

UNIVERSITY OF MARY WASHINGTON

LEASE POLICY MANUAL

JUNE 2010

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## INTRODUCTION

### **1. Background**

Section 4-5.08c of Chapter 912 of the 1996 Acts of the General Assembly delegated to the University the authorities otherwise granted to the Governor and the Department of General Services under Virginia Code §2.1-504.2 (now §2.2-1149) allowing delegated universities to approve operating leases under policies, procedures and guidelines developed by the University and approved by the Secretaries of Finance and Administration. The authority has been carried-over in each subsequent year, and §4-5.08c.1 of the 2003 Act expands the delegation to include income leases.

This document provides the approved guidelines.

### **2. Organizational Structure**

The following University positions will assume the administrative duties and responsibilities in approving real estate matters:

Vice President for Administration and Finance: Approve real estate transactions.

Executive Director of Budget and Financial Analysis: Approve lease justifications; approve waivers of solicitation; approve space utilization; ensure compliance with guidelines and applicable law; approve appraisals, environmental surveys and title reports and title insurance documents; approve purchase contracts.

Departmental Manager (Requestor): Perform market surveys and prepare lease recommendations; conduct or provide guidance in the conduct of solicitations and negotiations as set forth in the University's approved guidelines.

Assistant Attorney General: Approve leases and purchase contracts as to form.

## Organizational Chart

### Real Property Administration and Approval

1. Vice President for Administration and Finance
2. Executive Director of Budget and Financial Analysis
3. Departmental Managers (Requestors)

## **CHAPTER 1: EXPENSE LEASES**

**1. GENERAL PROVISIONS:** The following provisions apply to all leasing activities:

**1.1. LEASE EXPENDITURES:** The University shall not expend appropriated funds for leases of real property without the prior written approval of the lease by the Vice President for Administration and Finance.

**1.2. EQUAL OPPORTUNITY:** In all leasing activities, all persons/entities having equal interest shall have equal opportunity. Solicitations shall not provide arbitrary requirements and the University shall apply the same terms, conditions and selection criteria to all offerers qualified under the solicitation.

**1.3. MINORITY PARTICIPATION:** The University shall endeavor to contribute to opportunities for minority businesses, small businesses and female-owned or controlled businesses as required by Virginia Code 2.2-4310. It is understood that sufficient pools of such vendors are not always available. However, proposers must promise, to the extent possible, to provide minority businesses, small businesses and female-owned businesses opportunities in providing services associated with leases through partnerships, joint ventures, subcontracts and other contractual opportunities. Solicitations for leased space shall require that proposers submit a plan for utilizing the goods and services of minority, small and female owned businesses.

**1.4. ACCESSIBILITY:** The Americans with Disabilities Act (ADA) requires public entities to provide equal program accessibility to the disabled. Moreover, public entities may not discriminate in employment on the basis of lack of accessibility. The University will in all respects comply with the applicable requirements of the ADA and, where full accessibility is not required, will favor leasing those facilities that are fully (or most fully) accessible to the disabled.

**1.5. SPACE CLASSIFICATION:** The University will not specify "Class A" space in solicitations without the written approval of the Executive Director of Budget and Financial Analysis.

**1.6. LEASE PERIODS:** Leases should normally be for a period of three to five years. Longer or shorter lease periods will be considered where adequate justification supports the longer or shorter period.

**1.7. DOWNTOWN COMMERCIAL DISTRICTS:** House Joint Resolution 185, passed by the 1992 session of the Virginia General Assembly, encourages agencies to investigate the possibility of rehabilitating existing space in downtown commercial districts throughout the Commonwealth, and to give preference in such instances to such downtown locations. When facility locations can include existing space in downtown commercial districts, the University will give preference to such locations if they are economical and suit the needs of the University.

**1.8. LOCATION IN URBAN CENTERS:** Section 2.2-1154.B of the Code of Virginia provides, in part: "The Department of General Services shall require every state department, agency or institution responsible for the construction, operation or maintenance of public facilities within the Commonwealth, when siting state facilities and programs, to evaluate the feasibility of siting such facilities and programs in the Commonwealth's urban centers."

**1.9. Guidelines:** The following guidelines must be followed for every acquisition of real property:

- (i) Definition of Urban Center: The definition of an urban center is a city or incorporated town.
- (ii) Evaluation: Prior to acquiring real property for facilities and programs, the University shall evaluate the feasibility of siting the facilities and programs in the ommonwealth's urban centers.
- (iii) Documentation: Prior to approval of acquisition of property that is not in an urban center, the University shall document its analyses and findings regarding the requirements Section 2.2-1154.B of the Code of Virginia.
- (iv) Exceptions: State facilities and programs under the purview of this policy do not include land acquired for parks, forests, natural areas, wildlife management areas or other similar uses.

**1.10. ENVIRONMENTAL IMPACT REPORTS:** Section 10.1-1188 of the Code of Virginia requires an Environmental Impact Report (EIR) for acquisition of an interest in land for any state facility construction, the construction of any facility or expansion of an existing facility costing \$100,000 or more.

**1.10.1.** Environmental Impact Reports will generally be required for leases of build-to-suit facilities or facilities otherwise constructed due to the University's needs or where the University is to become the major tenant in a facility, and the financial commitment of the University causes the proposer to construct the facility that would not have occurred otherwise. The guidelines for an EIR are contained in the 1992 (or later edition) *EIR Procedure Manual* published by the Department of Environmental Quality (DEQ). Any questions regarding the need for an EIR will be directed to DEQ.

**1.11. CENTRAL RECORDS:** Copies of all supporting documentation and the executed agreement will be maintained by the University's Office of Budget and Financial Analysis. Copies of final lease documents, amendments or other legal instruments shall be forwarded to the Division of Real Estate Services within ten (10) days following the date of full execution of the instrument.

**1.12. COMPARING LEASE COSTS:** The University shall endeavor to obtain the most economical space appropriate to program needs. In comparing costs of proposed leases, all costs shall be considered, including but not limited to the cost of any expense increases to be passed through to the University (such as increases in taxes, insurance and operating expenses), the annual escalation, and, if not provided by the Landlord, the costs of utilities, janitorial services, refuse removal, security and other services necessary to operation and maintenance of the facility.

**1.13. RENT CONCESSIONS:** Rent concessions and/or rebates, if any, should be at the beginning of the lease term. Any lease that contains concessions or rebates must be analyzed as having a term of at least 10 years regardless of the actual term (if less than 10 years). The analysis will be in present values which often show future off-sets to be less competitive than they initially appear.

**1.14. CONFLICTS OF INTEREST:** Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the Comprehensive Conflict of Interests Act

(§2.1 -639.1 et seq of the Code of Virginia).

**1.15. ENVIRONMENTAL CONDITIONS:** The University will endeavor to ensure that leased facilities do not contain conditions that are adverse to the health, welfare or safety of employees and others entering the premises. Friable asbestos in any facility within which the University leases space (not just the portion leased by the University) must be managed under a management plan prepared by a licensed Asbestos Management Planner. If it is found that any facility within which the University leases space contains unmanaged friable asbestos, the Program Manager must (1) determine whether there has been a release of fibers, in which case the space should be immediately vacated, and (2) if the space is to be occupied, ensure that the air is monitored to detect any release of fibers.

**2. CONSOLIDATION AND CO-LOCATION:** Consolidation and co-location of offices and other facilities can have potential for improved service delivery, cost savings and improved visibility to clients. It is therefore the policy of the University to seek opportunities to co-locate and consolidate space needs of agencies to the greatest practical extent. Consolidation and co-location shall be given priority consideration in seeking new space or renewal of existing rental space.

**3. SPACE NEEDS:** Section 4-5.09 of the Appropriation Act requires the University to certify that the amount of space for each lease conforms to applicable space guidelines and that funding is available within the University's appropriation. A certification by the Executive Director of Budget and Financial Analysis will complete the lease file and be maintained by the University.

**3.1. SPACE GUIDELINES:** The applicable space guidelines are contained in the State Council of Higher Education for Virginia (SCHEV) Space Guidelines, and the Division of Real Estate Services' Space Planning Policies and Procedures for Leased Facilities manual. Where there are conflicts, the SCHEV guidelines will prevail.

**4. SPACE ACQUISITION:** When acquiring real estate by lease, it is the policy of the University to seek competition in order to obtain the most economical and functionally efficient space available within the identified geographic area. This can be accomplished by describing the facility need in the most specific terms possible (without eliminating competition) and by promoting the broadest possible competition.

**5. SOLICITATION REQUIREMENTS:** The Executive Director of Budget and Financial Analysis shall determine the minimum solicitation requirements for each proposed lease. To the extent possible, will solicit quotations from at least five separate sources of lease property (where available) in the particular market area. In the event five sources of lease property are not available, the University will obtain information from as many sources as are available and document the actions taken to locate available rental property. Emailed and faxed communications are acceptable. Telephone communications are acceptable, provided pertinent information shared in the communication are documented in writing by the University.

For space requirements exceeding 10,000 square feet for office, service, retail, classroom, or laboratory space and multi-family residential containing over 5 units: The University shall (1) advertise in a newspaper having general circulation in the area within which property is being sought and (2) solicit formal written proposals from at least five separate sources of rental property (where possible).

In addition to any other requirements, the eVA web site is the official state web site for posting all solicitation, addenda and award actions over \$30,000. The web site can be accessed at: [www.eva.state.va.us](http://www.eva.state.va.us).

**5.1.1.** Upon receipt of proposals, the University will select one or more responsive proposers for negotiation and document the reasons for its selection. In conducting negotiations, all proposers shall be provided the same information and opportunity for response.

**5.1.2.** Upon receipt of proposals, the University will select one or more responsive proposers for negotiation and document the reasons for the selection(s).

**5.1.3.** All proposers must be given the same information. No proposer shall be given information, either in writing or verbally, regarding the terms, conditions or costs proposed by others.

**5.2 NEGOTIATION:** Irrespective of the procedures used to solicit for space, negotiations must be defensible and fair to each proposer. The terms of negotiations must be documented.

**5.2.1.** The University will not negotiate higher costs than originally offered.

**5.2.2.** All proposers must certify that they are the owner of the property or the owner's agent and that the property does not contain adverse environmental conditions, including unmanaged asbestos.

**5.3. TENANT BROKERS:** The University may only negotiate with building owners or their agents. The University may not use tenant brokers in seeking space when the fee is based on the lease cost (in the form of commissions or any other manner) or when the broker or agent represents building owners in the area within which the University is seeking the space. Procurement of real estate brokers and consultants fall under the Virginia Public Procurement Act.

**5.4. RELATED ENTITIES:** Under the terms of the University's Master Lease Agreement, the UMW Foundation may provide rental space to the University without solicitation provided rates do not exceed market rates as evidenced by a survey of similar space in the area. In exceptional circumstances, waiver of solicitation may be granted for such leases at greater than market rates, provided the reasons for the exception, as well as the actual cost to the Foundation in providing the space, are fully documented. See Appendix D for a sample lease form with the UMW Foundation.

**5.5 INTERNATIONAL LEASES:** Occasionally, it may be necessary for the University to lease space outside of the United States. Because business practices in other countries are inconsistent with domestic practices, the competitive process may not fully apply. However, the University shall make every effort to identify the most economical space available that meets the program need, and the results of such efforts shall be documented in writing.

**6. STANDARD LEASE FORMS:** The University shall utilize standard lease forms approved by the University's counsel. Any proposed revisions will be approved by the Assistant Attorney General representing the University and coordinated with Risk Management.

**6.1. CHANGES TO THE LEASE FORMS:** Lease forms can be modified by striking through words and inserting words. The forms may not be modified by erasing or whiting-out words. Any modifications must be initialed by each party to the lease.

**6.1.1.** The standard lease form provides a format for attachments. Attachments are developed at the time of entering the lease and are a part of the original lease. They may modify terms of the standard lease or provide additional information or provisions. Attachments cannot be used to modify an existing lease.

**7. EMERGENCY LEASES:** Leases of an emergency nature are exempt from the foregoing procedures, although all statutory requirements must be met, including certification of funding and conformance with space planning procedures pursuant to 4-5.09 of the Appropriation Act. The need for space may be deemed an emergency (1) in the event of fire or other casualty which renders existing facilities (owned or leased) unusable, or (2) when the Vice President for Administration and Finance declares an emergency for which space is needed to handle the emergency condition.

**7.1.1.** Emergency leases should be for the shortest possible period, but in no event longer than one year. A short lease period will enable the University to reassess its needs after evaluating the impact of the emergency.

**8. LEASE RENEWALS:** Options to renew leases maybe exercised without further solicitation. In the absence of an option to renew, the University may determine that it should negotiate to remain at the same location. In such cases, the file shall be documented with the following:

1. A written justification for remaining at the same location demonstrating tangible benefits to the mission of the University and/or cost savings
2. A certification that the rental rate is within the market
3. A Certification of Space Needs and Funding
4. A description of any changes in terms and/or conditions
5. A lease amendment or a new lease.

**9. LEASE AMENDMENTS:** Modifications during the term of the lease shall be accomplished through a lease amendment. If an amendment increases space or costs, new certifications must be made as required by §4-5.09 of the Appropriation Act.

**10. EXEMPTIONS:** Exemptions from any of the requirements contained in this Policy will be issued only on an exceptional basis. The University cannot be exempted from legal requirements.

## **CHAPTER 2: INCOME LEASES**

**1. AVAILABLE SPACE:** All space in facilities under the control of the University, owned or leased, may be leased to outside entities, provided the space is currently underutilized, and (1) there is an anticipated future use, but for which there is no immediate use, or (2) leasing is necessary or tangibly beneficial to a program of the University, including public/private partnerships.

**2. SOLICITATION:** In all cases, the University will conduct a solicitation and ensure that all parties having equal interest in leasing the space have equal opportunity. Whenever feasible, space will be offered under a Request for Proposals (RFP) and advertised. The solicitation requirement for a given lease may be waived or modified with approval of the Vice President of Administration and Finance.

**3. CONFLICTS OF INTEREST:** Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the Comprehensive Conflict of Interests Act (§2.1-639.1 et seq. of the Code of Virginia).

**4. RENT:** Rent will be the fair rental value unless a different rent or waiver of rent is approved by the Vice President for Finance and Administration.

**4.1. DETERMINING FAIR RENTAL VALUE:** For significantly valuable space, fair rental value will be determined by an appraisal that meets the requirements of the Uniform Standards of Professional Appraisal Practices (USPAP) promulgated by the Appraisal Foundation. The appraisal may be a Restricted Appraisal reported in a Summary Report, all as defined in USPAP. For space that is not significantly valuable, the rent may be established by a survey of rents paid for comparable space in the area (at least five sources, if available).

**5. STANDARD LEASE FORMS:** The University shall utilize a standard lease form approved by the University's counsel. Any revisions will be approved by the Assistant Attorney General representing the University and coordinated with Risk Management.

**5.1. CONSTRUCTION:** Any construction or renovation of improvements on land leased to another party must nevertheless follow all of the requirements for capital improvement and construction imposed on the University. Such requirements must be cited in the lease. In addition, the improvements may be subject to local ordinances, such as zoning.

**5.2. LEASE AMENDMENTS:** Modifications during the term of the lease shall be accomplished through a lease amendment.

**6. CENTRAL RECORDS:** Copies of all supporting documentation and the executed agreement will be maintained by the UMW Office of Budget and Financial Analysis. Copies of final lease documents, amendments or other legal instruments shall be forwarded to the Division of Real Estate Services within ten (10) days following the date of full execution of the instrument.

### **CHAPTER 3: CAPITAL AND CAPITAL OUTLAY LEASES**

**1. CAPITAL AND CAPITAL OUTLAY LEASES:** A capital lease is one that meets one or more of the criteria set forth in the *Generally Accepted Accounting Principles* ("GAAP") promulgated by the Financing Accounting Standards Board. Capital Outlay Leases are those leases that cost \$5,000,000 or more over the term of the lease.

**1.1.** All capital and capital outlay leases to be entered into by the University shall (1) be specifically authorized by the Governor or the General Assembly pursuant to the Appropriation Act, and (2) be reviewed and approved by the Treasury Board.



## APPENDICES

## Instructions for Preparing the Lease Justification

The Lease justification is required for all proposed leases as a tool in helping the University articulate and document its space needs.

The justification must be submitted to the Executive Director of Budget and Financial Analysis. Information must be complete and defensible, since the justification will become part of the audit trail for the ensuing lease. The following provides guidance in completing the justification:

- Program Need: Provide a concise description of the program and the reason(s) for leasing space for the program.
- Facility Need: Describe the type of space needed to support the program (i.e. office, service, laboratory, etc.) and the estimated area. Describe special requirements such as special equipment and fixtures, build-out not normally provided, computer rooms and any other features which are not typical for the type of space.
- Location: Describe the area within which the space must be located. Use zip codes, optionally supplemented with physical boundaries such as roadways and waterways. Where physical boundaries are used, they must provide a closed area. The area should be as broad as possible and in any event cannot be restricted to eliminate competition. Exceptionally small areas will be challenged.
- Alternatives: Discuss alternatives considered, including locating in existing University owned space, co-locating in existing space controlled by the University, co-locating with other state agencies and build or buy options. For facilities which house administrative headquarters or other permanent functions, the Executive Director of Budget and Financial Analysis will prepare a present value lease vs. buy analysis over a 20 year period. In the event the analysis shows buying to be most advantageous, a justification for leasing and/or a timeframe for seeking funds to build or buy will be developed.

LEASE JUSTIFICATION FORM

MEMORANDUM

Date:

To: Paul C. Messplay  
Executive Director of Budget and Financial Analysis

From: [UMW College, Department, School]

Subject: Lease Justification  
Program:  
Source of Funds:

Program Need:

Facility Need:

Location:

Alternatives:

Estimated Annual Cost:

Prepared by: \_\_\_\_\_ Telephone: \_\_\_\_\_

Approved: \_\_\_\_\_

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

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



### DEED OF LEASE

This DEED OF LEASE (the "Lease") is dated the \_\_ day of \_\_\_\_\_, 20\_\_, between the COMMONWEALTH OF VIRGINIA, \_\_\_\_\_ [AGENCY IN ALL CAPS], as Grantor (the "Landlord"), and \_\_\_\_\_ [NAME IN ALL CAPS], a Virginia corporation / limited partnership / limited liability company, as Grantee (the "Tenant"), with approval of the Governor pursuant to Section 2.2-1155.A. of the Code of Virginia (1950), as amended.

#### WITNESSETH

- 1. **PREMISES.** For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the Landlord leases to the Tenant the following real property (the "Premises"), together with the right of ingress and egress, in the City/County of \_\_\_\_\_, Virginia, subject, however, to all easements, restrictions and covenants of record. The Premises are more particularly described as:

*Insert Legal Description and address including zip code. Include rentable s/f, and/or acreage and parking (if any).*

- 2. **TERM.** The term of this Lease (the "Initial Term") shall be \_\_\_\_\_ (\_\_) months / year(s), beginning on \_\_\_\_\_ 20\_\_ (the "Commencement Date"), and terminating on \_\_\_\_\_, 20\_\_ (the "Termination Date").

- 3. **RENT.** The Tenant shall pay the Landlord the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as rent (the "Rent") for the Initial Term which shall be paid in advance, without notice or demand or offset, in monthly installments of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Rent is due and payable beginning on \_\_\_\_\_, 20\_\_, and each month thereafter during the Initial Term, including any renewal or extension thereof. All Rent shall be made payable to \_\_\_\_\_, and mailed to \_\_\_\_\_, or to such other person or entity or at such other address as the Landlord may designate from time to time by written notice to the Tenant.

Rent payments will be applied first to all past due balances of Rent and other charges due under this Lease and the remaining portion, if any, shall be applied to current Rent. If a monthly installment of Rent is not paid within five (5) days of the due date, the Tenant shall pay as additional Rent [a late fee of \$\_\_\_\_\_] [\_\_ % of such Rent installment].

- 4. **USE OF PREMISES.** The Premises are to be used and occupied by the Tenant for \_\_\_\_\_ and for no other purpose. No alterations, additions, or improvements shall be made to the Premises without the prior written consent of the Landlord. The Tenant shall not damage the Premises or any part thereof or allow the same to be done. The Tenant shall not allow the Premises to be

used for any illegal purpose and shall not do or allow any act which may disturb occupants of adjoining property or cause damage to adjoining property.

5. **QUIET ENJOYMENT.** So long as the Tenant observes and keeps all the covenants, agreements and conditions of this Lease, the Landlord covenants that the Tenant shall have quiet and peaceful use and enjoyment of the Premises throughout the Initial Term of this Lease and any renewals or extensions thereof, subject, however, to the exceptions, reservations and conditions of this Lease.
6. **PERSONAL PROPERTY.** All personal property placed in or kept on the Premises shall be at the sole risk of the Tenant or the owner of such personal property and the Landlord shall have no liability for loss, damage or deterioration of same for any reason.
7. **ACCEPTANCE OF CONDITION OF PREMISES.** The Tenant covenants that it has inspected the Premises and accepts the Premises "as is" without any representations or warranties by the Landlord as to the condition or usefulness of the Premises for any purpose.
8. **ASSIGNMENT AND SUBLETTING.** The Tenant shall not assign or transfer this Lease, nor sublet any part of the Premises, without the prior written consent of the Landlord, which consent the Landlord may withhold in its sole discretion.
9. **ACCESS BY LANDLORD.** The Landlord and its representatives may enter the Premises at any time to make emergency repairs, preserve the Premises or to prevent or abate any nuisance, hazard, or unlawful conditions.
10. **INDEMNIFICATION; INSURANCE.** The Tenant shall indemnify, defend and hold harmless the Landlord, and its agents and employees, from all liability, claims for damage, injury or loss of every kind and nature, whether relating to person or property, arising on or within the Premises or incident to the Tenant's use of the Premises. Beginning on the Commencement Date and continuing during the Initial Term of this Lease and any renewals or extensions thereof, the Tenant, at the Tenant's expense, shall keep in force, with an insurance company authorized to transact business in Virginia, and in a form acceptable to the Landlord, an insurance policy with personal property and broad form liability coverage. The insurance policy shall include the Landlord as a named insured and have the following minimum limits and coverage: \$\_\_\_\_\_ for personal injury to or death of any one person, or more than one person, as the result of any one accident or disaster, and include coverage for property damage and medical payments. On or before the Commencement Date, the Tenant shall deliver to the Landlord a certificate of insurance showing the same to be in force and effect, together with a copy of a paid receipt for the first year's premium. The policy shall provide for notification to the Landlord in the event of cancellation.

In the event that the Tenant fails to obtain and maintain the insurance required by this section, the Landlord may, at its option, cause the required insurance to be issued and maintained and the Tenant shall pay the premiums for such insurance as additional Rent.

11. **DAMAGE OR DESTRUCTION; SMOKE & CARBON MONOXIDE DETECTORS.**

- (a) If the Premises or the building of which the Premises forms a part are damaged or destroyed by fire or other casualty, the Tenant shall notify the Landlord immediately.
- (b) If the Premises or the building of which the Premises forms a part, or any portion thereof, are damaged or destroyed by fire or other casualty and, in the sole opinion of the Landlord, the Premises are thereby rendered unfit for occupancy, either the Landlord or the Tenant shall have the right to terminate this Lease by notice to the other party within \_\_\_\_\_ (\_\_) days after the fire or other casualty. If this Lease is so terminated, Rent shall abate as of the date of such fire or other casualty.
- (c) If this Lease is not terminated pursuant to the provisions of Section 11 (b), and the Landlord elects, in its sole discretion, to repair and restore the Premises to their former condition, there shall be a proportionate abatement of Rent for the period during which the said repairs and restoration are being completed for that portion of the Premises not substantially usable by the Tenant.
- (d) The Tenant shall install and maintain in good working order at least one smoke detector and one carbon monoxide detector in the Premises.

12. **KEYS.** On the Commencement Date, the Landlord shall deliver to the Tenant \_\_\_\_\_ keys to the Premises. The Tenant shall not change or add locks without the prior written consent of the Landlord. Upon termination of this Lease, all keys will be surrendered to the Landlord.

13. **MECHANICS' AND MATERIALMEN'S LIENS.** The Tenant shall not create, place, or suffer the creation or filing of any mechanics' or materialmen's lien against the Premises by reason of labor or materials provided for or at the request or order of the Tenant, or of the Tenant's agents or contractors. The Tenant shall discharge any such lien within twenty (20) days after the date the same was filed.

14. **MAINTENANCE, REPAIRS, UTILITIES AND OTHER COSTS.** All costs relating to the possession, operation and maintenance of the Premises shall be the responsibility of the Tenant.

- (a) The Tenant shall keep, repair and maintain, at the Tenant's expense, all plumbing, lighting, heating, ventilation, air-conditioning, electrical and mechanical devices and appliances of every kind or nature located on the Premises in good working order and condition, and shall, if necessary, make such alterations, additions, and/or modifications to the Premises and all equipment, electrical and mechanical devices and appliances thereon or serving same so as to comply at all times with

all applicable federal, state and local laws, ordinances, rules and regulations pertaining to health, safety, fire and public welfare.

- (b) The Tenant shall pay all charges for utility services to the Premises, including, but not limited to, service charges, connection and disconnection charges, use charges and taxes. The Tenant shall provide such heating as shall be sufficient to prevent freezing of pipes, plumbing and associated equipment.
- (c) The Tenant shall pay all charges and other levies of any nature against the Premises and improvements thereon, whether ordinary or extraordinary, foreseen or unforeseen, including, without limitation, all applicable real estate taxes and any payments or use charges in lieu thereof, and assessments.
- (d) If the Tenant fails to make any payment or perform any act required by the Tenant under this Lease, the Landlord may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Landlord and all costs, fees and expenses incurred by the Landlord regarding such payment or performance shall be paid by the Tenant as additional Rent.

**15. ENVIRONMENTAL CONTAMINATION.**

- (a) The Tenant shall not engage in or allow any activity on the Premises involving: (i) the handling of any toxic or hazardous substances, (ii) the discharge of toxic or hazardous substances to the air, soil, surface water or groundwater, (iii) the storage, treatment or disposal of any toxic or hazardous substances (for purposes of this Lease, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. Section 9601(14), as amended, and of "regulated substance" at 42 U.S.C. Section 6991(2), as amended), or (iv) any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia.
- (b) The Tenant shall indemnify and hold harmless the Landlord from any and all claims, suits, judgments, damages, fines, penalties, liability, costs and expenses (including reasonable fees for costs and expenses for any required attorneys, consultants and experts) resulting or arising from the discovery of any toxic or hazardous substance on, in or arising from, or contamination of, the Premises which is a result of any activity of the Tenant, its agents, employees, contractors or repairmen.

**16. EVENTS OF DEFAULT; LANDLORD'S REMEDIES UPON DEFAULT.**

- (a) The following events shall be deemed to be an event of default ("Event of Default") by the Tenant under this Lease:
  - (i) The failure of the Tenant to pay when due any installment of Rent or any other payment required to be made by the Tenant under this Lease and the

failure to cure such default within ten (10) days after written notice thereof to Tenant.

- (ii) The failure of the Tenant to comply with any term, provision, promise or covenant of this Lease (other than the payment of Rent or any other payment required to be made by Tenant hereunder) and the failure to cure such non-compliance within \_\_\_\_\_ (\_\_\_) days after written notice of an Event of Default to the Tenant.
- (b) If the Landlord gives written notice to the Tenant of an Event of Default pursuant to Section 20 of this Lease and the Tenant does not cure such default within the specified period following the notification, then at the expiration of said period, this Lease shall automatically terminate as completely as if the deadline for curing the default were the date specified as the Termination Date in this Lease, and the Tenant shall then surrender the Premises to the Landlord. If this Lease shall be so terminated, the Landlord may, at its option, without formal demand or notice of any kind, re-enter the Premises by any unlawful detainer action or by any other means and remove the Tenant, or any other person who may be occupying the Premises, from the Premises without being liable for any damages therefor. Upon the Landlord's exercise of such termination, the Tenant shall pay the Landlord's costs and expenses incurred in fulfilling the Tenant's obligations under this Lease, including, without limitation, the Landlord's reasonable attorney fees and court costs, and this provision shall survive termination of this Lease.
  - (c) The failure of the Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any permitted right or remedy upon an Event of Default, and/or acceptance of payment of full or partial Rent or other payment required to be made by the Tenant during the continuance of any such Event of Default shall not constitute a waiver of such Event of Default or of any covenant, agreement, term or condition of this Lease.
  - (d) No right or remedy herein conferred upon or reserved to the Landlord shall be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law.
17. **RENEWAL OF LEASE.** Unless otherwise terminated as herein provided, at the end of the Initial Term or any renewal term, this Lease shall automatically renew and continue in full force and effect from year to year (the "renewal term") at the same monthly Rent, due and payable in the same monthly installments as provided in Section 3, and subject to all the terms and conditions herein contained.
18. **TERMINATION OF LEASE.** This Lease and any renewal term may be terminated by the Tenant or the Landlord only upon written notice at least thirty (30) days prior to the expiration of the Initial Term or any renewal term, otherwise this Lease shall renew and continue as provided in Section 17. Notwithstanding the foregoing or any other provision

in or incorporated by reference into this Lease, this Lease and any renewal term may be terminated by the Landlord at any time upon at least thirty (30) days written notice to the Tenant. At the termination of this Lease, the Tenant shall deliver peacefully the Premises in as good order and repair as the same were on the Commencement Date, reasonable wear and tear excepted.

19. **BINDING EFFECT; AMENDMENTS.** The covenants, agreements, and rights contained in this Lease shall bind and inure to the respective heirs, personal representatives, successors and assigns of the Landlord and the Tenant. This Lease constitutes the entire, full and complete understanding and agreement between the Landlord and the Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Lease, unless the amendment is in writing and executed by all parties to this Lease with the same formality as this Lease. This Lease and any amendments hereto shall not be effective or binding unless and until signed by all parties and the Landlord obtains the recommendation of the Virginia Department of General Services and the approval of the Governor of Virginia, or his designee, as required by Section 2.2-1155.A. of the Code of Virginia (1950), as amended.

20. **NOTICES.**

(a) All notices to the Tenant required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

(Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) All notices to the Landlord required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

(Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Where, under the terms of this Lease, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given as of the date of mailing such notice. Each party to this Lease shall notify the other party of any new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of a

new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 20(a) or Section 20(b), as appropriate.

- (d) Where, under the terms of this Lease, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

21. **HEADINGS.** The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

22. **ADDITIONAL PROVISIONS.** This Lease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders:

Attachments: \_\_\_\_\_

Exhibits: \_\_\_\_\_

Riders: \_\_\_\_\_

\_\_\_\_\_ NONE (Check if NONE)

[Signature Page to follow]

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

**Landlord:** COMMONWEALTH OF VIRGINIA  
[NAME OF DEPARTMENT, AGENCY OR INSTITUTION]

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

[Use the following for the Tenant signature line, if the Tenant is an individual.]

**Tenant:**  
\_\_\_\_\_  
\_\_\_\_\_  
(Type or print name of Tenant)

[Use the following for the Tenant signature line, if the Tenant is a corporation, partnership etc.]

**Tenant:** (NAME OF TENANT – ALL CAPS )  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_ acting in his/her capacity as  
\_\_\_\_\_ of the Commonwealth of Virginia, \_\_\_\_\_ [Name of  
Agency], on behalf of the agency.

My commission expires: \_\_\_\_\_

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

**[Use the following notary clause, if the Tenant is an individual.]**

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

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

**[Use the following notary clause, if the Tenant is a corporation, partnership, etc.]**

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_  
(Title) of \_\_\_\_\_ [insert name of corporation,  
partnership etc.], a Virginia \_\_\_\_\_ (corporation/ partnership/limited liability company),  
on behalf of the [corporation, partnership etc.].

My commission expires: \_\_\_\_\_

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

OFFICE OF THE ATTORNEY GENERAL  
Approved as to form:

By: \_\_\_\_\_  
Assistant Attorney General

## Deed of Lease

This DEED OF LEASE (the "Lease") is dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the UNIVERSITY OF MARY WASHINGTON FOUNDATION, a Virginia non-stock corporation, as Grantor ("Landlord"), and the COMMONWEALTH OF VIRGINIA, UNIVERSITY OF MARY WASHINGTON, as Grantee ("Tenant") with approval as required by law, pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended.

### WITNESSETH

1. **PREMISES.** That for and in consideration of the terms, conditions, covenants, promises and agreements herein made, Landlord leases to Tenant the following property or premises (the "Premises"), together with full rights of ingress and egress, in the City of Fredericksburg, Virginia. The Premises are more particularly described as:

*The building located at \_\_\_\_\_, Fredericksburg, Virginia 22401 consisting of approximately \_\_\_\_\_ gross square feet of space and identified by the City of Fredericksburg Assessor's office as Tax Map Number \_\_\_\_\_.*

A sketch of the floor plan of the Premises is attached hereto as Exhibit A.

2. **USE OF PREMISES.** The Premises are to be used and occupied by Tenant for \_\_\_\_\_ or for such purpose or purposes as Tenant may now or hereafter be empowered or authorized by law to use same.
3. **TERM.**
  - (a) The initial term of this Lease (the "Initial Term") shall be Five (5) years, beginning on \_\_\_\_\_, (the "Commencement Date") and terminating on \_\_\_\_\_ (the "Termination Date"). If due to delays in completion of construction or other events, the date upon which this Lease commences is other than \_\_\_\_\_, then the parties agree to execute a Certificate of Lease Commencement, the form of which is attached hereto as Exhibit B.
  - (b) Landlord warrants that Landlord alone, at the time this Lease is executed, has the right to lease the Premises, without the consent of any other party. It is expressly understood and agreed that this covenant by the Landlord constitutes a warrant. If Landlord does not have this right, then Tenant, in addition to any other remedy available at law or in equity, may immediately declare this Lease null and void from its inception and of no force and effect, without notice. In such event, no rent shall accrue or be deemed to have accrued for the term of this Lease, or for any part of the term.

**4. RENT.**

Tenant shall pay Landlord the sum of \_\_\_\_\_ and \_\_/100 Dollars (\$\_\_\_\_\_) as rent (the "Rent") for the Initial Term which shall be paid in arrears, in monthly installments, at the end of each month as shown on the table below. Rent is due and payable beginning on \_\_\_\_\_, and each month thereafter for the Initial Term, including any renewal or extension thereof.

DATES	MONTHLY RENT	ANNUAL RENT
<b>TOTAL</b>		<b>\$</b>

The payment of all Rent shall be made payable to the University of Mary Washington Foundation and mailed to:

UMWF Treasurer  
 1119 Hanover Street  
 Fredericksburg, VA 22401

or to such other person or entity or at such other address as Landlord may designate from time to time by written notice to Tenant.

**5. POSSESSION AND CONDITION OF PREMISES.**

- (a) Landlord shall deliver quiet possession of the Premises to Tenant on the Commencement Date and shall provide quiet enjoyment of the Premises to Tenant during the Initial Term, and any renewals or extensions thereof.
- (b) On the Commencement Date, Landlord shall deliver the Premises to Tenant in good repair and in a condition suitable to the use for which it is leased.
- (c) Landlord, and its employees, agents and contractors, shall have the right to enter and pass through any part of the Premises, without prior notice, only in the case of an emergency. If Landlord, or Landlord's employees, agents or contractors, must enter the Premises in the case of an emergency, then as soon as practicable before or after such emergency entrance, Landlord, or Landlord's agent, shall contact the Vice President for Administration and Finance office (Telephone # 540-654-1020).
- (d) At the Tenant's request and expense, the Landlord will have the Premises and the building(s) which is a part of the premises, inspected by an Asbestos Inspector

licensed by the Virginia Department of Professional and Occupational Regulation. Any friable asbestos discovered in or on the Building or the Premises shall be promptly and properly removed by Landlord, at Tenant's expense, in compliance with applicable federal, state and local laws and regulations.

**6. MAINTENANCE.**

- (a) Landlord warrants that on the Commencement Date, the Premises and all its equipment, including the plumbing, heating, ventilation and air conditioning equipment and systems shall be in good repair and good working order.
- (b) Tenant shall equip the Premises and perform all alterations, replacements, improvements, decontamination, and additions to the Premises and the equipment upon the Premises, at Tenant's expense, as shall be necessary at any time during the Initial Term of this Lease, or any extension or renewal thereof, to comply with the provisions of Federal, State and local laws and regulations pertaining to health, safety, public welfare, and environmental protection, including laws and regulations pertaining to asbestos, carbon monoxide, polychlorinated biphenyls, urea formaldehyde, lead paint, radon, petroleum product storage tanks, and freon, regardless of the effective date of law or regulation unless the Premises are grandfathered from such laws or regulations.
- (c) It shall be the sole responsibility and obligation of Tenant, at Tenant's expense and in accordance with applicable laws, technical publications, manuals and standard procedures, to (i) properly maintain, repair and replace all the structural portions of the Premises, including foundation, sub-floor, load bearing and exterior walls and roof, as well as to keep the Premises and all equipment and non-trade fixtures in good working order and to perform any required repairs, replacement and maintenance, and (ii) keep all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the Premises in good repair, condition and working order. All equipment and systems shall be maintained to provide reliable, energy efficient service, without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. As used herein, the word "repair" shall be deemed to include replacement of broken or cracked glass.
- (d) All other necessary or required maintenance, repairs and replacements to the Premises and common areas shall be the sole responsibility and expense of Tenant. Tenant's maintenance responsibilities shall include the supply and replacement of all supplies, materials and equipment necessary for such maintenance.
- (e) Landlord shall not be obligated to make any repairs to the Premises due to damage caused by the grossly negligent or willful acts of Tenant, or its agents, employees, or contractors.

- (f) If Tenant fails to keep, repair and maintain all structural and nonstructural portions of the Premises and all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the Premises in good repair, condition and working order as provided in this Section, then Landlord, at its option, but not its obligation, may either terminate this Lease and all obligations hereunder, or proceed to make, or cause to be made, such upkeep, repair and maintenance, at Tenant's expense. The cost of said upkeep, repair and maintenance shall be charged to Tenant as additional rent. No notice of termination shall be given under this Section if Tenant has physically commenced such repairs or is causing such repairs to be made, and such repair work is being diligently and continuously pursued to completion in a good and workmanlike manner.
- (g) When and as snow and/or ice removal become necessary, Tenant shall promptly remove all snow and ice from all walkways, loading areas, common areas, and parking areas.

**7. DAMAGE OR DESTRUCTION OF THE PREMISES.**

- (a) If the Premises are damaged by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature or other casualty loss, and, in the reasonable opinion of Tenant, the Premises are thereby rendered untenable or unusable for Tenant's purposes, this Lease shall immediately terminate, at the option of Tenant, upon written notice to Landlord.
- (b) If the Premises are damaged by fire or otherwise, but in the reasonable opinion of Tenant is not rendered totally untenable and unusable, upon being notified to do so by Tenant or its duly authorized agent, Landlord shall repair and restore the Premises as promptly as possible to their former condition, in which event there shall be a proportionate abatement of all Rent and other payments otherwise due to Landlord under the terms of this Lease, for the period during which the said repairs and restoration are being completed, for that portion of the Premises not substantially usable by Tenant during such period. If Landlord fails to make all repairs, replacement, restoration, or renovation as required in this subsection, or as otherwise required in this Lease where no other remedy is expressly provided, within a reasonable time after written notice to Landlord, then Tenant may choose either option (i) or (ii) below:
  - (i) Tenant may undertake with its own resources to repair, replace, restore or renovate the Premises and may deduct the reasonable costs of the repairs, replacement, restoration, and renovation from the Rent or other payments otherwise due to Landlord under the terms of this Lease, or any renewal or extension thereof, or Tenant may collect all such costs from Landlord in any manner provided by law, if Landlord has not paid for such repairs within 30 days after receipt of billing therefore from Tenant; or

- (ii) Tenant may terminate this Lease by giving fifteen (15) business days written notice to Landlord. No notice of termination shall be given by Tenant under this subsection if Landlord, or its agents, has physically commenced repairs, replacement, restoration or renovation, and the work is being diligently and continuously pursued to completion in a professional and workmanlike manner.

8. **ALTERATIONS BY THE TENANT.** Tenant, at its sole cost and expense, may make nonstructural alterations and additions to the Premises as Tenant deems proper. Tenant shall not make any structural alterations of the roof, foundation, sub-floor, load bearing or exterior walls without the prior written consent of Landlord, unless made pursuant to Section 7(b)(i). Tenant, at its sole cost and expense, may install fixtures, partitions and make such other improvements as Tenant may deem proper and the title and ownership of materials used in such alterations and additions, and all fixtures, partitions, and other improvements made and/or installed by Tenant shall remain in Tenant. Upon termination of this Lease, Tenant may, at its option, remove the fixtures, partitions and other improvements made under this Section, in which event any damage to the Premises caused by removal, other than nominal damage (such as screw holes, bracket marks, etc.) shall be repaired by Tenant at its expense. If Tenant elects not to remove the improvements, it shall have no further responsibility for them or their removal.

9. **UTILITIES AND SERVICES; INSURANCE; TAXES.**

- (a) Landlord shall provide, at Tenant's expense, the following utilities for the Premises: heating and air-conditioning as conditions require, electricity, gas, water and sewer. Tenant shall provide, at Tenant's expense, the following services for the Premises: janitorial, pest control, termite control, trash removal, and telephone service to the Premises.
- (b) Landlord shall be responsible for all real estate taxes or charges in lieu of taxes applicable to the Premises.
- (c) Landlord, at Tenant's expense, shall keep the Premises and the Building insured against damage by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature and casualty loss, under a broad form extended coverage or similar property loss policy. The policy shall cover at least eighty percent (80%) of the replacement cost of the Premises and the Building. In addition, Landlord shall maintain broad form general commercial liability insurance sufficient to ensure reasonable financial responsibility in the event of liability for injury, loss or damage at the Premises, the common areas and facilities.

10. **CONDITION OF COMMON AREAS.** Tenant, at Tenant's sole expense, shall maintain in a good, clean and safe condition, all common areas and common facilities, including all hallways, walkways, parking areas, and all related exterior lighting, to be

used by Tenant in common with other tenants. If Tenant fails to maintain such areas or facilities in a good, clean and safe condition, or to make all repairs and/or improvements within a reasonable time after written notice, then Landlord may terminate this Lease or proceed to make repairs or improvements, pursuant to the provisions of Section 6(f).

11. **ACCESSIBILITY BY PERSONS WITH DISABILITIES.** Tenant and Landlord acknowledge that the Premises does not comply with the facilities accessibility laws, regulations and standards required by the "Americans With Disabilities Act of 1990" (the "ADA"), including Titles II and III thereof, and the regulations and standards promulgated thereunder, including the regulations promulgated by the U.S. Department of Justice (28 CFR Chapter 1, Part 36 and the Standards for Accessible Design Pt. 36, App. A-entitled "ADA Accessibility Guidelines for Buildings and Facilities"), as amended, and (ii) the minimum requirements of the Virginia Uniform Statewide Building Code (VUSBC), Volume I-New Construction, as amended, pertaining to access by the physically handicapped and aged persons, including Chapter 11 ("Accessibility") of said VUSBC, which, in part, incorporates the regulations and referenced standards of the U.S. Department of Justice identified above, to the fullest extent required by law, as if the Premises were newly constructed. Individual attention will be provided by the Tenant for access to the building on an as needed basis.

12. **DISCLOSURES; NON-WAIVER; APPROPRIATIONS.**

- (a) Landlord understands and acknowledges that Tenant is an agency of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences on or about the Premises, including product liability, the Commonwealth and Tenant are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.
- (b) Landlord understands and acknowledges that Tenant has not agreed to provide any indemnification or save harmless agreements running to Landlord. No provision, covenant or agreement contained in this Lease shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, or of Tenant, from tort or other liability.
- (c) This Lease shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Fredericksburg, Virginia, as the venue for any action instituted pursuant to the terms of this Lease.
- (d) Notwithstanding any other provision of this Lease, if Tenant shall cease to exist, and is not replaced by a successor entity with similar powers and purposes, or its powers and authority are limited so as to not permit the continued use of the Premises for the purpose and use for which same are leased, then this Lease and all responsibility or obligations of Tenant under this Lease shall terminate. In such event, Tenant will endeavor to give as much notice as is reasonably possible

of the event triggering the termination of this Lease and the anticipated termination date, but failure to give such notice shall not affect the termination.

- (e) Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this Lease to the contrary, if any session of the Virginia General Assembly fails to appropriate funds for the continuance of this Lease, this Lease and all obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds.
- (f) Grant funded operations affiliated with Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the funding entity and may on occasion lose all or a portion of their funding, including the rent allocation. Therefore, notwithstanding any provision in this Lease to the contrary, if a Grant funding operations fails to appropriate funds for the continuance of this Lease, this Lease and all obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds.

**13. REPORT OF OCCUPANCY.**

- (a) Tenant shall, within fifteen (15) days after receipt of a written request by Landlord, submit to Landlord, or its designee, a written Report of Occupancy specifying: (i) the date of possession of the Premises by Tenant and the date on which the Lease terminates, (ii) whether this Lease is in full force and effect, (iii) the annual Rent, (iv) whether there have been any modifications to the Lease, and if there have been, a description of all such modifications, and, (v) whether Tenant has knowledge of any default hereunder on the part of Landlord, or if it does have such knowledge, a description of any such default. A copy of the Report of Occupancy is attached hereto as Exhibit C.
- (b) The issuance of a report requested under subsection 13(a), or any errors or omissions in such report: (i) shall not operate as an estoppel against either the Commonwealth of Virginia or Tenant, (ii) shall not form or provide any basis for liability against the Commonwealth or Tenant, and (iii) shall not operate as a waiver of any rights or defenses that may be available to the Commonwealth or Tenant either at that time or in the future.

**14. CONDEMNATION.**

- (a) Landlord shall give immediate notice to Tenant of any discussions, offers, negotiations or proceedings with any party regarding condemnation or taking of any portion of the Premises.
- (b) In the event that any portion of the Premises, or any portion of the Building, is taken by eminent domain, or sold to the holder of such power pursuant to a

threatened taking, this Lease shall terminate effective as of the date of the taking. The date of taking shall be the earlier of: (i) the date on which title vests in the condemning entity or (ii) the date on which the condemning entity takes possession. In the event of a taking, Tenant assigns to Landlord any rights that Tenant may have in and to any portion of a condemnation award, but such an assignment shall exclude any portion that may be due for, or attributed to, Tenant's fixtures, moving expenses and allowances.

**15. SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT.** Upon request by Landlord, Tenant agrees to execute a Subordination, Attornment and Non-Disturbance Agreement that substantially conforms to Exhibit D, attached hereto, provided, however, that all such agreements are subject to approval by Tenant and the Office of the Attorney General of Virginia.

**16. OPTION TO RENEW, TERMINATION, AND HOLDOVER.**

(a) **Options.** Tenant shall have two (2) options of five (5) years each to extend the term of this Lease (“First Option Term” and “Second Option Term”) upon providing a minimum of three (3) months’ written notice to Landlord prior to the expiration of the Initial Term or First Option Term as may be applicable. In the event the First Option Term is exercised, the rent will increase annually by \_\_\_\_\_ percent (\_\_\_\_%) on the anniversary date each year as shown in the table below:

In the event the Second Option Term is exercised, the rent will increase by \_\_\_\_ percent (\_\_\_\_%) on the anniversary date each year as shown in the table below:

DATES	MONTHLY RENT	ANNUAL RENT
TOTAL		\$

DATES	MONTHLY RENT	ANNUAL RENT
TOTAL		\$

(b) **Termination.** Unless otherwise terminated herein, Tenant may elect to terminate this Lease and vacate the Premises at the end of the Initial Term or either Option Term upon providing a minimum of three (3) months’ written notice to Landlord

prior to the expiration of the Initial Term or either Option Term as may be applicable or upon providing a minimum of three (3) months' prior written notice to Landlord at any time during either Option Term, as defined above.

Unless otherwise terminated herein, Landlord may elect to terminate this Lease upon the expiration of the Initial Term or either Option Term by providing a minimum of three (3) months' prior written notice to Tenant.

- (c) Holdover. If Tenant continues to occupy the Premises after the termination date specified in a proper notice to terminate as provided in (b) above ("Holdover"), such Holdover shall be deemed a tenancy from month-to-month upon the same terms and conditions as existed immediately prior to the commencement of the Holdover except that the monthly rent shall increase by three percent (3%) above the monthly rent that was in affect immediate prior to the Holdover. Either party may terminate such holdover upon providing a minimum of three (3) months' prior written notice to the other party.
- (d) Condition of Premises. At the termination of this Lease, Tenant shall peaceably deliver the Premises in the same condition as originally accepted, nominal damage and normal wear and tear excepted, and subject to any provisions to make repairs and restoration, as provided herein.
- (e) Posting of Notice. After notice of termination has been properly given by either party, Landlord may elect to post a notice that the Premises are available for rent. Landlord may show the Premises to prospective tenants only during Tenant's normal business hours, with prior notice to Tenant and in such a manner so as not to disturb Tenant's operations.

## 17. NOTICES.

- (a) All notices to the Tenant required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Tenant addressed to:

University of Mary Washington  
Vice President for Administration and Finance  
George Washington Hall, Room 105  
Fredericksburg, VA 22401  
Phone: 540-654-1020  
Fax: 540-654-1162

- (b) All notices to the Landlord required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Landlord addressed to:

University of Mary Washington Foundation

1119 Hanover Street  
Fredericksburg, VA 22401  
Phone: 540-654-2060  
Fax: 540-654-1118

- (c) Wherever a notice is required under this Lease, notice shall be deemed to have been duly given if in writing and either: (i) personally served; (ii) delivered by prepaid nationally recognized overnight courier service; or (iii) forwarded by Registered or Certified mail, return receipt requested, postage prepaid.
  - (d) Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused. Each party to this Lease shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 17(a) or Section 17(b), as appropriate.
  - (e) Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.
18. **BINDING EFFECT; AMENDMENTS.** The covenants, agreements, and rights contained in this Lease shall bind and inure to the respective heirs, personal representatives, successors and assigns of Landlord and Tenant. This Lease constitutes the entire, full and complete understanding and agreement between Landlord and Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Lease, unless the amendment is in writing and executed by all parties to this Lease with the same formality as this Lease. This Lease shall not be effective or binding unless and until signed by all parties and approved as required by law, as required by Section 2.2-1149 of the Code of Virginia (1950), as amended.
19. **DEFAULT.**
- (a) The termination of this Lease by Tenant pursuant to the provisions contained herein shall not be a default hereunder.
  - (b) If either party shall breach any provision of this Lease, the non-breaching party shall give written notice thereof to the breaching party. The breaching party shall have thirty (30) days from the receipt of the notice to cure the breach and, if not so cured, the non-breaching party may, at its option, exercise such rights as may exist at law or in equity, except that Landlord shall not take possession of the Premises by any self-help remedy. The provisions of this subsection shall not be

construed as imposing any additional obligations on the non-breaching party to the extent that this Lease permits the non-breaching party to take certain actions as a result of a breach by the other party.

20. **PRESUMPTIONS.** No presumption shall be created in favor of or against any of the parties to this Lease with respect to the interpretation of any term or provision of this Lease due to the fact that this Lease, or any part hereof, was prepared by or on behalf of one of the parties hereto, as may be evidenced by the disclosure on the face of this Deed of Lease made pursuant to Virginia Code Section 17.1-223.
21. **ASSIGNMENT.** Tenant may not assign this Lease, or sublet the Premises, without the written consent of Landlord, which consent shall not be unreasonably withheld or delayed, except that Tenant may assign this Lease to any other agency of the Commonwealth of Virginia without Landlord's consent.
22. **HEADINGS.** The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.
23. **ADDITIONAL PROVISIONS.** This Lease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders, which are hereby incorporated into this Deed of Lease:

Attachments: None

Exhibits:       Exhibit A – Floor plans (if available)  
                  Exhibit B – Certificate of Lease Commencement  
                  Exhibit C – Report of Occupancy  
                  Exhibit D - Subordination, Attornment and Non-Disturbance Agreement

Riders: None

\_\_\_\_\_ NONE (Check if NONE)

[Signature Page to follow]

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDORD: University of Mary Washington Foundation

BY: \_\_\_\_\_  
Jeff W. Rountree

TITLE: CEO, UMW Foundation

TENANT: Commonwealth of Virginia  
University of Mary Washington

BY: \_\_\_\_\_  
Richard R. Pearce

TITLE: Vice President for Finance and Administration

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Jeff W. Rountree acting in his capacity as CEO of the UMW Foundation.

My commission expires \_\_\_\_\_  
Registration # \_\_\_\_\_ Notary Public

COMMONWEALTH OF VIRGINIA  
CITY/County of \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Richard R. Pearce acting in his capacity as Vice President for Finance and Administration of the University of Mary Washington, on behalf of the agency.

My commission expires \_\_\_\_\_  
Registration # \_\_\_\_\_ Notary Public

Office of the Attorney General  
Approved as to form:

\_\_\_\_\_  
Special Assistant Attorney General

**EXHIBIT A**

**Insert floor plan of Premises**

EXHIBIT B

**CERTIFICATE OF LEASE COMMENCEMENT**

This Certificate of Lease Commencement, dated \_\_\_\_\_ 20\_\_, is entered into by and between \_\_\_\_\_, as Landlord, and the Commonwealth of Virginia, \_\_\_\_\_ as Tenant, the parties to a certain Deed of Lease (the "Lease") demising certain premises (the "Premises") located in the City/County of \_\_\_\_\_, Virginia, which are more fully described in said Lease dated \_\_\_\_\_.

The undersigned Landlord and Tenant do hereby declare and confirm that the Tenant has accepted the Premises effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and agree that the Initial Term of the Lease shall commence on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and terminate on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The undersigned do hereby further confirm that the Premises contain \_\_\_\_\_ square feet, more or less, of rentable floor area and that the annual rent shall be as specified in the Lease.

All other provisions in the Lease shall remain unchanged and in full force and effect [except that the dates of the option to renew (Section \_\_\_\_ of the Lease) shall be deemed modified in accordance with, and to comply with, the above agreed lease term].

The Tenant does hereby declare and confirm that the work required by the Landlord under the Lease has been completed by Landlord and accepted by Tenant and the undersigned do hereby declare and confirm that the Lease is in full force and effect.

LANDORD:  
University of Mary Washington Foundation

BY: \_\_\_\_\_  
Jeff W. Rountree  
TITLE: CEO, UMW Foundation

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY of \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Jeff W. Rountree acting in his capacity as CEO of the UMW Foundation.

My commission expires \_\_\_\_\_  
Registration # \_\_\_\_\_ Notary Public

TENANT:  
Commonwealth of Virginia  
University of Mary Washington

BY: \_\_\_\_\_  
Richard R. Pearce  
TITLE: Vice President for Finance and Administration

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY of \_\_\_\_\_, to wit:

The foregoing Deed of Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Richard R. Pearce acting in his capacity as Vice President for Finance and Administration for the University of Mary Washington on behalf of the agency.

My commission expires \_\_\_\_\_  
Registration # \_\_\_\_\_ Notary Public

Office of the Attorney General  
Approved as to form:

\_\_\_\_\_  
Special Assistant Attorney General

**EXHIBIT C**

**REPORT OF OCCUPANCY**

This REPORT OF OCCUPANCY is made this \_\_\_ day of \_\_\_\_\_, 200\_ , by the COMMONWEALTH OF VIRGINIA, \_\_\_\_\_ {AGENCY NAME), as Tenant, with \_\_\_\_\_ [LANDLORD NAME], as Landlord, under that Deed of Lease, dated \_\_\_\_\_ (and amended \_\_\_\_\_(date), [and recorded in the Clerk’s office of the Circuit Court of the City/County of \_\_\_\_\_, Virginia, in Deed Book \_\_\_\_, Page(s) \_\_\_\_] (the “Lease”), relating to the property known as \_\_\_\_\_ (full address). This Report of Occupancy is made by Tenant at the request of Landlord on account of a loan made or to be made by \_\_\_\_\_ (“Lender”), secured or to be secured by a deed of trust upon the demised premises (and the property of which the Premises forms a part).

Tenant certifies as of the date of this report that:

1. The Deed of Lease is now in full force and effect, there are no amendments thereto other than those cited above, and there are no other agreements between the Tenant and Landlord relating to the Premises.
2. Tenant has accepted and is now in possession of the demised premises, pursuant to the terms of the Deed of Lease, and all requirements for the commencement and validity of the Deed of Lease have been satisfied.
3. No offset or credit for any rent is due to Tenant, and no payment of rent under the Deed of Lease has been paid more than 30 days in advance of its due date. It is understood that the Deed of Lease provides that the rent is paid monthly in arrears and that the Tenant is subject to the Virginia Prompt Payment Act.
4. All improvements required to be made by Landlord, according to the Deed of Lease, have been satisfactorily completed.
5. Landlord has fulfilled all of its duties of an inducement nature and is not in default in any manner in the performance of any of the terms of the Deed of Lease.
6. The original base rental, in the amount of \$\_\_\_\_\_ per month, commenced to accrue on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_. The current lease term expires on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_. The present rental amount is \$\_\_\_\_\_ per month.
7. The Deed of Lease does not require and Tenant does not pay any percentage rent over and above the base rent indicated above.

- 8. Tenant has no notice or knowledge of any assignment, hypothecation, or pledge of rents by Landlord.
- 9. Tenant does not have an option to purchase the demised premises (or the property of which the Premises forms a part).
- 10. Tenant has not paid any security deposit and none is being held by Landlord relating to the Deed of Lease.

Tenant acknowledges that as a part of Lender’s loan to Landlord, Landlord has made or will make an assignment of Landlord’s interest in the Deed of Lease to Lender. Tenant understands that, until further notice from Lender, it may continue to make rent payments to Landlord. Tenant hereby requests a letter from Landlord confirming the loan has been closed and a formal notice of such assignment together with an executed copy of the assignment instrument.

Upon receipt of the letter and notice, as aforesaid, along with an executed copy of the assignment instrument, Tenant will notify Lender in the event of any extension or renewal of the Lease, and forward copies to Lender of all notices it may send to Landlord pursuant to the Deed of Lease.

Notwithstanding any of the foregoing provisions of this Report, neither Landlord nor Lender, nor any other party, shall have any right to assert any liability upon or against the Commonwealth of Virginia, Tenant, or any of its agents, members or employees, in connection with this Report or the statements herein made. Nothing herein shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia or Tenant.

COMMONWEALTH OF VIRGINIA  
University of Mary Washington

By: \_\_\_\_\_  
Richard R. Pearce  
Title: Vice President for Finance and Administration

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY of \_\_\_\_\_, to wit:

The foregoing Report of Occupancy was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 200\_\_, in the jurisdiction aforesaid, by Richard R. Pearce as Vice President for Finance and Administration of the University of Mary Washington, on behalf of the agency.

My commission expires: \_\_\_\_\_  
Registration # \_\_\_\_\_ Notary Public

Exhibit D

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

This Subordination, Attornment and Non-Disturbance Agreement is dated \_\_\_\_\_, 200\_ by and between \_\_\_\_\_ and the Commonwealth of Virginia, the University of Mary Washington.

Whereas, by Deed of Lease (the "Lease"), dated \_\_\_\_\_, \_\_\_\_\_, as Landlord (the "Landlord"), demised certain property described as, Fredericksburg, Virginia (the "Premises") to the Commonwealth of Virginia, University of Mary Washington, as Tenant (the "Tenant"); and,

Whereas, \_\_\_\_\_ (the "Lender") is secured by a Deed Of Trust (the "Deed of Trust") upon certain property, of which the Premises forms a part (the "Property"), described in Exhibit \_\_, which exhibit is attached hereto and made a part hereof; and,

Whereas, the Lender has requested that the Tenant execute a subordination and attornment agreement and the Tenant has agreed upon the condition that it simultaneously be provided with certain assurances that its tenancy under the Lease will not be disturbed.

Now, therefore, for and in consideration of the respective and mutual agreements herein set forth the parties agree as follows:

The Lender hereby expressly agrees that as long as the Tenant or its lawful successors or assigns shall continue to pay the rent as provided for in the Lease and otherwise comply with the terms and provisions thereof, neither the Lender nor its successors or assigns shall disturb the Tenant or its lawful assigns in its quiet possession of the Premises during the term of the Lease.

The Lender further agrees that the lien of the Deed of Trust shall not cover any of the Tenant's fixtures, alterations or improvements which the Tenant, under the terms of the Lease, is permitted to remove from the Premises.

The Tenant agrees that its rights under the Lease shall be subordinated to the lien of the Deed of Trust provided that the Tenant's tenancy shall not be disturbed nor shall the Lease be affected by any default under the Deed of Trust. The Tenant further agrees that, in the event of a foreclosure or other enforcement of the Deed of Trust, or sale in lieu thereof, it will attorn to any purchaser of the Property of which the Premises form a part, and recognize such purchaser as the Landlord under the Lease upon the then executory terms and conditions of the Lease for the remainder of the term of the Lease, provided that such purchaser shall then be entitled to possession of the Premises subject to the provisions of the Lease.

LENDER

Name

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

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

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_ to-wit:

The foregoing Subordination, Attornment and Non-Disturbance Agreement was acknowledged before me by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the jurisdiction aforesaid.

My commission expires: \_\_\_\_\_

Registration # \_\_\_\_\_

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

TENANT

COMMONWEALTH OF VIRGINIA

University of Mary Washington

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

Richard R. Pearce

Title: Vice President for Finance and Administration

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_ to-wit:

The foregoing Subordination, Attornment and Non-Disturbance Agreement was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, in the jurisdiction aforesaid by Richard R. Pearce as Vice President for Finance and Administration of the University of Mary Washington, on behalf of the agency.

My commission expires: \_\_\_\_\_

Registration # \_\_\_\_\_

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