and Tenant (i) a proposed set of condominium documents with the aforesaid two-unit condominium and with each unit having equal voting rights in the condominium association, including a Declaration of Condominium, Plats and Plans and such other documents as are required to subject the

Project to the "Rhode Island Condominium Act", R.I. Gen. Laws Chapter 34-36.1 (collectively the "Condominium Documents"), (ii) an assignment and assumption of the Parking Lease to Tenant under which Tenant shall assume only those obligations under the Parking Lease first arising after the assignment, together with a mutually acceptable estoppel certificate or such other evidence as is reasonably acceptable to Tenant that the tenant thereunder is not in default, and pursuant to which the occupant of the Tenant Unit shall have the right to use the number of parking spaces equal to the number of Parking Spaces then allocated to the Tenant Unit pursuant to Section 2.3 (but no fewer than 200), and the occupant of the Brown Unit shall have the right to use the number of parking spaces equal to the number of Parking Spaces then allocated to the Brown Unit pursuant to Section 2.3 (but no fewer than 200) (collectively, the "Parking Lease Assignment") and (iii) a Notice of the Parking Lease Assignment in recordable form. Such Condominium Documents, Parking Lease Assignment and Notice of Parking Lease Assignment shall be subject to the approval of the Tenant (and in the case of the Condominium Documents, Brown), each of which approvals will not be unreasonably withheld or delayed. If Tenant, Landlord and Brown are unable to agree upon such documents, then Landlord and the Tenant agree to submit the matter to arbitration in accordance with Section 21.17.2 hereunder and Landlord agrees to invoke the arbitration provisions of the Brown Lease and will use commercially reasonable efforts to join Brown into a joint arbitration among Landlord, Tenant and Brown, provided that if the Tenant is not satisfied with the results of such arbitration it may rescind its offer within forty-five (45) days after the determination made pursuant to the arbitration becomes final.

(ii) In the event that, either Brown or Tenant has exercised its option to purchase or right of first offer, in connection with the sale of the first Unit to be sold, the approved Condominium Documents, the approved Parking Lease Assignment and the approved Notice of the Parking Lease Assignment shall be executed and (where appropriate) recorded with the City of Providence Land Evidence Records. In such event, the Landlord shall cause all Mortgagees and other required parties to recognize the Tenant's Options and to take such steps, including without limitation the subordination of any mortgage to the Condominium Documents, as may be reasonably necessary to effectuate the exercise of such Options. Notwithstanding anything to the contrary contained in this Lease, the Tenant's Options to purchase shall not expire if the Project is foreclosed upon by any Mortgagee. For no additional consideration, if Tenant purchases the Tenant Unit, Owner shall assign the Parking Lease to Tenant, free and clear of all claims, and if Tenant purchases the Project, Owner shall assign the Parking Lease and the Brown Unit Parking Lease to Owner free and clear of all claims. In either case, Owner will represent to Tenant that there are no material defaults under the parking lease(s) being assigned and no encumbrances which will adversely affect Tenant's

rights thereunder, and Tenant shall assume all obligations under the parking lease(s) being assigned arising from and after the date of assignment.

(d) Fair Market Value.

Upon the Tenant's election to exercise the Tenant's Unit Purchase Option with respect to the First Option Date or the Second Option Date (each an "Option Exercise Date"), the "Fair Market Value" of the Tenant Unit shall be determined by appraisal as follows:

(i) Either of Landlord or Tenant may give the other written notice, within twenty (20) days after the respective Option Exercise Date, designating an independent appraiser ("First Appraiser"). The other party shall within twenty (20) days thereafter designate a second independent appraiser ("Second Appraiser") and the First Appraiser and Second Appraiser so designated or appointed shall meet within thirty (30) days after the Second Appraiser is appointed. The First Appraiser and the Second Appraiser shall attempt to determine, in writing, the Fair Market Value of the Tenant Unit as of the Option Exercise Date, taking into consideration all relevant factors. A written decision joined in by the First Appraiser and the Second Appraiser shall be binding upon the parties. After reaching a written decision, the appraisers shall give simultaneous written notice thereof to Landlord and Tenant.

(ii) If, within sixty (60) days after the Second Appraiser is appointed, the First Appraiser and Second Appraiser do not, for any reason, agree in writing upon the then Fair Market Value of the Tenant Unit, as of the Option Exercise Date, they shall themselves appoint a third independent appraiser (the "Third Appraiser") who shall be a competent and impartial person; and in the event of their being unable to agree upon such appointment within fifteen (15) days after the time aforesaid, the Third Appraiser shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the then Chairman of the Rhode Island Board of Real Estate Appraisers or any similar Board.

(iii) The Third Appraiser shall conduct his own investigation of the Fair Market Value, shall consider relevant information supplied to him by Landlord or Tenant, including with respect to the condition of the Premises, the available parking and other Common Area and appurtenant rights, and shall be instructed not to advise either party of his determination of the Fair Market Value except as follows: When the Third Appraiser has made his determination, which shall occur within thirty (30) days after the selection of the Third Appraiser, he shall so advise Landlord and Tenant and shall establish a date, at least five (5) days after the giving

of notice by the Third Appraiser to Landlord and Tenant, on which he shall disclose at a meeting his determination of the Fair Market Value. Such meeting shall take place in the Third Appraiser's office unless otherwise agreed by the parties. After having initialed a paper on which his determination of Fair Market Value is set forth, the Third Appraiser shall place his determination of the Fair Market Value in a sealed envelope. Landlord's Appraiser and Tenant's Appraiser shall each set forth their determination of Fair Market Value on a paper, initial the same and place them in sealed envelopes. Each of the three envelopes shall be marked with the name of the party whose determination is inside the envelope.

(iv) In the presence of the Third Appraiser, the determination of the Fair Market Value by Landlord's Appraiser and Tenant's Appraiser shall be opened and examined. If either party's envelope is blank, or does not set forth a determination of Fair Market Value, the determination of the other party shall prevail and be treated as the Fair Market Value. If both envelopes contain a determination of Fair Market Value, the envelope containing the Third Appraiser's determination shall be opened. The Fair Market Value for the purposes of this Lease shall be the Fair Market Value proposed by either Landlord's Appraiser or Tenant's Appraiser, whichever is closest to the determination of Fair Market Value by the Third Appraiser, provided that if the Third Appraiser's determination of Fair Market Value is the average of the determination of Fair Market Value by the Landlord's Appraiser and the Tenant's Appraiser, the Fair Market Value for the purposes of this Lease shall be such average (i.e. the determination of Fair Market Value by the Third appraiser.)

(v) In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act. Each party shall pay its own attorney's fees, the fees and expenses of the one of the two original appraisers appointed by such party, or in whose stead, as above provided, such appraiser was appointed, and one-half of the fees and expenses of the Third Appraiser, and all other expenses, if any, shall be borne equally by both parties.

(vi) Any appraiser designated to serve in accordance with the provisions of this option to extend shall be disinterested, shall be MAI certified by the Appraisal Institute or its successor, and shall have had at least ten (10) years' continuous experience in the business of appraising in the City of Providence, Rhode Island.

(vii) Notwithstanding any other provision contained herein to the contrary, in the event that Brown does not purchase the Brown Unit, and the Tenant has exercised its right to purchase the Tenant Unit, the Tenant shall then have the right, but not the obligation, to purchase the total

Project at fair market value (the "Project Purchase Price"), but no lower than the Project Minimum Purchase Price established for the entire Project if such option is exercised by Tenant at the First Option Date, subject to the terms of the Brown Lease and any remaining options or rights of first refusal set forth in the Brown Lease. Tenant may exercise such option within ninety (90) days after it has been notified that Brown has not exercised its option (the "Outside Project Option Date"), or that it has exercised its option and failed to close in a timely manner, and the determination of Fair Market Value and Project Minimum Purchase Price shall be made in accordance with Section 23.1. Notwithstanding any other provision contained herein to the contrary, in the event that Brown does not elect to purchase or does elect to purchase and does not then close on the Brown Unit, and the Tenant does not elect to purchase the entire Project, the Tenant may only purchase the Tenant Unit separately, if there are not less than eight (8) years remaining on the term of the Brown Lease, including any extension options.

(viii) Notwithstanding anything to the contrary contained in this Lease, (a) in the case of the determination of the Tenant Unit Purchase Price or the Project Purchase Price at the exercise of the option on the First Option Date, in no event will the purchase price be below the "Tenant Unit Minimum Purchase Price" or the "Project Minimum Purchase Price" (all as herein defined) and, in no event will the Tenant be bound to purchase prior to it knowing and it being satisfied with, the Fair Market Value and the actual Tenant Unit Minimum Purchase Price or the Project Minimum Purchase Price, as applicable, that it will pay (the "Purchase Price") and Tenant may rescind and cancel its exercise of either the First Purchase Option or the Second Purchase Option within forty-five (45) days after the Purchase Price is finally determined. The parties hereto agree that the Tenant shall have the right to reject any such determination without the requirement for State legislative approval or oversight. If properly exercised, the parties shall work diligently to close on the Tenant's purchase of the Tenant Unit or the Project, as the case may be, within one hundred eighty (180) days after the date of determination of the applicable Fair Market Value. The terms and conditions of such purchase and sale shall be governed by a Purchase and Sale Agreement which shall be agreed upon in connection with the approval of the Condominium Documents pursuant to Section 23.1(c). Notwithstanding the target date of one hundred eighty (180) days to close on any such purchase, it is acknowledged and agreed that in the event of the exercise by Tenant of any of its purchase options under this Section 23, Tenant will need the approval of the Rhode Island General Assembly to close Tenant's purchase of the Tenant Unit or the Project, as the case may be, which approval Tenant will promptly and diligently pursue. The parties further acknowledge and agree that if, for any reason, such approval shall not have been obtained by the end of the then current regular session of the RI General Assembly generally occurring from January through June of

each year, provided there are not less than ninety (90) days in such session after determination of the Fair Market Value (or if the RI General Assembly is not then in session, by the end of the next regular Session), Tenant shall be deemed to have withdrawn its exercise of all of its then effective purchase options under this Section 23.

(ix) At the closing, Landlord shall deliver good and clear record marketable title to the Tenant Unit or the Project, as the case may be, subject only to the Condominium Documents, the Notice of Parking Lease Assignment (hereinafter defined), the Permitted Title Exceptions and such other instruments as the parties may mutually agree, and in the case of a sale of the Project, the Brown Lease. Additionally, if the Purchase Price is equal to the Fair Market Value of the Project or the Tenant Unit, as the case may be, and such Fair Market Value exceeds the Minimum Purchase Price, then the Tenant shall be allowed, as a credit against the Purchase Price at closing, an amount equal to the Tenant's Borrowing Costs Differential; provided, however, that the Purchase Price resulting from such credit shall never be reduced below the Minimum Purchase Price.

(e) Tenant Unit Minimum Purchase Price.

The "Tenant Unit Minimum Purchase Price" shall mean the amount arrived at by multiplying "Project Minimum Purchase Price" by the "Tenant Percentage Interest" and then deducting an amount equal to the then unamortized Net TI Costs. The "Tenant Percentage Interest" shall be the percentage arrived at by dividing the total RSF in the Tenant Unit by the total RSF in the Building. The "Project Minimum Purchase Price" shall mean the total Project development costs (which shall not include any deferred fees or carried interest then payable to the Landlord or its Affiliates) plus commercially reasonable transactional costs, less (i) the Net Federal HTC Proceeds with respect to the Project (exclusive of any Net Federal HTC Proceeds attributable to the TI Costs with respect to the Premises or the State Premises), and (ii) the Net State HTC Proceeds. The Tenant Unit Minimum Purchase Price and the Project Minimum Purchase Price are referred to herein collectively as the "Minimum Purchase Prices."

(f) Determination of Tenant Unit Minimum Purchase Price.

(i) Within nine (9) months following the Rent Commencement Date, Landlord shall provide Tenant with a written statement setting forth in reasonable detail the Project development and transactional costs as described in Section 23.1(e), which statement shall be accompanied by reasonable supporting documentation and which statement is subject to supplementation and update by Landlord to Tenant in writing from time to time. Within twenty (20) days after the Landlord's receipt of the Tenant's Option Notice, the Landlord shall provide, by written notice to the Tenant,

the Landlord's initial determination of the Minimum Purchase Prices, which determination shall be made pursuant to the definition in Section 23.1(e) (the "Price Notice"), which such Price Notice shall include full and complete documentation of Landlord's determination of such prices. The Landlord's good faith determination of the Minimum Purchase Prices shall be final and binding unless, within twenty (20) days after the Tenant's receipt of the Price Notice, the Landlord shall receive a written notice from the Tenant (the "Price Objection Notice") which Price Objection Notice shall include the Tenant's good faith determination of the Minimum Purchase Prices in accordance with the definition in Section 23.1(e) or the basis for such objection (such as lack of information or documentation or a desire to audit the same).

(ii) If the Tenant shall timely challenge the Landlord's determination in accordance with Section 23.1(f)(i) above, then the parties shall attempt to agree upon a final and binding Minimum Purchase Prices, and Landlord shall make available for audit to Tenant and its consultants (and if the matter is subject to arbitration pursuant to the next paragraphs, to the arbitrators), the books, records and documentation of Landlord necessary to establish the Minimum Purchase Prices. If Landlord and Tenant shall fail to agree upon a final and binding Minimum Purchase Prices within fifteen (15) days after Landlord shall have received the Price Objection Notice, then Landlord and Tenant shall, within ten (10) days after such period, each designate a neutral arbitrator, each of whom shall be an accountant certified by the American Arbitration Association or its successor, and who shall have had at least ten (10) years' continuous experience in the business of accounting for real estate development projects in the City of Providence, Rhode Island.

(iii) The arbitrators shall review the Landlord's and Tenant's Minimum Purchase Prices and shall conduct such hearings and investigations as they may deem appropriate and shall, within thirty (30) days after their designations, jointly determine which of the two (2) determinations shall be the Tenant Unit Minimum Purchase Price, and that determination by the appraisers shall be binding upon Landlord and Tenant, provided that the arbitrators shall not have the power to add to, modify, or change any of the provisions of this Lease. Each party shall pay its own counsel and arbitrator's fees and expenses, if any, in connection with any determinations under this Section, and the parties shall share equally all other expenses and fees of any such final determination process.

(iv) If the arbitrators shall fail to agree upon which of the two (2) determinations shall be the Minimum Purchase Prices within sixty (60) days after Landlord shall have received the Price Objection Notice, they shall, within twenty (20) days after the expiration of said sixty (60) day period, designate a third arbitrator who shall be a competent and impartial person, and an accountant certified by the American Arbitration

Association or its successor, and who shall have had at least ten (10) years' continuous experience in the business of accounting for real estate development projects in the City of Providence, Rhode Island; and in the event of their being unable to agree upon such appointment within fifteen (15) days after the time aforesaid, the third appraiser shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the then Chairman of the Rhode Island Board of Real Estate Appraisers or any similar Board.

(v) Such third arbitrator shall, within thirty (30) days after his/her designation, determine which of the two (2) determinations shall be the Tenant Unit Minimum Purchase Price, and that determination by the third arbitrator shall be binding upon Landlord and Tenant, provided that the arbitrator shall not have the power to add to, modify, or change any of the provisions of this Lease. Each party shall pay its own counsel and arbitrator fees and expenses, if any, in connection with the third arbitrator under this Section, and the parties shall share equally the fees of the third arbitrator and all other expenses and fees of any such final determination process.

28. Tenant Alternative Option. The following new Section 23.2 is hereby added to the Lease:

"23.2 Tenant Alternative Option.

(a) Tenant's decision whether or not to exercise its First Purchase Option or its Second Purchase Option to purchase the Tenant Unit under this Article 23 may be affected by the identity of the constituent owners of the Landlord at the time and in particular whether Landlord's Historic Tax Credit equity investor remains a member of in Landlord and whether, as provided below, Tenant shall have the right to purchase from Landlord, Landlord's leasehold interest in and all of Landlord's rights under the Tenant Unit Master Lease. Accordingly, if Tenant intends to consider exercising its First Purchase Option or its Second Purchase Option, Tenant shall have the right to so notify Landlord at least 75 days prior to the First Option Date and at least 75 days prior to the Second Option Date, as the case may be, and thereafter Landlord shall provide to Tenant, at least 60 days prior to the First Option Date and at least 60 days prior to the Second Option Date, as the case may be, a notice (a "Alternative Option Notice") specifying (a) in reasonable detail, the identity of the direct and indirect members and owners of Landlord and (b) the precise First Option Date or the Second Option Date, as the case may be. If Landlord fails to timely deliver such Alternative Option Notice (a) the period of time of the First Option Period or the Second Option Period, as the case may be, shall be extended on a day for day basis for a period of time equal to the delay in the giving of such notice, and (b) Tenant may by written notice to Landlord request that such Alternative Option Notice be given (a "Reminder Notice"). Within 15

business days after Landlord has provided an Alternative Option Notice to Tenant, Tenant shall notify Landlord that it is electing either (x) to exercise its First Purchase Option or its Second Purchase Option, as the case may be, in which event Tenant shall purchase the Tenant Unit subject to the Tenant Unit Master Lease as provided in Section 16.4 hereto ("Tenant Alternative Option #1") or (y) not to exercise its First Purchase Option (subject to its continuing rights under the Second Purchase Option) or its Second Purchase Option, as the case may be, and to have the further provisions of Section 23.2(b) and 23.2(c) apply ("Tenant Alternative Option #2"). If Tenant fails to notify Landlord of its election within such 15 business day period after receiving an Alternative Option Notice, Tenant shall be deemed to have elected Tenant Alternative Option #2 and to have waived any rights under this Section 23.2 with respect to the First Purchase Option or the Second Purchase Option, as applicable. If, in an Alternative Option Notice, Landlord specifies that Landlord's Historic Tax Credit equity investor no longer remains a member of Landlord, then, in conjunction with Tenant Alternative Option #1 and Tenant's purchase of the Tenant Unit, Tenant shall have the right to purchase from Landlord (i.e. Master Tenant) Landlord's leasehold interest in and all of Landlord's rights under the Tenant Unit Master Lease for a purchase price equal to the "MTGP Credit" (as defined in Section 16.4(f) hereof); which amount (as provided in Section 16.4 hereof) shall also be a credit (and deduction from) the Purchase Price payable by Tenant for the Tenant Unit under Section 23 hereof, and Tenant shall not be bound to close on either the purchase hereunder or the purchase of Landlord's right under the Master Lease unless both sellers convey in accordance with the terms hereof and both purchases occur simultaneously.

(b) If, in the Alternative Option Notice with respect to the First Purchase Option Landlord specifies that Landlord's Historic Tax Credit equity investor remains a member of Landlord (an "Alternative Option Condition") and Tenant elects Tenant Alternative Option #2 with respect to the First Option as provided above, the following provisions shall apply:

(i) The "Option Term" as defined Section 3.2.1 shall be amended to mean (in lieu of the two-year period referenced therein) an additional period (i) commencing on the day after the last day of the Original Term and (ii) expiring on the last day of the initial term of the Master Leases (as defined in Section 16.4 of the Lease, as amended by this First Amendment). The initial term of the Master Leases will commence on the first day that the historic rehabilitation of the Project is placed in service and end on the last day of the month that is nineteen (19) years and ten (10) months thereafter; it is currently anticipated that the initial term of the Master Leases will end on or about October 31, 2036. Landlord shall, promptly after commencement of the initial term of the Master Leases, inform Tenant in writing of the initial term of the Master Leases and, accordingly, the expiration date of the Option Term.

(ii) Provided Tenant subsequently elects to extend the Term for the Option Term pursuant to Section 3.2.1 (as amended by Section 23.2(b)(ii) above), Tenant shall have a third option to purchase the fee interest in the Tenant Unit (a "Third Purchase Option") on the same terms and conditions as the Second Purchase Option, except that:

(A) The first date upon which the Third Purchase Option may be exercised (the "Third Option Date") shall be ten (10) months prior to the scheduled expiration date of the Option Term, and the 60 day period during which the Third Purchase Option may be exercised (the "Third Purchase Option Period") shall expire eight (8) months prior to the scheduled expiration date of the Option Term.

(B) Tenant may initiate the process under Section 23.1(d) to determine Fair Market Value prior to exercise of the Third Purchase Option (but no sooner than 14 months prior to the scheduled expiration of the Option Term); and

(C) The Master Leases shall have terminated and, notwithstanding the provisions of Section 16.4 or anything else in this Lease, Tenant shall acquire the fee interest in the Tenant Unit free and clear of any encumbrance of the Master Leases.

Without limitation, Tenant shall have the right to purchase the entire Project in connection with the Third Purchase Option, as provided for in Section 23.1(d)(vii).

(iv) Neither Master Landlord nor Landlord shall convey the Tenant Unit or the Project to Brown and the Brown shall have no right to purchase the Tenant Unit or the Project unless and until Tenant has had an opportunity to purchase pursuant to the Second Purchase Option, provided the Alternative Option Condition does not apply, or if the Alternative Option Condition applies to the Second Purchase Option, unless and until Tenant has had an opportunity to purchase pursuant to the Third Purchase Option.

(c) If in the Alternative Option Notice with respect to the Second Purchase Option, Landlord specifies that Landlord's Historic Tax Credit equity investor remains a member of Landlord (i.e. an Alternative Option Condition applies) and Tenant elects Tenant Alternative Option #2 with respect to the Second Purchase Option as provided above, and if Tenant subsequently elects to extend the Term for the Option Term pursuant to Section 3.2.1, as amended by Section 23.2(b)(ii) above (the "First Renewal Option"), the following provisions shall apply:

(i) Tenant shall have one additional option to extend the Term for an additional period of five (5) years (the "Second Renewal Option"), The Second Renewal Option shall be subject to all of the terms and conditions applicable to the First Renewal Option, provided that Base Rent for the Option Term under the Second Renewal Option shall be the greater of (i) \$17.15/RSF or (ii) the then-applicable Fair Market Rental Value of the Premises.

(ii) Unless Tenant has received an Alternative Option Notice with respect to the First Purchase Option or the Second Purchase Option in which Landlord has specified that Landlord's Historic Tax Credit equity investor no longer remains a member of Landlord, neither Master Landlord nor Landlord shall convey the Tenant Unit or the Project to Brown and Brown shall have no right to purchase the Tenant Unit or the Project unless and until Tenant has had an opportunity to purchase the Tenant Unit pursuant to the Third Purchase Option. Landlord represents and warrants that it has amended the Brown Lease accordingly. Similarly, Tenant agrees that unless Brown has received an Alternative Option Notice with respect to the First Purchase Option or the Second Purchase Option in which Landlord has specified that Landlord's Historic Tax Credit equity investor no longer remains a member of Landlord Tenant shall have no right to purchase the Brown Unit or the Project unless and until Brown has had an opportunity to purchase the Brown Unit pursuant to its Third Purchase Option.

(d) Landlord represents, warrants and covenants to Tenant that the Master Leases and the Brown Lease contain legally binding provisions which give full effect to the Tenant Alternative Option rights under the foregoing provisions of this Section 23.2.

29. Right of First Offer to Purchase. Article 24 of the Lease is hereby deleted in its entirety and replaced with the following:

24 Right of First Offer to Purchase

24.1 In addition to the Options described in Article 23 of this Lease (and any comparable Option relating to the Brown Premises or the Brown Unit, as set forth in the Brown Lease), the Tenant (and Brown) shall each have a right of first offer ("ROFO") to purchase their respective units, prior to the Project being offered for sale to any third party at any time during the Term. This right of first offer and the comparable right in the Brown Lease shall expire if the Project is foreclosed upon by any Mortgagee. Pursuant to such rights of first offer, the Landlord shall simultaneously notify the Tenant and Brown of its intention to sell the Project, and the price (the "Landlord ROFO Price") and terms (the "Landlord Terms") that Landlord would accept for the Project (the "Landlord Offer") and the Tenant Unit and the Brown Unit (in each case determined by multiplying Landlord

ROFO Price by the Tenant Percentage Interest and the Brown Percentage Interest). The Tenant (and Brown) shall have forty five (45) days after receipt of such notice to accept such offer to purchase the Tenant Unit (or the Brown Unit, as the case may be) in writing or submit an alternative written offer to purchase the Tenant Unit at a specified price and terms (the "Tenant Offer"). Within forty-five (45) days after the exercise by Tenant (or Brown, as applicable) of the ROFO (or the acceptance by Landlord of a Tenant Offer), Landlord will submit to Brown and Tenant (i) the proposed Condominium Documents, (ii) the proposed Parking Lease Assignment and (iii) a Notice of Parking Lease Assignment in recordable form. Such Condominium Documents, Parking Lease Assignment and Notice of Parking Lease Assignment shall be subject to the approval of the Tenant and Brown, each of which approvals will not be unreasonably withheld or delayed. If Tenant, Landlord and Brown are unable to agree upon such documents, the Landlord and the Tenant agree to submit the matter to arbitration in accordance with Section 21.17.2 hereunder, provided that if Tenant is not satisfied with the results of such arbitration it may rescind its offer within forty-five (45) days after the determination made pursuant to the arbitration becomes final. If the Tenant accepts the Landlord Offer or if the Tenant submits the Tenant Offer and such the Tenant Offer is accepted by Landlord or Tenant as the case may be, the Tenant's purchase of the Tenant Unit shall close within one hundred eighty (180) days after the date of such acceptance, and (b) sixty (60) days after final determination of the Condominium Documents, Parking Lease Assignment and Notice of Parking Lease, at which time Landlord shall deliver to Tenant good and clear record and marketable title to the Tenant Unit, subject only to the Condominium Documents, Notice of Parking Lease Assignment and Permitted Exceptions hereunder. If such Tenant Offer is rejected by Landlord or the Tenant does not submit an offer within such forty five (45) day period, Landlord shall have the right thereafter to enter into an agreement to sell the Project to any other party within six (6) months of the earlier of (i) Landlord's receipt of the Tenant Offer or (ii) expiration of said forty-five (45) day period, in all events (x) at a price of not less than 95% of the Landlord ROFO Price and pursuant to a bona fide offer from a third party on substantially the same terms and conditions as the Landlord Terms, or (y) at any price, if the Tenant does not timely submit the Tenant Offer. This ROFO shall be a so-called "evergreen" right of first offer which shall survive the sale of the Project or either Unit and be binding on successors and assigns. Without limitation, if Brown fails to exercise its Right of First Offer on the Brown Unit as described in this Section, or once having exercised such right fails to close in a timely manner, the Tenant shall have a Right of First Offer on the Brown Unit, subject to Brown's continuing Right of First Offer on the Brown Unit, if any. If the Tenant fails to exercise its Right of First Offer on the Tenant Unit as described in this Section, or once having exercised such right fails to close in a timely manner, Brown shall have a Right of

First Offer on the Tenant Unit, subject to the Tenant's continuing Right of First Offer on the Tenant Unit.

24.2 Notwithstanding any other provision contained herein to the contrary, in the event Brown does not purchase the Brown Unit, the Tenant shall then have the right, but not the obligation, to purchase the total Project at fair market value, subject to the terms of the Brown Lease and any remaining options or rights of first refusal set forth in the Brown Lease. Notwithstanding any other provision contained herein to the contrary, in the event that the Tenant does not elect to purchase pursuant to this Section or does elect to purchase and does not then close on the Tenant Unit, and Brown does not elect to purchase the entire Project, Brown may only purchase the Brown Unit separately, if there are not less than 10 years remaining on the term of the Tenant Lease, including any extension options. Additionally, in the event that the Brown does not elect to purchase or does elect to purchase and does not then close on the Brown Unit, and the Tenant does not elect to purchase the entire Project, the Tenant may only purchase the Tenant Unit separately, if there are not less than ten (10) years remaining on the term of the Brown Lease, including any extension options.

30. Memorandum of Understanding Regarding Tenant Improvements. The Lease is hereby amended by adding the Memorandum of Understanding by and between Landlord and Tenant attached hereto as Exhibit N. All references in the Lease to TI Costs, design costs and Initial Tenant Improvements shall hereafter be made with reference to and be subject to the terms of the Memorandum of Understanding shown in Exhibit N.

31. Exhibit H – Post-Execution Deliverables. The schedule of Post-Execution Deliverables attached as Exhibit H to the Lease is hereby deleted in its entirety and replaced with the new schedule of Post-Execution Deliverables shown on the Replacement Exhibit H ("Amended Post-Execution Deliverables") attached to this First Amendment and by this reference made a part hereof. All references in the Lease to the Post-Execution Deliverables or Exhibit H shall hereafter refer to the Amended Post-Execution Deliverables.

32. Exhibit H-1 – Conditions Subsequent. Exhibit H-1 to the Lease is hereby deleted in its entirety without replacement therefor. All references in the Lease to conditions subsequent or Exhibit H-1 are hereby deleted.

33. Exhibit I – Permitted Title Exceptions. Exhibit I is hereby amended and supplemented by adding the following after the last sentence:

9. Environmental Land Use Restriction executed by Heritage Harbor Corporation dated June 4, 2007 and recorded in the City of Providence, Rhode Island Land Evidence Records in Book 8710 at Page 254.

34. Exhibit O – MTGP Funds. The Lease is hereby amended by adding a Schedule of Annual MTGP Funds thereto as Exhibit O.

35. Miscellaneous. This First Amendment shall be construed and interpreted in accordance with the laws of the State of Rhode Island, contains the entire agreement of the parties hereto with respect to the subject matter hereof, and may not be changed or terminated orally or by course of conduct, or by any other means except by a written instrument, duly executed by the party to be bound thereby. This First Amendment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

36. Ratification. Landlord and Tenant hereby ratify and reaffirm the terms of the Lease and agree that nothing contained herein invalidates or shall impair or release any covenant, condition, agreement or stipulation in the Lease except as herein expressly modified, and the Lease shall continue in full force and effect. Tenant further acknowledges that as of the date hereof Landlord is not in default under the Lease and there are no actions or causes of action by Tenant against Landlord directly or indirectly relating to the Lease, and Tenant has no claims, counterclaims, defenses, or setoffs against Landlord arising in connection with the Lease. Without limitation of the generality of the foregoing, the parties acknowledge that in the original Lease the name of the Landlord was inadvertently typed as "CV South Street Landing Master Tenant, LLC". Notwithstanding any ambiguity created by the name of the Landlord as written in the original Lease, Landlord hereby ratifies the Lease and confirms that it was signed by a person authorized to do so on Landlord's behalf, and that it (and the related Escrow Agreement, with all amendments and extensions thereto) was, and shall be treated for all purposes as, executed by Landlord and binding upon the Landlord and Tenant. All references to the "Landlord" in the Lease, wherever stated, shall refer to CV SSL Master Tenant LLC.

37. Counterparts; Electronic Signature. This First Amendment may be executed in one or more counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. Signatures to this First Amendment transmitted by telecopy (or scanned in pdf format sent by e-mail transmission) shall be valid and effective to bind the party so signing. Each party hereto agrees to promptly deliver to the other party an executed original to this First Amendment with its actual signature, but a failure to do so shall not affect the enforceability of this First Amendment, it being expressly agreed that each party to this First Amendment shall be bound by its own telecopied or scanned signature and shall accept the telecopied or scanned signature of the other party to this First Amendment.

**[Signature Page Follows]**

THIS FIRST AMENDMENT IS EXECUTED by the parties as of the day and year first above written.

**LANDLORD:**

CV SSL MASTER TENANT LLC, a Rhode Island limited liability company

By: WEXFORD-CV SSL MANAGER, LLC, a Delaware limited liability company, its Managing Member

WITNESS:

By: BIOMED REALTY HOLDINGS II, INC., a Maryland corporation, its Managing Member

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

RHODE ISLAND COUNCIL ON POST SECONDARY EDUCATION

WITNESS:

By: \_\_\_\_\_, Chair

TITLE: \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the State Properties Committee.

APPROVED:

\_\_\_\_\_  
Chairman, State Properties Committee

APPROVED AS TO FORM:

\_\_\_\_\_  
Designee for the Department of Attorney General

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Designee of the Director, Department of Administration

APPROVED:

\_\_\_\_\_  
Public Member

APPROVED:

\_\_\_\_\_  
Public Member

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Exhibit N

[See executed Memorandum of Understanding attached.]

