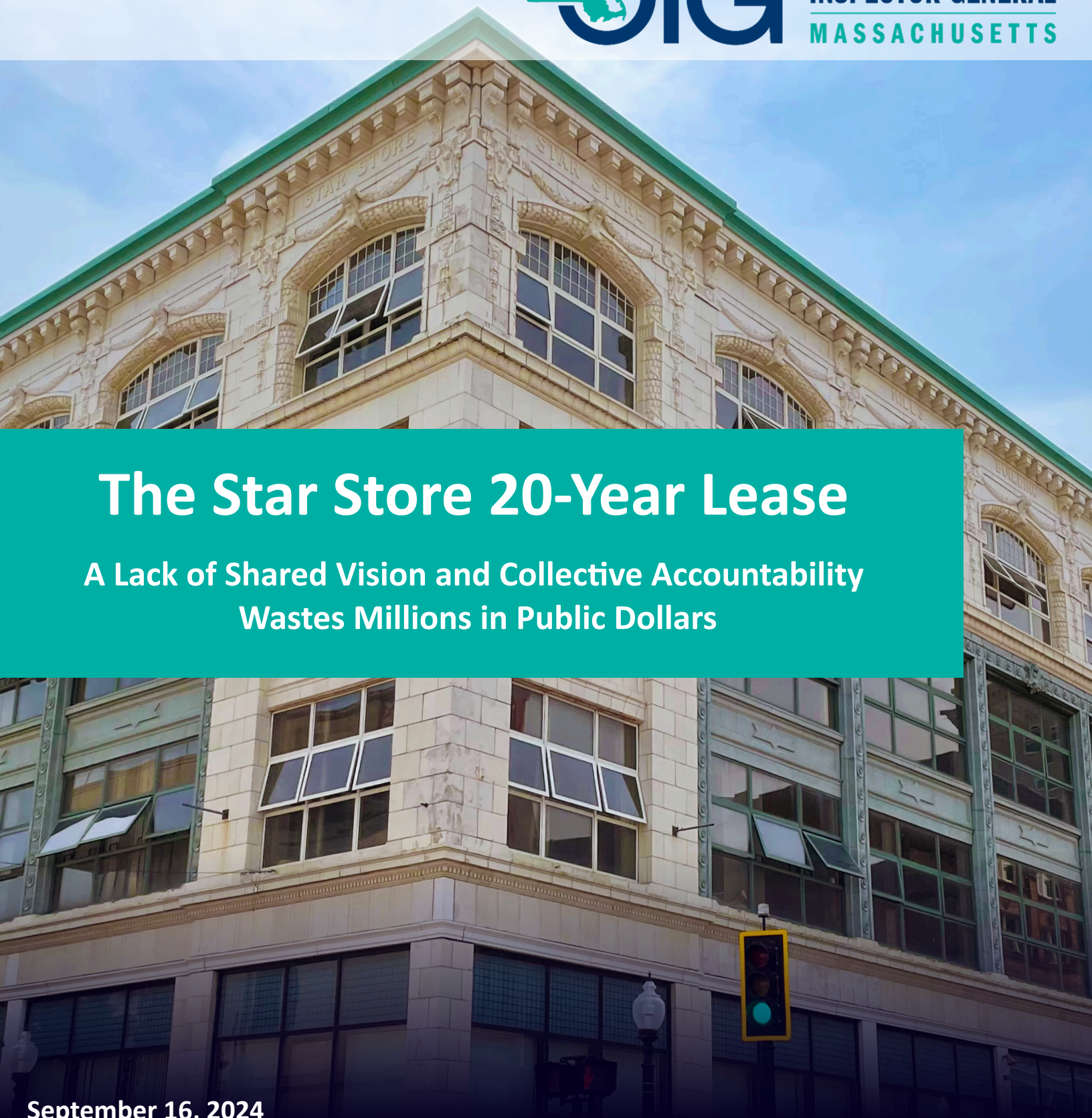
OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS



The Star Store 20-Year Lease

A Lack of Shared Vision and Collective Accountability Wastes Millions in Public Dollars

September 16, 2024

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Office of the Inspector General
Commonwealth of Massachusetts

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OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS

JEFFREY S. SHAPIRO
Inspector General

September 16, 2024

Via Electronic Mail

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Re: The Star Store 20-Year Lease: A Lack of Shared Vision and Collective Accountability Wastes Millions in Public Dollars

Dear Governor Healey and Commonwealth Leaders:

The Legislature directed the Office of the Inspector General (OIG) to review expenditures incurred by the Division of Capital Asset Management and Maintenance (DCAMM) and the University of Massachusetts Building Authority (UMBA) in leasing the Star Store in New Bedford for use by the University of Massachusetts Dartmouth (UMD).

The original 20-year lease ran from August 15, 2001, to August 14, 2021. The parties subsequently entered a short-term lease with a continuation of terms from August 15, 2021, to August 14, 2022. Upon the expiration of the short-term lease, UMD remained in the Star Store for another year through a month-to-month tenancy that ended when the Legislature stopped funding the rent payments.

The Legislature's mandate tasked the OIG with reviewing expenses incurred after the initial 20-year lease expired, specifically from September 7, 2021, until UMD vacated the building on August 31, 2023. Based upon the fact that one of my predecessors, Inspector General Robert A. Cerasoli, urged the then-Governor to veto the 1996 legislation that authorized the procurement of the underlying 20-year lease, I used my authority under M.G.L. Chapter 12A to expand the review to revisit the decisions related to the initial procurement and original 20-year lease and to cover the entire period of UMD's occupancy.

I present a summary and findings of said review herein.

The OIG found that the state-funded lease of the Star Store on behalf of UMD was flawed from its inception and resulted in a waste of public funds. The legislation that authorized DCAMM to issue a request for proposals (RFP) for a 20-year lease of a building on behalf of UMD, ostensibly to drive

economic revitalization in the Gateway City of New Bedford, was not open, fair, or competitive. In fact, I conclude that it was a procurement in name only.

As forewarned by IG Cerasoli, the 1996 legislation unnecessarily exempted the procurement from existing statutory safeguards and was written so narrowly that there was no competition. Therefore, it comes as no surprise that this sham procurement resulted in a flawed lease that was financially structured to offset a $1.00 option to purchase the building at lease end (which was not executed) with premium rents paid by the Commonwealth. While the OIG found no evidence of fraud in the period of review mandated by the Legislature, the OIG did find that over $4 million in public funds were wasted due to a lack of ownership or oversight of the lease and its provisions.

The parties – the Legislature, DCAMM, UMD, UMBA and the owner of the Star Store – lacked a shared vision about the objectives of the lease, which resulted in a lack of responsibility to adhere to the lease's terms, particularly regarding maintenance and capital repairs. Maintaining the building was essential to ensure that it was in good repair at the lease's end, making the option to own a reasonable one. The Commonwealth funded most of the operational needs of the lease through a special line item, with a minimal amount coming from UMD's budget. As the end of the 20-year lease approached, the parties failed to communicate timely and effectively as to whether the option to purchase would be exercised. As a result, the Commonwealth, after paying very generous lease terms for 20 years and failing to purchase the building, then paid unnecessary and high rent payments for two additional years. When funding was not appropriated in the Commonwealth's FY24 budget, UMD was forced to abruptly vacate the building in August 2023. Since then, the Star Store has languished as a vacant, aging property in the downtown center of New Bedford.

This project may have been beneficial for the local community, as evidenced by the public outcry when UMD's Center for Visual and Performing Arts vacated the Star Store, but there were no defined metrics to objectively measure economic benefits. In the absence of a shared written commitment to the purpose of the project, the OIG could not justify the millions in public funds expended, most especially during the final two years of UMD's occupancy.

This report contains specific findings about this project and recommendations that I hope will prevent similar waste of public funds and assets in the future.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (via email):

Senator Mark Montigny
Representative William Straus
Representative Antonio F. D. Cabral
Representative Chris Hendricks

Representative Christopher Markey
Representative Paul Schmid
Jon Mitchell, Mayor, New Bedford
Martin Meehan, President, UMass
Mark Fuller, Chancellor, UMass Dartmouth
Adam Baacke, Commissioner, DCAMM
Deborah Russell, Director of Leasing, DCAMM
Susanne M. O'Neil, Deputy Inspector General, OIG
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Joshua Giles, Director, Government Outreach and Public Policy Division, OIG
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- 49 Finding 5: DCAMM failed to exercise ownership over the project.
- 50 Finding 6: UMass was not committed to the long-term plan for the Star Store.
- 50 Finding 7: The Commonwealth spent over $60 million on the Star Store since executing the original lease in 2000.
- 52 Finding 8: The collective failure of DCAMM, UMD, and the Legislature to communicate and plan for the end of the 20-year lease resulted in the waste of over $4 million in public funds through the short-term and month-by-month tenancies.
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EXECUTIVE SUMMARY

Pursuant to Section 79 of Chapter 28 of the Acts of 2023 (Section 79), the Massachusetts Office of the Inspector General (OIG) conducted a review of expenditures related to the Commonwealth's lease of the Star Store, a large commercial building located at 182 Union Street in New Bedford, for use by the University of Massachusetts Dartmouth (UMD). The original 20-year lease began in 2001, and was later extended through one-year and month-by-month tenancies. The Legislature specifically directed through Section 79 that the OIG review Star Store lease expenses incurred after September 7, 2021. But in light of concerns that former Inspector General Robert A. Cerasoli had expressed about the lease even before it was signed, the OIG began its review with the series of events leading to the original 20-year lease. The OIG's examination extended through the entire period of UMD's occupancy, which ended in August 2023 when UMD vacated the premises.

The Star Store was built in downtown New Bedford in 1844 and operated as a popular department store for many years. In 1995, the city took possession of the building in lieu of unpaid taxes. Later in 1995, the New Bedford Redevelopment Authority designated a developer (Developer) for the Star Store.

In 1996, state lawmakers, at the urging of New Bedford's state senator, passed legislation authorizing the Division of Capital Asset Management and Maintenance (DCAMM) to procure a 20-year lease for a property in New Bedford for use by UMD. While the senator viewed the measure as a linchpin for revitalizing downtown New Bedford, then-Inspector General Cerasoli raised concerns that the anticipated procurement would not be fair and competitive since the Star Store was the only building in downtown New Bedford that met the very detailed criteria specified in the 1996 legislation.

In 1999, the city sold the Star Store to the Developer for $1.00. In 2000, following the request for proposals (RFP) process envisioned by legislators, DCAMM executed an agreement with the Developer to lease the Star Store for 20 years. In addition to base rent payments – which were tied to the repayment of bonds and included the Developer's profit – the Commonwealth as the tenant was required to cover the building's operating costs and real estate taxes through payments designated as "additional rent." Inspector General Cerasoli had previously criticized the "additional rent" provision in the rider of the proposed lease attached to the RFP, writing to DCAMM in 1999, "In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively."

Significantly, the 20-year lease agreement contained an option for the Commonwealth to purchase the building for $1.00 at the conclusion of the lease. The financial structure of the 20-year lease suggests that, barring unforeseen circumstances, it was designed to facilitate the Commonwealth's lease-end purchase of the Star Store.

In 2001, UMD's College of Visual and Performing Arts (CVPA) moved into the Star Store and began using the facility for classes and studio and performance space. In 2021, at the end of the 20-year lease, the Commonwealth did not exercise the purchase option. Instead, the parties extended the lease for another year. During that one-year term, the Commonwealth continued to pay a high base rent that was no longer tied to the repayment of construction costs, plus "additional rent." In August 2022, when the lease extension was set to expire, the Commonwealth again did not exercise the $1.00 purchase option

that the extension had preserved. Instead, the CVPA remained in the building without a lease and made monthly rent payments until August 2023.

After paying more than $60 million in rent and other payments over the life of the original lease, the one-year extension, and the subsequent month-to-month tenancy, the Commonwealth failed to exercise the $1.00 purchase option and allowed it to expire.

Through its investigation of the Star Store lease, the OIG assessed the circumstances surrounding the 1997 procurement, the lease terms, the lease management, and whether DCAMM and UMD effectively used the Star Store for public benefit without wasting public dollars. The OIG found that the 1996 legislation prompted a procurement process that was not open, fair, or competitive. With no competition, there was no incentive for the Developer to reduce costs or propose more favorable terms for the Commonwealth. Other lease terms were ambiguous or ignored by the Commonwealth parties and the Developer.

The OIG further found that the Star Store economic development project lacked a clear vision. DCAMM, which acts as the expert in the Commonwealth's real estate construction, purchases, and leases, did not exercise ownership over the project and did not undertake capital improvements that would have made the purchase option more attractive to the Commonwealth.

The University of Massachusetts system and UMD likewise did not ensure that capital repairs and improvements were made over time, despite the Legislature making funds available to protect the value of the Star Store over the course of the lease. UMD seemed uncommitted to maintaining a presence in downtown New Bedford upon the lease's expiration and gave mixed signals on its interest in the purchase option. Yet, some UMD officials began discussions with DCAMM about future long-term lease options, notwithstanding that neither DCAMM nor UMass had committed to seek funding for an additional lease.

When the university did not clearly communicate by the July 14, 2021 deadline that it wanted the state to purchase the building for its continued use, DCAMM and UMD should have made plans to orderly vacate the premises by the lease's end on August 14, 2021. Instead, the collective failure of DCAMM, UMD, and the Legislature to effectively communicate and plan for the end of the 20-year lease wasted over $4 million in public funds through expensive short-term and month-by-month tenancies.

To prevent a similar waste of public funds and assets in future long-terms leases, the OIG herein makes numerous recommendations.

For public entities generally:

1. Public entities entering, managing, or benefiting from leases to which the Commonwealth or one of its subdivisions is a party must establish clearly defined roles and responsibilities and implement processes to ensure accountability to protect the Commonwealth's interests.

2. When public entities are negotiating leases, atypical or nontraditional terms such as "additional rent" provisions should be the exception and must be supported by well documented justification. Public entities must ensure that the lease contains safeguards, processes, and enforceable terms to promote accountability and protect against fraud, waste, and abuse.

3. Public entities must be mindful that their work on a lease does not end when the lease has been negotiated and signed. Public entities must dedicate resources and ensure they have processes in place to administer the lease for its duration. Public entities must take full stock of all rights and duties under the lease to maximize the property's benefit in a fiscally responsible manner.

4. Public entities should proceed cautiously in considering lease durations that exceed DCAMM's standard 10-year term, as longer terms increase the level of risk.

For DCAMM:

1. DCAMM must actively manage leases that include an option to purchase, rather than simply assisting tenant agencies with landlord compliance issues.

2. DCAMM should immediately, clearly, and forcefully call attention to terms and conditions that are not advantageous to the Commonwealth.

3. Should it enter a lease with an option to purchase, DCAMM must be an active manager of the property and advocate for needed maintenance and capital improvements to protect the Commonwealth's investment.

4. DCAMM must monitor and manage leases to ensure that the tenant agency and landlord meet their respective responsibilities and obligations.

5. DCAMM should have processes in place for managing long-term leases, including periodic reviews, to ensure that DCAMM timely responds to options to renew, terminate, or purchase.

6. DCAMM should have processes in place for managing leases with "additional rent" terms, including so-called "triple net" leases, to protect against fraud, waste, and abuse, whether through unwarranted costs or failures to maintain the property.

7. DCAMM should insist upon written compacts that clearly define the roles and responsibilities of stakeholders when entering long-term property investments with multiple parties.

8. DCAMM must ensure that it has processes and procedures in place to timely communicate with appropriate decision-makers for public entity tenants in properties leased by DCAMM.

9. DCAMM should report annually on its lease compliance or enforcement actions.

10. DCAMM should not assume costly property tax assessments through leases with private landlords and should pursue tax increment financing (TIF) agreements.

11. DCAMM should review all of its leases having greater than 10-year terms to examine its management practices, assess risks, and implement improvements for other long-term leases.

12. DCAMM should undertake an internal review of the Star Store lease to determine what could have or should have been done differently to avoid wasting public dollars.

For the UMass system:

1. In cases of special funding outside of the university system's budget appropriations, the UMass system must understand its obligations, understand the underlying purpose of the special funds, and effectively communicate with the Legislature.

2. The UMass system must ensure that it communicates its strategic plan to stakeholders in order to ensure that parties have a shared goal and sustainability plan for long-term property investments.

3. The UMass system must ensure that it memorializes long-term plans to inform its future decision-making and provide context and a sound basis for property investments.

4. The UMass system should insist upon written compacts that clearly define the roles and responsibilities of the stakeholders when entering long-term property investments with multiple parties.

5. If in a similar position with an off-campus property in the future, the UMass system should ensure that it communicates the full cost of occupying and using the property to stakeholders to inform decision-making and mitigate unintended waste.

6. The UMass system must be an active tenant in its leased properties, both ensuring that the properties are maintained and communicating in a timely manner for key decisions such as renewing or terminating a lease or exercising an option to purchase.

7. The UMass system should undertake an internal review of the Star Store lease, and all other leases for terms of 20 years or greater, examine its management practices, assess risks, and implement improvements for other long-term leases.

For the Legislature:

1. The Legislature should require proposals that deviate from standard statutory requirements to contain reporting requirements and safeguards to protect against fraud, waste, and abuse to the same degree as existing statutory protections.

2. The Legislature should limit proposals for noncompetitive procurements.

3. The Legislature should require DCAMM to annually report on its lease compliance or enforcement efforts.

4. The Legislature should require all parties to a legislatively directed land or space lease to execute a written compact that clearly defines the roles and responsibilities of the stakeholders.

LEGISLATIVE MANDATE – OFFICE OF THE INSPECTOR GENERAL REVIEW

Section 79 of Chapter 28 of the Acts of 2023, in part, directed the OIG to investigate expenditures surrounding the Commonwealth's lease of the Star Store:

> Not later than October 1, 2023, the division of capital asset management and maintenance, in consultation with the University of Massachusetts Building Authority, shall submit to the inspector general for inclusion in the annual report pursuant to section 12 of chapter 12A of the General Laws, a report detailing each expenditure made after September 7, 2021, from item 1599-7104 for the facility located at 182 Union street in the city of New Bedford. The report from the division shall identify the purpose of each expenditure and provide documentation therefor, including, but not limited to, amounts paid for rents, utility expenses, deferred maintenance, capital improvements, personnel expenses and any other operating expenses. The inspector general shall review and investigate all such expenditures in accordance with said chapter 12A, including, but not limited to, the production of all records, correspondence and payments relating to the facility and shall refer any appropriate matters in accordance with sections 10 and 11 of said chapter 12A.

STATUS UPDATE – STAR STORE REVIEW – 2023 OIG ANNUAL REPORT

Pursuant to Section 79, the OIG commenced its investigation and reported its progress on pages 62 and 63 of its 2023 Annual Report:

> In 2023, the Legislature directed the Division of Capital Asset Management and Maintenance (DCAMM) to submit a report to the OIG detailing each expenditure made between September 7, 2021, and September 2023 related to the Star Store, a building leased by the state at 182 Union Street, New Bedford, for the University of Massachusetts at Dartmouth's (UMass Dartmouth) College of Visual and Performing Arts. The Legislature further directed the OIG to review those expenditures in accordance with Chapter 12A. While DCAMM did provide the requested records to the OIG, the OIG's Chapter 12A review is ongoing. The OIG expects to issue its findings in a report within 120 days of this report.

Timeline of Key Events Related to the Star Store Lease

Period before lease execution

1987

The Star Store at 182 Union Street in downtown New Bedford becomes vacant.

Jun 1995

New Bedford takes possession of the Star Store in lieu of unpaid taxes.

Nov 1995

The New Bedford Redevelopment Authority designates a developer (Developer) for the Star Store.

Jan 1997

Gov. Weld signs legislation authorizing the Division of Capital Asset Management and Maintenance (DCAMM) to lease property in downtown New Bedford on behalf of the University of Massachusetts Dartmouth (UMD).

Oct 1997

DCAMM issues request for proposals (RFP) for lease agreement.



Joseph G. Tirrell, Untitled, c. 1919. Glass plate negative, 8”x10”. New Bedford Whaling Museum, Photography Collection, 2001.100.85.57. Courtesy of the New Bedford Whaling Museum.

Jan 1998

DCAMM awards RFP to the Developer, the only qualifying candidate.

Sept 1999

The New Bedford Redevelopment Authority sells the Star Store to the Developer for $1.

Feb 2000

DCAMM and the University of Massachusetts (UMass) enter a 20-year lease with the Developer for the Star Store, which includes an option to purchase the building for $1, 30 days prior to the lease's end. The Commonwealth must pay base rent and "additional rent" to cover the Developer's real estate taxes and operating expenses.

Twenty-year lease term

Aug 2001

The lease term commences and UMD occupancy begins on August 15, 2001.

Feb 2016

A study reveals major issues in the Star Store's HVAC equipment and controls system.

Jun 2018

The Legislature authorizes $8M in bonds for upgrades to the HVAC systems at UMD. These funds are never appropriated or spent.

Jan 2020

A *Standard Times* article quotes the UMD chancellor as being "hopeful" that CVPA's participation in New Bedford's local community continues beyond lease's end in 2021.



Jan 2021

Chapter 358 of the Acts of 2020 is signed, making unspent funds from the Jan 2018 bond authorization available for Star Store renovations. Again, no funds are spent for significant capital improvements at the Star Store.

Feb 2021

DCAMM proposes a 10-year lease with the Star Store Developer, including capital improvements that will be paid for by the Commonwealth, without exercising the $1 purchase option at lease's end or vacating the building.

July 2021

- The $1 purchase option in the lease expires on July 14 without DCAMM exercising it.
- With no long-term successor lease in place, negotiations for the 10-year lease pivot toward a one-year short-term tenancy agreement (STTA).

Aug 2021

- 20-year lease ends on August 14, 2021.

One-year STTA term

- DCAMM executes an STTA for one year through August 14, 2022. The STTA extends the $1 purchase option, to be exercised by July 14, 2022.

Aug 2022

- Gov. Baker signs legislation naming the University of Massachusetts Building Authority (UMBA) as the successor agency to DCAMM for the purchase option and directing UMBA to exercise the option by August 14, 2022, terms which are contrary to terms of the one-year lease, which state that the purchase option is non-assignable.
- The one-year STTA ends on August 14, 2022.



- DCAMM attempts to exercise the purchase option on August 10, 2022, but the Developer rejects it as too late.

Month-to-month tenancy

- UMD continues to rent the Star Store on a month-to-month basis with no lease or purchase option.

May 2023

The New Bedford Senator files a budget amendment requiring the Office of the Inspector General to review Star Store spending. The measure prohibits the expenditure of funds for capital improvements until the Developer transfers title of the Star Store to UMass.

Aug 2023

- The Developer requests that Gov. Healey reject the New Bedford Senator's language and require DCAMM to accept the Star Store as a gift.
- Gov. Healey signs FY24 budget, which eliminates Star Store funding.
- UMD vacates the Star Store by month's end.

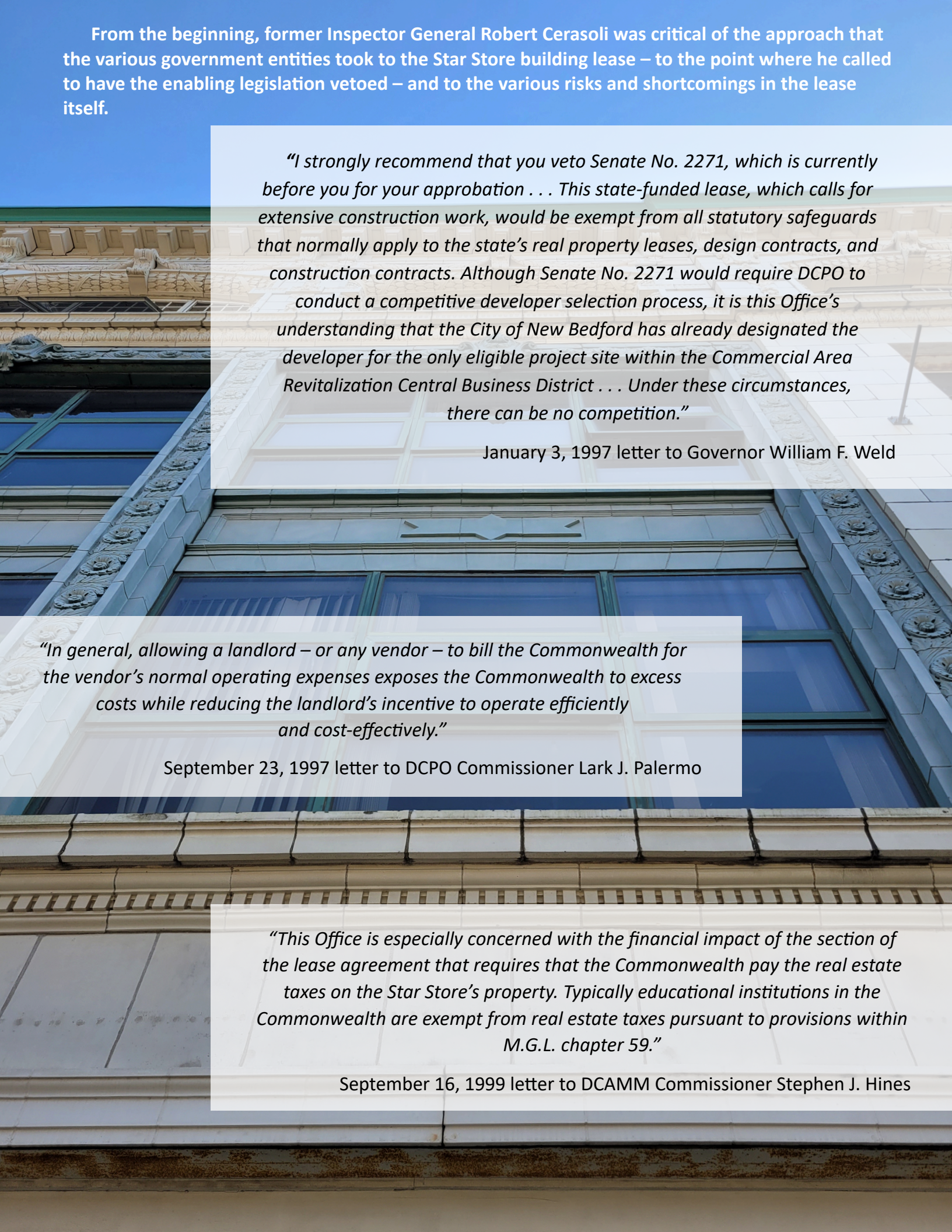
Period following UMD's departure

Sept 2023 – Present

The Star Store remains vacant.



From the beginning, former Inspector General Robert Cerasoli was critical of the approach that the various government entities took to the Star Store building lease – to the point where he called to have the enabling legislation vetoed – and to the various risks and shortcomings in the lease itself.



"I strongly recommend that you veto Senate No. 2271, which is currently before you for your approbation . . . This state-funded lease, which calls for extensive construction work, would be exempt from all statutory safeguards that normally apply to the state's real property leases, design contracts, and construction contracts. Although Senate No. 2271 would require DCPO to conduct a competitive developer selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the Commercial Area Revitalization Central Business District . . . Under these circumstances, there can be no competition."

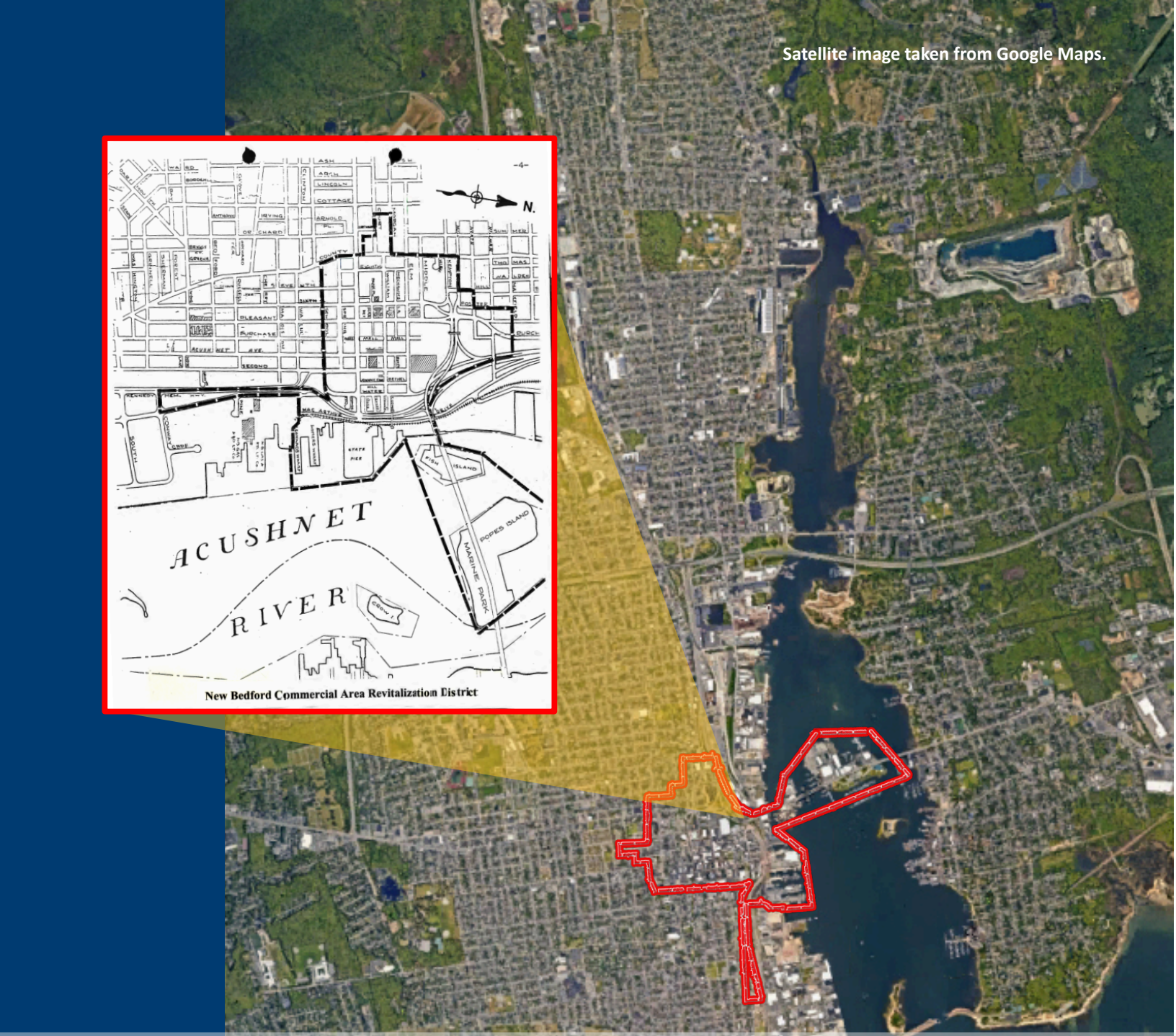
January 3, 1997 letter to Governor William F. Weld

"In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively."

September 23, 1997 letter to DCPO Commissioner Lark J. Palermo

"This Office is especially concerned with the financial impact of the section of the lease agreement that requires that the Commonwealth pay the real estate taxes on the Star Store's property. Typically educational institutions in the Commonwealth are exempt from real estate taxes pursuant to provisions within M.G.L. chapter 59."

September 16, 1999 letter to DCAMM Commissioner Stephen J. Hines



The 1997 RFP required the property that was to be leased on behalf of UMD to be located within a small geographic area in downtown New Bedford, referred to as the New Bedford Commercial Area Revitalization District (outlined in red above). The RFP provided no explanation as to why this area was the preferred location in the city of New Bedford (shown in the Google Maps satellite image above). This restriction limited the pool of potential respondents, to the point where there was in effect one property with a predesignated developer that met the conditions of the RFP.

The black-and-white image of the New Bedford Commercial Area Revitalization District above is taken from the 1997 RFP.

BACKGROUND

I. Office of the Inspector General

The Office of the Inspector General for the Commonwealth of Massachusetts (OIG) is an independent state agency charged with preventing and detecting fraud, waste, and abuse of public funds and assets. The OIG investigates allegations of fraud, waste, and abuse at all levels of government and reviews programs and practices in state agencies and municipalities to identify systemic vulnerabilities and opportunities for improvement. The OIG strives to enhance public confidence in government, ensure accountability, and promote the best interests of the people of the Commonwealth in the use of public funds and property.

The Legislature established the OIG in 1980 as the first state-level inspector general's office in the country.[1] Today, the OIG has a budget of approximately $10 million and a staff of around 90 employees. The OIG has oversight of more than $120 billion in spending and the work of over 300,000 public employees across all state and municipal public entities throughout the Commonwealth, plus suppliers, vendors, contractors, and nonprofits that receive public funds.

II. Scope and Methodology of OIG's Investigation

The OIG investigated not only the narrow period of expenses mandated by the Legislature in Section 79 of Chapter 28 of the Acts of 2023, but also the series of events underlying the execution of the Star Store lease. Further, the OIG reviewed the Star Store lease which the Division of Capital Asset Management and Maintenance (DCAMM) entered for use by the University of Massachusetts Dartmouth (UMD or UMass Dartmouth), up to and including its expiration, to assess (1) the quality, efficiency, and integrity of DCAMM's and UMD's actions, and (2) whether DCAMM and UMD effectively used the Star Store for public benefit without wasting public funds. Included in this assessment, and in accordance with the specific legislative mandate, the OIG reviewed the financial reports which DCAMM and the University of Massachusetts Building Authority (UMBA) submitted to the OIG detailing the expenditures made for the Star Store after September 7, 2021. This review consisted of an analysis of over 300 invoices, as well as related contemporaneous communications and other records, and cross-referencing these expenses with other agreements, such as the lease and bond agreements.

The OIG also interviewed many key actors in the events surrounding the Star Store lease, including, but not limited to, DCAMM employees, UMD employees, MassDevelopment employees, government officials involved in the matter, and the developer ultimately selected to renovate and serve as landlord for the Star Store.

[1] The Legislature created the OIG pursuant to the recommendation of the Special Commission Concerning State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts.

In the course of its investigation, the OIG used its statutory authority to obtain access to relevant documentation and correspondence from public and private entities, including, but not limited to, UMD, DCAMM, MassDevelopment, and the Star Store's developer.

III. Star Store, New Bedford

The Star Store is a large commercial building located at 182 Union Street in downtown New Bedford, Massachusetts. The New Bedford Dry Goods Company built the original structure in 1844.[2] After expanding into adjacent buildings and undergoing reconstruction, the Star Store "reopened" in 1915 as one of the largest and most modern department stores in New Bedford, with four stories and 150,000 square feet of floor space, a rooftop garden, 60 telephones, and air ventilation and intercom systems.[3]

The New Bedford Dry Goods Company owned the Star Store until 1969, when it sold the property to Gorin's, a Boston-based department store chain.[4] In the 1980s, the ownership of the Star Store changed hands several times.[5] An investment group led by a Rhode Island developer purchased the Star Store in 1987 with plans to open a hotel on the site, but that plan collapsed with a legal dispute between the group's partners.[6] Hotel Properties, Inc. purchased the property in 1989, but its potential hotel project also failed to materialize.[7] In 1992, New England Federal Savings Bank foreclosed on the developers, who subsequently declared bankruptcy.[8]

New England Federal Savings Bank then sold the Star Store to NEF Properties, Inc. in 1992.[9] In June 1995, after NEF Properties failed to pay approximately $700,000 in local property taxes, the city of New Bedford took possession of the Star Store and nearby properties in lieu of unpaid taxes.[10] The city subsequently transferred the controlling interest of the Star Store to the New Bedford Redevelopment

[2] William Corey, *$17 million Star Store renovation is a go*, SOUTHCOAST TODAY, August 28, 1998.

[3] *Id.*

[4] *Gorin's, Inc. Buys Star Store In New Bedford*, THE BOSTON GLOBE, June 3, 1969.

[5] Gorin's sold the property to Almy, Bigelow and Washburn, Inc. (Almy), owner and operator of the Edgar Department Stores chain, in 1983. Almy in turn sold the property to Federal Street Investors in December 1984, who sold it again in September 1985. In November 1985, Stuarts Department Store leased the property. William Corey, *$17 million Star Store renovation is a go*, SOUTHCOAST TODAY, August 28, 1998.

[6] *Id.*

[7] The Bristol County Commissioners entered an agreement with Hotel Properties to finance the project, but a key investor backed out of the deal after the state's bond rating dropped. *Id.*

[8] *Id.*

[9] *See* Bristol County Register of Deeds, Southern District, Book 2782, Page 77.

[10] *See* Massachusetts Quit Claim Deed, June 29, 1995. In total, NEF Properties transferred four parcels of land to the city through this quitclaim deed.

Authority (NBRA).[11] On November 14, 1995, the NBRA designated a private developer (Developer) for the now vacant and deteriorating Star Store and the adjacent Purchase Street parking lot.[12]

IV. Events Leading to Star Store Lease (1996 – 2001)

A. Legislative Authorization for Lease (1996 – 1997)

In 1996, the Legislature passed S2271, a measure that included an authorization for the Division of Capital Planning and Operations (DCPO)[13] to lease property for use by the University of Massachusetts Dartmouth (UMD or UMass Dartmouth) in a section of downtown New Bedford that the bill identified as the "Commercial Area Revitalization Central Business District." The state senator representing New Bedford (New Bedford Senator) had advocated for this authorization. The legislation required:

1. The chosen developer of the property to also serve as the landlord and perform certain improvements determined by UMD;[14]
2. DCPO to use "competitive and public processes" to select a developer, although the legislation also exempted the project from existing public bidding statutes;[15]
3. The lease to include an option for DCPO to purchase the property at the end of the lease term on behalf of the Commonwealth for no more than fair market value;[16] and
4. The OIG to review and approve an independent rent appraisal; the developer selection process and criteria; and the lease agreement.[17]

The measure did not specifically name either the Star Store or UMD's College of Visual and Performing Arts (CVPA). However, news outlets at the time reported that the New Bedford Senator's goal in supporting the legislation was for the CVPA to move into the Star Store.[18]

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[11] William Corey, *$17 million Star Store renovation is a go*, SouthCoast Today, August 28, 1998. The NBRA is a redevelopment authority established pursuant to M.G.L. c. 121B, § 4. It is responsible for "the urban renewal planning and project implementation in designated urban renewal areas in the City of New Bedford." *See* https://www.newbedford-ma.gov/nbra/. The NBRA has a wide range of statutory powers to engage in urban renewal projects, including the power to acquire and dispose of real property. M.G.L. c. 121B, § 11(d).

[12] *See* Bristol County Register of Deeds, Southern District, Book 4534, Page 181.

[13] DCPO was the predecessor agency to the Division of Capital Asset Management and Maintenance (DCAMM). 1998 Mass. Acts c. 194, § 12. Although the Legislature through M.G.L. c. 75, § 12 has authorized the UMass system to negotiate and execute its own leases, DCPO (now DCAMM) issued the subject RFP pursuant to specific directives in the 1996 legislation.

[14] 1996 Mass. Acts c. 457, § 2(a).

[15] *Id.* Specifically, the legislation exempted the project from the competitive bidding provisions of M.G.L. c. 7; M.G.L. c. 30, § 39M; and M.G.L. c. 149, §§ 44A-44J.

[16] 1996 Mass. Acts c. 457, § 2(c).

[17] *Id.* at § 2(e), (f).

[18] Patricia O'Connor, *Star Store project still in the works*, SouthCoast Today, May 7, 1996; Rachel G. Thomas, *Legislation Doesn't Specify Star Store*, SouthCoast Today, October 12, 1996.

". . . although Chapter 457 requires a competitive selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the target area for the lease."

-September 1997 letter from former Inspector General Cerasoli to DCPO Commissioner

In a letter dated January 3, 1997, former Inspector General Robert A. Cerasoli urged then-Massachusetts Governor William F. "Bill" Weld to veto S2271, objecting that the legislation as written resulted in only one eligible site for the lease – the Star Store – and would therefore not promote open and fair competition.[19] In his letter, former Inspector General Cerasoli also drew comparisons between the proposed legislation and the Commonwealth's previous "disastrous" experience with the Ruggles Center lease.[20]

Despite the OIG's objections, Governor Weld signed S2271 into law on January 6, 1997. The measure was enacted as Chapter 457 of the Acts of 1996 (1996 legislation).

B. OIG Review of DCPO's RFP (1997)

As mandated by the 1996 legislation, the OIG reviewed DCPO's process and criteria for selecting a developer, designer, and construction contractor as outlined in its draft request for proposals (RFP). In a letter to the then-DCPO commissioner dated September 23, 1997, former Inspector General Cerasoli wrote that the legislation "exempted the lease from all statutory safeguards applicable to public design and construction contracts."[21] Former Inspector General Cerasoli was also concerned that the city of New Bedford had "already designated the developer for the only eligible project site within the target area for the lease,"[22] making the selection of the Developer a foregone conclusion. Notwithstanding his reservations, and in furtherance of the Legislature's directive, former Inspector General Cerasoli made a number of recommendations to increase the RFP's public protections. He made it clear, however, that his approval of DCPO's selection process and criteria should not be interpreted to mean that he believed the transaction protected the public interest.[23]

[19] *See* OIG's letter to Governor Weld, January 3, 1997, Appendix A, at 59.

[20] The Ruggles Center lease was a long-term design and construction project and lease procured by the Registry of Motor Vehicles (RMV) as part of an effort to revitalize Boston's Roxbury neighborhood. Similar to provisions in the Star Store legislation, Section 3 of Chapter 443 of the Acts of 1990 exempted the Ruggles Center project from the usual state oversight requirements, including public bidding statutes such as M.G.L. c. 30, § 39M and M.G.L. c. 149, §§ 44A-44J. Former Inspector General Joseph R. Barresi opined that the bill "invite[d] waste and abuse" and "open[ed] the door to inflated rents and windfall profits." David Armstrong, Stephen Kurkjian, and Meg Vaillancourt, *Concessions Helped, Hurt Registry Project*, BOSTON GLOBE, September 4, 1995. The Commonwealth agreed to pay $106 million over 15 years to lease the Ruggles Center, which cost its owners $31 million to build; however, the RMV vacated the building 15 months into its occupancy after more than 500 employees fell ill as a result of faulty HVAC systems. Daniel Golden and Stephen Kurkjian, *Weld Defends 'Political Judgments,' Concedes Registry Job Deserved 'Harder Look,'* BOSTON GLOBE, September 5, 1995.

[21] *See* OIG's letter to DCPO commissioner, September 23, 1997, Appendix A, at 60.

[22] *Id.*

[23] *Id.*

In addition to the RFP itself, the OIG also reviewed a draft proposed lease agreement included in the RFP.[24] The rider to the proposed lease stated that UMD would pay base rent and "additional rent," consisting of the landlord's actual operating expenses and property taxes.[25] The landlord's estimate would determine the amount of additional rent, which would be adjusted annually. The landlord's estimates would be based off of actual expenses incurred in the previous year.[26] Former Inspector General Cerasoli elaborated on this condition in his September 23, 1997 letter:

> In this Office's view, landlord services required under the terms of a lease agreement, such as routine maintenance of the property, should normally be included in [the] Commonwealth's rental payments. In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively. However, including the cost of these services in the base rent could also expose the Commonwealth to excess rent costs.[27]

To mitigate this issue, former Inspector General Cerasoli recommended the rider be amended to allow DCPO to approve or disapprove the landlord's initial operating budget and any subsequent changes.[28] DCPO accordingly revised the RFP, and in a letter to the DCPO commissioner dated October 10, 1997, former Inspector General Cerasoli confirmed that the revised RFP was "fully responsive to [the OIG's] recommendations" and formally approved it, but continued to express concerns about the public interest.[29]

C. RFP Award and Purchase of Property (1997 – 1999)

Following the OIG's approval, DCPO issued the RFP on October 29, 1997.[30] The RFP included very specific requirements, including:

1. A lease for 20 years;
2. A property of at least 78,800 square feet;
3. A property within the "Commercial Area Revitalization District" of New Bedford;

[24] DCAMM Request for Proposals, October 29, 1997, at 342, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download. The rider to the RFP's proposed lease was ultimately incorporated into the executed lease. *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 85.

[25] *See* OIG's letter to DCPO commissioner, September 23, 1997, Appendix A, at 60.

[26] *Id.*

[27] *Id.*

[28] *Id.* This change was included in the final lease. *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 86.

[29] *See* OIG's letter to DCPO commissioner, October 10, 1997, Appendix A, at 67.

[30] DCAMM Request for Proposals, October 29, 1997, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download. *See also* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73.

4. A $1.00 purchase option;

5. A property with a loading dock for trucks up to 40 feet long; and

6. Fifty reserved parking spaces for UMD personnel and 100 public parking spaces within a half-mile walk of the property.[31]

As the OIG had predicted, DCPO received only one qualifying proposal – from the Star Store Developer who was previously designated by the NBRA.[32] On January 30, 1998, DCPO formally awarded the contract to the Developer.

Thereafter, the NBRA formally voted to deed the Star Store – which it had held since June 1995 – to the Developer.[33] NBRA sold the Star Store to the Developer for $1.00 on September 30, 1999.[34]

D. OIG Review of Rent Appraisal and Lease Agreement (1999)

The OIG reviewed the property appraisal and lease as required by the 1996 legislation.[35] In an August 16, 1999 letter, the Division of Capital Asset Management and Maintenance (DCAMM)[36] – the successor entity to DCPO – provided the OIG with a copy of the lease and an independent appraisal of the lease price.[37] DCAMM noted that "the lease contains an option for the Commonwealth to purchase the property at the end of the twenty-year lease term for nominal consideration."[38]

> The 20-year lease included an option for the Commonwealth to purchase the Star Store at the lease's end, with a deadline to exercise of **July 14, 2021**.

The OIG reviewed the rent appraisal and, despite noting that the per-square foot costs were "on the high side," approved the methodology in a September 16, 1999 letter to DCAMM.[39] Former Inspector General Cerasoli also raised concerns in that letter about the lease agreement's requirement that the Commonwealth assume the landlord's property tax obligations, which would increase the costs by more

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[31] DCAMM Request for Proposals, October 29, 1997, available at https://www.mass.gov/doc/dcpo-leasing-and-state-office-planning-rfp/download.

[32] *See* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73. *See also* William Corey, *Lone Bid Is in for Star Store Renovation*, SouthCoast Today, January 30, 1998. In an interview with the OIG, the Developer recalled that other proposals were submitted. However, the Developer's proposal was the only one that met the minimum requirements.

[33] NBRA Certificate of Vote, August 31, 1999. Note that the certificate may be incorrect in stating that the NBRA's meeting and vote occurred on July 10, 1998. The certificate itself is dated August 31, 1999, over a year after the purported voting date. A vote on July 10, 1998, would also mean that the NBRA granted the deed to the Developer's limited partnership almost six months prior to the partnership's existence, according to records from the Secretary of the Commonwealth. It is more likely that the vote actually occurred on August 31, 1999, or shortly prior thereto, rather than on July 10, 1998.

[34] Purchase and Sale Agreement, September 30, 1999.

[35] 1996 Mass. Acts c. 457, § 4(e), (f).

[36] Prior to 2012, DCAMM was in some instances referred to as "DCAM," although the agency's official name has not changed since 1998. This report uses "DCAMM" for ease of reference.

[37] *See* DCAMM acting commissioner's letter to OIG, August 16, 1999, Appendix A, at 73.

[38] *Id.*

[39] *See* OIG's letter to DCAMM commissioner, September 16, 1999, Appendix A, at 76.

than $12 million over the 20-year lease term.[40] Former Inspector General Cerasoli further noted that "this project cannot be considered reasonable if the Commonwealth is further burdened with extraordinary tax obligations that could exceed a half million dollars annually" and to that end recommended that the parties seek a tax increment financing (TIF) arrangement from the city of New Bedford.[41]

> *". . . it is important to point out that in 1996 this Office had strongly recommended that Governor Weld veto the legislation that created this entire process."*
>
> -September 1999 letter from former Inspector General Cerasoli to DCAMM Commissioner

Former Inspector General Cerasoli also repeated his concerns in his September 1999 letter about the "additional rent" stipulation in the rider to the lease, despite the landlord's expenses now being subject to DCAMM inspection and approval.[42] He wrote that routine property maintenance services "are the responsibility of a landlord and should normally be included in the Commonwealth's rental payments" and that including such expenses in the subject lease would expose the Commonwealth to excess costs and reduce the landlord's incentive to operate efficiently and cost-effectively.[43] He reiterated his disapproval of the 1996 legislation.[44]

Following the OIG's September 1999 letter, DCAMM revised the lease to state that the landlord's additional rent estimate was subject to approval by "the tenant" and that additional rent could be withheld if the tenant determined that the estimate was unreasonable.[45] In a November 3, 1999 letter to DCAMM, former Inspector General Cerasoli formally approved the Star Store lease, as required by Chapter 457 of the Acts of 1996.[46]

E. Pre-Lease Activity (1998 – 2000)

In accordance with the terms of the lease agreement, the Developer performed substantial work at the Star Store prior to the execution of the lease to ensure that UMD was in a position to assume the property for use by the CVPA.

Renovations. The Star Store building – which had previously only been used as a department store and was considered for a potential hotel – required extensive construction work to make it suitable for the specific needs of the CVPA. In an interview with the OIG, the Developer claimed that the building was dilapidated prior to the renovations, with no windows or roof. UMD provided the Developer with drawings and specifications for the needed renovations. In June 1999, the Developer and Suffolk Construction Co.

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[40] *Id.*

[41] *Id.* The Developer, DCAMM, and the city of New Bedford ultimately did enter a TIF agreement that drastically reduced the applicable property tax. *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 12, 1999.

[42] *See* OIG's letter to DCAMM commissioner, September 16, 1999, Appendix A, at 76.

[43] *Id.*

[44] *Id.*

[45] *See* OIG's letter to DCAMM commissioner, November 3, 1999, Appendix A, at 79.

[46] *Id.* The legislation did not specify a mechanism for the Inspector General to reject the lease, but as described herein, former Inspector General Cerasoli repeatedly objected to the legislation and process leading to the Star Store lease.

entered a $14 million contract to renovate the Star Store per the UMD specifications,[47] a cost which was almost double the Developer's prior public estimate of $7.5 million.[48] Although the Developer incurred the costs of the renovations up front, they were to be paid through state-backed bonds. The contract specified that DCAMM would repay the principal and interest of these bonds over the course of the 20-year lease as part of the base rent.[49]

Parking. In November 1998, the Developer and the NBRA entered a purchase and sale agreement for the Star Store, and simultaneously acquired the right to use the adjacent Purchase Street parking lot.[50] In July 1999, the Developer and the NBRA agreed that the Developer would relinquish his designation as developer of the Purchase Street lot in exchange for his use of a portion of the parking spaces in the resulting municipal parking garage at that location for the following 20 years. The Developer would pay $10,000 annually for those spaces.[51]

Historic Preservation. In September 1999, the city of New Bedford, the NBRA, and the Developer signed a preservation restriction on the Star Store property. The restriction required the owner to preserve the exterior façade of the building.[52] The city of New Bedford and the NBRA agreed to pay the total cost of preservation, while the Developer, who officially purchased the property the same day, agreed to contribute $521,000 toward the cost.[53]

Real Estate Taxes and TIF Agreement. As former Inspector General Cerasoli recommended in his September 1999 letter, DCAMM and the Developer entered a 20-year tax incremental financing (TIF) agreement with the city of New Bedford that reduced the Star Store property taxes – taxes for which UMD would otherwise be exempt if it owned the building.[54] Under the October 14, 1999 TIF agreement, the city agreed to accept a reduced $50,000 per year in property taxes[55] (which DCAMM would pay as additional rent) in exchange for certain commitments from DCAMM and the Developer, including (1) the creation of 25 permanent jobs, the majority of which could be filled by New Bedford residents; (2) the already-agreed-

[47] *Star Holdings L.P. Contract with Suffolk Building Corp.*, June 1, 1999.

[48] Patricia O'Connor, *Star Store Project Still in the Works*, SouthCoast Today, May 7, 1996.

[49] *Star Holdings L.P. Contract with Suffolk Building Corp.,* June 1, 1999. Suffolk Construction and certain subcontractors filed five civil actions in Bristol County Superior Court against the Developer between 2001 and 2003 for an alleged failure to pay the renovation costs in full. All of those actions were dismissed or settled.

[50] *Purchase Lot Agreement between Star Holdings Limited Partnership and The New Bedford Redevelopment Authority*, October 12, 1999.

[51] *Id.* It is unknown whether the parties extended this agreement following the expiration of the Star Store lease.

[52] *Preservation Restriction between Star Holdings Partnership and the City of New Bedford*, October 12, 1999.

[53] *Trust Agreement Among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000, at page 27, § 401(b). *See also* MassDevelopment projected budget. The $1,086,153.52 reimbursement included work done for the façade.

[54] *See* M.G.L. c. 59, § 5.

[55] The city of New Bedford reportedly valued the property at $1,552,400 for tax purposes. *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 14, 1999. The local property tax rate at the time is unknown.

upon estimated $18.5 million in capital improvements to the Star Store; and (3) the submission of annual reports to the New Bedford Economic Development Council on job creation, retention, and investment.[56]

Zoning. In October 1998, the New Bedford Zoning Board of Appeals granted the Developer a zoning variance to use the Star Store without the requisite off-street parking, as well as a special permit to alter a pre-existing, nonconforming structure.[57]

F. Lease Execution (2000 – 2001)

On February 28, 2000, DCAMM, on behalf of UMass Dartmouth, executed a 20-year lease with the Developer to house the university's visual arts college in the Star Store.[58] The Developer, DCAMM's acting commissioner, and the then-president of the University of Massachusetts (UMass) signed the lease agreement.[59]

The lease specified that the 20-year term commenced on August 15, 2001, when UMD first occupied the premises.[60] The expiration date was therefore August 14, 2021.[61, 62]

G. Lease Financing (1999 – 2000)

In order to finance the Star Store's acquisition and rehabilitation, the Developer entered a trust agreement with the Massachusetts Development Finance Agency (MassDevelopment)[63] and Wells Fargo on September 1, 2000. The agreement gave the Developer access to up to $21.5 million in bonds secured by the Star Store.[64] MassDevelopment served as the issuer, Wells Fargo as the trustee, and the Developer as the assignor.[65]

The bonds were federally tax-exempt and backed by the Commonwealth, thus carrying an interest rate of 6%, lower than comparable private bonds at the time.[66] The Developer would have been unable to

[56] *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management,* October 14, 1999.

[57] City of New Bedford Massachusetts Board of Appeals, *Notice of Decision on Zoning Variance Petition 3307A*, October 1, 1998.

[58] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 82.

[59] *Id.*

[60] *Id.* at 83, 84.

[61] *Id.*

[62] The DCAMM commissioner and the UMD chancellor signed an amendment to the lease in December 2001, which allowed modifications to the specified Star Store improvements. *See Commonwealth of Massachusetts First Amendment to the Lease*, December 7, 2001. The amendment also acknowledged that the Developer failed to meet the deadline for substantial completion of the improvements, but the parties disclaimed any resulting damage.

[63] The Legislature created MassDevelopment in 1998 pursuant to M.G.L. c. 23G. It is an industrial development financing board within the Executive Office of Administration and Finance (A&F), but is not subject to A&F's supervision.

[64] *Trust Agreement among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000.

[65] *Id.*

[66] A comparable benchmark, Moody's Daily AAA Corporate Bond Yield Averages, had an interest rate of 7.6% in September 2000, according to the Federal Reserve Economic Database. The bond underwriter's Official Statement was dated September 1, 2000.

secure these bonds without a lease agreement from a public entity.[67] The bonds were secured by the original 20-year lease agreement and the Star Store itself, and ran concurrently with the lease.[68]

The Developer, according to the bond underwriter's Official Statement, paid $36,303,816 of debt service. These costs were paid entirely by the Commonwealth's base rent, which amounted to over $44,444,460 over the course of the lease. With the Commonwealth also covering the Developer's operating costs through "additional rent," the Developer would profit an estimated $8.1 million over the course of the lease.[69] By utilizing state-backed bonds to fund the construction costs, the Developer's construction costs were significantly reduced, theoretically resulting in lower base rent payments for UMD.

V. Provisions of Lease Agreement (2001 – 2021)

A. Rent Payments

The 20-year Star Store lease was a "triple net" lease, an uncommon arrangement for public entities. The Commonwealth, as the tenant, was responsible for paying the landlord base rent, as well as property taxes and operating expenses.

Under the lease the Commonwealth was responsible for three categories of payments to the landlord: (1) base rent, (2) additional rent, and (3) funding for a replacement reserve account.[70] A specific annual legislative appropriation funded these expenses, an arrangement that is unusual for a lease by a public agency.[71]

1. Base Rent

The lease structured the base rent for the Star Store as set forth below in Figure 1.[72] The lease calculated the base rent at approximately 20% above the payments on the bond used to finance the initial Star Store renovations. As reflected in Figure 1, the Commonwealth paid $44,444,460 in base rent monthly installments to the Developer over the 20-year lease.[73]

[67] In an interview with the OIG, MassDevelopment officials stated that the Developer's limited liability company would have qualified for a tax-exempt bond because it held the lease with UMass Dartmouth. A lease with a private entity would not normally have qualified.

[68] *Trust Agreement among Massachusetts Development Finance Agency and Star Holdings Limited Partnership and Wells Fargo Bank Minnesota*, September 1, 2000; Massachusetts Development Finance Agency Lease Revenue Bonds, 2000 Issue, September 1, 2000.

[69] The bond underwriter's Official Statement notes that "Subsequent to the Date of Occupancy, the annual bond debt service requirement divided by the Base Rent will result in an approximate 1.20:1.00 debt service coverage ratio."

[70] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 82.

[71] *See* 2000 Mass. Acts c. 159, line 1599-7014.The Developer recalled in an interview with the OIG that over the course of the lease, each newly elected governor would cut the Star Store line item in their first proposed budget, but would then reinstate it after realizing that the Star Store was the centerpiece of New Bedford.

[72] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 84, 85.

[73] *Id.*

Five-Year Increments of 20-Year Lease	Annual Base Rent Per Year
Years 1 to 5	$2,158,488
Years 6 to 10	$2,200,980
Years 11 to 15	$2,243,472
Years 16 to 20	$2,285,952
Total Base Rent	**$44,444,460**

Figure 1. Annual Base Rent for Star Store Lease.

2. Additional Rent[74]

In accordance with DCAMM's RFP, in addition to base rent the lease required the Commonwealth to pay for the landlord's real estate taxes and operating expenses, collectively referred to as "additional rent."[75]

As previously discussed, the Star Store's property taxes were drastically lowered pursuant to the TIF agreement between the Developer, DCAMM, and the city of New Bedford, which former Inspector General Cerasoli had insisted upon.[76] The TIF agreement was in effect through June 30, 2020, but according to the New Bedford Assessor's Office it was continued through Fiscal Year 2023, which aligns with UMD's time at the Star Store[77] and is consistent with the invoices for "additional rent" paid to the Developer.

The landlord's operating expenses were defined broadly in the lease to include all expenses related to the operation, maintenance, and repair of the property.[78] The lease specified that operating expenses include:

- Labor costs for the property manager, responsible for the Star Store's operations, maintenance, and repair;
- Costs of supplies, materials, tools, and equipment;
- Utilities (unless UMD had its own accounts with utility companies);
- Costs for landscaping, janitorial services, security, sweeping, snow plowing, sanding, and refuse removal;
- Costs of general maintenance and necessary routine repair;

[74] *Id.* at 85-89.

[75] *Id.* Part of the Commonwealth's rationale in entering a 20-year lease rather than buying the Star Store was to allow for its development without the requirements and costs that would be involved if the building was a Commonwealth asset. This course meant that the building remained subject to real estate taxes. While many private properties are leased to the state, the Star Store lease was unusual in that the Commonwealth – not the landlord – was responsible for paying real estate taxes.

[76] The TIF agreement, pursued at the suggestion of former Inspector General Cerasoli, reduced the annual tax burden to $50,000 per year, regardless of fluctuations in property value. *See* Footnote 41.

[77] *See* City of New Bedford Assessor's Office property card, outlining taxes owed on the Star Store.

[78] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 87-89.

- Costs of capital improvements;
- The landlord's legal, accounting, and other professional costs related to the Star Store's operation;
- Liability costs for the Star Store itself and the landlord's personal property on the site, provided that property was used for the building's operation and maintenance.

The definition of operating expenses specifically excluded the landlord's own costs solely related to ownership of the building, as opposed to the actual operation.[79]

Figures 2 and 3 – composed from data available from UMD, the Developer, and other sources – reflect the Commonwealth's base rent and additional rent costs vis-à-vis the Legislature's annual appropriations from Fiscal Year 2012 through Fiscal Year 2022.[80] Numbers in red indicate years where UMD's total rent (base rent plus additional rent) exceeded the legislative appropriation. UMD paid the difference from its budget.

Fiscal Year	State Appropriation 1599-7104 for Star Store	Base Rent	Additional Rent	Total Rent
2012	$2,700,000.00	($2,238,233.26)	($272,726.14)	($2,510,959.40)
2013	$2,700,000.00	($2,243,472.00)	($399,688.66)	($2,643,160.66)
2014	$2,700,000.00	($2,243,472.00)	($315,867.87)	($2,559,339.87)
2015	$2,700,000.00	($2,243,472.00)	($355,763.37)	($2,599,235.37)
2016	$2,700,000.00	($2,243,472.00)	($360,261.85)	($2,603,733.85)
2017	$2,700,000.00	($2,280,714.74)	($441,736.09)	($2,722,450.83)
2018	$2,700,000.00	($2,285,952.00)	($452,240.36)	($2,738,192.36)
2019	$2,700,000.00	($2,285,952.00)	($460,658.10)	($2,746,610.10)
2020	$2,700,000.00	($2,285,952.00)	($432,796.46)	($2,718,748.46)
2021	$2,700,000.00	($2,285,952.00)	($380,259.65)	($2,666,211.65)
2022	$332,876.71	($281,829.70)	($58,889.45)	($340,719.14)
Total	**$27,332,876.71**	**($22,918,473.70)**	**($3,930,888.00)**	**($26,849,361.69)**

Figure 2. Appropriations, Base Rent, and Additional Rent from FY12 – FY22.

[79] *Id.* at 89.

[80] The OIG requested records on additional rent paid for the entire lease term, but neither the Comptroller nor DCAMM was able to provide complete data on the additional rent paid by the Commonwealth prior to Fiscal Year 2012. Furthermore, the additional rent data available for Fiscal Year 2012 is incomplete. UMD should have been able to produce records covering the life of the lease, but was unable to do so. Currently, the Commonwealth dictates a six-year retention requirement for lease records. Record retention challenges suggest another reason why leases beyond the Commonwealth's traditional 10-year period are problematic. The Developer likewise could not produce invoices prior to 2011.

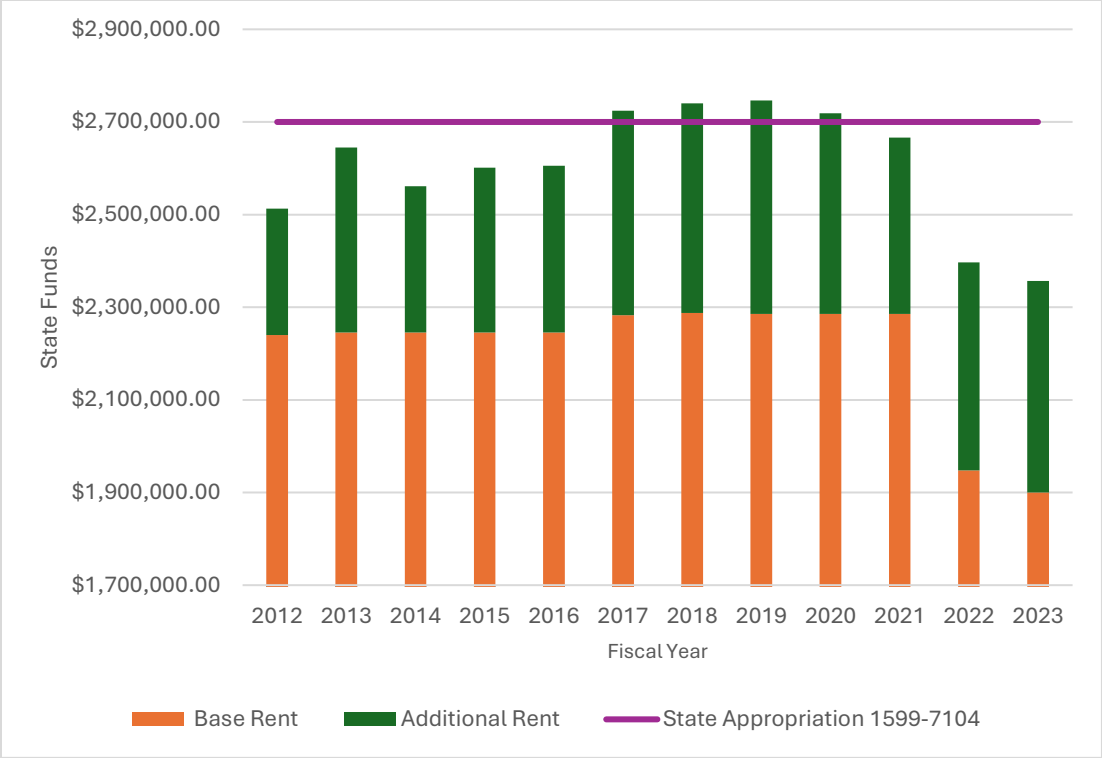


Figure 3. Appropriations Compared to Base Rent and Additional Rent from FY12 – FY23.

3. Replacement Reserve Account

The lease required the Developer to create and UMD to fund a replacement reserve account to address needed maintenance and replacement of capital items in the Star Store. The account was never created nor funded.

The lease required the Developer to establish an interest-bearing "replacement reserve" escrow account within the first year of the date of occupancy.[81] The account's purpose was to fund the replacement of capital items at the Star Store, such as the roof, walls, structural components, mechanical systems, floors, plumbing, and HVAC systems, provided the replacement was not otherwise covered by the Developer's other lease obligations or by an insurance policy.[82] The lease required UMD to pay the Developer $1,000 per month, which the Developer would deposit into the replacement reserve account.[83] According to the lease, UMD's monthly payments for the account were to increase by 4% each year during the lease term.[84]

Contrary to the lease terms, at no point during the 20-year lease did the Developer open the required replacement reserve account. Nor did UMD make any of the required payments for the account.

[81] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 16.19, Appendix B, at 127.

[82] *Id.*

[83] *Id.*

[84] *Id.*

Had the replacement reserve account been opened and fully funded, it would have accumulated approximately $400,000 over 20 years.

B. Maintenance

According to Section 5.4 of the lease, the Developer, as the landlord, was responsible for general maintenance of the Star Store, including routine repairs and replacement caused by reasonable wear and tear by the tenants.[85] The Developer was also required to fix any defects resulting from the initial renovations.[86]

While Section 5.4 of the Star Store lease stated that all repairs to the property must be completed "at Landlord's sole cost and expense," another provision classified costs to "repair and maintain the Property" as operating expenses which the Commonwealth was responsible for paying as additional rent.

Section 5.4 stated that all repairs to the Star Store must be completed "at Landlord's sole cost and expense." Another provision classified costs to "repair and maintain the Property" as operating expenses to be covered by the Commonwealth's "additional rent" payments.[87]

Pursuant to lease requirements, the Developer hired a third-party property manager to maintain the Star Store at the beginning of the lease.[88] For the first 10 years of the lease, the Developer paid the property manager for his services, and then passed these expenses on to UMD. The Developer told the OIG that 10 years into the lease, in order to save costs, UMD hired the property manager as a full-time employee to maintain the property on its behalf.

While certain capital assets such as the roof were reportedly deteriorating by the end of UMD's tenancy, there are no allegations or evidence that the Developer failed to provide routine maintenance services.

C. Capital Replacements and Improvements

The provisions in the lease regarding the replacement reserve account – an account from which the Developer could draw funds to replace "capital items" – authorized, but did not require, the Developer to make such replacements or improvements.[89] By all accounts, neither the Developer nor UMD made any such replacements or improvements, and by the end of the lease the Star Store required an estimated $26.3 million in basic capital expenditures, though some estimates for capital expenditures were as high as $70 million.[90]

Despite the Legislature authorizing appropriations for UMD to perform capital improvements to the Star Store, UMD never made use of those funds.

[85] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 5.4, Appendix B, at 102.

[86] *Id.*

[87] *See Commonwealth of Massachusetts Lease for Star Store Building*, Appendix B, at 88.

[88] *Id.*, § 5.4, at 102.

[89] *Id.*, § 16.19, at 127.

[90] Summary of Gordian Deferred Maintenance Report on the Star Store.

The Legislature twice authorized appropriations for UMD to perform capital improvements at the Star Store. First, following a 2016 study of the building's mechanical and electrical systems that found "numerous issues with the major HVAC equipment and controls system," the Legislature approved up to $8 million in its bond authorization bill.[91] None of those available funds were spent.[92] Later, Chapter 358 of the Acts of 2020 made unspent funds from the previous bond authorization available "for the purposes of renovating the [UMD] Star Store [CVPA] into a twenty-first century arts and design hub connecting downtown arts, commerce and entertainment to working waterfront venues and activities, including expanded mixed use at the New Bedford state pier."[93] Again, none of these available funds were used to make capital improvements at the Star Store.[94]

D. Purchase Option

The original 1996 legislation authorizing the Star Store's lease required that the lease include an option for the commissioner of DCAMM to purchase the property at no more than fair market value.[95] The parties did include an option to purchase – for $1.00 – which stated in relevant part:

> The Purchase Option shall be exercised by Tenant giving written notice of such exercise (the "Notice of Exercise") to Landlord at any time on or before the date which is not less than thirty (30) days prior to the expiration date of the Lease Term. If Tenant gives the Notice of Exercise, the delivery of the deed to the Property to Tenant (the "Closing") shall be on the last day of the Lease Term (or last business day if such a day is not a business day), at a time and place in the greater Boston area to be designated by Tenant in the Notice of Exercise. The purchase price for the Property shall be $1.00 (the "Purchase Price") and shall be paid at the Closing in good funds drawn on a Boston clearinghouse bank (including a check of the Commonwealth or a wire transfer of funds of the Commonwealth) at the Closing.[96]

Thus, under the lease's terms, DCAMM was required to notify the Developer by July 14, 2021, if it intended to exercise the purchase option for the nominal $1.00 price. The lease detailed the duties of the parties once the option was executed.

DCAMM did not exercise the purchase option on or before July 14, 2021.

VI. CVPA's Occupancy of Star Store Under 20-Year Lease (2001 – 2021)

The CVPA formally began its occupancy of the Star Store on August 14, 2001. In addition to the studios used by CVPA students, during the course of the 20-year lease the Star Store also provided space

[91] 2018 Mass. Acts c. 113, line 7066-8100.

[92] Capital Investment Plans 2018 – 2023.

[93] 2020 Mass. Acts c. 358, line 7002-8036.

[94] Capital Investment Plans 2018 – 2023.

[95] 1996 Mass. Acts c. 457, § 2(c).

[96] *See Commonwealth of Massachusetts Lease for Star Store Building*, § 16.20, Appendix B, at 131.

for a university art gallery open to the public, science labs for Bristol Community College students, classrooms for UMD's Workforce Education Program, and broadcast studio space for Rhode Island Public Radio.

Articles in various newspapers, including *The Boston Globe* and New Bedford's *The Standard-Times,* portrayed the CVPA's presence as playing an important role in the economic and cultural revitalization of downtown New Bedford.[97] In March 2015, the *Taunton Daily Gazette* reported on state and local leaders gathering at the Star Store to celebrate the "multi-year revitalization of New Bedford's downtown, where senators said state funding ha[d] helped spur broad private investment and economic growth."[98] Interviewees noted that the influx of thousands of visitors and students to the area had created "ripple effects for local businesses."[99]

As the end of the lease approached, and with the future of the CVPA at the Star Store uncertain, local leaders were vocal about the need to maintain its presence. A January 2020 article by *The Standard-Times* stated that "[s]ince the UMass CVPA has moved in, other businesses have sprouted up around the city block."[100] The then-UMD chancellor claimed in the article that "[o]ver the past 20 years, there have been millions of dollars in investment around the Star Store in the form of galleries, coffee shops, restaurants and programs like AHA! Night. It has been an engine of the city's creative economy."[101] The chancellor was also quoted as being "hopeful" that the CVPA's participation in the local community continued beyond the end of the 20-year lease.[102]

Both the public and state officials believed that UMD's lease of the Star Store had a positive economic impact on the city and were consequently outraged with the CVPA's impending departure from the premises. According to a *Standard-Times* article, a "Save the Star Store" petition in 2023 received close to 5,000 signatures and rallies were planned to protest the CVPA's decision to vacate the building.[103] One interviewee said the loss of the students, faculty, and visitors to the Star Store's art galleries would be an "irretrievable loss and terrible backwards step for downtown."[104] A 2024 article in the *Fall River Herald News* highlighting a local art exhibit noted that, with the Star Store gone, local artists had "fewer opportunities to prominently showcase their art" and were still working to find alternative sites and opportunities, with limited success.[105] The article also reported that many CVPA students who had moved

[97] Patricia Harris and David Lyon, *New England Art Scene is Lively Work in Progress*, THE BOSTON GLOBE, October 2006.

[98] *State senators, arts leaders celebrate revitalization of New Bedford's downtown*, TAUNTON DAILY GAZETTE, March 14, 2015.

[99] *Id.*

[100] *Star Light Star Bright: The Star Store shines brightly once again in downtown New Bedford*, THE STANDARD-TIMES, January 18, 2020.

[101] *Id.*

[102] *Id.*

[103] Seth Chitwood and Matthew Ferreira, *Star Store in New Bedford Closing, Artists Protest as UMass Dartmouth Readies Location*, THE STANDARD-TIMES, August 31, 2023.

[104] *Id.*

[105] *Star Store student collective takes hold on William Street*, FALL RIVER HERALD NEWS, February 4, 2024.

to New Bedford were faced with the task of finding transportation to the main UMD campus in Dartmouth.[106]

Pursuant to the TIF agreement, the Developer and DCAMM were required to file annual reports to the New Bedford Economic Development Council (NBEDC) disclosing the economic benefits of the project, including the number of full-time jobs created and the total amount of "investment."[107] These filings were often incomplete and were not submitted at all between 2008 and 2017. The reports that were submitted disclosed minimal job creation, with a peak of 37 reported full-time jobs as a result of the project in 2007, and only 2 reported full-time jobs in 2019. The reported total investment capped at $21.5 million in 2006, with no updates thereafter. That figure appears to coincide with the cost of the initial Star Store renovations. DCAMM did not appear to play any role in completing these filings, as all signatures and correspondence were to and from the Developer, and there is no indication that the NBEDC or the city of New Bedford vetted such representations.

VII. Lease-End Discussions on UMD's Future at the Star Store (2019 – 2021)

Like most other institutions of higher learning, UMD and the CVPA were faced with reduced enrollment – and therefore revenues – in the wake of the COVID-19 pandemic, which coincided with the end of the Star Store lease.

As evidenced by emails produced to the OIG, conversations between DCAMM, UMass, and UMD officials relating to the future of UMD's tenancy at the Star Store began in December 2019, when just under two years remained on the Star Store lease. The then-DCAMM commissioner spoke with a representative of the UMass president's office and asked (1) whether UMD wanted to remain in the Star Store, and (2) if so, whether UMD would renew the lease with the Developer or exercise the purchase option.

In a January 15, 2020 conference call, DCAMM and UMass officials discussed the purchase and extended lease options, as well as the question of who would pay for needed improvements to the building. At that time, the CVPA's new dean was still convening stakeholders and reviewing their vision for the CVPA's future.

In a February 2020 email, DCAMM's director of leasing noted to representatives of UMD that DCAMM had previously advised the UMD vice chancellor that UMD needed "to understand the program and approve the future course of action and financial investments entailed." The email further said that the specific state appropriation for rent payments was "not the norm for other higher education leases." UMD agreed to undertake a facilities condition assessment and further agreed to assemble a group of stakeholders, including the Developer, "to discuss the future of the Star Store."

For the facilities condition assessment, UMass and UMD commissioned a private consulting firm, Gordian, to assess the overall status of UMD's physical facilities. In a 2020 report, Gordian estimated that

[106] *Id.*

[107] *Tax Increment Financing Agreement by and between the City of New Bedford and Star Holdings, LP and the Division of Capital Asset Management*, October 14, 1999.

UMD's overall deferred maintenance obligations for buildings it owned (*i.e.*, not including the Star Store) amounted to approximately $690 million.

In another report, Gordian specifically reviewed the age and condition of the Star Store. It concluded that the property was a "medium risk" facility that would require $3.3 million in immediate renovations to address the "highest risk" issues and a total of $8.3 million in renovations over the next 10 years. Gordian noted that these estimates did not incorporate potential cost escalations resulting from the COVID-19 pandemic, new building codes, and general inflation. Gordian provided UMD with another assessment in March 2022, updating the figures to $4.8 million in immediate renovations, $11.6 million in renovations over the next 10 years, and $28.1 million in total renovations. Separately, UMBA and DCAMM reported the cost of deferred maintenance at the Star Store to be substantially higher, falling in the range of $50 million to $70 million.

While the needs of the Star Store comprised only a fraction of the university's larger financial obligations, UMD officials told OIG interviewers that they were significant costs for the university to assume.

In September 2020, an internal UMD email summarized the issues surrounding the Star Store, noting that the programs housed in the Star Store had experienced enrollment declines, which had impacted the "creative energy the facility generates." The UMD email went on to say that the Star Store would require a "substantial investment" to transform its facilities and technologies. In addition to the deferred maintenance needs that Gordian identified, the email identified other needs:

1. Reconfiguration of space to allow for open areas to accommodate design studios and computer labs;
2. Upgrades to spaces with large-scale art equipment (*e.g.*, printing presses, kilns, and metalworking equipment) for student safety, including ventilation;
3. Upgraded internet access and modern digital art equipment, some of which UMD had on the main campus, but would need to move to the Star Store; and
4. Relocation of the remaining Bristol Community College science lab and the UMD Workforce Education classrooms.

The CVPA's dean was convinced that the Star Store in its current state could not meet the CVPA's changing needs. In December 2020, he emailed a white paper[108] to DCAMM outlining the changing trends in the CVPA program, such as reduced enrollment in traditional arts programs and increased enrollment in "graphic design, illustration, animation, and game art," which were housed at the main UMD campus in Dartmouth. The document outlined the findings of a Star Store working committee,[109] which proposed a "Star Store 2.0" with a reduced footprint for traditional art programs, repurposed space, and consolidation of the CVPA's design programs, while maintaining key amenities such as the university art gallery and kiln.

[108] The author of the white paper is believed to be one or more CVPA students who collaborated with the dean and the Star Store working committee.

[109] The working committee included the New Bedford Senator, the CVPA dean, UMD students, and other stakeholders. The group produced several proposed redesigns for the Star Store.

The dean sent the same document to the Developer in July 2021. The OIG did not find evidence that DCAMM or the Developer ever acknowledged or responded to the document.

In February 2021, an email from DCAMM's director of leasing reported the Developer's estimate of approximately $18 million for deferred maintenance costs and necessary upgrades. That same email stated that in discussions with DCAMM, the Developer said that he could invest $8 million into the Star Store and that if that figure was amortized over a period longer than 10 years, the Commonwealth's rent during that time would be close to or lower than its rent over the initial 20-year lease. The director of leasing was privately skeptical that the Developer would invest that much money and added that the opportunity to revitalize the building for UMD's current needs was contingent on the Developer doing so.

Internally, emails among the UMD administration reflect that the CVPA's presence at the Star Store was becoming a point of contention. In a March 2021 email to the UMD chancellor, the dean said that the CVPA was struggling to fit non-design classes in the Star Store, and that the problem would persist even if facilities and equipment were downsized. The dean pointed out that splitting the CVPA between the Star Store and the main campus in Dartmouth was inhibiting efficient use of space and staff, with the CVPA struggling to move students between campuses in a timely way. The dean also complained that UMD's vice chancellor had "no interest in considering the academic mission of CVPA."

Given those issues, the dean concluded in his March 2021 email that it would be better for DCAMM to put a space request out to bid rather than creating a "white elephant at the Star Store." But the dean was skeptical that the New Bedford Senator, who had been an influential proponent of the Star Store arrangement from the beginning, would support any earmark that wasn't specifically for that property.

DCAMM leadership also appeared cognizant that the CVPA's continued occupancy of the Star Store would require more capital investment and time than was available. On July 23, 2021, more than a week after the purchase option expired, DCAMM's commissioner toured the Star Store. That same day, she acknowledged in an email to other officials:

> The only way to keep this building from failing and keep the program alive is to have the current owner do the work. If this becomes a commonwealth project it will be twice the money and five years later. By law and practice we will not be able to contain the scope and move with the speed the way a private owner can.

In December 2020, with the end of the lease approaching and with no consensus on a long-term solution, DCAMM and the Developer began discussing a potential successor lease agreement.

Emails at the time suggest that a successor lease was DCAMM's preferred course of action, with UMD preferring a 10-year lease that would require the Developer to make certain improvements, such as upgrading the building's mechanical systems and reconfiguring the space for the CVPA's changing needs.

Other emails and internal reports indicate disagreement between DCAMM, UMD, and the Developer as to what would happen to the Star Store following the lease. An internal DCAMM memo from January 2021 stated that UMD had no interest in owning the property and did not have the revenue stream to support operations, maintenance, and the upgrading of an off-campus building should the purchase option be exercised. The memo presented several alternatives, including a 10-year lease with required

improvements; exercising the purchase option and obtaining Asset Management Board approval for a public-private partnership; and the Developer donating the property to UMD.

In February 2021, the Developer proposed a 10-year lease to DCAMM, with rent structured around repayment of $18.5 million in improvements to be made by the Developer. However, whether to include another $1.00 purchase option in a new lease agreement was a point of debate. UMD's vice chancellor remarked in an email that leaving out a purchase option would mean "giving up millions of dollars in equity, both now and at the end of the lease." This was followed up with another UMD vice chancellor stating in a March 2021 email, "The University has a great interest in remaining at that location, and, specifically, in that facility. Although I understand that the Commonwealth has no [interest] in the purchase option, the University, through the UMass Building Authority, has an interest in a [purchase] option." However, other conversations in March 2021 indicate that both DCAMM and UMD believed that the absence of the purchase option in a 10-year lease would result in a reduced lease cost.

The Developer opposed including a purchase option in a 10-year lease, speculating to DCAMM that the IRS would consider a lease with a purchase option as an installment sale, giving the Developer a "very large tax bill" in 2022 and necessitating a significantly higher rent to the Commonwealth to compensate.[110]

In April 2021, DCAMM's director of leasing advised the New Bedford Senator that DCAMM was uninterested in owning the Star Store, and by May 2021, all discussion of exercising the purchase option had effectively ceased. By that point, DCAMM, UMD, and the Developer were solely focused on a long-term successor lease. Emails indicate that UMD reviewed architectural plans which the Developer provided for a 14-month renovation of the Star Store, costing $18 million amortized over a 10-year lease – an estimate that assumed the construction would not follow the public bidding requirements.

The New Bedford Senator continued to insist that the Commonwealth should own the Star Store building. On May 17, 2021, he introduced a budget amendment continuing a $2.7 million Star Store appropriation into Fiscal Year 2022 and permitting a one-year successor lease that would require DCAMM to exercise the purchase option at the end of the lease.[111] In a June 23, 2021 letter to the DCAMM commissioner, the New Bedford Senator criticized the "no-bid lease extension" process, and declared that a new long-term lease was "contrary to the original intent of the campus' creation and . . . an insult to taxpayers and the pursuit of good government."[112] He also demanded that DCAMM account for

DCAMM's director of leasing privately acknowledged that DCAMM had waited too long to start the process of thinking about the future, and had therefore locked itself into an untenable position.

[110] The Developer appears to have been correct in this assertion. When evaluating whether a lease with a purchase option is in fact an installment sale, the IRS looks to factors that include (1) whether the rent was substantially more than fair market value; and (2) whether the option price was a bargain for the buyer. While the OIG does not have data on whether the rent was greater than fair market value, it is clear that the $1.00 option would be far below the building's value. The IRS also considers whether the lease requires the tenant to pay for improvements on the property – as was the case here – which is indicative of the tenant's intent to purchase the property. As a result, the rent payments would be treated as taxable sales installments, and the Developer would lose the ability to deduct allowances for depreciation and rental expenses.

[111] This language ultimately was not included in the Fiscal Year 2022 budget.

[112] New Bedford Senator's letter to DCAMM, June 23, 2021.

the state appropriation given the building's reportedly deteriorating condition, and suggested that taking ownership of and renovating the building would be "far less" costly than a new lease.[113]

The DCAMM commissioner responded to the New Bedford Senator in a letter on July 13, 2021, which stated that there were "significant issues with exercising the purchase options [sic] in the current lease," reiterating the cost of renovations, the fact that UMD did not have a separate source of funding for these renovations, and that the replacement reserve account which was meant to pay to replace capital items was never funded. The DCAMM commissioner said that, rather than exercising the purchase option, "[w]ith the August 2021 lease expiration rapidly approaching, we are focused on responsibly securing a short-term agreement to allow UMD to continue its occupancy for the upcoming school year." The commissioner stated that once the "immediate occupancy crisis" was resolved, DCAMM and UMD would make a decision on how to procure future occupancy.[114]

The day before DCAMM sent this letter, the DCAMM director of leasing conceded to his colleagues the New Bedford Senator's point that they were using a "no-bid" process. His email stated:

> I can't refute the "no bid" point. We locked ourselves into the position we are in by:
>
> 1. Not being flexible with our ability to purchase and flip the property to another developer;
> 2. Not starting this process 2-3 years earlier to determine how the space would be utilized differently in the future;
> 3. Not sending the required reserve funding to the owner to maintain the systems of the building over the past twenty years.
>
> The only way to actually have the building available to students in September is to either enter into [a short-term tenancy agreement (STTA)], or a no-bid "unique" lease and hope the owner is reasonable. If the owner is willing to move forward with the STTA we have provided, we may have some additional options.

The New Bedford Senator's intervention effectively ended all discussion of a new 10-year lease, and the parties turned to negotiating a one-year short-term tenancy agreement (STTA) that included the purchase option. DCAMM's director of leasing speculated in an email that the Developer sought to shift the burden of repairs, expressing concern that "the building systems are at the end of their useful life" and that the Developer did not want the responsibility of replacing them.

A lack of consensus among all government entities involved led to the 20-year lease ending without the Commonwealth purchasing the property, vacating the premises, or signing a successor lease.

On August 14, 2021, the original lease lapsed without a signed STTA in place.

[113] *Id.* The OIG does not have the New Bedford Senator's underlying costs to verify the accuracy of this assertion.

[114] DCAMM commissioner's letter to New Bedford Senator, July 13, 2021.

VIII. Short-Term Tenancy and Subsequent Month-to-Month Tenancy (2021 – 2023)

A. One-Year Short-Term Tenancy Agreement (2021 – 2022)

The parties continued to negotiate terms of a one-year STTA in the weeks following the expiration of the original lease. DCAMM and the Developer finally executed an STTA on August 31, 2021.[115] The STTA specified a lease term of one year, retroactively beginning on August 15, 2021, and running through August 14, 2022. It substantially incorporated the terms of the original lease, including the purchase option.[116]

DCAMM agreed to pay $1.9 million in base rent for the one-year STTA, a reduction from the prior year, but not an amount seemingly based on any debt service, additional renovations, or any other cost the Developer bore, thus giving the Developer a much higher profit ratio.[117] There is conflicting information as to whether the base rent was set at this amount in exchange for the $1.00 purchase option.[118] In addition to the base rent, the STTA incorporated the additional rent provision from the original lease that required the Commonwealth to pay for the Developer's operating expenses and property taxes.[119] The STTA did not incorporate the never-fulfilled replacement reserve account requirement from the original lease agreement. It also made the Commonwealth solely responsible for the "entire cost of any and all repairs, maintenance, improvements or Capital Improvements" required to meet building codes or insurance carrier requirements.[120]

The STTA was the first year in which the Developer received rent from UMD while not having to service the initial debt. With the Commonwealth covering all of the Star Store's operating expenses and the Developer not making any capital improvements to the property, the Developer essentially made $1.9 million in profits during the STTA.[121] Furthermore, because the Developer's TIF agreement expired, the additional rent that UMD paid was scheduled to increase as well, although based upon information and belief the TIF agreement was extended throughout the remainder of UMD's occupancy.

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[115] *Commonwealth of Massachusetts Short Term Tenancy Agreement*, August 31, 2021. All communications reportedly went through DCAMM and the Developer, and the Developer did not have any direct communication with anyone at UMD.

[116] *Id.*

[117] *Id.*

[118] In a March 2021 email, DCAMM's director of leasing relayed the Developer's position that the inclusion of the $1.00 purchase option would result in a rent increase. By contrast, in an interview the director indicated that the rent was based on appraisals and comps and was not higher due to the inclusion of the purchase option. The Developer represented that he had a "moral responsibility" to include the option.

[119] *Commonwealth of Massachusetts Short Term Tenancy Agreement*, August 31, 2021, at 2. Upon information and belief, the TIF agreement was extended by an additional year, keeping the property taxes at $50,000.

[120] *Id.* at 9. As these costs were included as additional rent under the original lease, the significance of this additional language is unclear.

[121] In the prior year, the Developer's profit was approximately $383,252. *See* Figure 1.

Fiscal Year	State Appropriation 1599-7104 for Star Store	Base Rent	Additional Rent	Total Rent
2022	$2,367,123.29	($1,665,753.42)	($390,487.31)	($2,056,240.73)
2023	$2,700,000.00	($1,900,000.00)	($456,643.45)	($2,356,643.45)
2024	$ -	($234,246.58)	($83,155.36)	($317,401.94)
Total	**$5,067,123.29**	**($3,800,000.00)**	**($930,286.12)**	**($4,730,286.12)**

Figure 4. Appropriations, Base Rent, and Additional Rent for FY22 – FY24 During STTA and Subsequent Occupancy.

After executing the STTA, the parties continued to discuss the future of the Star Store. In early October 2021, DCAMM's director of leasing circulated an internal document proposing three possible options following the end of the STTA:

1. Exercise the purchase option and require DCAMM or UMBA to renovate and reconfigure the building;

With the Star Store's Developer no longer having to service the debt for initial renovations and the Commonwealth responsible for operating expenses, in the final two years of UMD's tenancy nearly all multimillion dollar rent payments made by the Commonwealth were profits for the Developer.

2. Enter a new long-term (10-year) lease to commence following the completion of necessary renovations and improvements, which could either be competitively procured or continued with the Developer, with the building's "unique" characteristics serving as justification for a noncompetitive process; or

3. Propose a long-term lease to the Asset Management Board, requesting waiver of the applicable public construction laws.

DCAMM also explored whether it could access pandemic relief funds to purchase the building.

In January 2022, DCAMM and UMD leadership believed that, due to a lack of funding for Star Store repairs, they had no option but to renew the lease. The parties subsequently obtained an appraisal of the building and estimated costs of renovations, including updated estimates from Gordian, which they received in March.[122]

In April 2022, DCAMM emailed a letter to the Developer asking him to provide information on rent, landlord services, and costs of interior alterations for a lease of up to 15 years. The Developer answered through email later that month that he was meeting with engineers and working on the estimates.

On May 13, 2022, the New Bedford Senator filed an amendment to the Fiscal Year 2023 budget requiring that DCAMM exercise the purchase option of the STTA by July 15, 2022. The Developer provided DCAMM the proposal for a 10-year lease on June 6, 2022, but the proposal was problematic in that it

[122] Cushman and Wakefield Appraisal Report, February 1, 2022; UMass Dartmouth Star Store Facilities Assessment and Planning Final Presentation, March 2022.

excluded costs for key maintenance, including the HVAC. Over the next few days, the Developer and DCAMM continued to negotiate the terms for this lease.

UMD arranged a meeting in mid-June with DCAMM to discuss "creative options" in response to the New Bedford Senator's insistence that legislative funding for another lease be withheld. They made little progress, and on July 12, 2022 – mere days before the deadline to exercise the purchase option – the New Bedford Senator wrote a letter to the DCAMM commissioner urging DCAMM to purchase the Star Store and use the $2.7 million legislative appropriation to address the building's maintenance and renovations.[123] The letter also asserted that "[n]o more state funding should be devoted to this building until ownership is transferred and the taxpayer's investment has been secured." The New Bedford Senator also wrote to then-Massachusetts Governor Charlie Baker advocating that DCAMM exercise the purchase option.

Despite the insistence of the New Bedford Senator, DCAMM did not exercise the purchase option. DCAMM's senior counsel prepared a draft of a Notice of Exercise of Purchase Option and sent it to the DCAMM commissioner and DCAMM chief of staff on July 15, but no DCAMM official signed the notice or sent it on to the Developer. On the same day, DCAMM responded to the New Bedford Senator in a short letter, stating that DCAMM was proposing an "alternative path" and requesting a commitment to at least five years of legislative appropriations prior to exercising the purchase option.[124]

On July 28, 2022, the Governor sent back a section of the budget as an amendment which required DCAMM to exercise the purchase option and transfer the Star Store to UMBA by October 1, 2022. The filing letter which accompanied the amendment included a statement that the Governor intended to include $30 million for five years of capital and operating repairs in a supplemental budget. The chief of staff proposed that DCAMM assign the purchase option to UMBA, to avoid complications with a transfer of real property. The amendment language ultimately designated UMBA as the successor agency to DCAMM with respect to the Star Store STTA, and directed UMBA to exercise the purchase option before August 14, 2022. According to DCAMM emails, DCAMM did not consult with UMBA prior to proposing this language.

On August 4, 2022, Governor Baker signed Chapter 141 of the Acts of 2022. Section 1 of the law mirrored the language filed by Governor Baker, making UMBA the successor agency to DCAMM with respect to the purchase option and directing UMBA to exercise the option prior to August 14, 2022.[125]

Despite this newly-signed legislation making UMBA the successor agency, DCAMM sent a letter to the Developer on August 10, 2022, attempting to exercise the purchase option.[126] The Developer responded to DCAMM in an emailed letter the following day, objecting to the attempt to exercise the purchase option as untimely.[127] The Developer asserted that the STTA required DCAMM to exercise the

[123] New Bedford Senator's letter to DCAMM, July 12, 2022.

[124] DCAMM letter to New Bedford Senator, July 15, 2022.

[125] Acts 2022 c. 141, § 1.

[126] DCAMM letter to the Developer, August 10, 2022.

[127] Developer's letter to DCAMM, August 11, 2022.

option at least 30 days prior to the expiration of the lease – or no later than July 14, 2022.[128] He further argued that the lease specifically prohibited DCAMM from assigning the purchase option to another state agency and prohibited assignment of the lease itself without the Developer's written consent.[129] Notwithstanding his assertions, the Developer said he was open to reaching "an agreement that will be amicable to both sides" but did not offer a specific resolution.[130]

Upon receipt of the Developer's rejection, DCAMM's director of leasing conceded in an internal email that there were "no real surprises" by his denial.

B. Month-to-Month Tenancy (2022 – 2023)

UMD continued to occupy the Star Store after the STTA had expired in August 2022, while DCAMM and the Developer negotiated another extension to the lease. Because the Legislature had appropriated funds for Fiscal Year 2023, UMD was able to pay the Developer on a month-to-month basis at the same rate set in the STTA.

C. End of Legislative Appropriations (2022 – 2023)

In September 2022, Governor Baker filed a supplemental budget that included up to $20 million for capital repairs to the Star Store, but the Legislature did not pass that bill.[131] DCAMM and UMD had no assurances from the Legislature that future funding would be forthcoming, and emails from the New Bedford Senator's office to UMBA show that the senator was increasingly concerned about the legislative lease payments to the Developer with no simultaneous debt service.

The lack of assurances from the Legislature stalled negotiations between DCAMM and the Developer over a successor lease, and in early 2023 the Developer informed DCAMM through emails that he intended to donate the Star Store to UMD or UMBA to recoup the tax benefits. In June 2023, DCAMM concluded that it could accept the Star Store building as a donation, but that UMBA could not.

In May 2023, the New Bedford Senator introduced a budget amendment that would ultimately become Section 79 of Chapter 28 of the Acts of 2023, which prohibited any additional expenditures on the Star Store from any account until the property was conveyed to UMBA.[132] In July 2023, the Executive Office of Administration and Finance (A&F) informed DCAMM by email that the legislative Fiscal Year 2024 budget conference committee had eliminated the Star Store funding line item in its entirety. DCAMM met with A&F in early August 2023, seemingly to discuss DCAMM's views on Section 79.

On August 4, 2023, the Developer wrote to Massachusetts Governor Maura Healey requesting that she veto Section 79, declaring that it had "long been [his] intention to gift or convey the property for

[128] *Id.* The Developer states that the original lease with purchase option expired on August 14, 2021.

[129] *Id.*

[130] *Id.*

[131] *See* H5260.

[132] Mass. Acts 2023 c. 28, § 79.

$1 despite DCAM[M] missing their opportunity to exercise the option in accordance with the lease."[133] The Developer proposed new language that would require DCAMM to accept title to the Star Store.[134]

On August 9, 2023, Governor Healey signed the Commonwealth's Fiscal Year 2024 budget, Chapter 28 of the Acts of 2023. For the first time since 2001, the state budget did not include a specific appropriation for the Star Store and prohibited the expenditure of any state funds for the Star Store.[135]

Section 79 also directed DCAMM and UMBA to produce a report to the OIG detailing expenditures relating to the Star Store made after September 7, 2021.[136] The law further required the OIG to review said expenditures for evidence of fraud, waste, and abuse, and to make appropriate findings.[137]

IX. UMD's Termination of Tenancy (2023)

On August 14, 2023, UMD notified DCAMM that it intended to vacate the Star Store due to the lack of available funding. That same day, DCAMM notified the Developer in writing that it was terminating the tenancy and would vacate the building by August 31, 2023.

X. Star Store Today (2023 – present)

As of the date of this report, the Developer still owns the Star Store, and the building remains vacant. The CVPA has temporarily moved into a big-box warehouse in Dartmouth.[138] UMD has built space on campus for some CVPA courses and has stated that it has no interest in returning to the Star Store as it focuses on developing its Dartmouth campus.

The Developer stated in an OIG interview that he is still searching for a buyer or donor recipient. The Developer also stated in the interview that the TIF agreement has lapsed and that his annual property tax bill for the Star Store is over $500,000 based on an assessed value of over $20 million. He further stated that he has not paid that full amount. Instead, he is continuing to pay the $50,000 per year he owed under the TIF agreement while he appeals the Star Store's assessed value to the Appellate Tax Board.[139]

[133] Developer's letter to Governor Maura Healey, August 4, 2023.

[134] *Id.*

[135] Mass. Acts 2023 c. 28, § 79.

[136] *Id.*

[137] *Id.*

[138] *What's Next for UMass Dartmouth Arts? School Isn't Saying*, NEW BEDFORD LIGHT, May 20, 2024.

[139] As noted above, the parties did not file complete annual reports with the NBEDC on the economic benefits of the project as required by the TIF agreement. These reports would have helped to assess the economic impact of the project in downtown New Bedford. As it stands, without these reports it is difficult to objectively evaluate the economic value of the 20-year Star Store lease or the presence of the CVPA to downtown New Bedford's economy.

FINDINGS

Overview

The Commonwealth's leaders play a critical role in helping to drive economic growth across the state, particularly in gateway cities. The fact that the Commonwealth assumed a central responsibility in a plan to revive downtown New Bedford was both a reasonable and admirable governmental function. The missteps surrounding the Star Store lease that are outlined in the findings below were not a result of the initiative itself, but in its myriad details and the actions and inactions of key parties that set the trajectory for the present outcome – the waste of taxpayer dollars and a large abandoned commercial building in downtown New Bedford.

By all accounts, repurposing the Star Store for use by the University of Massachusetts Dartmouth (UMD) was a legislative priority for New Bedford's state senator (New Bedford Senator), consistent with the objective of growing the city's economy. While UMD became the long-term tenant under the lease arrangement authorized by Chapter 457 of the Acts of 1996, it is unclear to what extent the University of Massachusetts (UMass) proposed or advocated for the legislation. The Star Store lease was not a UMass or UMD project. Rather, UMD and its College of Visual and Performing Arts (CVPA) benefited from the Legislature's willingness to use a standalone funding mechanism outside of the university system's traditional budget process to fund the lease and nearly all of its related costs.

From the beginning, a lack of shared goals between UMass and the Legislature was apparent. In an attempt to revitalize New Bedford, the Legislature incentivized UMass to locate the CVPA in the Star Store for the long-term lease with minimal university expenses, but UMass was not interested in investing its own funds in the downtown building at the expense of developing its Dartmouth campus. Given its role as a signatory to the lease and the manager of Commonwealth properties, the Commonwealth's Division of Capital Asset Management and Maintenance (DCAMM) should have taken a more active role. DCAMM should have engaged with the Legislature and UMass to ensure that all parties were invested in exercising the lease-end option to purchase, to keep the public tenants in the Star Store, and to agree on the circumstances under which this option would be beneficial to all parties.

DCAMM documents and officials characterized the Star Store project as unique for both DCAMM, as the Commonwealth's real estate expert, and the Commonwealth as a whole. DCAMM should have acknowledged that the limitations specified by the Legislature in effect amounted to an illusory procurement for UMD space. Several aspects of the lease arrangement were unusual in terms of DCAMM procurements, such as the statutory requirement that DCAMM secure a lease with very specific terms (including the lease-end option to purchase) and the fact that the Legislature, rather than the tenant agency, advocated for and funded the space. The OIG found no evidence that DCAMM raised concerns about the leasing arrangement or objected to its inability to negotiate favorable terms for the Commonwealth in light of the 1996 legislation's stringent specifications favoring one property.

Nonetheless, DCAMM could have negotiated a lease-end purchase that would have rendered the less-favorable lease terms more palatable. DCAMM failed to engage with officials from UMass, UMD, or the Legislature to ensure that all parties were aware that the financial structure of the lease significantly favored exercising the $1.00 purchase option at the lease's end.

The OIG investigation also showed that UMass did not effectively manage the lease or adhere to its terms. For instance, the required reserve replacement account was not established or funded. Additionally, notwithstanding the lease-end option to purchase the Star Store, UMass did not make sufficient efforts to maintain the building or make needed capital improvements, despite the Commonwealth making funds available for those purposes. Protecting the condition of the building was critical to maximizing the Star Store's value were it to have become a public asset through the purchase option. Nor did DCAMM address the confusion as to whether the option to purchase, if exercised, would make the Star Store a university asset or a Commonwealth asset.

The OIG's investigation indicates that UMass was agreeable to housing the CVPA in downtown New Bedford's Star Store for many years as long as the Commonwealth was assuming the costs. However, as the end of the original 20-year lease term approached, differing views emerged among UMass system officials, UMD leadership, administrators, deans, and students on the best course to move forward. Some wanted UMD to own the building by exercising the lease's purchase option; others advocated for a new long-term lease that would include a major space renovation; and others wanted the CVPA to return to the Dartmouth main campus. As those conversations unfolded, leaders from the UMass Office of the President (an original signatory to the lease) and UMD did not identify a single party to clearly and directly communicate the university's position to DCAMM or the Legislature. When the university did not clearly communicate that it wanted the state to purchase the building for its continued use by the July 14, 2021 deadline specified in the lease, DCAMM and UMD should have adhered to the only remaining lease option: vacating the Star Store by the end of the lease on or about August 14, 2021.

To reiterate, while DCAMM was hands-off through much of the life of the lease, as it began to engage in lease-end conversations around 2019, DCAMM erred by:

- Not obtaining clarity from UMass whether to exercise the purchase option by the lease's deadline;
- Not obtaining an assurance of continued funding from the Legislature prior to engaging UMass or UMD regarding a subsequent long-term lease, as DCAMM knew that UMass, while a beneficiary, was not funding the 20-year lease or any subsequent extension; and
- Not planning to vacate the building by the lease's end when it received neither of these authorizations.

If the Commonwealth were to make any future use of the Star Store and avoid wasting the public funds that were expended in short-term arrangements following the end of the lease, it was imperative for DCAMM to advise the Legislature and the New Bedford Senator of the stance of the parties involved and the options available to them: (1) UMass was not clear if it was interested in pursuing the $1.00 purchase option, although it seemed to have some interest in renovating and entering a subsequent long-term lease as long as the Commonwealth was funding it; (2) if UMass would not commit to the purchase option, DCAMM's only option would be to vacate the space at the lease's end; and 3) alternatively, if the Legislature had an interest in DCAMM pursuing the purchase option, it would need to clarify how the building would be operated and occupied, as DCAMM cannot dictate that state agencies occupy certain spaces.

For its part, UMass did not manage the lease as it does for its other leases of private property. UMass never attempted to align a long-term plan with the long-term plan of the Legislature, and indeed never committed to one long-term plan at all. Nor did it designate a leader to be the decision-maker, thus allowing the purchase deadline to pass without deciding to purchase or vacating the building.

In the future, the Legislature should ensure that the government entities involved in similar long-term funding and leasing arrangements sign a compact to ensure that they share a long-term vision for the project and understand the strategic goals needed to achieve it.

As an economic development project, the Star Store lease provided many years of value to downtown New Bedford, although the extent of economic benefits is not easily measured. But the lack of shared vision and collective ownership of the lease did allow millions of public dollars to be wasted. The lease was financially structured so that the Star Store would become a Commonwealth asset at the end of 20 years. As long as the parties properly maintained the building during the 20-year term – including making capital repairs that the Commonwealth provided funding for – the option at the end of the lease was illusory. UMass should have been clear that it had no interest in "owning" the Star Store if it was going to have to invest its own money. Yet, due to the lack of communication and cooperation among the government entities involved, the Commonwealth paid very generous lease terms for 20 years and then failed to purchase the building; paid high rent payments for two additional years; and ultimately allowed the Star Store to languish as a vacant, tax delinquent, aging property in the center of New Bedford.

The OIG believes that the Commonwealth can and must do a better job of protecting public dollars. While government agencies should "dream big" and think creatively to bring economic growth to the Commonwealth and its municipalities, they must memorialize long-term strategies and goals in writing and hold their partners accountable. While government agencies in the right circumstances can deviate from general practices, such as in procuring property leases or establishing the length of those leases, Commonwealth agencies must understand that such circumstances require greater oversight by the agencies involved, not less.

Finding 1: The 1996 legislation was flawed, setting up a procurement process that was not open, fair, or competitive.

Section 2 of Chapter 457 of the Acts of 1996 authorized DCAMM to procure a 20-year lease of property in New Bedford for use by UMD. As forewarned by former Inspector General Robert Cerasoli, the 1996 legislation needlessly exempted the procurement from existing statutory safeguards and narrowed the scope of the procurement so significantly that only one property fit the legislation's criteria.

In light of his concerns, former Inspector General Robert Cerasoli objected to the legislation and called on former Governor Weld to veto the measure, stating in a January 3, 1997 letter:

> I strongly recommend that you veto Senate No. 2271, which is currently before you for your approbation. Section 2 of Senate No. 2271 would authorize the development and lease by that state of property in the so-called Commercial Area Revitalization Central Business District within the city of New Bedford for use by the University of Massachusetts at Dartmouth. The arrangement proposed in this legislation mirrors the

> disastrous Ruggles Center lease in a number of respects. This state-funded lease, which calls for extensive construction work, would be exempt from all statutory safeguards that normally apply to the state's real property leases, design contracts and construction contracts. Although Senate No. 2271 would require DCPO [now DCAMM] to conduct a competitive developer selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the Commercial Area Revitalization Central Business District. Moreover, the legislation requires the developer to be the landlord for the property. Under these circumstances, there can be no competition.

From its inception, the 1996 legislation was intended to apply only to the Star Store. The New Bedford Senator publicly stated that the purpose of the 1996 legislation was to lease the Star Store. The New Bedford Senator even appeared before the New Bedford Redevelopment Authority with the Developer to advocate for the project before the legislation was passed. Furthermore, the legislation did not specify metrics to measure the project's economic impact in New Bedford.

Finding 2: The resulting request for proposals (RFP) was an RFP in name only and resulted in a flawed lease.

The narrow scope of the RFP showed that the RFP was a mere formality and that there was never a truly open, fair, and competitive procurement process to select a site for the lease. The 1997 RFP DCAMM issued pursuant to the 1996 legislation limited qualifying proposals to those properties located in a relatively small area of downtown New Bedford that had a large physical space, a loading dock suitable for large trucks, and substantial dedicated parking spaces, as well as an owner who had both the appetite for a 20-year lease and a willingness to ultimately part with the property for $1.00. These detailed requirements effectively narrowed down the range of potential respondents to the Star Store. Future DCAMM officials not involved in the RFP would privately acknowledge that the procurement was not competitive. DCAMM officials should have objected at the time.

With no competition, there was no incentive for the Developer to reduce costs or propose terms favorable to the Commonwealth. The Developer made millions in profits while the Commonwealth bore every expense related to the Star Store lease.

Finding 3: The project lacked a clear vision.

The Legislature adopted the plan to house the CVPA in New Bedford to help revitalize the city's downtown. As noted above, the long-vacant Star Store was the predetermined property. The building needed extensive renovations to accommodate the CVPA. Rather than purchasing the building and undertaking a public construction project, the proponents crafted a 20-year lease with the renovations to be completed by a developer, funded by a state bond and an option for the Commonwealth to purchase the property at the end of the lease. In authorizing this project, the Legislature also directed the OIG to

review and approve the appraisal and DCPO's [now DCAMM's] process for selecting the developer. The OIG wrote extensively of the flaws in the process and opined that the proposal was not in the public interest. The Legislature nevertheless approved the measure. Although the Legislature included oversight protections for the procurement and lease negotiation phases of the project, it did not establish safeguards for the lease period itself to ensure that the building was properly maintained in anticipation of the Commonwealth's ultimate purchase of the property. With no party to the original lease assigned overall responsibility for the project, the New Bedford Senator's goal of making the Commonwealth a permanent occupant of the Star Store was destined to fail from the outset.

Finding 4: The original lease terms were unfavorable to the Commonwealth, while other terms were ambiguous or ignored.

A. Acting at the Legislature's direction, DCAMM negotiated a lease for which the Commonwealth paid a premium.

The original lease required UMD to pay not only a high base rent – set at 20% above the principal and interest the Developer owed on the state-backed bonds – but also to pay property taxes and operating expenses as "additional rent." The lease was in effect a "triple net lease," an arrangement common in long-term private sector leases, but less common in the public sector. The Developer retained a third-party property manager to handle the day-to-day work of maintaining the property. UMD covered those costs as part of additional rent, so the Developer's profits were unaffected. Notably, these advantageous terms appear to have been predetermined, as this arrangement was already included in the proposed lease attached to the RFP.

Former Inspector General Cerasoli objected to these terms in a September 23, 1997 letter to the DCPO Commissioner, stating as follows:

> In this Office's view, landlord services required under the terms of a lease agreement, such as routine maintenance of the property, should normally be included in Commonwealth's rental payments. **In general, allowing a landlord - or any vendor - to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively.** However, including the cost of these services in the base rent could also expose the Commonwealth to excess rent costs. Of these two unfavorable options, the method outlined in the Rider may be preferable if DCPO is accorded sufficient authority to approve or disapprove the landlord's initial operating budget and any changes thereafter.

Ultimately the lease did include a provision allowing UMD and DCAMM to review and approve of operating expenses. According to the Developer, the provision was never used to prevent any expenses from being paid.

Of note, because the Developer in effect received the building for free and therefore did not hold large mortgages, the rent agreement was essentially structured to pay for the cost of construction – an arrangement that today likely would be prohibited as an illegal circumvention of public construction laws.

B. The lease included provisions that were ambiguous.

While the landlord was clearly responsible for routine repairs, responsibility for capital replacements and improvements – such as HVAC system and roof – was less clear. That ambiguity resulted in a lack of responsibility by any party for those larger improvements. Thus, when the Legislature made money available for that purpose, none of the parties – the Developer, DCAMM, nor UMD – sought to leverage those funds to initiate improvements.

C. The lease included provisions that the parties ignored.

The Developer was required to establish a reserve replacement account to which UMD would contribute. The purpose of the account was to ensure that in the later years of the lease term, funds would be ready to cover the costs of capital improvements. The Developer and UMD ignored these provisions. While the amount that would have been deposited into the replacement reserve account would have been insufficient to support the costs of the Star Store's needed improvements, the facts that the Developer did not open the required account and that UMD did not make any of the required payments demonstrate that neither DCAMM nor UMD took ownership of a lease to which they were both signatories. By the end of UMD's occupancy, the Star Store's systems had deteriorated and needed replacement. UMD cited these problems as part of the reason it declined to take possession of the building. UMD and DCAMM's failure to maintain the building as detailed by the lease terms resulted in a waste of public dollars.

Finding 5: DCAMM failed to exercise ownership over the project.

Because the lease had an option to purchase to effectuate the goal of the Commonwealth eventually owning the property, DCAMM should have gone beyond its usual role and actively managed the building. DCAMM was heavily involved in the initial procurement, negotiating the lease, and overseeing the renovations. UMD was responsible for day-to-day oversight.

During the 20-year lease, DCAMM did not undertake capital improvements. Nor did it take advantage of funds the Legislature appropriated for such improvements. The costs of the deferred capital improvements made it less desirable for the Commonwealth to exercise the purchase option.

Further, DCAMM did not begin to ascertain the Commonwealth's interest in purchasing the property until early 2020. Its needs assessment of the continued viability of the Star Store occurred too late for other stakeholders to engage in a thoughtful and deliberative process with DCAMM about the viable future options for the Star Store.

As signatory to the lease, DCAMM should have actively managed the project not only to ensure that the Commonwealth was meeting its contractual obligations, but – given the nominal purchase price

– to ensure that the building was being maintained in a manner consistent with a building that had a high probability of becoming a Commonwealth asset at the lease's end.

Finding 6: UMass was not committed to the long-term plan for the Star Store.

While proponents of downtown redevelopment had identified UMD's CVPA as a viable economic catalyst for the area, the OIG found little evidence that UMD was enthusiastic about the lease. For example, the OIG found no evidence to indicate that UMD understood or accepted the overarching premise that the lease would spur economic growth in downtown New Bedford. Although university officials told the OIG that each campus of the system operates independently, the UMass president signed onto the plan on behalf of UMD, perhaps incentivized because the project was funded by the Legislature outside of the university's annual appropriation. At the outset, the university did not incur renovation costs to prepare the building for the school. And the Legislature made a separate appropriation for rent payments for the duration of the lease. The university did shoulder incidental costs, such as those associated with shuttling staff and students to the Star Store from the Dartmouth campus. Although the OIG found that UMD generally kept up with day-to-day maintenance of the building, UMD did not treat the building as an asset that the Commonwealth would one day own for UMD's benefit. UMD did not ensure capital repairs and improvements were made over time. The OIG found no evidence that UMD took steps to advocate for the release of funds to be used for capital improvements. Until 2020, UMD did not communicate regarding the continued viability of its occupancy of the Star Store. UMD's inaction on these matters contributed to the increased costs necessary to modernize the building at the end of the lease. UMD then used the high cost of renovations as justification for not moving forward to ask DCAMM to acquire the building under the purchase option for a nominal $1.00.

Finding 7: The Commonwealth spent over $60 million on the Star Store since executing the original lease in 2000.

As shown in Figures 5 and 6, the OIG verified almost **$60.5 million** in public expenditures on the Star Store since DCAMM and the Developer executed the original lease in 2000. These expenditures include base rent, additional rent, and UMD's ancillary expenses, such as shuttling students between the Star Store and the main campus in Dartmouth. This amount does not include additional rent expenses prior to Fiscal Year 2012, ancillary expenses prior to Fiscal Year 2012 or during the 45-day month-to-month tenancy in Fiscal Year 2024, or the costs of UMD moving out of the building.

Fiscal Year	State Appropriation 1599-17104 for Star Store	Base Rent	Additional Rent	UMass Extra Expenses	Total Verified Star Store Operating Costs
2001	$1,700,000.00				$ -
2002	$2,430,267.00	($1,892,373.04)			($1,892,373.04)
2003	$2,730,267.00	($2,158,488.00)			($2,158,488.00)
2004	$2,665,093.00	($2,158,488.00)			($2,158,488.00)
2005	$2,565,093.00	($2,158,488.00)			($2,158,488.00)
2006	$2,565,093.00	($2,158,488.00)			($2,158,488.00)
2007	$2,700,000.00	($2,195,741.26)			($2,195,741.26)
2008	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2009	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2010	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2011	$2,700,000.00	($2,200,980.00)			($2,200,980.00)
2012	$2,700,000.00	($2,238,233.26)	($272,726.14)	($640,863.17)	($3,151,822.57)
2013	$2,700,000.00	($2,243,472.00)	($399,688.66)	($608,256.65)	($3,251,417.31)
2014	$2,700,000.00	($2,243,472.00)	($315,867.87)	($646,416.25)	($3,205,756.12)
2015	$2,700,000.00	($2,243,472.00)	($355,763.37)	($624,510.93)	($3,223,746.30)
2016	$2,700,000.00	($2,243,472.00)	($360,261.85)	($556,002.79)	($3,159,736.64)
2017	$2,700,000.00	($2,280,714.74)	($441,736.09)	($728,410.42)	($3,450,861.25)
2018	$2,700,000.00	($2,285,952.00)	($452,240.36)	($703,565.33)	($3,441,757.69)
2019	$2,700,000.00	($2,285,952.00)	($460,658.10)	($804,037.98)	($3,550,648.08)
2020	$2,700,000.00	($2,285,952.00)	($432,796.46)	($674,032.19)	($3,392,780.65)
2021	$2,700,000.00	($2,285,952.00)	($380,259.65)	($509,910.13)	($3,176,121.78)
2022	$2,700,000.00	($1,947,583.12)	($449,376.75)	($372,368.67)	($2,769,328.54)
2023	$2,700,000.00	($1,900,000.00)	($456,643.45)	($513,026.08)	($2,869,669.53)
2024	$ -	($234,246.58)	($83,155.36)		$(317,401.94)
Total	**$60,555,813.00**	**$(48,244,460.00)**	**$(4,861,174.11)**	**($7,381,400.59)**	**$(60,487,034.70)**

Figure 5. Total Verified Costs of Star Store, Base Rent FY02 – FY24, Additional Rent FY12 – FY24, UMass Extra Expenses FY12 – FY23[140]

[140] Information provided by UMD's CFO. UMD's estimates were used for 2017 to 2021 for internet costs, and no costs were provided for years prior to 2017. UMD's estimates were used for 2017 and 2021 for A&A Metro Shuttle Contract (Continuous Loop) costs, and no costs were provided for years prior to 2017. This shuttle is different from the CVPA college-funded shuttles,

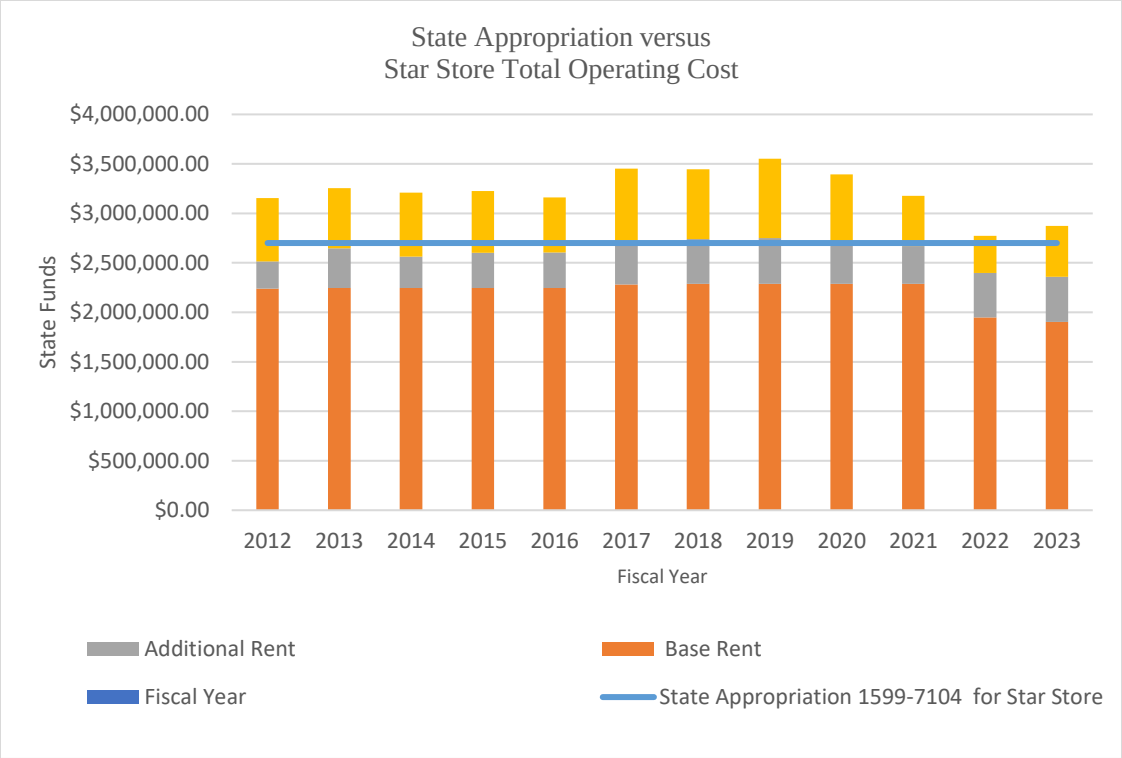


Figure 6. State Appropriation inflow next to Total Operating Cost expense made up of the Base Rent, Additional Rent & UMass's Extra Expenses.

Finding 8: The collective failure of DCAMM, UMD, and the Legislature to communicate and plan for the end of the 20-year lease resulted in the waste of over $4 million in public funds through the short-term and month-by-month tenancies.

The parties' actions and inactions at the end of the original lease term demonstrated poor fiscal management. DCAMM and UMD engaged in virtually no discussions of whether and how to exercise the purchase option and take possession of the Star Store until early 2020, when only about 18 months remained to do so. Likewise, DCAMM and UMD did not assess the Star Store's overall condition or cost analysis until 2020.[141] Discussions in 2020 were largely speculative and high-level; productive discussions did not begin in earnest until January 2021, after a new interim UMD Chancellor was named and when only six months remained until the lease expired.

DCAMM's director of leasing privately acknowledged in a July 2021 internal email that DCAMM waited too long to start the process of thinking about the future and had therefore locked themselves into an untenable position.

which were intermittent. In Fiscal Year 2010, the Commonwealth provided the appropriation in the form of federal ARRA funds instead of state funds. The ARRA funds came directly to UMD.

[141] In February 2016, the Developer commissioned a study of the building's HVAC and electrical systems only.

The delay and lack of coordination may have made negotiating more favorable lease terms difficult. When DCAMM entered discussions with the Developer and UMD on a successor 10-year lease, it did so without the assurance of funding. DCAMM therefore should have presented UMD with two options at the end of the 20-year lease term: affirm its intent to purchase the Star Store or vacate the premises at the end of tenancy. Instead, the parties entered the one-year STTA – which substantially incorporated the terms of the original lease, but without debt service or required renovations gave the Developer a much higher profit margin. During the STTA period, DCAMM's discussions with the Developer were still focused on negotiating a successor 10-year lease. The New Bedford Senator was actively urging an exercise of the purchase option. Because of the delay in communication and lack of agreement in July and August 2022, DCAMM did not exercise the option by the July 14, 2022 deadline. DCAMM attempted to salvage the deal with legislation filed by Governor Baker making UMBA the successor agency for the now-expired option, which was signed into law on August 4, 2022. On August 10, 2022, DCAMM attempted – and failed – to exercise the option in violation of the lease.

With no title to the property and no successor lease to the STTA in place, UMD became a tenant-at-will for the following year. Ultimately, the Developer accepted additional rent payments and therefore the terms of the STTA continued. Occupying the property without a written lease for an additional year created uncertainty and demonstrated a lack of strategic planning.

The Developer was very well compensated from August 2021 to August 2023 – the two years beyond the original 20-year lease – raising significant concerns that the Commonwealth's inactions wasted public funds. Had the Commonwealth parties acted prudently, they would have come to a consensus on whether to exercise the purchase option or vacate the Star Store within the original lease period. Rather, the Commonwealth parties entered the STTA and subsequent month-to-month tenancy, thereby diverting almost $4 million of taxpayer funds into the Developer's profits while still not obtaining title to the property.

Finding 9: The OIG has no reasonable grounds to refer the Star Store matter for prosecution or civil recovery.

In accordance with the specific mandate of Section 79 of Chapter 28 of the Acts of 2023 and the OIG's general mandate under Chapter 12A of the Massachusetts General Laws, OIG investigators reviewed public expenditures related to the Star Store after September 7, 2021, for evidence of fraud, waste, and abuse in the expenditure of public funds. The review consisted of an analysis of over 300 invoices during that time period, as well as contemporaneous related communications and other records. Based on the evidence it reviewed, the OIG does not have reasonable grounds to refer this matter for prosecution or civil recovery pursuant to § 79 and M.G.L. c. 12A, §§ 10 and 11.

CONCLUSIONS AND RECOMMENDATIONS

I. Recommendations Regarding the Star Store Property

As of the date of this report, a bill before the Legislature proposes to have the state take title to the now-vacant Star Store, which remains the property of the Developer. The OIG advises the interested parties to carefully consider this proposal so that the Commonwealth does not repeat the mistakes it made in the execution, administration, and outcome of the Star Store lease. To that end, the OIG makes the following recommendations specific to the Star Store property:

1. To the extent that one or more stakeholders, whether through special legislation or otherwise, advocates for a public entity to own and operate the Star Store as a taxpayer-supported public building, the Legislature, the Administration, the city of New Bedford, and any other public stakeholder must first assess the viability of the project based on the current state of the building. Before undertaking any such project, all stakeholders must agree on shared goals, reach a consensus on what type of public entity is best suited to occupy the Star Store, fully understand what the occupancy and operation should entail to best meet the shared goals, and commit to the necessary state and local financing required to update and sustain the building for the next generation and beyond. The parties must memorialize these matters in a compact before committing any further state funds – appropriated or capital – to this site. Each state and municipal entity involved needs to explicitly understand its role, create a sustainability plan, and implement accountability measures.

2. Based upon the experience with UMD and the CVPA, the Legislature should reject any additional funding for an additional lease term for the Star Store.

3. Should the Star Store property become available to the city of New Bedford at a future time through a donation or tax taking, and should the city consider retaining the property for its own use, the city should first undertake a full assessment of the immediate and long-term capital investments the building needs to serve as an asset to the city and to meet its long-term economic development and infrastructure plans. Until such an assessment is completed, the Commonwealth should certainly not commit any funds to advance this purpose.

4. Should the property return to the market, the Commonwealth, UMD, the CVPA, and the city of New Bedford should continue to support the economic development of downtown New Bedford through smart and long-term strategic planning, balancing the benefits to be gained in the short term for the community with the imperative of not burdening public finances with uncertain and escalating costs.

II. General Recommendations

A. For Public Entities Generally

To prevent waste of public funds and assets in the future, similar to the waste incurred through projects like the Star Store lease or the Ruggles Center in Roxbury, the OIG makes the following recommendations:

1. Public entities entering, managing, or benefiting from leases to which the Commonwealth or one of its subdivisions is a party must establish clearly defined roles and responsibilities and implement processes to ensure accountability to protect the Commonwealth's interests.

2. When public entities are negotiating leases, atypical or nontraditional terms such as "additional rent" provisions should be the exception and must be supported by well documented justification. Public entities must ensure that the lease contains safeguards, processes, and enforceable terms to promote accountability and protect against fraud, waste, and abuse.

3. Public entities must be mindful that their work on a lease does not end when the lease has been negotiated and signed. Public entities must dedicate resources and ensure they have processes in place to administer the lease for its duration. Public entities must take full stock of all rights and duties under the lease to maximize the property's benefit in a fiscally responsible manner.

4. Public entities should proceed cautiously in considering lease durations that exceed DCAMM's standard 10-year term, as longer terms increase the level of risk.

B. For DCAMM

DCAMM, as the Commonwealth's expert in property purchases and leases, must fully understand long-term implications as it negotiates proposed lease terms. Understanding terms such as options to purchase and "additional rent" provisions will help to ensure long-term value for the Commonwealth and protect the Commonwealth's interests. Based on lessons learned from the Star Store lease, the OIG makes the following recommendations specific to DCAMM:

1. DCAMM must actively manage leases that include an option to purchase, rather than simply assisting tenant agencies with landlord compliance issues.

2. DCAMM should immediately, clearly, and forcefully call attention to terms and conditions that are not advantageous to the Commonwealth.

3. Should it enter a lease with an option to purchase, DCAMM must be an active manager of the property and advocate for needed maintenance and capital improvements to protect the Commonwealth's investment.

4. DCAMM must monitor and manage leases to ensure that the tenant agency and landlord meet their respective responsibilities and obligations.

5. DCAMM should have processes in place for managing long-term leases, including periodic reviews, to ensure that DCAMM timely responds to options to renew, terminate, or purchase.

6. DCAMM should have processes in place for managing leases with "additional rent" terms, including so-called "triple net" leases, to protect against fraud, waste, and abuse, whether through unwarranted costs or failures to maintain the property.

7. DCAMM should insist upon written compacts that clearly define the roles and responsibilities of stakeholders when entering long-term property investments with multiple parties.

8. DCAMM must ensure that it has processes and procedures in place to timely communicate with appropriate decision-makers for public entity tenants in properties leased by DCAMM.

9. DCAMM should report annually on its lease compliance or enforcement actions.[142]

10. DCAMM should not assume costly property tax assessments through leases with private landlords and should pursue tax increment financing (TIF) agreements.

11. DCAMM should review all of its leases having greater than 10-year terms to examine its management practices, assess risks, and implement improvements for other long-term leases.

12. DCAMM should undertake an internal review of the Star Store lease to determine what could have or should have been done differently to avoid wasting public dollars.

C. For the UMass System

The Commonwealth's public universities play meaningful roles in their local communities. As a stakeholder in those communities and a steward of public funds, the public university system must ensure that it is fully committed to investments made on its behalf, such as the Star Store lease. Based on lessons learned from the Star Store lease, the OIG makes the following recommendations to the UMass president and UMD:

1. In cases of special funding outside of the university system's budget appropriations, the UMass system must understand its obligations, understand the underlying purpose of the special funds, and effectively communicate with the Legislature.

2. The UMass system must ensure that it communicates its strategic plan to stakeholders in order to ensure that parties have a shared goal and sustainability plan for long-term property investments.

3. The UMass system must ensure that it memorializes long-term plans to inform its future decision-making and provide context and a sound basis for property investments.

[142] Currently, DCAMM files an annual report with a list of properties owned and leased by the Commonwealth.

4. The UMass system should insist upon written compacts that clearly define the roles and responsibilities of the stakeholders when entering long-term property investments with multiple parties.

5. If in a similar position with an off-campus property in the future, the UMass system should ensure that it communicates the full cost of occupying and using the property to stakeholders to inform decision-making and mitigate unintended waste.

6. The UMass system must be an active tenant in its leased properties, both ensuring that the properties are maintained and communicating in a timely manner for key decisions such as renewing or terminating a lease or exercising an option to purchase.

7. The UMass system should undertake an internal review of the Star Store lease, and all other leases for terms of 20 years or greater, examine its management practices, assess risks, and implement improvements for other long-term leases.

D. For the Legislature

The Legislature provides the critical funding and leadership necessary to achieve economic development goals. Over time, and for good reason, the Legislature has enacted numerous laws to promote open and transparent procurements, including land acquisitions. Funding without adequate oversight or unburdened by generally applicable laws and processes creates opportunities for fraud, waste, and abuse. Based on the Star Store lease, the OIG makes the following recommendations to the Legislature:

1. The Legislature should require proposals that deviate from standard statutory requirements to contain reporting requirements and safeguards to protect against fraud, waste, and abuse to the same degree as existing statutory protections.

2. The Legislature should limit proposals for noncompetitive procurements.

3. The Legislature should require DCAMM to annually report on its lease compliance or enforcement efforts.

4. The Legislature should require all parties to a legislatively directed land or space lease to execute a written compact that clearly defines the roles and responsibilities of the stakeholders.

Appendix A. Previous OIG Correspondence Relevant to Star Store Lease

I. OIG's Letter to Governor Weld, dated January 3, 1997

II. OIG's Letter to DCPO Commissioner, dated September 23, 1997

III. DCPO Commissioner's Letter to OIG, dated October 3, 1997

IV. OIG's Letter to DCPO Commissioner, dated October 10, 1997

V. OIG's Letters to Chairs of Joint Committee on State Administration, dated October 14, 1997

VI. OIG's Letters to Chairs of Senate and House Ways and Means Committees, dated October 14, 1997

VII. DCAMM Acting Commissioner's Letter to OIG, dated August 16, 1999

VIII. OIG's Letter to DCAMM Commissioner, dated September 16, 1999

IX. OIG's Letter to DCAMM Commissioner, dated November 3, 1999

The Commonwealth of Massachusetts

Office of the Inspector General

One Ashburton Place, Boston, MA 02108

ROBERT A. CERASOLI
INSPECTOR GENERAL

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January 3, 1997

His Excellency William F. Weld, Governor
State House Executive Office, Room 350
Boston, MA 02133

Dear Governor Weld:

I strongly recommend that you veto Senate No. 2271, which is currently before you for your approbation. Section 2 of Senate No. 2271 would authorize the development and lease by the state of property in the so-called Commercial Area Revitalization Central Business District within the city of New Bedford for use by the University of Massachusetts at Dartmouth. The arrangement proposed in this legislation mirrors the disastrous Ruggles Center lease in a number of respects. This state-funded lease, which calls for extensive construction work, would be exempt from all statutory safeguards that normally apply to the state's real property leases, design contracts, and construction contracts. Although Senate No. 2271 would require DCPO to conduct a competitive developer selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the Commercial Area Revitalization Central Business District. Moreover, the legislation requires the developer to be the landlord for the property. Under these circumstances, there can be no competition. Is the Ruggles Center experience anyone's success story for weakening public safeguards for the benefit of a preselected private developer?

Also, Section 1 of Senate No. 2271 would authorize the Division of Capital Planning and Operations (DCPO) to enter into an unadvertised five-year lease, renewable for an additional five years, with a named party for State property located in Springfield. This Office is not aware of any public policy justification for denying other interested and qualified private parties the opportunity to compete for this public lease over the next ten years.

I urge you to veto Senate No. 2271.

Sincerely,

Robert A. Cerasoli
Inspector General

The Commonwealth of Massachusetts
Office of the Inspector General

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September 23, 1997

Lark J. Palermo, Commissioner
Division of Capital Planning and Operations
One Ashburton Place
Boston, MA 02108

Dear Commissioner Palermo:

On September 3, 1997, this Office received a copy of the proposed Request for Proposals (RFP) for the lease of the New Bedford campus for the Visual Arts Division of the College of Visual and Performing Arts of the University of Massachusetts at Dartmouth.

Section 2 (e) of Chapter 457 of the Acts of 1996 requires this Office to

> review and approve the reasonableness of the process and criteria, as such protect the public interest, established by the commissioner of the division of capital planning and operations for the selection of any developer, designer and construction contractor pursuant to the provisions of subsection (a).

Although the RFP anticipates that the selected landlord will be responsible for procuring extensive design and construction services under the 20-year lease with the Commonwealth, Chapter 457 of the Acts of 1996 exempted the lease from all statutory safeguards applicable to public design and construction contracts. The Commonwealth's experience with the Ruggles Center lease has shown the high risks inherent in this approach to procuring design and construction services. Moreover, although Chapter 457 requires a competitive selection process, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the target area for the lease. For these reasons, I had strongly recommended that Governor Weld veto this legislation.

The RFP appears generally well organized, thorough, and logical. The amendments recommended below are intended to increase the public protections contained in the RFP. If these amendments were incorporated into the final RFP, my

intention would be to approve the selection process and criteria developed by DCPO for the project.

However, my approval should not be interpreted to mean that the public interest is protected in this transaction. Rather, my approval signifies my belief that the selection process and criteria are reasonable and protect the public interest within the narrow confines of Chapter 457 of the Acts of 1996, which drastically limits (if not eliminates) competition for this lease, to the detriment of the public interest.

My comments and recommendations on specific sections of the RFP are provided below.

Qualitative and Other Criteria (Section 7)

1. The "Qualitative and Other Criteria" listed in the RFP include the following:

> **Benefit to the Local Community and the Commonwealth:** DCPO will consider any identified benefits of a proposal to the local community or the Commonwealth[.] [Emphasis in the original.]

Chapter 457 of the Acts of 1996 states that the selection criteria shall include "the financial and other benefits to the commonwealth and the local community, but the RFP provides no indication of how benefits to the local community or the Commonwealth will be defined or evaluated. While the intent of the legislative language is unclear to this Office, fair competition dictates that all evaluation criteria – including this criterion – be clearly defined.

This Office therefore recommends that the RFP specify objective standards and submission requirements relating to this criterion.

2. Section 7 of the RFP lists 19 evaluation criteria and subcriteria that will be used to compare the relative merits of qualifying proposals. However, for certain key criteria, such as the proposer's "technical and financial capacity to complete the project," the RFP provides no minimum requirements, nor does it state how DCPO will use the financial and reference information submitted by competing proposers to evaluate the relative merits of proposals deemed qualified by DCPO. For example, the Lease Proposal requires the proposer to submit "resumes, qualifications, bank reference and portfolio of recent projects" for the project team, including the landlord and developer, the architect, and the general contractor. These submission requirements are unnecessarily vague.

Since the lease has been exempted from the state's designer selection and construction bid laws, the RFP should define minimum eligibility requirements that will protect the taxpayers and building users from the financial and safety risks of substandard design and construction work. Without such requirements, DCPO may be

unable to reject proposals that rely on unqualified architects and/or general contractors. Similarly, DCPO may be unable to reject proposals from landlords who lack the necessary experience and/or financial capacity to finance and manage the tasks required under this long-term lease.

This Office recognizes that the evaluation criteria and selection process described in the RFP parallel the criteria and process DCPO and other state agencies use to lease private office space. These procedures appear workable for evaluating competing proposals from private landlords offering to lease existing private office space to the Commonwealth. In this Office's view, however, the Commonwealth's standard leasing procedures are inadequate to the task of selecting a single landlord to design, construct, and maintain a major building project under a long-term contract with the Commonwealth.

This Office therefore recommends that the RFP define minimum eligibility requirements for each of the project team members, specify standards for evaluating proposals from qualified project teams, and clarify the precise information concerning project team members to be submitted for evaluation purposes.

3. Finally, the version of the RFP forwarded to this Office does not indicate the amount of proposal preparation time the selection process will afford prospective proposers. In view of the extensive, complicated proposal submission requirements (including the preparation of schematic plans and project timelines) contained in the RFP, the process will not encourage competition within the narrow confines of Chapter 457 of the Acts of 1996 if it does not allow at least three months for proposal preparation and submission.

This Office therefore recommends that the RFP allow at least three months for proposal preparation and submission.

Rider to Lease

4. *Amendment to Section 1.1 of the Lease:* The Rider to the Lease states that the Commonwealth intends to pay the landlord base rent and "additional rent" consisting of the landlord's actual operating expenses and real estate taxes. The operating expenses to be paid by the Commonwealth would include items such as the landlord's labor and materials costs for routine maintenance, landscaping, snowplowing, sanding, and sweeping of the property.

Under the procedures outlined in the Rider, the amount of additional rent paid by the Commonwealth each year would be based on the landlord's estimate of the current year's expenses and taxes. These additional rent payments, which would be subject to DCPO approval, would be adjusted every year based on a year-end statement prepared by the landlord showing actual expenses; the Commonwealth would also have the right to examine the landlord's records relating to the additional rent payments.

In this Office's view, landlord services required under the terms of a lease agreement, such as routine maintenance of the property, should normally be included in Commonwealth's rental payments. In general, allowing a landlord – or any vendor – to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively. However, including the cost of these services in the base rent could also expose the Commonwealth to excess rent costs. Of these two unfavorable options, the method outlined in the Rider may be preferable if DCPO is accorded sufficient authority to approve or disapprove the landlord's initial operating budget and any changes thereafter.

This Office therefore recommends that the Rider be amended to make clear that DCPO may withhold approval of the landlord's estimate of projected operating expenses if DCPO determines that any component of the estimate is unreasonable, based on DCPO's analysis of market prices for labor, materials, utility rates, and other operating expense components.

5. *Amendment to Section 3.2*: This Office has no objection to the Rider's amendment to Section 3.2 of the Commonwealth of Massachusetts Standard Office Lease. However, Section 3.2 also warrants an additional amendment to address the uniquely risky nature of the design and construction work to be procured through this lease. Section 3.2 of the Standard Office Lease provides that the property shall be deemed available for occupancy under three conditions, including the following:

> Landlord has provided Tenant with a copy of a Certificate of Completion issued by the project architect confirming that the landlord's Improvements have been substantially completed in accordance with the Working Drawings approved by the Tenant[.]

Under the Commonwealth's normal office leasing procedures, this procedure may be sufficient to ensure that the buildout required by the Commonwealth has been completed. In this case, however, the construction work required under the lease is anticipated to be extensive – so extensive that the landlord will be required to prepare 100 percent complete plans and specifications prior to execution of the lease. Under these conditions, a representative of DCPO should verify that the required construction has been completed before the property is made available for occupancy.

This Office therefore recommends that the Rider be amended to require that the certificate of completion be signed by a DCPO representative as well as the project architect commissioned by the landlord.

Conclusion

The comments and recommendations provided in this letter are intended to address the risks to the Commonwealth posed by the selection process mandated by Chapter 457 of the Acts of 1996. I would be glad to make my staff available for further discussion of these issues. I look forward to hearing from you.

Sincerely,

Robert A. Cerasoli

Robert A. Cerasoli
Inspector General

The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Division of Capital Planning and Operations
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ARGEO PAUL CELLUCCI
GOVERNOR
CHARLES D. BAKER
SECRETARY
LARK JUREV PALERMO
COMMISSIONER

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RECEIVED
OCT - 3
OFFICE OF
INSPECTOR GENERAL

BY HAND

October 3, 1997

Robert Cerasoli, Inspector General
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

RE: Request for Proposals (RFP) for Long-term Lease for the University of Massachusetts at Dartmouth

Dear Inspector General Cerasoli:

Thank you for your prompt review of the above-referenced Request for Proposals. We have revised the Request for Proposals in accordance with the recommendations in your letter dated September 23, 1997. I have enclosed a copy of the revised Request for Proposals with all of the changes marked.

Please let me know if the changes we made to the Request for Proposals satisfy all of the issues raised in your letter. If we have not adequately addressed all of your concerns, please let me know as soon as possible and I will arrange to have representatives from my staff meet with your staff in order to bring this to a prompt conclusion.

Thank you again for all of your efforts in connection with this Request for Proposals.

Very truly yours,

Lark Jurev Palermo
Commissioner

cc: Secretary Charles D. Baker, EOAF
Chancellor Peter Cressy, University of Massachusetts at Dartmouth
President Eileen Farley, Bristol Community College

The Commonwealth of Massachusetts
Office of the Inspector General

ROBERT A. CERASOLI
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October 10, 1997

Lark J. Palermo, Commissioner
Division of Capital Planning and Operations
One Ashburton Place
Boston, MA 02108

Dear Commissioner Palermo:

Chapter 457 of the Acts of 1996 authorized the Commonwealth to negotiate and enter into a 20-year lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. Although the legislation mandates a competitive landlord selection process, it exempted the lease, which calls for extensive design and construction services, from all statutory safeguards applicable to public design and construction contracts. As you know, I had strongly recommended that Governor Weld veto this legislation.

Section 2 (e) of Chapter 457 of the Acts of 1996 requires this Office to

> review and approve the reasonableness of the process and criteria, as such protect the public interest, established by the commissioner of the division of capital planning and operations for the selection of any developer, designer and construction contractor pursuant to the provisions of subsection (a).

This Office reviewed and recommended changes to an earlier draft of the request for proposals (RFP) for the long-term lease, prepared by the Division of Capital Planning and Operations (DCPO) in accordance with the requirements of Chapter 457 of the Acts of 1996. The revised RFP is fully responsive to this Office's recommendations. Accordingly, I hereby approve the process and criteria established by DCPO for the selection of a developer, designer, and construction contractor for the project authorized by Chapter 457 of the Acts of 1996.

However, this approval should not be interpreted to mean that the public interest is protected in this transaction. The Commonwealth's experience with the Ruggles Center lease has shown the high risks inherent in this approach to procuring design and construction services. Moreover, it is this Office's understanding that the City of New Bedford has already designated the developer for the only eligible project site within the target area for the lease. Under these circumstances, competition is drastically limited (if not eliminated), to the detriment of the public interest. Rather, my approval signifies my belief that the selection process and criteria are reasonable and protect the public interest within the narrow confines of Chapter 457 of the Acts of 1996.

Sincerely,



Robert A. Cerasoli
Inspector General

The Commonwealth of Massachusetts
Office of the Inspector General

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BY HAND

October 14, 1997

The Honorable Marc R. Pacheco, Chairman
Joint Committee on State Administration
State House, Room 413B
Boston, MA 02133

Dear Chairman Pacheco:

Pursuant to Section 2 (e) of Chapter 457 of the Acts of 1996, I am reporting to you the outcome of my review and approval of a process to issue a request for proposals for a long-term lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. I have enclosed copies of my correspondence with the Commissioner of the Division of Capital Planning and Operations relative to this mandate.

If you have any questions about my review, please contact Pamela Bloomfield of my staff.

Sincerely,

Robert A. Cerasoli
Inspector General

Enc.

The Commonwealth of Massachusetts
Office of the Inspector General

ROBERT A. CERASOLI
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BY HAND

October 14, 1997

The Honorable Geoffrey D. Hall, Chairman
Joint Committee on State Administration
State House, Room 34
Boston, MA 02133

Dear Chairman Hall:

Pursuant to Section 2 (e) of Chapter 457 of the Acts of 1996, I am reporting to you the outcome of my review and approval of a process to issue a request for proposals for a long-term lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. I have enclosed copies of my correspondence with the Commissioner of the Division of Capital Planning and Operations relative to this mandate.

If you have any questions about my review, please contact Pamela Bloomfield of my staff.

Sincerely,

Robert A. Cerasoli
Inspector General

Enc.

The Commonwealth of Massachusetts
Office of the Inspector General

ROBERT A. CERASOLI
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BY HAND

October 14, 1997

The Honorable Stan Rosenberg, Chairman
Senate Ways and Means Committee
State House, Room 212
Boston, MA 02133

Dear Chairman Rosenberg:

Pursuant to Section 2 (e) of Chapter 457 of the Acts of 1996, I am reporting to you the outcome of my review and approval of a process to issue a request for proposals for a long-term lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. I have enclosed copies of my correspondence with the Commissioner of the Division of Capital Planning and Operations relative to this mandate.

If you have any questions about my review, please contact Pamela Bloomfield of my staff.

Sincerely,

Robert A. Cerasoli
Inspector General

Enc.

The Commonwealth of Massachusetts
Office of the Inspector General

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BOSTON, MA 02133

BY HAND

October 14, 1997

The Honorable Paul R. Haley, Chairman
House Ways and Means Committee
State House, Room
Boston, MA 02133

Dear Chairman Haley:

Pursuant to Section 2 (e) of Chapter 457 of the Acts of 1996, I am reporting to you the outcome of my review and approval of a process to issue a request for proposals for a long-term lease for land, buildings, and improvements in the Commercial Area Revitalization Central Business District of New Bedford. I have enclosed copies of my correspondence with the Commissioner of the Division of Capital Planning and Operations relative to this mandate.

If you have any questions about my review, please contact Pamela Bloomfield of my staff.

Sincerely,

Robert A. Cerasoli
Inspector General

Enc.

Capital Asset Management

Argeo Paul Cellucci
GOVERNOR

Jane Swift
LIEUTENANT GOVERNOR

Andrew S. Natsios
SECRETARY

Stephen J. Hines
ACTING COMMISSIONER

August 16, 1999

BY HAND

Inspector General Robert Cerasoli
Office of the Inspector General
One Ashburton Place, Room 1311
Boston MA 02108

RE: Letter Report and Lease between Star Holdings Limited Partnership and the Commonwealth of Massachusetts on behalf of the University of Massachusetts at Dartmouth for premises located at 182 Union Street, New Bedford

Dear Inspector General Cerasoli:

Pursuant to section 2(f) of Chapter 457 of the Acts of 1996 (a copy of which is enclosed), I am submitting this letter report and the enclosed lease for the Star Store building in New Bedford. In accordance with section 2(e) of Chapter 457, I am also submitting an independent appraisal of the lease price prepared by Steven R. Foster, MAI. Also in accordance with section 2(e), we have submitted this lease to the Attorney General for approval of the form of lease.

By letter dated October 10, 1997 you approved the process and criteria established by DCAM for the selection of a developer, designer and construction contractor for the project authorized by Chapter 457 of the Acts of 1996. Following that approval and after incorporating your comments, Asset Management issued a Request for Proposals on October 30, 1997 for space for the University of Massachusetts College of Visual and Performing Arts and the Continuing Education Division of Bristol Community College. We received one proposal by the January 30, 1998 submission deadline, from Sakonnet Properties, Inc. Sakonnet proposed to renovate the former Star Store at 182 Union Street in the City of New Bedford Commercial Area Revitalization Central Business District for use by UMass Dartmouth and Bristol Community College. Asset Management evaluated

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the proposal and met extensively with the proposer and his design and construction team, Whitney Atwood Norcross Architects and Suffolk Construction Company. After negotiation, Sakonnet agreed to reduce the proposed rent commensurate with an agreed upon $1.7 million reduction in the cost to renovate the building.

After consulting with former Secretary of Administration and Finance Charles D. Baker, DCAM authorized Sakonnet to proceed with preparation of plans and specifications for the renovation of the Star Store building, in consultation with DCAM, UMass Dartmouth, and Bristol Community College.

During design development, DCAM, UMass Dartmouth, and Bristol Community College requested the addition of a number of items such as fume hoods, kilns, built-in furniture, enhancements to the ventilation and dust collection systems, and other improvements that were not required by the Request for Proposals or included in Sakonnet's proposal. The Bristol Community College health training lab was also upgraded to a general science lab so that a wider range of certificate programs can be offered. As a result of these changes we agreed to increase the rent in an amount necessary to reimburse the developer for the additional costs relating to these improvements.

Asset Management has approved the final plans and specifications for the renovation of the Star Store building, which are included as an exhibit to the lease. Based on a review of the final plans and specifications by the DCAM Office of Construction Services, we are satisfied that they are at one-hundred percent design stage ready for construction, as required by Chapter 457. We are also satisfied, based on our review and consultation with the University of Massachusetts Dartmouth and Bristol Community College, that the final plans and specifications meet the needs of University and College as set forth in the Request for Proposals issued on October 30, 1997.

Based on the enclosed appraisal and our own review, we are satisfied that the negotiated lease price is not more than fair market value. The lease contains an option for the Commonwealth to purchase the property at the end of the twenty-year lease term for nominal consideration.

Please contact me, or Acting General Counsel MaryJude Pigsley, if you have any questions or require any additional information.

Very truly yours,

Stephen J. Hines
Acting Commissioner

Enclosures

cc: Secretary Andrew S. Natsios
Senator Mark Montigny
Chancellor Peter Cressy, UMass Dartmouth
President Eileen Farley, Bristol Community College
Paul Downey, Sakonnet Properties
Martha Goldsmith
Suanne St. Charles

The Commonwealth of Massachusetts

Office of the Inspector General

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September 16, 1999

Stephen J. Hines, Commissioner
Division of Capital Asset Management
One Ashburton Place, 15th Floor
Boston, MA 02108

Re: Letter Report on the Appraisal and Lease of the Star Store Property located in the City of New Bedford

Dear Commissioner Hines:

Pursuant to section 2(f) of Chapter 457 of the Acts of 1996, this Office has reviewed the appraisal and methodology used to determine the full and fair market rent of the Commonwealth's parcel, and buildings thereon, located in downtown New Bedford to be leased from a selected developer to the University of Massachusetts. The Act requires a determination of market value but the appraiser states that: market value...*requires a competitive market, with buyers and sellers being typically motivated and market rent is defined as the most probable rent that the property would command in the open market. The sale or lease of a property to a specific user for a specialized use does not meet this definition as a competitive market does not exist and the user has special motivations. The value of the subject...is more appropriately defined as Value in Use or Use Value. The subject property has this value, only to this user for this specialized use.* The appraiser of this property invoked this jurisdictional exception to determine its use value as its market value.

The total market value rent of $49,815,782 for a twenty-year term was based on the Use Value approach to valuation. The total rent of between $28.52 and $30.25 per square foot over the twenty-year lease term includes base rent, tenant improvements, and operating expenses. Additionally, the appraisal contains an analysis of tenant improvement costs and operating expenses per square foot of useable space. These total rent figures are on the high side, nonetheless, this Office approves the appraisal and methodology used to arrive at this determination of market value rent of this building for its specialized use.

This Office is especially concerned with the financial impact of the section of the lease agreement that requires that the Commonwealth pay the real estate taxes on the Star Store's property. Typically educational institutions in the Commonwealth are exempt from real estate taxes pursuant to provisions within M.G.L. chapter 59. In this lease agreement, although the taxes are assessed to the owner of the property, the Commonwealth on behalf of the University

as the tenant is financially responsible for the payment of the local real estate taxes. A $20 million property assessment of this completely renovated Star Store property could result in the Commonwealth's assumption of an additional rent payment of $620,000 annually, assuming a commercial tax rate of $31/$1,000 in the City of New Bedford. The bottom line is that for this 20-year lease arrangement, the cost to the Commonwealth could increase by more than $12 million because of this "additional rent" tax obligation. Unfortunately, a *payment in lieu of taxes* option is not possible in this situation.

Nonetheless, the City has the authorization to enter into a Tax Increment Financing arrangement with the developer/landlord and provide a tax incentive to the landlord for investing in New Bedford's Commercial Area Revitalization Central Business District. The Commonwealth is committed to this project and its participation in what is essentially an alternative financing scheme to locate a University of Massachusetts College of Visual and Performing Arts in this City. But this project cannot be considered reasonable if the Commonwealth is further burdened with extraordinary tax obligations that could exceed a half million dollars annually. If the City is unwilling to absorb a tax expenditure on this parcel and enter into a Tax Increment Financing Agreement while the University leases the Star Store building, the Commonwealth should rethink its participation in this alternative financing arrangement. A nominal tax payment, in a range not to exceed $50,000 annually, would be reasonable. As an alternative, the Commonwealth could exercise its option to purchase the property pursuant to section 2(c) of chapter 457, and withdraw from this alternative-financing arrangement.

This Office continues to have concerns with the lease agreement between the developer and the Commonwealth on behalf of the University of Massachusetts. The Rider to the Lease states that the Commonwealth intends to pay the landlord base rent and "additional rent" consisting of the landlord's actual operating expenses and real estate taxes. The operating expenses to be paid by the Commonwealth would include items such as the landlord's labor and material costs for routine maintenance, landscaping, snowplowing, sanding, and sweeping of the property.

Under the procedures outlined in the Rider, the amount of additional rent paid by the Commonwealth each year would be based on the landlord's estimate of the current year's expenses and taxes. These additional rent payments, which would be subject to DCAM approval, would be adjusted every year based on a year-end statement prepared by the landlord showing actual expenses; the Commonwealth would also have the right to examine the landlord's records relating to the additional rent payments.

In this Office's view, routine property maintenance services are the responsibility of a landlord and should normally be included in the Commonwealth's rental payments. In general, allowing a landlord - or any vendor - to bill the Commonwealth for the vendor's normal operating expenses exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively. However, including the costs of these services in the base rent could also expose the Commonwealth to excess rent costs. Of these two unfavorable options, the method outlined in the Rider may be preferable if DCAM is accorded

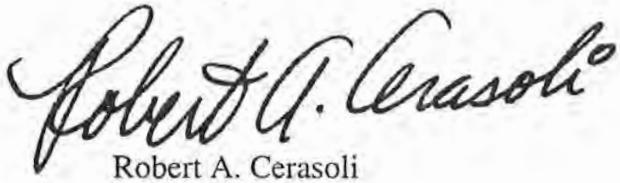
sufficient authority to approve or disapprove the landlord's initial operating budget and any changes thereafter.

This Office recommends that the Rider be amended to make clear that DCAM may withhold approval of the landlord's estimate of projected operating expenses if DCAM determines that any component of the estimate is unreasonable, based on DCAM's analysis of market prices for labor, materials, utility rates, and other operating expense components. This Office further recommends that the lease agreement be amended to permit the University the option of procuring its own utilities and building maintenance services.

Finally, it is important to point out that in 1996 this Office had strongly recommended that Governor Weld veto the legislation that created this entire process. Therefore, this letter should not be interpreted to mean that the public interest is protected in this transaction. Rather this Office's suggestions signify that as the Inspector General, I am fulfilling the statutory requirements demanded of this Office within the narrow confines of Chapter 457 of the Acts of 1996.

Please contact me, or Fran Brown of my staff, if you have any questions or require any additional information.

Sincerely,



Robert A. Cerasoli
Inspector General

The Commonwealth of Massachusetts
Office of the Inspector General

ROBERT A. CERASOLI
INSPECTOR GENERAL

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MAILING ADDRESS:
STATE HOUSE STATION
P.O. BOX 270
BOSTON, MA 02133

November 3, 1999

Stephen J. Hines, Acting Commissioner
Division of Capital Asset Management
One Ashburton Place, 15th Floor
Boston, MA 02108

Re: Letter Report on the Lease of the Star Store Property located in the City of New Bedford

Dear Commissioner Hines:

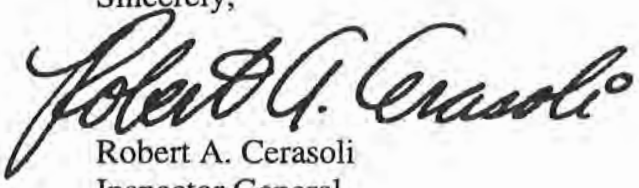
In a letter addressed to you and dated September 16, 1999, this Office expressed its concerns about the financial impact of a section of the lease agreement that required the Commonwealth to be responsible for the payment of the real estate taxes on the Star Store's property. In the same letter this Office recommended that the City of New Bedford grant a tax increment financing exemption to the Star Store Limited Partnership to provide for an annual tax payment not to exceed $50,000 per year over the duration of the lease. Subsequently, on October 14, 1999 the New Bedford City Council authorized the execution of a tax increment financing agreement that reflects this recommendation.

Also in the September 16th letter, this Office expressed its view that the ability of the landlord to bill the Commonwealth for its operating expenses as additional rent exposes the Commonwealth to excess costs while reducing the landlord's incentive to operate efficiently and cost-effectively. The revised lease provided to this Office states that the *Landlord's estimate of the Additional Rent ...shall be subject to the tenant's approval, which approval may be withheld in the Tenant's sole discretion in the event the Tenant reasonably determines that any component of the estimate ...is unreasonable based upon the Tenant's analysis...* The lease has been further amended to provide the Tenant with the right to notify the landlord *every six months* (previously every 2 years) of its dissatisfaction with the performance of the management company. These revisions

provide the Commonwealth with sufficient authority to approve or disapprove the Landlord's operating budget and any changes thereafter.

In fulfilling the statutory requirements demanded of this Office pursuant to Chapter 457 of the Acts of 1996, this Office approves the Commonwealth's lease of the Star Store Property located in the City of New Bedford. Please contact me, or Fran Brown of my staff, if you have any questions or require additional information.

Sincerely,



Robert A. Cerasoli
Inspector General

Appendix B. Commonwealth of Massachusetts Lease for Star Store Building



COMMONWEALTH OF MASSACHUSETTS
LEASE FOR STAR STORE BUILDING

ARTICLE I: SUMMARY

1.1 Subjects Referred To

Each of the references in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Article and, unless defined elsewhere in this Lease, constitutes the definition of the listed term.

DATE OF LEASE:	November ___, 1999
LANDLORD:	Star Holdings Limited Partnership a Massachusetts Limited Partnership
ORIGINAL ADDRESS OF LANDLORD:	P.O. Box 4023 New Bedford, MA 02741-4023
TENANT:	The Commonwealth of Massachusetts ("Tenant"), acting by and through its Division of Capital Asset Management ("DCAM"), on behalf of the University of Massachusetts at Dartmouth ("User Agency").
ORIGINAL ADDRESS OF TENANT:	Division of Capital Asset Management One Ashburton Place, 15th Floor Boston, Massachusetts 02108
TENANT'S REPRESENTATIVE:	John MacMillan, Project Manager Office of Construction Services Division of Capital Asset Management One Ashburton Place Boston, MA 02108 and Martha Goldsmith, Director Office of Leasing and State Office Planning Division of Capital Asset Management One Ashburton Place Boston, MA 02108

	and / or such other persons as Tenant may designate from time to time as set forth in Section 4.4
USER AGENCY:	University of Massachusetts at Dartmouth
ORIGINAL ADDRESS OF USER AGENCY:	University of Massachusetts at Dartmouth 285 Old Westport Road North Dartmouth, MA 02747
BUILDING ADDRESS:	182 Union Street New Bedford, MA 02740
PREMISES:	Floor(s) 1-4 including basement within the Building as shown in Exhibit A but excluding the roof and the façade of the Building, together with all of Landlord's Improvements (as such term is defined in Section 4.1) made within the Premises pursuant to the terms of this Lease.
USABLE AREA OF PREMISES:	86,274 square feet
RESERVED PARKING SPACES:	Number: 46 Location: 668-670 Purchase Street, New Bedford, and as further described in Article XVII.
PERMITTED USES:	Subject to the provisions of Section 6.1, Tenant shall use the Premises for the following purposes: General classroom , art classroom, lecture halls, studio space, laboratory space, kitchen space, metals and woodworking shop space, equipment area, darkroom space, tool room space, storage space, faculty office space and any other uses stated in or implied by the provisions of the Request for Proposals dated October 29, 1997 and issued by the Tenant (the "RFP").
LEASE TERM:	Beginning on the Date of Occupancy, as defined in Section 3.2, and continuing until midnight of the day immediately preceding

the twentieth (20th) anniversary of such date.

BASE RENT FOR LEASE TERM:

Year One:	$2,158,488.00 per year in monthly installments of $179,874.00 $25.02 per square foot
Year Two:	$ 2,158,488.00 per year in monthly installments of $179,874.00 $25.02 per square foot
Year Three:	$2,158,488.00 per year in monthly installments of $179,874.00 $25.02 per square foot
Year Four:	$2,158,488.00 per year in monthly installments of $179,874.00 $25.02 per square foot
Year Five:	$2,158,488.00 per year in monthly installments of $179,874.00 $25.02 per square foot
Year Six:	$2,200,980.00 per year in monthly installments of $183,415.00 $25.51 per square foot
Year Seven:	$2,200,980.00 per year in monthly installments of $183,415.00 $25.51 per square foot
Year Eight:	$2,200,980.00 per year in monthly installments of $183,415.00 $25.51 per square foot
Year Nine:	$2,200,980.00 per year in monthly installments of $183,415.00 $25.51 per square foot
Year Ten:	$2,200,980.00 per year in monthly installments of $183,415.00 $25.51 per square foot
Year Eleven:	$2,243,472.00 per year in monthly installments of $186,956.00 $26.00 per square foot
Year Twelve:	$2,243,472.00 per year in monthly installments of $186,956.00 $26.00 per square foot
Year Thirteen:	$2,243,472.00 per year in monthly installments of $186,956.00 $26.00 per square foot
Year Fourteen:	$2,243,472.00 per year in monthly installments of $186,956.00 $26.00 per square foot
Year Fifteen:	$2,243,472.00 per year in monthly installments of $186,956.00

$26.00 per square foot

Year Sixteen:	$2,285,952.00 per year in monthly installments of $190,496.00 $26.50 per square foot
Year Seventeen:	$2,285,952.00 per year in monthly installments of $190,496.00 $26.50 per square foot
Year Eighteen:	$2,285,952.00 per year in monthly installments of $190,496.00 $26.50 per square foot
Year Nineteen:	$2,285,952.00 per year in monthly installments of $190,496.00 $26.50 per square foot
Year Twenty:	$2,285,952.00 per year in monthly installments of $190,496.00 $26.50 per square foot

PROPERTY:	The parcel of land designated as the "Lot" on Exhibit A, the Building, and all other improvements located on the Lot. Wherever the term "Building" is used in this Lease, it shall be deemed to include the Premises, unless the context clearly indicates otherwise
BUILDING:	The Building located on the Property as shown on Exhibit A.

ADDITIONAL RENT:

In addition to Base Rent described in this Section 1.1, Tenant shall pay to Landlord as Additional Rent during the Lease Term the actual cost to Landlord for (i) Real Estate Taxes (as defined below) imposed upon the Property, and (ii) Operating Expenses (as defined below) for the Property. The Base Rent and Additional Rent are sometimes collectively referred to in this Lease as the "Rent". Additional Rent shall be calculated on a calendar year (January 1 - December 31) basis, prorated for any partial calendar year falling within the Lease Term. For the period from the Date of Occupancy through December 31st of the first year of the Lease Term (the "First Calendar Lease Year"), the Additional Rent shall be Two Hundred Fifty-Four Thousand and 00/100 Dollars ($254,000.00) per annum (pro-rated based on the number of days in such First Calendar Lease Year) based upon a statement prepared by Landlord and approved by Tenant prior to the execution of this Lease, representing Landlord's good faith estimate of its annualized cost for each of the items comprising Additional Rent for the First Calendar Lease Year. Said amount shall be paid in as many equal installments as there are months remaining in the First Calendar Lease Year, the first such monthly installment to be pro-rated for the partial month, if any, at the beginning of the Lease Term. Beginning with the Rent payment due February 1st of the year immediately following the First Calendar Lease Year, Tenant shall pay to Landlord each month an amount

equal to one-twelfth (1/12) of the total amount of Additional Rent due for the then current calendar year as estimated by Landlord and approved in writing by Tenant, which approval shall not be unreasonably withheld or delayed. Landlord agrees that its estimate of the Additional Rent due for each calendar year thereafter shall be equal to the amount of Additional Rent actually due for the preceding calendar year as calculated in Landlord's year-end statement described below, adjusted only for reasonable projected increases or decreases in any applicable costs, provided such projections are documented by Landlord.

Each installment of Additional Rent shall be paid by Tenant and shall be due with Tenant's monthly payment of Base Rent. Each monthly installment of Additional Rent shall be credited by Landlord to Tenant's obligations to pay Additional Rent for the then current calendar year.

On or before February 28th of each year of the Lease Term after the First Calendar Lease Year, Landlord shall render to Tenant a year-end statement prepared in accordance with generally accepted accounting principles consistently applied showing (i) for the calendar year just ended, the actual amount of Additional Rent due and paid, and (ii) for the then current calendar year, the amount of estimated Additional Rent. Said year-end statement shall be accompanied by copies of all bills, notices and other documentation substantiating Landlord's estimate of the Additional Rent due for the then current calendar year. Landlord's estimate of the Additional Rent due for the then current calendar year shall be subject to Tenant's approval, which approval ~~shall not be unreasonably withheld if the components of the estimate are reasonable based on~~ may be withheld in the Tenant's sole discretion in the event that Tenant reasonably determines that any component of the estimate of Additional Rent submitted by Landlord for the current calendar year is unreasonable based on Tenant's analysis of market rates for labor, materials, utilities and other Operating Expense components, and Landlord's obligations under this Lease.

If the total amount of Additional Rent paid by Tenant in any calendar year exceeds the actual amount of Landlord's applicable costs for such year, then such excess shall be credited by Landlord against the monthly installments of Additional Rent next falling due or refunded to Tenant at the time Landlord's year end statement is due if the Lease Term has ended. If, however, the total amount of Additional Rent paid by Tenant in any calendar year is less than the actual amount of Landlord's applicable costs for such year, Tenant shall pay the difference to Landlord within thirty (30) days of receipt of Landlord's year end statement and completed invoice.

Tenant and Tenant's representatives may at any time during the one hundred twenty (120) day period after receiving such year end statement, examine Landlord's books and records relating to Additional Rent. If such an examination shows that only 90% or less of the amount stated in Landlord's year end statement is due as Additional Rent, then, unless Landlord gives notice back to Tenant within thirty (30) days after receipt of Tenant's notice of the alleged discrepancy that Landlord in good faith disagrees with the results of Tenant's examination or the existence or amount of the discrepancy alleged by Tenant, Landlord shall repay the difference to Tenant forthwith, and Landlord will also reimburse Tenant's reasonable direct costs of such examination. If Landlord gives notice as aforesaid disputing

the results of Tenant's examination, then Landlord may refrain from making any repayment or reimbursement until such dispute is resolved. In such case, Landlord and Tenant shall, within thirty (30) days after Landlord's dispute notice, make diligent, good faith efforts to resolve such dispute and agree in writing as to what Additional Rent actually was for the subject year and what repayment and reimbursement, if any, are owed by Landlord. If they succeed, Landlord shall then repay and reimburse Tenant in accordance with such written agreement. If they do not, then Landlord and Tenant shall promptly submit the dispute to arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrators shall be binding on both Landlord and Tenant, and if it directs Landlord to make any repayment or reimbursement to Tenant, Landlord shall promptly do so.

Landlord shall promptly deliver to Tenant a copy of any notice sent to Landlord increasing the assessed valuation of the Premises. Tenant may request that Landlord contest any tax assessment if the amount to be abated is material and Tenant determines that there are reasonable grounds for obtaining an abatement, and Tenant agrees that it shall pay Landlord's reasonable costs to contest such assessment in the event such costs exceed the amount of the abatement obtained by Landlord, if any. In the event Landlord unreasonably refuses to contest such assessment, Tenant shall have the right to contest any tax assessment by legal proceedings brought on behalf of Tenant and Landlord, or on behalf of Tenant alone, and Landlord shall provide Tenant with such documents or information in Landlord's possession as Tenant may reasonably require in support of such contest. If Tenant is precluded from taking legal action, Landlord shall contest the assessment upon reasonable notice from Tenant, provided that Tenant agrees in writing to reimburse Landlord for all costs associated with such contest. If Tenant obtains any abatement of tax with respect to which Tenant has paid Additional Rent, the entire amount of such abatement shall belong to Tenant. If Landlord obtains any abatement of a tax with respect to which Tenant has paid Additional Rent, Landlord shall promptly pay Tenant the net proceeds (i.e., the amount abated less Landlord's reasonable legal, accounting, appraisal and other expenses of obtaining the abatement) received by Landlord on account of such abatement.

Landlord agrees to pay all Real Estate Taxes and Operating Expenses promptly when due. Tenant shall not be responsible for, nor shall Tenant pay as Additional Rent, any penalties, interest or other charges levied against Landlord for delay in payment of the same.

"Operating Expenses" shall mean all reasonable direct costs and expenses necessary to operate, manage, repair and maintain the Property, including, but not limited to the following:

All labor costs, including wages, salaries, and fringe benefits of all persons directly engaged in the operation, maintenance and repair of the Property, up to and including the Building manager (whose salary shall be prorated if said individual manages more than one property), provided the fees due to such manager shall be no greater than the fees customarily charged from time to time by qualified building managers for providing comparable management services in connection with the management of comparable properties in the New Bedford area;

Costs of supplies, materials, tools and equipment used in the operation, maintenance and repair of the Property.

Costs of utilities furnished to the Premises and Property common areas (unless paid for by Tenant directly to the supplier thereof), including without limitation electricity, water and sewer, heat, fuel, air conditioning and ventilation.

Costs and expenses incurred by Landlord in connection with the provision of services to the Property and the Premises, including without limitation, the cost of landscaping, janitorial services, security, sweeping, snow plowing, sanding and refuse removal.

The cost of general maintenance (including without limitation the costs of Landlord Services as contained in Exhibit C) and necessary routine repairs to the Property.

The cost of replacing any portion of the Building, or making repairs to the Building structure or Property which materially extend the useful life of the subject of such repairs (such replacements or repairs hereafter "Capital Improvements") made necessary by any law, regulation or ordinance which was not in effect on the Date of Occupancy and required by a governmental agency, amortized over the useful life of the Capital Improvement.

The cost of making Capital Improvements which reduce Operating Expenses, amortized over their useful life; provided, however, that the annual amortization amount shall not exceed the annual reduction in Operating Expenses for the relevant year as reasonably projected by Landlord.

Legal, accounting and other professional fees and disbursements reasonably incurred in connection with the operation of the Property.

Costs of casualty and public liability insurance for the Property and Landlord's personal property located on the Property that is used in connection with the operation and maintenance thereof, and any such additional insurance as it is the prevailing practice for the mortgagees to require with respect to comparable properties similarly located.

"Operating Expenses" shall not include costs associated with the ownership of the Property, leasing commissions or other costs of soliciting or obtaining leases; design, construction, permitting or other costs associated with the initial construction of the Building or any other improvements upon the Property or any addition to the Building or to such other improvements (except for the Capital Improvements specifically authorized above); design, construction, permitting or other costs associated with the construction of Landlord's Improvements; wages, salaries, fees and fringe benefits paid to Landlord's administrative or executive personnel, officers, or partners; costs reimbursed by insurance proceeds (provided that fees of public adjusters and any reasonable deductible shall be included in Operating Expenses in the event of an insured loss), or by any third party; legal, accounting or other professional fees incurred in connection with any item specifically excluded from the definition of Operating Expenses or the ownership of the Property; costs for environmental

or other inspections, tests, assessments reports, or filings or for remediation of the Property or any additions thereto; costs of correcting defects in the construction of the Building, Landlord's Improvements or any other improvements upon the Property or in the Building equipment, except to the extent provided in Section 5.4; the costs of any repair made by Landlord because of a total or partial destruction of the Building or other improvements upon the Property or condemnation of a portion thereof; the cost of any Capital Improvement (or Capital Replacement as defined in Section 16.20) except as specifically set forth above; charges for depreciation of the Building, other improvements upon the Property or equipment, or any interest or other financing charge; rent payments by Landlord under any ground or underlying lease; costs arising out of the enforcement of the provisions of any agreement affecting the Building or land upon which it is situated; interest or amortization payments on any mortgage; any expense representing an amount paid to a related corporation, entity, or person which is in excess of the amount which would be paid in the absence of such relationship; costs of operating any concessions, cafeteria, retail space or similar commercial space in the Building or elsewhere on the Property; costs incurred due to any default by Landlord under this Lease or any other lease of space in the Building or on the Property except to the extent caused by the acts, omissions, negligence, willful misconduct or fault of Tenant or Tenant's employees, servants, agents, contractors, subtenants, licensees or invitees; or any other costs associated with the operation, maintenance or repair of the Property that are paid directly by Tenant.

"Real Estate Taxes" shall mean all taxes, payments in lieu of taxes, special or general assessments, or similar charges imposed by any governmental authority having the power to tax which may, during the Lease Term, be assessed against or levied upon the Property. "Real Estate Taxes" shall not include (i) water and sewer charges, (ii) so-called "linkage" payments, and (iii) inheritance, estate, gift, excise, franchise, income, gross receipts, or profit taxes, unless such taxes replace taxes now imposed on the Property or this Lease. Also, "Real Estate Taxes" shall not include (i) any penalty or interest on account of late payment unless such late payment is caused by a late payment of Rent or Event of Default by Tenant under this Lease or (ii) any tax, charge or imposition on account of an increase in the value of the Property from additions, alterations, or improvements to the Building or other improvements to the Property made for the sole benefit of parties other than Tenant.

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RIDERS AND EXHIBITS

These are incorporated into and made part of this Lease:

Exhibit A: Site Plan
Exhibit A-1: Legal Description
Exhibit A-2: ~~Title Report~~ Easements and Restrictions affecting the Premises
Exhibit B: Working Drawings (List)
Exhibit C: Landlord Services
Exhibit D: Construction Schedule
Exhibit E: Landlord's Beneficial Interest Disclosure Statement
Exhibit F: Landlord's Certificate of State Tax Compliance
Exhibit G: Authorization to Execute Lease:

1. Corporation (General Partner of Landlord): Corporate Vote and Certificate of Clerk of Corporation and Certificate of Good Standing issued by the Secretary of the Commonwealth of Massachusetts
2. Limited Partnership: Certificate of Legal Existence (long form showing General Partner) from the Secretary of ~~State's Office~~ the Commonwealth of Massachusetts.

Exhibit H: Environmental Report
Exhibit I: Memorandum of Lease

ARTICLE II: PREMISES; USABLE AREA

2.1 Premises; Appurtenant Rights

Landlord does hereby lease to Tenant and Tenant does hereby lease from Landlord the Premises.

Tenant shall have, as appurtenant to the Premises, the exclusive right to use (subject to the rules of the Building as set forth in Section 6.4): (i) the lobbies, malls, corridors, stairways, elevators, service areas and loading platform of the Building; (ii) the pipes, ducts, conduits, wires and appurtenant meters and equipment serving the Premises; (iii) pedestrian walkways and landscaped areas; and (iv) all other areas in or about the Building from time to time intended for general use by Tenant.

2.2 Usable Area

For the purposes of this Lease, the term "Usable Area" shall mean, with respect to the Premises or any space removed from or added to the Premises, the square footage determined by measuring the entire floor area of the Premises (or such other space) bounded by a line established by the predominant inside finish of the permanent outside Building walls which abuts the floor (not from the inside face of the windows) and by the interior surface of corridor walls or other demising walls. No deductions shall be made for columns or other projections necessary to the Building structure or systems or for partitions subdividing the Premises. Notwithstanding the foregoing, under no circumstances shall the Usable Area include elevator shafts, vestibules, stair enclosures, elevator machine rooms or other building equipment areas, janitorial, electrical or mechanical closets, loading platforms or smoking vestibules required by law or restrooms, irrespective of whether Tenant occupies the entire floor or the entire Building.

Landlord and Tenant agree that they shall take such measurements as Landlord and Tenant deem necessary to verify the Usable Area of the Premises as built out, and shall confirm such Usable Area in a written addendum to this Lease executed by Landlord and Tenant's Representative not later than sixty (60) days following the Date of Occupancy.

ARTICLE III: RENT; DATE OF OCCUPANCY

3.1 Rent Payment

Tenant agrees to pay, and Landlord agrees to accept, the Rent described in Section 1.1. Equal monthly installments of Rent shall be payable in arrears on or before the tenth (10th) day of the month for which said Rent is due. If the Lease Term commences other than on the first day of a month or ends other than on the last day of a month, the Rent for such fractional month shall be prorated. Notwithstanding the first sentence of this Section, the prorated Rent for the portion of the month in which the Lease Term

commences shall be paid at the same time as the first installment of monthly Rent for the first full month of the Lease Term.

If any installment of Rent is not paid when due, Landlord shall be entitled to late payment interest on the overdue amount in accordance with and subject to Massachusetts General Laws Chapter 29, Section 29C and any regulations or administrative bulletins thereunder.

3.2 Date of Occupancy; Commencement of Rent Obligation

The obligation of the Tenant to pay Rent shall begin on the Date of Occupancy. The Date of Occupancy shall be the earlier of (a) the fifteenth (15th) day after the Premises are available for Tenant's occupancy, or (b) the day the Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses. The Premises shall be deemed available for Tenant's occupancy only when (i) Landlord has substantially completed all of the Landlord Improvements (as defined in Section 4.1) in accordance with the terms of this Lease, with only Punchlist Items (as defined in Section 4.1) excepted, and (ii) Landlord has provided Tenant with a copy of a Certificate of Completion issued by the project architect confirming that the Landlord's Improvements have been substantially completed in accordance with the Working Drawings approved by Tenant, and (iii) Landlord has provided Tenant with a copy of the Certificate of Occupancy for the Premises issued by the appropriate municipal authority, and (iv) Landlord has provided Tenant with a written certification of a registered engineer certifying that the Building HVAC system, as designed and constructed, will satisfy the requirements of Design Drawings H1 ~~thru~~ through H14 (inclusive) dated 11-June-99 which are contained as part of Exhibit C and Technical Specifications Section 15500 dated 11-June-99 which are contained as part of Exhibit C and that the air distribution system serving the Premises is properly balanced in accordance with the design intent as set forth in Design Drawings H1 ~~thru~~ through H14 (inclusive) dated 11-June-99 which are contained as part of Exhibit C and Technical Specifications Section 15500 dated 11-June-99 which are contained as part of Exhibit C, and (v) Landlord has provided Tenant with the certificates of insurance required by Section 8.2 and (vi) a qualified but neutral professional designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed, has confirmed in writing that the Landlord's Improvements appear to be substantially completed in accordance with the Working Drawings, provided that such confirmation shall not render Tenant responsible for the design, engineering or construction of the Landlord's Improvements or invest Tenant with any responsibility for defects in the design, construction or performance thereof or other Building conditions, and shall not, under any circumstances, be deemed to be a waiver by Tenant of any of Tenant's rights or any of Landlord's obligations under this Lease, or any other provision of this Lease.

Notwithstanding that Landlord may have met all of the requirements set forth in the preceding paragraph for establishing the Date of Occupancy, the Date of Occupancy shall not be deemed to have occurred prior to the Completion Date set forth in Section 4.3 unless Tenant has actually taken possession of the Premises and has begun to use the Premises for any or all of the Permitted Uses prior to said date. Tenant agrees to execute

a letter to the Landlord confirming the Date of Occupancy within ten (10) business days after the Date of Occupancy has occurred.

3.3 Tenant's Entry Prior to Lease Term Without Charge

With the prior approval of Landlord, Tenant may enter the Building and the Premises prior to the Date of Occupancy without payment of any additional sums in order to install telephone equipment, cabling, furniture and fixtures, and to otherwise prepare the Premises for occupancy by Tenant. Landlord shall not withhold or delay such approval, provided Tenant coordinates its work with the construction of Landlord's Improvements and any other work being performed by Landlord in the Building so as not to interfere with or increase the cost of such work of Landlord or delay the Completion Date. As a condition of granting such approval, Landlord may require that Tenant and its contractors be accompanied by a representative of Landlord, and Tenant agrees on behalf of itself and its contractors to comply with any and all reasonable directions given by said representative of Landlord.

In order to assist Tenant with Tenant's preparation, move into and occupancy of the Premises, Landlord shall provide Tenant and Tenant's agents and contractors with all information concerning the Building's structure, systems, utilities, equipment and services reasonably required by Tenant. Such information shall be provided within reasonable promptness following a request by Tenant, whether before or after commencement of the Lease Term.

ARTICLE IV: IMPROVEMENTS BY LANDLORD

4.1 Landlord's Improvements

Landlord, at its sole cost and expense (except as otherwise specifically provided in this Lease), shall furnish all labor and materials necessary to construct any and all improvements or alterations to the Property required by the Working Drawings (as defined in Section 4.2) and all other terms and conditions of this Lease. All such alterations and improvements to be made by Landlord in or about the Premises and Property are hereinafter referred to as the "Landlord's Improvements."

Notwithstanding any other provision of this Lease, all general contractors engaged by Landlord to construct the Landlord's Improvements or to construct or renovate any other improvements upon the Property and all subcontractors to such general contractors shall pay wages at the rates determined under the provisions of sections twenty-six (26) through twenty-seven H (27H) of Chapter 149 of the Massachusetts General Laws. Prior to the commencement of any construction (including environmental remediation, demolition and site work), Landlord shall obtain from the Massachusetts Department of Labor wage rates for all trades involved in the construction of Landlord's Improvements and any other construction or renovation of improvements upon the Property and shall provide Tenant with a copy of such wage rate determinations.

4.2 Working Drawings

Landlord has caused to be developed by the Landlord's architect, Whitney Atwood Norcross, Working Drawings at 100% design stage ready for construction, which are comprised of the plans and written specifications listed in Exhibit B, all of which have been reviewed and approved by Tenant, and are made part of this Lease for all purposes, together with any revisions thereto which may be approved by Tenant from time to time. Landlord acknowledges that Tenant's approval of the Working Drawings and any revisions thereto signifies Tenant's consent to the Landlord's Improvements contemplated thereby only and shall not result in any responsibility of Tenant for compliance of such Landlord's Improvements with applicable law or the efficacy of such Landlord's Improvements for Tenant's use and occupancy.

The Working Drawings shall at all times remain in conformity with good design practice, the schematic space plans and other preliminary design documentation previously approved by Landlord and Tenant, and the terms and conditions of this Lease. Without limiting the foregoing, Landlord shall make no change in the Working Drawings that will in any manner lower the quality, reduce the utility or affect the appearance of all or any part of Landlord's Improvements, or that will increase Tenant's cost to use and occupy the Premises or interfere with Tenant's ability to use the Premises as contemplated by schematic space plans and other preliminary design documentation previously approved by Landlord and Tenant. Before making any changes to the Working Drawings, Landlord shall provide Tenant with the proposed changes and a written request for Tenant's approval thereof. Within ten (10) business days after receipt of any proposed changes to the Working Drawings, Tenant shall either approve the changes in writing or notify Landlord in writing of disapproval, specifying in reasonable detail the reasons for such disapproval. If Tenant fails to notify Landlord of disapproval within said time period, the revised Working Drawings shall be deemed approved.

Notwithstanding any other provision of this Lease, in the event Tenant shall request changes to the Working Drawings or the Landlord's Improvements which shall cause an increase in the Rent or require Tenant to pay any additional sums to Landlord or its contractors, no such changes shall be made and Tenant shall have no liability for any costs incurred by Landlord or any other party in connection therewith, unless and until a written amendment to this Lease specifying such change and the increase in Rent or other payment to be made by Tenant is executed by Landlord and Tenant.

It is understood and agreed that Landlord and its architects and engineers shall be fully and completely responsible for all aspects of the design, engineering and construction of the Landlord's Improvements. No comments on or approval by Tenant of the Working Drawings or any other advice or opinions provided by Tenant concerning the design or construction of the Landlord's Improvements shall render Tenant responsible for the design, engineering or construction of the Landlord's Improvements or invest Tenant with any responsibility for defects therein or other Building conditions.

4.3 Completion Date; Tenant Delays; Standard for Substantial Completion

Subject to Tenant Delays, as hereafter defined, and Force Majeure Causes (as defined in Section 15.1) as hereafter set forth, all of Landlord's Improvements shall be substantially completed and the Premises made available for Tenant's occupancy within fourteen (14) months after delivery of a fully executed copy of this Lease to Landlord (the "Completion Date"). If at any time it appears that this deadline will not be met, Landlord shall notify Tenant immediately in writing. Such notice shall advise Tenant of the reasons for such delay and of the new projected Completion Date.

In the event the Completion Date is delayed due to Force Majeure Causes, then the Completion Date set forth above, as it may be amended from time to time, shall be extended by the actual number of days the Completion Date was delayed as a result of such Force Majeure Causes, but in no event shall such extension of the Completion Date for Force Majeure Causes exceed one hundred and fifty (150) days in the aggregate without Tenant's consent which consent shall not be unreasonably withheld or delayed.

In the event the Completion Date is delayed due to a Tenant Delay, then the Completion Date set forth above, as it may be amended from time to time, shall be extended by the actual number of days the Completion Date was delayed by such Tenant Delay. For the purposes of this Lease, the term "Tenant Delay" shall mean any delay in the Completion Date that is directly and primarily caused by any of the following acts or omissions of Tenant, provided such act or omission has continued for a period of more than two (2) business days after receipt of notice from Landlord that such act or omission is likely to cause a delay in the Completion Date (such notice to be sent to Tenant in an envelope bearing the following notice on the outside in bold-face type: NOTICE OF TENANT DELAY -- OPEN IMMEDIATELY):

(a) Tenant's request for special work not included in the Working Drawings previously approved by Tenant or otherwise required by this Lease; or

(b) Tenant's request for a change in the Working Drawings previously approved by Tenant; or

(c) Delays in the delivery, installation or completion of any work performed by Tenant or Tenant's contractors; or

(d) Any failure by Tenant to perform any of its obligations under this Lease or

(e) Any other delay in construction directly caused by the negligent acts or omissions of Tenant or Tenant's employees, agents, or contractors.

In the event the Completion Date is extended for any Tenant Delay pursuant to the preceding paragraph, the Completion Date shall nevertheless be deemed to have occurred earlier than the actual date thereof by the aggregate length of all Tenant Delays. The extension of the Completion Date for Tenant Delays as provided in the preceding

paragraph and the provisions of the preceding sentence shall be Landlord's sole and exclusive remedies for Tenant Delays, notwithstanding the provisions of Section 16.7 or any other provisions of this Lease.

The Landlord's Improvements shall be considered substantially completed for the purposes of this Lease only when (i) Landlord has performed the work required to be performed by Landlord in the Working Drawings approved by Tenant, including complete installation of all structural and mechanical elements, walls, partitions, windows, floor and ceiling coverings, wiring, fixtures, life-safety systems, decorations, paint, and exterior improvements, with only Punchlist Items excepted, (ii) the water supply, sewage, heating, ventilating, air conditioning, and electric facilities are available to Tenant in accordance with the obligations assumed by Landlord under this Lease, (iii) the Premises are free of debris and construction materials, are in a usable and habitable condition, and have been cleaned by Landlord.

Subject to Tenant Delays and Force Majeure Causes only, Landlord shall cause Landlord's Improvements to be completed in accordance with the Construction Schedule annexed hereto as Exhibit D. Landlord shall keep Tenant apprised of the progress of the work to be performed by Landlord hereunder. In the event there is any delay in the progress of the work of five (5) days or more, Landlord shall notify Tenant of such delay immediately regardless of whether Landlord anticipates that such delay shall cause a delay in the Completion Date. Said notice shall advise Tenant of all changes or adjustments in the Construction Schedule, the cause thereof, and the corrective efforts, if any, made or to be made by Landlord.

If for reasons other than Tenant Delays or Force Majeure Causes, the Landlord's Improvements are not substantially completed and the Premises made available for Tenant's occupancy by the Completion Date as it may have been extended, and notwithstanding termination of this Lease by Tenant as hereinafter provided, Landlord shall pay to Tenant any and all costs, fees and expenses reasonably incurred which Tenant incurs as a result of such delay, including, without limitation, necessary additional moving and storage costs, expenses incurred to find other temporary space, and any cost difference between Tenant's rental rate under this Lease and the rent it incurs during the period of delay by Landlord but not including foregone tuition payments or increases.

In the event that Landlord's Improvements are not substantially completed by Landlord within ninety (90) days after the Completion Date, as it may be extended for Tenant Delays, Force Majeure Causes or otherwise by agreement of Landlord and Tenant, Tenant may, at its sole option, at any time thereafter but before Landlord's Improvements are substantially completed, give Landlord notice terminating this Lease in forty-five (45) days, and unless Landlord then substantially completes Landlord's Improvements by the end of said forty-five (45) days, this Lease shall terminate. Tenant's aforesaid right to terminate this Lease shall be Tenant's sole remedy for Landlord's failure substantially to complete Landlord's Improvements by the Completion Date.

Notwithstanding Tenant's consent to any extension of the Completion Date, all Punchlist Items shall be completed promptly by Landlord, and in no event shall such items be

completed later than thirty (30) days after the Date of Occupancy. For the purposes of this Lease, the term "Punchlist Items" shall mean only minor and insubstantial details of decoration or mechanical adjustment which shall not impair Tenant's ability to use and occupy the Premises in accordance with the terms of this Lease. On or before the Date of Occupancy Landlord and Tenant shall conduct a walk-through of the Premises and shall identify in writing all Punchlist Items to be completed by Landlord. In addition, within sixty (60) days after the Date of Occupancy, Landlord shall provide Tenant with a set of "as built" drawings for the Premises, and the Premises shall not be considered finally complete unless and until such "as built" drawings are delivered to Tenant.

The construction of the Landlord's Improvements shall be (i) coordinated with any work being performed by the Tenant provided such coordination will not materially interfere with Landlord's construction schedule, delay the Completion Date or increase the cost of Landlord's Improvements, (ii) completed in accordance with the approved Working Drawings and in a good and workmanlike manner, (iii) performed and completed in compliance with all applicable laws, ordinances, codes and regulations, and (iv) performed and completed at Landlord's sole expense, including the cost of all design work, materials, labor, and state and local permits. No approval by Tenant of any Working Drawings or changes in Working Drawings, whether expressly given or resulting from Tenant's inaction, shall be construed as a waiver of any of the requirements of this paragraph.

4.4 Tenant's Representative

Tenant has designated the individuals named in Section 1.1 as Tenant's Representative, with full power and authority to make decisions on behalf of Tenant with respect to matters pertaining to the design and construction of the Landlord's Improvements, except that Tenant's Representative shall have no authority whatsoever to alter, waive or modify any of the provisions of this Lease (which may only be done in accordance with the provisions of Section 16.2). All Working Drawings and any requests for changes or modifications thereto shall be delivered to Tenant's Representative. Tenant's approval or disapproval of the Working Drawings and all other decisions relating to the Landlord's Improvements shall be communicated to Landlord by Tenant's Representative, or his/her successor, and Landlord shall rely only upon communications received from such individuals, unless otherwise notified by Tenant in writing.

Tenant may elect to have an engineer, project manager or other employee or contractor on site with full access to observe and inspect the quality and progress of the Landlord's Improvements (but who shall not interfere with or give directions to the persons performing the Landlord's Improvements); provided that such observation and inspection by Tenant, and any advice, comments or response to the same given by Tenant, shall not in any event or to any extent (i) render Tenant responsible for the design or construction of the Landlord's Improvements, or (ii) constitute or be used as evidence of a waiver by Tenant of its right to claim that the Building or any component(s), equipment or furnishings thereof or Landlord Improvements are defective.

ARTICLE V: LANDLORD'S COVENANTS

5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings

Landlord warrants and represents that it has record title to the Property and that there are no encumbrances affecting the Property, the Premises or the Building that would prohibit or interfere with the construction of the Landlord's Improvements or the use of the Premises for the Permitted Uses.

Landlord warrants and represents that the execution of this Lease has been duly authorized and that the person or persons executing this Lease on behalf of Landlord have full authority to do so.

Landlord warrants and represents that it is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

Landlord warrants and represents that it knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Landlord or its properties wherein any unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out its obligations hereunder. After making due inquiry and investigation, Landlord has no actual knowledge that the Property does not conform to the requirements of all covenants, easements, agreements or other title encumbrances affecting all or part of the Property and appearing of record in the registry of deeds; Landlord is not a party to any action, proceeding, dispute or investigation in which title to or the use of the Property is being examined, questioned or disputed and Landlord is not a party to any judgment or order affecting title to the Property or ownership of the Property.

Except as may be shown on Exhibit A, a survey furnished by Landlord, Landlord has no actual knowledge that the Property encroaches on any adjacent real property or that improvements on adjacent real property encroach upon the Property.

5.2 Delivery of Premises; Compliance with Law

Landlord warrants and represents that it shall deliver the Premises to Tenant in good, clean and rentable condition and otherwise in accordance with the terms and conditions of this Lease, and that the construction of Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, and the use of the Premises by Tenant for the Permitted Uses shall be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes and regulations (including, without limitation, those pertaining to handicapped accessibility) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance rating body or bodies.

If at any time any governmental authority with jurisdiction or the Board of Fire Underwriters or any similar insurance rating body shall notify Landlord or Tenant that all or any part of the Premises or Building is not constructed or maintained in compliance with any applicable law, ordinance, code or regulation, and shall demand compliance, then Landlord shall, upon receipt of such notification, promptly cause such repairs, alterations or other work to be done so as to bring about the compliance demanded. Landlord may defer compliance so long as the validity of any such law, order or regulation shall be contested in good faith by Landlord and by appropriate legal proceedings, provided that such failure to comply shall in no way interfere with Tenant's use of the Premises for the Permitted Uses, or subject Tenant or its employees or invitees to any increased risk of injury to their persons or property, or adversely affect any other right of the Tenant under this Lease, or impose any additional obligation upon the Tenant.

5.3 Quiet Enjoyment

The Landlord hereby warrants and covenants that so long as there has not occurred an Event of Default (as defined in Section 9.1) by Tenant under this Lease, Tenant shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of the Landlord or any other person(s) for whose actions the Landlord is legally responsible, or by any person claiming by, through or under Landlord.

The Landlord or its agents may, at reasonable times and without unreasonably interfering with Tenant's use, occupancy and enjoyment of the Premises, enter the Premises to make repairs or to view the Premises. Landlord shall give Tenant a minimum of forty-eight (48) hours notice for such visits (which notice may be given by facsimile transmission in the case of minor repairs taking one day or less to complete or to view the Premises); provided, however, that Landlord may enter the Premises at any hour and without forty-eight (48) hours notice in the case of an emergency affecting the Premises.

Landlord may enter to show the Premises to prospective tenants only during the last six (6) months of the Lease Term. Landlord shall notify Tenant (which notice may be given by facsimile transmission) at least twenty-four (24) hours prior to showing the Premises to prospective purchasers, tenants or other parties.

5.4 Correction of Defective Work; Repair of Premises and Building

Any defect in the design, construction or installation of the Landlord's Improvements which requires any repairs or replacements to be made to the Building or any of Landlord's Improvements, but expressly excluding any repairs or replacements attributable to normal wear and tear, obsolescence, casualty, taking, acts or neglects of Tenant, those acting under Tenant or the invitees of either, or Force Majeure Causes, shall be a "Latent Defect". Subject to the terms of this paragraph, Landlord shall, during the entire Lease Term, promptly remedy any Latent Defect which appears after the Date of Occupancy. If Landlord is notified by Tenant, Landlord's own employees or contractors, or any other party of any Latent Defects prior to the sixth anniversary of the Date of Occupancy, Landlord shall correct such Latent Defects at Landlord's sole cost

and expense; provided however that with respect to any defect in the design or construction (but not installation) of any equipment installed at the Building by Landlord (an "Equipment Latent Defect"), Landlord shall correct any such Equipment Latent Defect at Landlord's sole cost and expense if so notified prior to the first anniversary of the Date of Occupancy. With respect to Latent Defects of which Landlord receives notice after the sixth anniversary of the Lease and with respect to Equipment Latent Defects of which Landlord receives notice after the first anniversary of the Lease, the cost of correcting such Latent Defects and Equipment Latent Defects shall be paid by Tenant as an Operating Expense, provided that if the correction of any such Latent Defect constitutes a Capital Improvement (as defined in paragraph (h) of the definition of Operating Expenses in this Rider) the cost thereof shall be amortized over the useful life of the Capital Improvement.

Subject to Landlord's obligation to correct Latent Defects, Landlord shall keep and maintain the Premises, including, without limitation, all equipment and fixtures furnished by Landlord as part of the Landlord's Improvements (whether located within or outside of the Premises) in such good repair, order and condition as the same are at the beginning of the Term of this Lease, reasonable wear and tear, damage caused by fire or casualty (except as provided in Section 7.1) and damage caused by the negligence, breach of this Lease or willful misuse of Tenant excepted. Without limiting the foregoing, but subject to any additional or limiting provisions of Exhibit C, Landlord's obligations hereunder shall include repair and/or replacement of broken glass, roof and ceiling leaks, doors, floors and floor coverings, interior walls and partitions, ceiling tiles, plumbing and plumbing fixtures, lighting fixtures and lamps, locks, fire protection equipment, security system, elevators, heating, ventilation and air conditioning equipment and cabling. Landlord shall make such repairs to the roof, foundation, exterior walls, floor slabs, and common areas and facilities of the Building, including finishes, as may be necessary to keep them in good condition consistent with the quality of similar buildings in the same general locality.

Routine repairs to the Premises or to any of Landlord's Improvements outside of the Premises shall be made by Landlord within five (5) business days after Landlord discovers or is notified by Tenant of the condition requiring repair, or within such shorter time period as may be required by applicable law, code or regulation. As used herein the term "routine repairs" shall mean any repair that is not an "emergency repair" as defined in the next paragraph.

Emergency repairs to the Premises, Landlord's Improvements or any other portion of the Building shall be made immediately upon notice to Landlord or its authorized representative of the condition requiring repair. As used herein, the term "emergency repair" shall mean any repair or replacement that is required to remove an immediate threat to the life, health, or safety of persons or property upon the Premises or the appurtenant areas described in Section 2.1.

All repairs by Landlord shall be completed (i) at Landlord's sole cost and expense except as provided in Section 6.2, (ii) in a good and workmanlike manner, (iii) with materials of

equal or better quality than the original, and (iv) in compliance with all applicable laws, ordinances, codes and regulations.

In (i) scheduling and carrying out the repairs required by this Lease, (ii) making any optional repairs, alterations or improvements to the Building or Premises, and (iii) performing routine maintenance of Building systems, fixtures or equipment, Landlord shall make all reasonable efforts to minimize interference with Tenant's access to and use of the Premises. In the event any such repairs or maintenance by Landlord shall cause Tenant to be deprived of the use or quiet enjoyment of all or any material portion of the Premises for a period of more than two (2) consecutive business days, the Rent for each succeeding day shall be abated in proportion to the deprivation, unless said repairs or maintenance are required due to damage caused by the negligence, breach of this Lease or willful misconduct of Tenant or its agents or contractors. Notwithstanding the foregoing, Landlord agrees to notify its mortgagee (if any) if any such repair or maintenance may so deprive the Tenant of the use or quiet enjoyment of all or any material portion of the Premises for a period of more than two (2) consecutive business days to provide such mortgagee with the opportunity to prevent any such deprivation and Tenant's right to so abate Rent as provided in the immediately preceding sentence.

Notwithstanding any other provision of this Lease, all general contractors engaged by Landlord to repair or renovate any improvements (including fixtures and equipment) upon the Property or to construct any alterations or additions to the Property and all subcontractors to such general contractors shall pay wages at the rates determined under the provisions of sections twenty-six (26) through twenty-seven H (27H) of Chapter 149 of the Massachusetts General Laws. Prior to the commencement of any such repair, renovation, alteration or addition, Landlord shall obtain from the Massachusetts Department of Labor wage rates for all trades involved in such work upon the Property and shall provide Tenant with a copy of such wage rate determinations.

Landlord agrees to contract with a management company to manage the Premises in accordance with the terms of this Lease for the duration of the Lease Term. Tenant shall have the right, every ~~two years~~ six (6) months, to notify Landlord if Tenant is dissatisfied, in its reasonable judgment, with the performance of Landlord's management company and upon Landlord receiving such notification, Landlord shall use commercially reasonable efforts to either replace the management company or cause the then current management company to address, to Tenant's reasonable satisfaction, Tenant's concerns.

5.5 Delivery of Services and Utilities

Landlord shall furnish the services set forth in Exhibit C. Tenant shall contract directly with public utility companies or other suppliers for gas, fuel, oil, electricity and telephone service and any and all other utilities serving the Premises (except for water and sewer service) and Tenant shall pay all bills for said utilities or services furnished to the Premises during the Lease Term directly to the applicable utility companies and authorities by the dates due from time to time. Landlord shall have no responsibility for the interruption of any such utilities unless caused by the willful act or neglect of Landlord.

5.6 Hazardous Substances

Landlord represents that, except for (a) the presence of asbestos and lead-based paint in a report dated November 10, 1994 prepared by CONECO Environmental Corporation and addressed to RPC-Mitchell Titus, Inc., a copy of which is attached to this Lease as part of Exhibit H; (b) the matters disclosed in a report entitled "21E Preliminary Hazardous Waste Site Assessment Property Located at: Assessor's Map 46, Lot 41 and Map 47, Lots 46, 48, 49 Union and Purchase Streets, New Bedford, Massachusetts" dated March 18, 1999 by SITEC Environmental, Inc. prepared for Mr. Paul Downey, Sakonnet Properties, SITEC Project Number SE98-367, a copy of which is also attached hereto as part of Exhibit H; (c) the matters disclosed in a letter, dated October 23, 1995, from the Resolution Trust Company (RTC) to Mayor Tierney of New Bedford, a copy of which is attached hereto as part of Exhibit H; (d) the matters disclosed in the Review of Existing Conditions Analysis, dated March 21, 1995, prepared by LEA Group, dated March 21, 1995, a copy of which is attached hereto as a part of Exhibit H; and (e) the matters disclosed in the Inspection Report, Star Store Buildings, 182-200 Union Street, New Bedford, Massachusetts by Design & Conservation Architecture and Historic Preservation, dated October 6, 1993, a copy of which is attached hereto as a part of Exhibit H, (the reports and correspondence noted above as (a), (b), (c), (d) and (e) are referred to herein collectively as the "Environmental Reports"). Landlord has no knowledge of, and has not received any notice of, the current or past existence of any materials considered to be Hazardous Substances existing, deposited or discharged on or from, or transported to, from or across or migrating toward or across the Property. Landlord warrants and represents to Tenant that (i) prior to commencing construction of the Landlord's Improvements, all of the asbestos-containing materials identified in the Environmental Reports will be removed from the Property and disposed of in accordance with legal requirements and good construction practices, (ii) Landlord shall, as part of the construction of Landlord's Improvements, remove or encapsulate all lead-based paint in accordance with legal requirements and good construction practices, and (iii) Landlord shall maintain and, upon request, provide Tenant with copies of, all required permits, certifications, bills of lading and manifests pertaining to the removal of the asbestos-containing materials and lead-based paint.

For purposes of this Lease, Hazardous Substances shall mean (i) any "hazardous substances", "hazardous material", "toxic substance", "hazardous waste" or "solid waste" as such terms are presently defined in the Comprehensive Environmental Response and Liability Act of 1980, as amended from time to time (42 U.S.C. 9601 et seq.) and the regulations thereunder, and the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.); (ii) any additional substances or materials which are hereafter incorporated in or added to the definition of "hazardous substances" for the purposes of such laws; (iii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iv) any hazardous waste or solid waste as defined in the Resource Conservation and Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C.A. 6901 et seq.); (v) any material, waste or substance which is (A)

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petroleum, (B) asbestos or asbestos containing materials, (C) polychlorinated biphenyls, (D) urea-formaldehyde ("UFFI") or UFFI-containing material, (E) radon, (F) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. 1251 et seq.), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317); (G) flammable explosives; or (F) radioactive materials; and (vi) any additional substances or materials which are now or hereafter considered to be "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes", or "solid wastes" or regulated substances or materials under (including, without limitation, any asbestos containing materials) under any state, Federal or local law, rule or regulation governing health, safety, natural resources or the environment relating to the Premises, including, without limitation, Chapter 21E of the Massachusetts General Laws (Massachusetts Oil and Hazardous Materials Release and Prevention Act) and the definitions of oil and/or hazardous materials promulgated thereunder, Chapter 21C of the M.G.L., and hazardous and inflammable substances regulated under M.G.L. Chapter 148. All of the foregoing statutory references are to such statutes which are currently in effect and as may be hereafter modified, amended or supplemented.

Landlord agrees that it shall not cause or permit any materials which at the time are Hazardous Substances to be used, generated, stored or disposed of on, under or about, or transported to, from or across the Property, provided, however, that this shall not prohibit Landlord and its contractors from using necessary amounts of cleaning fluids, pesticides, gasoline, solvents or similar supplies necessary to carry out its construction, repair and maintenance obligations hereunder which may constitute Hazardous Substances, provided that such use, including storage and disposal thereof, by Landlord is in compliance with the manufacturer's instructions and recommendations for the safe use of such products and all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment, safety or any Hazardous Substance now or hereafter in effect.

Landlord shall promptly take or cause others to take all actions that may be necessary to assess, remove or remediate all Hazardous Substances on, under or migrating toward the Property or Building (unless generated by Tenant), as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance now or hereafter in effect. Landlord shall also take all actions required to prevent such Hazardous Substances from causing injury or damage to Tenant and its employees, agents, contractors and invitees, or, if injury or damage cannot be prevented, to minimize such injury or damage to the greatest extent possible.

Landlord shall indemnify, save harmless and defend Tenant from all liability, claim or cost (including reasonable costs of legal counsel and response costs as defined under CERCLA) resulting directly or indirectly from any Hazardous Substances (i) on or under the Property or the Building prior to the Date of Occupancy, or (ii) after such date with respect to Hazardous Substances released or placed on or under the Property or the Building by Landlord, its employees, agents, independent contractors, or invitees. This

indemnity shall survive termination of this Lease. Tenant shall, promptly upon discovery thereof, notify Landlord of any facts or circumstances which may give rise to any claim by Tenant hereunder.

ARTICLE VI: TENANT'S COVENANTS

6.1 Use of Premises

Tenant shall use the Premises only for the Permitted Uses set forth in Section 1.1, provided, however, that Tenant may use the Premises for other purposes if such use (i) is consistent with the other tenant uses of the Building, (ii) will not materially increase the amount of visitor or employee traffic to and from the Premises, (iii) will not materially increase Landlord's cost to provide the services (including, without limitation, repairs and maintenance of the Premises and Building) required by this Lease and (iv) is otherwise consistent with all other obligations of Tenant under this Lease.

Tenant shall not cause or permit any nuisance in the Building and shall not conduct any activity within the Premises or Building that will interfere with the rights of other tenants or occupants of the Building.

Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises or Building or bring anything thereon which shall increase the rate of insurance on the Premises or Building above the standard rate applicable to Premises occupied for the Permitted Uses or which shall void such insurance. Tenant further agrees that in the event Tenant shall do any of the foregoing, Tenant shall promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as additional Rent hereunder, or Tenant shall cease all activities which cause the increase in insurance premiums or the voiding of the insurance, as the case may be.

6.2 Care of Premises

Tenant shall not injure, deface or commit waste in the Premises or any part of the Building. Tenant shall exercise reasonable care to ensure that all systems, fixtures and equipment installed by Landlord are used only for their intended purposes and that the electrical, mechanical and structural systems of the Building and Premises are not overloaded. Tenant shall notify Landlord promptly of any damage to the Premises, malfunction of a system or fixture, or any other condition that requires repair by Landlord.

Tenant shall maintain the Premises in good, clean, tenantable and working order, condition and repair, excluding only those elements which Landlord is obligated to maintain and repair under the terms of this Lease. Tenant shall repair, or reimburse Landlord for the cost of repairing, any damage to the Premises directly caused by Tenant or its employees, agents, contractors, subtenants, licensees, teachers, instructors, students and invitees.

6.3 Hazardous Substances

Tenant agrees that it shall not cause or permit any Hazardous Substances (as defined in Section 5.6) to be used, generated, stored, released or disposed of on, under or about, or transported to, from or across the Premises except for those Hazardous Substances customarily used in the instructional programs carried out by Tenant upon the Premises. Landlord acknowledges that said programs require the use of certain chemicals, solvents and other substances that may be included within the definition of Hazardous Substances. Nothing herein shall prohibit Tenant, its employees, instructors and students from using such materials, as well as minimal quantities of cleaning fluids and office and household supplies which may constitute Hazardous Substances, but which are customarily present in and about premises devoted to the Permitted Uses, provided that such use, including storage and disposal thereof, by Tenant is in accordance with the manufacturer's instructions and recommendations for the safe use of such products and in compliance with all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements and other restrictions or requirements of governmental authorities relating to safety, the environment or any Hazardous Substances now or hereafter in effect.

In the event Tenant, its employees, agents, independent contractors or invitees, causes the release or threatened release of Hazardous Substances from the Premises, Tenant shall promptly notify Landlord and Tenant shall, without cost to Landlord, take such action or cause others to take such action as may be necessary to assess, remediate or remove such Hazardous Substances as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance now or hereafter in effect.

6.4 Compliance With Applicable Laws and Removal of Liens

Tenant shall comply with all laws, orders and regulations of federal, state, county and city authorities and with any of Landlord's rules and regulations which may be set forth in this Lease (or which Landlord may hereafter establish, provided same do not conflict with the provisions of this Lease). Tenant may defer compliance so long as the validity of any such law, order or regulation shall be contested in good faith by Tenant and by appropriate legal proceedings, if Tenant first gives Landlord appropriate assurance reasonably satisfactory to Landlord against any loss, cost or expense on account thereof, and provided such contest shall not subject Landlord to criminal penalties or civil sanctions, loss of property, liens against property, or civil liability. Tenant shall not cause or allow any liens of any kind to be filed against the Premises. If any liens are so filed, then Tenant shall, within fifteen (15) days after receiving written notice of such lien, at its sole cost and expense take whatever action is necessary to cause such lien to be released of record without cost to Landlord.

6.5 Assignment and Subleasing

Tenant shall not assign, sublet, mortgage, pledge or encumber (collectively referred to as "Transfer") this Lease without Landlord's and the Landlord's Mortgagee (if any) prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, Landlord and Tenant agree that Landlord may withhold its consent to any proposed Transfer to a Transferee who, by reputation, financial strength or expected use is not comparable to other types of tenants in the Building or is not deemed by Landlord, in its reasonable business judgment, to be an acceptable credit risk. Any transferee shall, by valid written instrument, expressly assume for itself and its successors and assigns, and for the benefit of Landlord, all of the obligations of Tenant under this Lease. Following such transfer, Tenant shall have no further obligations of Tenant hereunder.

Any request by Tenant for Landlord's consent to a Transfer shall include (i) the name of the proposed Transferee; (ii) the nature of its business and proposed use of the Premises; (iii) complete information as to the financial conditions and standing of the proposed Transferee; and (iv) the terms and conditions of the proposed Transfer. Tenant shall promptly supply such additional information about the proposed Transfer and Transferee as the Landlord reasonably requests. Landlord shall also have the right to meet and interview the proposed Transferee.

Landlord shall advise Tenant in writing whether or not it consents to a proposed Transfer within thirty (30) days of receiving Tenant's request for such consent. In the event such consent is withheld, Landlord shall specify the reasons therefore. If Landlord fails to so notify Tenant within said time period, Landlord shall be deemed to have given its consent to the proposed Transfer.

Consent by Landlord, whether express or implied, to any Transfer shall not constitute a waiver of Landlord's right to prohibit any subsequent Transfer.

As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of the Tenant's interest in the Lease by operation of law.

Notwithstanding any contrary provisions of this Section 6.5, in connection with any proposed Transfer, Landlord shall have an option to cancel and terminate this Lease if the request is to assign the Lease or to sublet more than eighty percent (80%) of the Premises; or, if the request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion of the Premises for the proposed term of the sublease. Landlord shall exercise said option in writing within thirty (30) days of receiving Tenant's request for Landlord's consent to a proposed Transfer, and in each case such cancellation or termination shall occur as of the effective date of the proposed Transfer. In such event, Landlord shall be permitted to enter into a direct lease with the proposed Transferee. Landlord acknowledges and agrees that the use or occupation of all or part of the Premises by an agency of state government other than the User Agency named in Section 1.1 or the transfer of the User Agency's obligations under this Lease from the jurisdiction of the User Agency named in Section 1.1 to another agency of state

government, shall not be a Transfer (and, therefor, shall not require Landlord's prior written consent) provided that the Premises continue to be used for the Permitted Uses as set forth in Sections 1.1 and 6.1. Nevertheless, Tenant shall advise Landlord in writing if any agency of state government other than the User Agency named in Section 1.1 shall occupy all or any portion of the Premises or if there is a transfer of such User Agency's obligations under this Lease to the jurisdiction of another agency of state government.

6.6 Alterations and Additions

Tenant may make non-structural alterations or additions to the Premises ("Tenant Alterations") provided that Tenant shall first obtain the Landlord's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, Landlord may withhold its consent to any proposed Tenant Alterations that would violate any law, ordinance, code or regulation of governmental authorities with jurisdiction or any regulation of the Board of Fire Underwriters or any similar insurance rating body or bodies, or which would materially and adversely affect the appearance or value of the Building or the mechanical, electrical, sanitary or other systems of the Building.

As a condition to giving its consent to any Tenant Alterations, Landlord may require that all or a portion of such Tenant Alterations be removed by Tenant at the expiration or earlier termination of this Lease, provided that Landlord shall designate all such items to be removed at the time Landlord gives its consent.

As a further condition for its consent, Landlord may require that, prior to the commencement of the work, Tenant submit to Landlord for its approval plans and specifications that reasonably fix and describe all of the proposed Tenant Alterations. Landlord agrees to review Tenant's plans and specifications and to advise Tenant in writing of approval or disapproval within ten (10) business days after submission. In the event of disapproval, Landlord shall advise Tenant of the reasons therefor and of the changes necessary to obtain Landlord's approval. If Landlord fails to notify Tenant of disapproval within said time period, Tenant's plans and specifications shall be deemed approved.

All such Tenant Alterations shall be (i) done at reasonable times and in such manner so as not to unreasonably disturb other tenants of the Building, (ii) completed in accordance with any plans and specifications approved by Landlord and in a good and workmanlike manner, with materials in quality at least equal to the then present construction, (iii) performed by contractors approved by Landlord, provided that Landlord's approval shall not be required for any contractors selected by Tenant pursuant to applicable public bidding laws of the Commonwealth of Massachusetts, (iv) performed and completed in compliance with all applicable laws, ordinances, codes and regulations of governmental authorities and regulations of the Board of Fire Underwriters or any similar insurance body or bodies, and (v) performed and completed at Tenant's sole expense, including the cost of all design work, materials, labor, and state and local permits. No approval by Landlord of any plans and specifications or changes in plans and specifications, whether

expressly given or resulting from Landlord's inaction, shall be construed as a waiver of any of the requirements of this paragraph.

At all times during the construction of any Tenant Alterations, Tenant shall cause its contractors and any subcontractors to maintain workers compensation insurance covering the persons employed in connection with such Tenant Alterations as required by law and, if the estimated construction cost of such Tenant Alterations exceeds $25,000, to secure and maintain (i) commercial general liability insurance for the mutual benefit of Landlord and Tenant with limits reasonably established by Landlord to protect against the risks or nature of the construction to be undertaken or customarily carried in connection with similar work undertaken in buildings similar to the Building in the same locality, and (b) such builders risk insurance protecting the interests of Landlord and Tenant against damage resulting from such Tenant Alterations in amounts deemed reasonably necessary by Landlord. Tenant shall not permit Tenant's contractors or any subcontractor to commence any work until all required insurance coverage has been obtained and certificates evidence such coverage have been delivered to and approved by Landlord. Each insurance policy shall be with a company authorized to do business in Massachusetts and shall provide that Landlord shall be given at least twenty (20) days prior, written notice of any alteration or termination of coverage.

Landlord shall have the right to inspect the work as it progresses and to require Tenant to remove any Tenant Alterations that do not conform to the approved plans and specifications. Tenant shall not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant and shall promptly cause any such lien to be released of record without cost to Landlord.

All Tenant Alterations shall remain the exclusive property of the Tenant until the Tenant vacates the Premises. The Tenant may at any time, at its sole option, remove any such Tenant Alteration and restore the Premises to the same conditions as prior to such Tenant Alteration, reasonable wear and tear and damage by fire or other casualty excepted. Any such Tenant Alterations remaining upon the Premises after Tenant vacates the Premises shall become the property of Landlord without payment.

6.7 Yield Up at Termination of Lease

Tenant shall, at the expiration or other termination of this Lease, remove all Tenant's effects from the Premises. Tenant shall surrender and deliver up the Premises to Landlord in the condition in which Tenant is required to maintain the same as set forth in this Lease, reasonable wear and tear and damage by fire or other casualty excepted. Any personal property of Tenant remaining upon the Premises after Tenant has surrendered possession of the Premises shall become the property of Landlord. If Landlord removes and disposes of such property, Tenant agrees to pay the reasonable costs thereof, less any salvage value actually recovered by Landlord, provided such claim is submitted to Tenant in writing within thirty (30) days after Tenant vacates the Premises.

ARTICLE VII: CASUALTY; EMINENT DOMAIN

7.1 Damage by Fire or Other Casualty

If any part of the Property shall be damaged by fire or other casualty, then, subject to the next paragraph of this Section, Landlord shall proceed with diligence to establish and collect all valid claims which may have arisen against insurers based upon any such damage and, subject to the then applicable building codes, zoning ordinances and other legal requirements, Landlord shall proceed with diligence to repair such damage or destruction and restore the Premises and Building as nearly as practicable to their condition prior to such casualty at Landlord's sole expense (but, provided Landlord has maintained the casualty insurance required by this Lease, only to the extent of insurance proceeds made available to Landlord by its insurers and any mortgagee of the Building). Notwithstanding the forgoing, Landlord shall have no duty to repair any damage to any Tenant Alterations unless the damage thereto was caused by the negligence, breach of this Lease or willful misconduct of Landlord.

Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease in the event a casualty materially interferes with Tenant's use and occupation of the Premises and (i) the cost of repairing, restoring or replacing the Building or Property as required by the preceding paragraph exceeds the amount of the insurance proceeds received by Landlord from its mortgagee (Landlord agreeing to provide Tenant with all reasonable information and documentation regarding the extent of the repair, restoration or replacement work required, the cost thereof, and the insurance proceeds available therefor as soon as such information is received by Landlord) and within sixty (60) days following such casualty, Landlord or such mortgagee has not agreed in writing to pay the shortfall, or (ii) if Landlord does not commence such repair, restoration or replacement within sixty (60) days of the casualty or taking, or (iii) if Landlord defaults in diligently prosecuting such work to completion and such default continues beyond the applicable cure period, or (iv) if Landlord does not substantially complete such work within twelve (12) months following the date of such casualty or taking, in all cases subject to Force Majeure Causes. Tenant shall notify Landlord of Tenant's election to terminate this Lease within thirty (30) days after the date on which arises Tenant's right to terminate. Any such termination shall be effective thirty (30) days after the date of notice thereof, unless within such time the cause thereof has been removed. In the event damage to the Building or Property by such fire or casualty exceeds thirty-three percent (33%) of the value thereof, then Landlord may terminate this Lease by written notice to Tenant within thirty (30) days after such damage or destruction.

If any damage to the Premises or Building or the repair thereof by Landlord shall (i) render any part of the Premises unfit for use and occupation by Tenant or otherwise materially interfere with Tenant's use and occupancy of the Premises, or (ii) cause a material cessation or reduction in the services to be provided by Landlord under this Lease (even if Tenant may continue to use and occupy the Premises), the Rent or a just proportion thereof shall be abated until the Premises and/or such services have been restored as required hereunder.

7.2 Condemnation - Eminent Domain

If all or any substantial part of the Property shall be taken for any public or quasi-public use under governmental law or by right of eminent domain (a "Taking") and the Taking would materially interfere with the use of the Premises for the purposes contemplated by this Lease, even if reconstructed to the maximum extent practicable in the circumstances, either Landlord or Tenant may terminate this Lease by giving written notice of termination to the other not later than thirty (30) days after the effective date of such Taking, provided, however, that any termination hereunder by Landlord following a partial Taking shall require the consent of Tenant, which consent shall be given only if the cost of repairing, restoring or replacing the Building or Property to their condition prior to such Taking materially exceeds the amount of the Taking award received by Landlord from its mortgagee (Landlord agreeing to provide Tenant with all reasonable information and documentation regarding the extent of the repair, restoration or replacement work required, the cost thereof, and the Taking awards available therefor as soon as such information is received by Landlord) and within sixty (60) days following such Taking, Landlord's mortgagee has not agreed in writing to pay the shortfall. In the event of a partial Taking, Tenant shall also have the right to terminate this Lease if such partial Taking interferes with Tenant's use and occupation of the Premises and (i) the cost of repairing, restoring or replacing the Building or Property as required by the following paragraph exceeds the amount of the Taking award received by Landlord from its mortgagee (Landlord agreeing to provide Tenant with all reasonable information and documentation regarding the extent of the repair, restoration or replacement work required, the cost thereof, and the Taking awards available therefor as soon as such information is received by Landlord) and within sixty (60) days following such taking by eminent domain, Landlord or Landlord's mortgagee has not agreed in writing to pay the shortfall, or (ii) Landlord does not commence repair, restoration or replacement within sixty (60) days of the Taking, or (iii) if Landlord defaults in diligently prosecuting such work to completion and such default continues beyond the applicable cure period, or (iv) if Landlord does not substantially complete such work within twelve (12) months following the date of such taking, in all cases subject to Force Majeure Causes. Tenant shall notify Landlord of Tenant's election to terminate this Lease within thirty (30) days after the date on which arises Tenant's right to terminate. Any such termination shall be effective thirty (30) days after the date of notice thereof, unless within such time the cause thereof has been removed.

Following a partial Taking, if this Lease is not terminated as herein provided, Landlord shall proceed with diligence to establish and collect all valid claims which may have arisen against the Taking authority or other and, subject to the then applicable Building codes, zoning ordinances and other legal requirements, landlord shall proceed with diligence to restore the Premises and Property, or what remains thereof, as nearly as practicable to their condition prior to such Taking at Landlord's sole expense, subject, however, to the extent of the proceeds of the Taking received by Landlord. In the event that the portion of the Building or Property taken exceeds thirty-three percent (33%) of the value thereof, then, notwithstanding anything herein to the contrary, Landlord may terminate this Lease by written notice to Tenant within thirty (30) days after such Taking.

If this Lease is terminated by Landlord or Tenant following a total or partial Taking as herein provided, Tenant shall have the right to give Landlord a Notice of Exercise of its Purchase Option at any time prior to the effective date of such termination. If Tenant gives such Notice of Exercise, the Closing shall occur on a date designated by Tenant in the Notice of Exercise which date shall be not earlier than twenty (20) nor later than one hundred and fifty (150) days after the date the Notice of Exercise is given.

In the event Tenant exercises its Purchase Option as herein provided, Tenant shall be entitled to receive, and Landlord hereby assigns to Tenant, all damages and other compensation payable by reason of such Taking, including the proceeds of any pro tanto award, which damages or compensation shall be the property of Tenant notwithstanding the date on which the Notice of Exercise is given or the date of the Closing. If any such damages or compensation is paid over to Landlord prior to the Closing, it shall be held in trust by Landlord for the benefit of Tenant and paid over to Tenant on or before the date of the Closing. Notwithstanding the foregoing, the amount of the Taking award expressly designed by the Taking authority as allocable to the Property shall be distributed as follows to the extent it is sufficient:

First, Tenant will be reimbursed for its attorney's fees, appraisal fees, and other reasonable costs incurred in prosecuting its claim for the award.

Second, Landlord's mortgagees shall be paid all principal, interest and other charges due on the loans to Landlord secured by their mortgages, provided that if any such mortgagee shall have acquired title to the Property through foreclosure or deed in lieu of foreclosure, and thus there is no mortgage, then such mortgagee shall be entitled to the amount of the principal, interest and all other charges due on the prior mortgage(s).

Third, Landlord shall receive the discounted present value of Landlord's interest in the unexpired Lease Term as of the date of the Taking. Such discounted present value shall be determined by a real estate appraiser selected by Tenant and against whom landlord has no reasonable objection. Such appraiser shall have at least ten (10) years experience appraising commercial income-producing properties and shall be qualified as an expert witness to give opinion testimony addressed to the issue in the Superior Court of Bristol County. Such discounted present value shall be determined in accordance with good appraisal practice and shall assume full performance of all terms and conditions of this Lease by both Landlord and Tenant.

Fourth, the balance shall be paid to Tenant.

Landlord and Tenant shall request that the Taking authority separately designate the portion of any Taking award constituting compensation for the Taking of the Property, and either may maintain separate action to obtain such a designation.

Tenant's right to exercise its Purchase Option as provided in this Section 7.2 shall survive any termination of this Lease by a vesting of title in the Taking authority, or the taking of possession of the Property or any part thereof by the Taking authority.

If any Taking of the Premises or Building or the restoration thereof by Landlord shall (i) reduce the Usable Area of the Premises, (ii) render any part of the Premises unfit for use and occupation by Tenant or otherwise materially interfere with Tenant's use and occupancy of the Premises, or (iii) cause a material cessation or reduction in the services to be provided by Landlord under this Lease (even if Tenant may continue to use and occupy the Premises), the Rent or a just proportion thereof shall be abated until the Premises, or what remains thereof, and/or such services have been restored as required hereunder. In the case of a Taking which reduces the Usable Area of the Premises, interferes with Tenant's use and occupancy of the Premises, or materially diminishes Landlord services on a permanent basis, a just proportion of the Rent shall be abated for the remainder of the Term.

Landlord reserves all rights to any damages or compensation payable by reason of any Taking and Tenant grants to Landlord all of Tenant's rights to such damages or compensation and covenants to execute and deliver such further instruments as Landlord may from time to time request to obtain such damages or compensation, provided, however, that Tenant reserves for itself any award specifically reimbursing Tenant for moving or relocation expenses and any other award the payment of which does not diminish the amounts otherwise payable to the Landlord.

ARTICLE VIII: INDEMNIFICATION AND INSURANCE

8.1 Indemnification of Tenant by Landlord

Landlord shall indemnify, save harmless and defend Tenant from any and all liability, claim or cost arising in whole or in part out of any injury, loss, or damage to any person or property while on or within the Premises, Building or appurtenant areas if caused by any negligence, breach of this Lease or willful misconduct of Landlord or Landlord's employees, agents, contractors, servants or invitees except proportionately to the extent caused by the acts, omissions, negligence, breach of this Lease or willful misconduct of Tenant or Tenant's employees, agents, servants, contractors, subtenants, licensees, teachers, instructors, students or invitees. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred by Tenant in connection with any such injury, loss or damage or any such claim, or any proceeding brought thereon or in defense thereof, including, but not limited to, reasonable legal fees and expenses charged by public or private counsel employed by Tenant. This indemnity shall survive termination of this Lease.

8.2 Insurance Coverage to be Maintained by Landlord

At all times subsequent to the Date of Occupancy and during the full Term of this Lease, Landlord shall, at its sole cost and expense, keep in force commercial general liability insurance insuring Landlord against all claims and demands for personal injury or damage to property which may be claimed to have occurred upon or about the Premises, Building or appurtenant areas. Said insurance shall be written on an occurrence basis to afford protection in an amount not less than $2,000,000 combined single limit for personal and bodily injury and death and for property damage, with a so-called "broad form" endorsement and contractual liability coverage insuring the performance by Landlord of the indemnity agreement set forth in Section 8.1 of this Lease. Said insurance policy shall also name Tenant as an additional insured, but only if (i) Tenant occupies twenty percent (20%) of the tenanted portion of the Building using Landlord's generally applicable standard of measurement, or (ii) the Usable Area of the Premises exceeds 20,000 square feet.

Landlord shall also maintain casualty insurance upon the Building (including all fixtures and equipment installed by Landlord and all alterations and additions made by Landlord) insuring Landlord against loss or damage caused by fire and other risks which are customarily comprehended by the term "all risk" in endorsements in insurance policies (with such additional endorsements as may be necessary to include coverage for vandalism and malicious conduct, floods, boiler explosion or similar water damage, earthquake, debris removal and demolition) in an amount equal to one hundred percent (100%) of the replacement cost of the Building and its fixtures and equipment.

All insurance policies required hereunder shall be taken out with insurers qualified to do business in the Commonwealth and shall have only such deductibles as are reasonable and customary.

On or before the Date of Occupancy, Landlord shall provide Tenant with certificates of insurance in a form reasonably satisfactory to Tenant for all policies of insurance required hereunder, and shall provide Tenant with a certificate evidencing renewal of each such policy at least twenty (20) days before the expiration thereof. In the event Tenant is named as an Additional Insured under Landlord's commercial general liability insurance policy pursuant to the first paragraph of this Section, said insurance policy shall also contain an endorsement providing that the policy may not be canceled, terminated, reduced or changed in any material respect without at least twenty (20) days' prior written notice to the Tenant.

8.3 Tenant's Self-Insurance

Landlord and Tenant acknowledge and agree that Tenant is self-insured and that Tenant is not required by this Lease to procure or maintain insurance of any kind for payment of damages to the Landlord or any other party. Notwithstanding any other provision of this Lease, but subject to the provisions of Section 13.1, Tenant's liability for injuries to persons or property shall be governed by the provisions of M.G.L. Chapter 258 or any successor statute.

8.4 Tenant's Personal Property, Assumption of Risk

All of the furnishings, equipment, effects and personal property of every kind and nature of Tenant and of all persons claiming by, through and under Tenant, which during the Term of this Lease may be on the Premises or in the Building shall be at the sole risk and hazard of Tenant except for damage thereto caused by the negligence, breach of this Lease or willful misconduct of Landlord. If the whole or any part of such personal property shall be destroyed or damaged by fire, water or other casualty, no part of such loss or damage is to be charged to or to be borne by Landlord, unless such loss or damage is due to the negligence, breach of this Lease or willful misconduct of Landlord.

ARTICLE IX: DEFAULT

9.1 Event of Default by Tenant

The following events shall be deemed to be "Events of Default" by Tenant under this Lease:

(a) Tenant shall fail to pay when due any sum of money due Landlord hereunder, whether such sum be an installment of Rent or any other payment or reimbursement due Landlord by the terms of this Lease, and such failure shall continue for a period of ten (10) business days after written notice from Landlord.

(b) Tenant shall fail to comply with any other obligation or covenant of Tenant under this Lease, other than the failure to pay a sum of money due Landlord, and shall not cure such failure within thirty (30) days after receiving written notice from Landlord specifying such failure, or for those failures which cannot be cured within such thirty (30) day period, if Tenant has failed to commence such cure within said thirty-day period and thereafter diligently pursued such cure to completion.

(c) Any warranty, representation or statement made by Tenant herein is incorrect or misleading in any material respect on the date made.

9.2 Remedies of Landlord

Upon the occurrence of an Event of Default by Tenant, Landlord shall have the remedies described in Section 9.3 below and any other remedies available at law or equity. In addition, upon the occurrence of a material Event of Default only, Landlord shall also have the right to terminate this Lease if Tenant fails to fully cure or eliminate the cause (s) of such Event of Default within sixty (60) days following written notice from Landlord identifying with reasonable specificity the nature of such material Event of Default by Tenant and stating that Landlord intends to terminate this Lease by reason of such material Event of Default (or, for those Events of Default which are incapable of

being cured within such sixty (60) day period, if Tenant fails to commence and diligently prosecute such cure during such time period). Upon the effective date of such termination, this Lease shall come to an end as fully and completely as if the termination date stated in such notice were the date originally fixed for the expiration of the Term, and Tenant shall then quit and surrender the Premises and property to Landlord as provided in Section 6.7, but Tenant shall remain liable for damages arising out of such Event of Default as herein provided.

Upon termination of this Lease by Landlord pursuant to this Section 9.2, Tenant shall pay to Landlord the Rent payable by Tenant to Landlord up to the effective date of such termination, and Tenant shall remain liable for any breach of its obligations under this Lease occurring prior to the date of termination. In addition, Tenant shall be liable to pay Landlord, as damages, the aggregate of the Rent remaining in the Term.

Said Rent shall be payable by Tenant in the same manner and to the same extent and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence, Tenant shall be credited with the net Rents then actually received by Landlord from a re-letting of the Premises. Net Rents shall be determined by deducting from the gross rents, as and when received by Landlord from such re-letting, the reasonable expenses incurred or paid by Landlord in terminating this Lease and the reasonable expenses incurred or paid by Landlord in connection with the re-letting of the Premises that are allocable to the remaining Term of this Lease. In no event shall Tenant be entitled to receive any excess of such net Rents over the sums payable by Tenant to Landlord hereunder. In the event Landlord terminates this Lease by reason of an Event of Default by Tenant, Landlord shall be required to take all reasonable steps to mitigate its damages, including making reasonable efforts to re-let the Premises, it being understood that any such re-letting may be for a period equal to, or shorter, or longer than the remaining Term of this Lease.

9.3 Cure By Landlord

If Tenant fails to perform any of its obligations, agreements, or covenants under this Lease, and if Tenant shall not cure such failure within thirty (30) days after written notice from Landlord specifying the failure (or for those failures which are incapable of being cured within such thirty (30) day period, if Tenant has failed to commence such cure within said thirty (30) day period and thereafter diligently pursued such cure to completion), Landlord may, at its sole option and without waiving or limiting any claim for damages, at any time thereafter perform such obligation of the Tenant; provided that Landlord may cure any such failure prior to the expiration of the waiting period described above (but after notice to Tenant, which may be by telephone) if the curing of such breach prior to the expiration of the waiting period is reasonably necessary to prevent injury or damage to persons or property, including Landlord's interest in the Premises or Building. If the Landlord makes any expenditure or incurs any obligation for the payment of money in order to cure a failure to perform by Tenant as aforesaid, such sums paid or obligations incurred, to the extent they are reasonable, shall be due from Tenant to Landlord as additional Rent. Landlord shall deliver to Tenant an itemized statement of all costs incurred by Landlord to cure Tenant's failure to perform, together with copies of

all bills, invoices, receipts and other documents evidencing such costs. Any additional rent due by reason of such costs shall be paid with the second installment of rent due after said statement is delivered to Tenant.

9.4 Event of Default by Landlord

The following events shall be deemed to be "Events of Default" by Landlord under this Lease:

(a) Landlord shall fail to comply with any obligation or covenant of Landlord under this Lease and shall not cure such failure within thirty (30) days after receiving written notice from Tenant specifying such failure, or for those failures which cannot be cured within such thirty-day period, if Landlord has failed to commence such cure within said thirty-day period and thereafter diligently pursued such cure to completion.

(b) Any warranty, representation or statement made by Landlord herein is incorrect or misleading in any material respect on the date made.

9.5 Remedies of Tenant

Upon the occurrence of an Event of Default by Landlord, Tenant shall have the remedies described in Section 9.6 below, if applicable given the nature of the Event of Default, and any other remedies available to Tenant at law or in equity. In addition, if the Event of Default by Landlord is of such a nature that it materially interferes with Tenant's use or occupancy of the Premises in Tenant's reasonable judgment and Landlord fails to fully cure or eliminate the cause(s) of such Event of Default within thirty (30) days following written notice from Tenant stating that such an Event of Default has occurred, then Tenant shall also have the right to terminate this Lease by giving Landlord a written Notice of Termination, which shall be given at least ten (10) days prior to the effective date of termination stated in such Notice of Termination. Upon the effective date of such termination, this Lease shall come to an end as fully and completely as if the termination date stated in such notice were the date originally fixed for the expiration of the Term, provided, however, Landlord shall remain liable for any breach of its obligations under this Lease occurring prior to the date of termination, and Tenant shall be required to comply with the provisions of Section 6.7.

Notwithstanding the foregoing, upon the occurrence of such Event of Default which materially interferes with Tenant's use and occupancy of the Premises in Tenant's reasonable judgment and Landlord has failed to cure as provided in this Section 9.5, Tenant shall not send such written Notice of Termination until Tenant shall have afforded any mortgagee of Landlord notice of such Event of Default and an opportunity to cure such Event of Default within a period of time equal to the cure period afforded to the Landlord. In order for any such mortgagee of Landlord to have the benefit of this Section 9.5 and in order for the provisions of this Section 9.5 to be binding upon the Tenant, such mortgagee shall have provided to Tenant a written notice of such mortgagee and of each

assignment thereof, if any, containing the full name and address of such mortgagee and the term of such mortgage, notwithstanding any other form of notice, actual or constructive.

9.6 Cure by Tenant

If Landlord fails to perform any obligation, agreement or condition of this Lease on its part to be performed, including, but not limited to, failing to make any required repairs or provide any Building services, and if such failure shall materially interfere with Tenant's use or occupancy of the Premises in Tenant's reasonable judgment, and if Landlord shall not cure such failure within thirty (30) days after written notice from Tenant specifying the failure (or for those failures which are incapable of being cured within such thirty-day period, if Landlord has failed to commence such cure within said thirty-day period and thereafter diligently pursued such cure to completion), Tenant may, at its sole option and without waiving or limiting any claim for damages, at any time thereafter perform such obligation for Landlord; provided that Tenant may cure any such failure prior to the expiration of the waiting period described above (but after notice to Landlord, which may be by telephone) if the curing of such failure prior to the expiration of the waiting period is reasonably necessary to prevent injury to persons or property. If Tenant makes any expenditure or incurs any obligation for the payment of money in order to cure a failure to perform by Landlord as aforesaid, such monies paid or obligations incurred, to the extent they are reasonable, shall be deemed paid or incurred on behalf of the Landlord, and Landlord agrees to reimburse Tenant therefor or save Tenant harmless therefrom. Tenant shall deliver to Landlord an itemized statement of all costs incurred by Tenant to cure Landlord's failure to perform, together with copies of all bills, invoices, receipts and other documents evidencing such costs. Landlord shall pay any outstanding bills for labor or materials promptly, and shall reimburse Tenant within thirty (30) days of demand for any amount paid by Tenant on behalf of Landlord. In the event Landlord fails to reimburse Tenant within such period, the amount may be deducted by Tenant from the next or any succeeding payments of Rent due hereunder; provided however that in the event of a dispute, no deduction shall be made until the matter has been arbitrated and the ~~arbibitrator~~ arbitrator has rendered a decision, which decision shall be enforceable by a court of competent jurisdiction. The Tenant shall have the right to designate the arbitrator, provided said individual is not an employee of the User Agency or the Division of Capital Asset Management.

9.7 Remedies Cumulative

Any and all rights Landlord and Tenant may have under this Lease, and at law and equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of such rights and remedies may be exercised at the same time insofar as permitted by law.

ARTICLE X: MORTGAGE PROVISIONS

10.1 Estoppel Certificate

Within twenty (20) working days from receipt of a written request from Landlord or any mortgagee of the Building, Tenant shall execute and deliver to Landlord a certificate in the form of the *Commonwealth of Massachusetts Standard Estoppel Certificate* indicating thereon any exceptions thereto which may exist at that time.

10.2 Subordination.

Upon request of Landlord in writing, Tenant will subordinate this Lease and the lien thereof to the lien of any future mortgage(s) upon the Premises held by a bank, insurance company, governmental agency, or other financial institution, provided that the Landlord and the holder of such mortgage(s) shall execute and deliver to Tenant the *Commonwealth of Massachusetts Standard Subordination, Non-Disturbance and Attornment Agreement*. The word "mortgage" as used herein includes mortgages, deeds of trust and all similar instruments, and all modifications, extensions, renewals and replacements thereof.

Notwithstanding any provision of the Lease to the contrary, Tenant shall not be obligated under this Section 10.2 of the Lease or otherwise to subordinate the Lease and the lien thereof to the lien of any future mortgage upon the Premises, or to enter into the recordable subordination agreement described in this Section 10.2 unless such mortgagee shall, in such recordable agreement, consent to be bound by the provisions of this Lease granting Tenant the Purchase Option and the provisions of Section 7.1.

Landlord's existing mortgagee, by entering into a certain recognition, non-disturbance and attornment agreement in connection herewith, has consented to this Lease

ARTICLE XI: HOLDING OVER

11.1 Holding Over By Tenant

If Tenant or anyone claiming under Tenant shall remain in possession of the Premises or any part thereof after the expiration of the Term hereof, without any agreement in writing between Landlord and Tenant with respect thereto, prior to acceptance of Rent by Landlord the person remaining in possession shall be deemed a tenant at sufferance. After acceptance of Rent by Landlord, the person remaining in possession shall be deemed a tenant from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to a tenant from month-to-month. Notwithstanding the forgoing, Tenant agrees that Landlord may accept any Rent tendered by Tenant after the expiration or earlier termination of this Lease without prejudice to any claim that Landlord may have for a higher fair market rent for the Premises, provided Landlord shall give Tenant written notice of such claim prior to acceptance of such Rent. Nothing

in this Section 11.1 shall be construed to give Tenant a right to remain in possession of the Premises after the Expiration Date.

ARTICLE XII: FISCAL YEAR APPROPRIATIONS

12.1 Tenant's Obligations Subject to Appropriations

Appropriations for expenditures by agencies of the Commonwealth and authorizations to spend for particular purposes, are made on a fiscal year basis. The fiscal year of the Commonwealth is the twelve-month period ending June 30 of each year. The obligations of the Tenant under this Lease or any amendment or extension of this Lease for any fiscal year are subject to an annual appropriation of funds to the University of Massachusetts at Dartmouth for such fiscal year by the Massachusetts General Court in an amount sufficient to perform all of the Tenant's obligations under this Lease which accrue in that fiscal year, and to an annual authorization by the Massachusetts Secretary of Administration and Finance and Board of Trustees of the University of Massachusetts to spend such funds for the purpose of discharging Tenant's obligations under this Lease during such fiscal year. Prior to the commencement of each fiscal year during the Term of this Lease, the User Agency shall make all reasonable efforts to secure an appropriation and authorization to spend funds in an amount sufficient to discharge the obligations of Tenant under this Lease which accrue in that fiscal year.

12.2 Termination of Lease for Lack of Appropriations

If, for any fiscal year during the Term of this Lease, funds for the discharge of Tenant's obligations under this Lease are not appropriated by the Massachusetts General Court or if either the Secretary of Administration and Finance or the Board of Trustees of the University of Massachusetts does not authorize the expenditure of such funds for the purpose of performing Tenant's obligations under this Lease during such fiscal year, or if the funds so appropriated and authorized are insufficient to discharge all of Tenant's obligations under this Lease during such fiscal year, then Tenant may terminate this Lease by written notice to Landlord without being in breach of this Lease and without any liability whatsoever for damages, penalties or other charges arising from such early termination, and without further recourse to either party; provided however, that Tenant shall pay all Rent and any other charges due to Landlord for the period prior to its surrender of the Premises, and that Tenant shall comply with the provisions of Section 6.7 of this Lease.

Tenant hereby confirms that the Massachusetts General Court has appropriated funds to the University of Massachusetts at Dartmouth for the discharge of Tenant's obligations under this Lease for the current fiscal year in an amount sufficient to perform all of the Tenant's obligations under this Lease which accrue during this fiscal year, and that the Massachusetts Secretary of Administration and Finance and Board of Trustees of the University of Massachusetts have authorized the expenditure of such funds for the purpose of discharging Tenant's obligations under this Lease during the current fiscal year.

ARTICLE XIII: PERSONAL LIABILITY

13.1 Liability of Tenant

No official, employee or consultant of the Commonwealth of Massachusetts shall ever be personally liable to the Landlord or to any successor in interest to Landlord or to any person claiming through or under the Landlord for or on account of any Event of Default by Tenant or failure by Tenant to perform any of its obligations hereunder, or for or on account of any amount which may be or become due under this Lease, or for the satisfaction of any judgement against Tenant under this Lease, or on any claim, cause or obligation whatsoever under the terms of this Lease.

13.2 Liability of Landlord

No trustee, beneficiary, partner, director, officer, shareholder or employee of Landlord shall ever be personally liable to the Tenant or to any successor in interest to Tenant or person claiming through or under the Tenant for or on account of any Event of Default by Landlord or failure by Landlord to perform any of its obligations hereunder, or for or on account of any amount which may be or become due under this Lease, or for the satisfaction of any judgment against Landlord under this Lease or on any claim, cause or obligation whatsoever under the terms of this Lease. Tenant shall look solely to Landlord's interest in the Premises and Building and the legal parcel upon which the Building is located and to the rents and profits therefrom for the satisfaction of any claim or judgment against Landlord under this Lease. Notwithstanding the foregoing, nothing in this paragraph shall limit any right that Tenant may otherwise have to obtain injunctive relief against Landlord, or to claim the proceeds of any insurance maintained by Landlord for Tenant's benefit or any condemnation proceeds to which Tenant may be entitled hereunder. In addition nothing in this paragraph shall limit the recourse of Tenant on account of willful fraudulent conduct by an individual, provided that only the individual who actually engaged in the willful fraudulent conduct shall have liability for such conduct.

ARTICLE XIV: NOTICE

14.1 Giving of Notice

All notices or other communications required or permitted to be given under this Lease shall, unless otherwise expressly permitted hereunder, be in writing, signed by a duly authorized representative of the party giving notice, and shall be given by hand delivery (including without limitation, courier, Federal Express, or other overnight delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested. Notices shall be addressed and sent to Landlord at the address appearing for Landlord in Section 1.1. Notices to Tenant, unless otherwise expressly stated in this

Lease, shall be sent or addressed to Tenant at the address appearing for Tenant in Section 1.1, with copies to the User Agency (i) at the address of the Premises (after the Date of Occupancy) and (ii) at the address set forth for the User Agency in Section 1.1 if different from the address of Tenant and with copies to Martha Goldsmith, Director, Office and Leasing and State Office Planning, Division of Capital Asset Management, One Ashburton Place, Boston, MA 02108. Landlord or Tenant may, by notice given hereunder, at any time and from time to time designate a different address to which notices shall be sent. Notices sent as aforesaid shall be deemed given for all purposes (i) on the date shown on the receipt for such delivery, or (ii) as of the date such notice was sent in the event delivery is refused or acceptance could not be obtained.

14.2 Special Notice Where Failure to Reply Results in Approval or Consent

Wherever in this Lease the consent or approval of Landlord or Tenant is deemed to be given to a request or submission following a period of non-reply, said Lease provision shall be effective only if the envelope containing the request or submission shall bear on the outside thereof the following legend with the appropriate time period filled in, printed in bold-face type at least one-quarter inch high:

NOTICE
THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN __ DAYS SHALL RESULT
IN AUTOMATIC APPROVAL.

ARTICLE XV: FORCE MAJEURE

15.1 Force Majeure

In any case where either party hereto is required to do any act, delays caused by or resulting from war, fire, flood or other casualty, strikes, extraordinary governmental regulation, (which shall include, in the case of Tenant, delays in the payment of Rent of forty-five (45) days or less at the commencement of the Commonwealth's fiscal year caused by an act or omission of a branch, agency or department of State government other than the User Agency or DCAM), unusually severe weather, or other causes beyond such party's reasonable control ("Force Majeure Causes"), shall not be counted in determining the time during which such act shall be completed, whether such time be designated by a fixed date, a fixed time or "a reasonable time," and such time shall be deemed to be extended by the period of the delay.

ARTICLE XVI: MISCELLANEOUS

16.1 Entire Agreement

This Lease contains all of the agreements between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior writings and dealings between them with respect thereto.

16.2 Changes in Lease

None of the provisions or terms of this Lease shall be deleted, amended or modified in any manner except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

16.3 Binding Agreement

This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors and assigns. All covenants, agreements, terms and conditions of this Lease shall be construed as covenants running with the land.

16.4 Governing Law

This Lease shall be construed and governed by the laws of the Commonwealth of Massachusetts. Landlord and Tenant agree to bring any Federal or State legal proceedings arising under this Lease, in which the Commonwealth of Massachusetts, the User Agency or DCAM is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

16.5 Waiver

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by either party unless such waiver be in writing and signed by a duly-authorized representative of the party to be bound by such waiver.

16.6 No Broker

Landlord and Tenant each represents and warrants to the other that no broker, agent, commission salesman or other person has represented it in connection with the procurement or consummation of this Lease.

16.7 Rights and Remedies Not Exclusive

Unless otherwise expressly stated in this Lease, no mention in this Lease of any specific right or remedy shall preclude Landlord or Tenant from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either at law or in equity.

16.8 Accord and Satisfaction

No acceptance by Landlord of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check of Landlord or Tenant or any letter accompanying any check or payment from either Landlord or Tenant to the other be deemed an accord and satisfaction, and Landlord and Tenant may accept such check or payment without prejudice to such party's right to recover any balance due with respect to such payment or pursue any other remedy provided in this Lease.

16.9 Debarred Contractors

Landlord agrees that it shall not, during the term of this Lease, knowingly accept bids or proposals from or enter into any contract with any person or firm for the construction, repair or maintenance of the Premises if such person or firm is debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

16.10 Time of Essence

Time is of the essence of this Lease and each of its provisions.

16.11 Non-Discrimination in Employment

Landlord shall not discriminate against any qualified employee, applicant for employment, contractor, or person or firm seeking to provide goods or services to Landlord because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. The Landlord shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment.

16.12 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then Landlord and Tenant shall be relieved of all obligations under that provision (or the application of that provision under circumstances in which it is illegal or unenforceable) provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

16.13 Memorandum of Lease

Upon request of Tenant, Landlord shall execute and deliver to Tenant a recordable memorandum of this Lease.

16.14 No Agreement Until Signed

No legal obligation shall arise with respect to the Premises or other matters covered by this Lease until this Lease is executed by Landlord, the User Agency, and DCAM and delivery is made to each.

16.15 State Employees Barred from Interest

No official, employee or consultant of the Commonwealth of Massachusetts shall have any personal interest, direct or indirect, in this Lease or the Landlord, nor shall any such official, employee or consultant of the Commonwealth of Massachusetts participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

16.16 Paragraph Headings

The paragraph headings herein are for convenience of reference only and shall in no way define, increase or limit the scope or intent of any provision of this Lease.

16.17 Counterparts

This lease may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original and all such counterparts shall together constitute but one and the same Lease.

16.18 Riders and Exhibits

The Riders and Exhibits attached hereto are made a part of this Lease for all purposes.

16.19 Replacement Reserve

In order to establish a reserve for the purpose of funding the replacement of capital items located upon the Premises, Landlord shall establish a separate interest-bearing account at a custodial bank whose deposits are FDIC insured ("Replacement Reserve Account"). Landlord shall provide Tenant with evidence that the Replacement Reserve Account has been established on or before the first anniversary of the Date of Occupancy, and shall notify Tenant promptly if the account number or custodial bank changes during the Lease Term.

The Replacement Reserve Account shall be an escrow account established in Tenant's name and all funds deposited by Landlord in said account and interest accrued thereon shall be the sole and exclusive Property of Tenant, and any unexpended funds in the Replacement Reserve Account shall be paid to Tenant on the earlier of the Expiration Date or the earlier termination of this Lease or the Closing.

Commencing with the first full month following the first anniversary of the Date of Occupancy and continuing thereafter for the full Term of this Lease Tenant shall, by separate check made payable to the Replacement Reserve Account, pay monthly to Landlord at the time Base Rent is to be paid, the sum of Eleven Hundred and 00/100 Dollars ($1,100.00) per month, to increase annually at the cumulative rate of four per cent (4%), unless otherwise agreed by Landlord and Tenant (the "Capital Reserve Amount"). Landlord shall deposit each such separate check received from Tenant within five (5) business days after receipt thereof by the Landlord. All interest earned shall be added to the principal in the Replacement Reserve Account (but Landlord shall not be responsible for earning any interest). Tenant shall pay Landlord the Capital Reserve Amount in addition to, above and beyond the Base Rent and any Additional Rent due from Tenant hereunder.

Disbursements shall be made from the Replacement Reserve Account as follows:

(a) Disbursements shall be made from the Replacement Reserve Account for no purpose other than paying for the replacement of capital items, including, but not limited to, the roofs, walls, floors, structural components, building and mechanical systems, fixtures, finishes and appliances located upon the Premises but excluding that portion of the facade of the Building which will be maintained and replaced in accordance with the provisions of a certain Preservation Restriction between the City of New Bedford and the Landlord dated _____, 1999 and recorded with the Bristol County (Southern District) Registry of Deeds in Book _____, Page ___ (hereinafter collectively "Capital Replacements").

(b) Funds in the Replacement Reserve Account shall not be used for Capital Replacements required to correct Latent Defects that Landlord is obligated to correct at its sole cost and expense pursuant to Section 5.4 or for correcting other Latent Defects if Landlord reasonably obtains correction of the defect under a warranty or other contract right obtained by Landlord in connection with such work (Landlord agreeing to obtain customary warranties from subcontractors and manufacturers and to use reasonable efforts to obtain correction of defective materials or workmanship under such warranties or other contract rights).

(c) Disbursements shall be made from the Replacements Reserve Account to pay for a Capital Replacement only if there are no insurance proceeds available to pay for such Capital Replacement, and, if the item to be replaced is covered by a warranty, only if Landlord has been unable to obtain such replacement after using reasonable efforts to enforce such warranty.

(d) If a proposed Capital Replacement has an estimated cost that exceeds Ten Thousand Dollars ($10,000) and Landlord intends to pay for all or part of such Capital Replacement with funds from the Replacement Reserve Account, Landlord shall not undertake such Capital Replacement without the prior written approval of Tenant, which approval shall not be unreasonably withheld, conditioned or delayed unless the useful life of such replacement will extend beyond the end of the Lease Term (in which event Tenant may withhold its

approval in its sole discretion). Landlord shall notify Tenant in writing of any proposed Capital Replacement to be funded from the Replacement Reserve Account, which notice shall include a description of the proposed Capital Replacement and the price to be paid therefor. Within forty-five (45) business days of receipt of a notice from Landlord requesting approval of a Capital Replacement, Tenant shall either approve or disapprove such request in writing. In the event of disapproval, Tenant shall provide the specific reasons therefor. If Tenant fails to notify Landlord of disapproval as required hereunder, Landlord's request shall be deemed approved, but only if the envelope containing Landlord's request bears the following notation in bold-face type: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN 15 DAYS SHALL RESULT IN AUTOMATIC APPROVAL. Notwithstanding the foregoing, in cases of emergency Landlord may undertake a Capital Replacement without obtaining the prior approval of Tenant if the Capital Replacement is necessary to remove an immediate threat to life, health, or safety of persons or property upon the Premises. In such cases, Landlord shall give Tenant the notice required hereunder as soon as practical after the Capital Replacement is undertaken, and if Tenant notifies Landlord within ten (10) business days after receiving such notice that it disapproves such Capital Replacement, Landlord shall replenish the Replacement Reserve Account by an amount equal to the amount withdrawn to make such capital Replacement if it is determined pursuant to subparagraph (f) below that such Capital Replacement was not necessary.

(e) Without limiting Landlord's obligations to maintain the Premises in good condition and in compliance with laws, as further set forth in Section 5.4 hereof, Tenant may request that Landlord undertake a Capital Replacement in lieu of repairing a capital item or for any other reason if, in Tenant's reasonable judgment, said Capital Replacement is necessary. Any such request shall be in writing and shall include a statement of the reasons why Tenant believes the Capital Replacement is necessary. Within fifteen (15) business days of receipt of a request from Tenant hereunder, Landlord shall either approve or disapprove such request in writing. In the event of disapproval, Landlord shall provide the specific reasons therefor. If Landlord fails to notify Tenant of disapproval as required hereunder, Tenant's request shall be deemed approved, but only if the envelope containing Tenant's request bears the following notation in bold-face type in a font of at least fourteen points in size: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN 15 DAYS SHALL RESULT IN AUTOMATIC APPROVAL. Landlord shall cause any Capital Replacement approved by Landlord hereunder to be undertaken promptly and completed with diligence.

(f) In the event either Tenant or Landlord disapproves a proposed Capital Replacement and the parties cannot reach agreement regarding the disputed Capital Replacement, the cost thereof or any other disagreement connected with a proposed Capital Replacement, within fifteen (15) business days after such

disapproval, either Landlord or Tenant may give notice to the other that the dispute shall be resolved in the following manner: Landlord and Tenant shall each appoint (and pay for) a licensed professional engineer or architect within fifteen (15) business days after the aforesaid notice is given, and said individuals shall, within ten (10) business days after their appointment, determine whether such Capital Replacement is necessary. In the event said individuals cannot reach agreement within said time period, they shall appoint (and share equally the cost of) a third licensed professional engineer or architect who alone shall, within ten (10) business days of his or her appointment, make such determination. For the purposes of this Section 16.19, a Capital Replacement shall be considered necessary if (i) it is required to remove an immediate threat to the life, health, or safety of persons or property upon the Premises, or (ii) it is required in order to comply with applicable laws, or (iii) the capital item to be replaced is no longer performing its intended function in a satisfactory manner and has exceeded ninety percent (90%) of its estimated useful life. In no event shall Landlord be in default of any obligation under this Lease to make a Capital Replacement if Tenant has failed to approve such Capital Replacement proposed by Landlord.

(g) Whenever Landlord undertakes a Capital Replacement to be funded from the Replacement Reserve Account, Landlord shall solicit not less than three (3) competitive bids from competent and responsible contractors unless Landlord and Tenant agree that it is not practical to obtain three (3) competitive bids. If bids are solicited, the price to be paid for such Capital Replacement shall be the lowest of such bids, unless Landlord and Tenant agree that there is good reason for a contractor other than the lowest bidder to perform the work.

(h) Promptly upon completion of any Capital Replacement funded from the Replacement Reserve Account, Landlord shall submit to Tenant a written statement showing (1) the full cost thereof, (2) the useful life of such Capital Replacement and (3) the interest rate applicable to the amortization of the cost of such Capital Replacement as provided in paragraph (i) below. Such statement shall also include copies of any bills or invoices submitted from the contractor performing the work and other parties to whom payment is made in connection with the Capital Replacement.

(i) The cost of any Capital Replacement funded from the Replacement Reserve Account shall be amortized over its useful life. Following the completion of any such Capital Replacement, Landlord may withdraw each month from the Replacement Reserve Account an amount equal to the monthly payment necessary to amortize the cost of such Capital Replacement over its useful life together with either (a) interest at the rate charged by Landlord's lender if Landlord has financed such Capital Replacement, or (b) an imputed interest rate not to exceed the rate then being charged by institutional first mortgagees for permanent first mortgage loans on buildings similar to the Building if Landlord has used its own funds to pay for such Capital Replacement.

(j) Within forty-five (45) days after the end of each calendar year during the Term of this Lease, Landlord shall render to Tenant a statement prepared in accordance with generally accepted accounting practices consistently applied showing all transactions in the Replacement Reserve Account for the calendar year just ended, which statement shall include copies of the statements received from the bank in which the Replacement Reserve Account is maintained. Upon receiving a written request from Tenant at any time during a calendar year, Landlord shall promptly provide Tenant with a copy of the most recent statement from the custodial bank.

(k) Landlord and Tenant acknowledge that the purpose of the Replacement Reserve Account is to ensure that a portion of the Rent shall be set aside and made available for the purpose of making Capital Replacements and for no other purpose, and that Landlord's obligation to repair and maintain the Premises under Section 5.4 and to make any necessary Capital Replacements in connection therewith shall in no way be limited by the amount of funds on deposit in the Replacement Reserve Account at any particular time.

(l) The provisions of this Section 16.19 shall not apply to any repairs or maintenance undertaken by Landlord pursuant to Section 5.4 except for the replacement of capital items, nor to the replacement of any capital item that is not paid for with funds from the Replacement Reserve Account.

(m) If Landlord undertakes any Capital Replacement other than a Capital Replacement required to correct a Latent Defect, and the cost of such Capital Replacement is not fully amortized as provided in paragraph (i) of this Section 16.19 prior to the exercise by Tenant of the Purchase Option, then if, and only if Tenant exercises the Purchase Option, Tenant shall pay to Landlord at the Closing the unamortized principal balance of the cost of such Capital Replacement which shall be in addition to the purchase price.

Landlord and Tenant shall each be entitled to bring an action to compel specific performance of the provisions of this Section 16.19, which remedy shall be in addition to any other remedies either may have for a breach of this Lease.

16.20 Purchase Option

In consideration of the execution of this Lease by Tenant and the performance of Tenant's obligations hereunder, Landlord hereby grants to Tenant the right and option to purchase the Property, including the Tenant's rights to the Reserved Parking Spaces as further defined in Article XVIII herein without additional consideration, in accordance with the terms and conditions set forth herein (the "Purchase Option").

The Purchase Option shall be exercised by Tenant giving written notice of such exercise (the "Notice of Exercise") to Landlord at any time on or before the date which is not less than thirty (30) days prior to the expiration date of the Lease Term. If Tenant gives the Notice of Exercise, the delivery of the deed to the Property to Tenant (the "Closing") shall be on the last day of the Lease Term (or last business day if such a day is not a

business day), at a time and place in the greater Boston area to be designated by Tenant in the Notice of Exercise. The purchase price for the Property shall be $1.00 (the "Purchase Price") and shall be paid at the Closing in good funds drawn on a Boston clearinghouse bank (including a check of the Commonwealth or a wire transfer of funds of the Commonwealth) at the Closing.

At the Closing, the Property shall be conveyed by a good and sufficient Massachusetts quitclaim deed in recordable form running to the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management or any successor agency to said Division, and said deed shall convey good and clear record and marketable title thereto, free from all encumbrances except:

(a) Provisions of then existing building, zoning, environmental, and other laws; and

(b) Real estate taxes, liens for municipal betterments, water and sewer charges, and any other similar costs or expenses not yet due and payable on the Closing date; and

(c) Those easements and restrictions existing as of the date of the Lease and listed on Exhibit A-2 to the Lease, and such other easements and restrictions as may be created hereafter as to which Tenant consents, Tenant agreeing that it shall consent promptly to any easements and restrictions which do not unreasonably interfere with Tenant's use of the Premises for the purposes permitted under the Lease or marketability of the Property (the "Permitted Encumbrances").

Full possession of the Property, including the Tenant's rights to the Reserved Parking Spaces as further defined in Article XVII herein, in the condition required by the terms of the Lease (and subject to this Lease) (including, without limitation, a complete cure of any breaches of Landlord's obligations under the Lease, the completion of all construction of the Building and other improvements on the Property including without limitation components and systems necessary to operate and maintain the Building and other portions of the Property as provided in the Working Drawings and the Lease, and with any Latent Defects of which Landlord has notice from Tenant or any other party completely cured), not in violation of any environmental laws as listed in Section 5.6 hereof, and free of all tenants and occupants except Tenant and any party claiming by, through or under Tenant, shall be delivered by Landlord to the Commonwealth at the Closing. If Landlord shall be unable to give title or make conveyance, or to deliver possession, all as herein stipulated, then at Tenant's written election:

(i) (A) Landlord shall remove all encumbrances other than the Permitted Encumbrances, if any, including any voluntary encumbrances, encumbrances which are a result of a default by Landlord, (except any encumbrances which are caused directly by Tenant or those acting under Tenant) or encumbrances which secure the payment of money and Landlord shall use reasonable efforts to remove all other encumbrances (except for public takings) which prevent Landlord from conveying good and clear record and marketable title to the Property to Tenant, whether

such encumbrances were created or recorded before or after the date hereof, and (B) Landlord shall use all reasonable efforts to remove all other defects in title and to deliver possession as provided herein, including, without limitation, completion of all construction of the Building and improvements and, correction of all Latent Defects, as the case may be, and the Closing shall be extended for a period of not more than ten (10) days to remove encumbrances which secure the payment of money and in all other cases hereunder, for a period of not more than ninety (90) days; or

(ii) Tenant may rescind its Notice of Exercise and be relieved of any further obligation or liability in connection therewith, but such rescission shall not affect the continued rights and obligations of Landlord and Tenant under all provisions of this Lease, if any, other than those of this Section 16-20.

If at the expiration of the extended time, Landlord shall have failed to so remove any defects in title or deliver possession, all as herein agreed, Tenant shall have the election to (i) rescind its Notice of Exercise in which case both parties shall be relieved of any further obligation or liability in connection therewith, but such rescission shall not affect the continued rights and obligations of Landlord and Tenant under all provisions of this Lease, if any, other than those of this Section 16.20, or (ii) accept such title as Landlord can deliver to the Property in their then condition, in which case Landlord shall convey such title and Tenant shall pay the full Purchase Price, unless such defects in title secure the payment of money, are voluntary encumbrances, or are a result of a default by Landlord, in which event the costs of removing such defects shall be deducted from the Purchase Price. If the Building shall have been damaged by fire or casualty, Tenant may elect to extend the Closing for the period of time required for Landlord to repair, restore or replace the Building pursuant to Section 7.1. Tenant may also elect, at either the original or any extended time for Closing, to accept the Building in its then condition. In either case, at the Closing Landlord shall, unless Landlord has previously restored the Building to its former condition, assign to Tenant all claims which Landlord may have with respect to all amounts recoverable on account of such insurance and pay over to Tenant all amounts recovered, in each case to the extent of all amounts in excess of the amounts incurred or expended on restoration on account of such insurance. In addition, if the Building shall be damaged by fire or casualty after the exercise of the Purchase Option, Tenant may also elect to rescind its Notice of Exercise and be relieved of any further obligation or liability in connection therewith, but such rescission shall not affect the continued rights and obligations of Landlord and Tenant under all provisions of this Lease, if any, other than those of this Section 16.20.

Tenant, its employees and agents shall have the right, at all reasonable times and at Tenant's sole cost and expense, whether prior to the date of exercise of the Purchase Option or thereafter, to conduct such surveys, tests and inspections, including without limitation environmental studies and assessments, as Tenant determines necessary to evaluate the Property.

At the Closing, Landlord shall deliver to the Commonwealth:

(a) The deed conveying title to the Property in accordance with the provisions of this Section 16.20;

(b) A bill of sale without warranty of title, in form and content reasonably satisfactory to Tenant, conveying and transferring title to Landlord's personal property used solely in connection with the maintenance and operation of the Property;

(c) An assignment without warranty, in form and content reasonably satisfactory to Tenant, of all of Landlord's rights, title and interest in and to all service, maintenance and management contracts (to the extent that Tenant, at its option, has elected to assume same) affecting or relating to the Property, together with the original of each such contract;

(d) An assignment without warranty, in form and content reasonably satisfactory to Tenant, of all franchises, licenses, permits, approvals and other consents issued by governmental authorities which are or may be required for use and occupancy of the Property;

(e) Such affidavits and indemnities as a title insurance company typically or reasonably requires relating to mechanic's liens and parties in possession;

(f) A set of current "as built" plans and specifications for the building and an ALTA survey unless up-to-date "as built" plans have already been provided to Tenant;

(g) An assignment without warranty, in form and content reasonably satisfactory to Tenant, of all of Landlord's rights, title and interest in and to all guaranties and warranties relating to the Building, and the equipment, furnishings and fixtures, together with the original of each such guarantee and warranty;

(h) All maintenance records and operating manuals pertaining to the Property;

(i) Title closing documents, including all discharges of encumbrances which secure the payment of money in recordable form;

(j) An affidavit from Landlord containing the representations and warranties made by Landlord in the last two paragraphs of Section 5.1, made and executed as of the date of the Closing;

(k) Such certificates, votes, authorizing resolutions and similar documentation as may be reasonably required by Tenant to insure the legality and binding effect of the Closing instruments delivered by Landlord.

Adjustments of Rent, Additional Rent, Real Estate Taxes, if any, water and sewer use charges and all other items of a similar nature shall be apportioned in accordance with customary practice as of the Closing Date to the end that Tenant shall bear and pay all such items as provided for in this Lease through such Closing Date. If the amount of Real Estate Taxes is not known on the date of the Closing, Real Estate Taxes shall be apportioned on the basis of the assessment for the preceding tax year and reapportioned

as soon as the new tax rate and valuation is ascertained; this provision shall survive the Closing and termination of the Lease. Landlord and Tenants shall each pay for its own expenses, including legal fees, incurred in connection with the Closing and the documents to be delivered at the Closing. Landlord shall pay at the Closing all deed stamps and transfer taxes, if any, payable on account of the sale of the Property and all recording costs for documents that must be recorded to clear the title of encumbrances. Tenant shall pay the costs of recording all conveyancing documents necessary to enable Landlord to convey the Property as herein provided.

The effective termination of the Lease at any time shall terminate all rights and obligations of Landlord and Tenant under this Section. The Purchase Option shall not be assignable except as part of the Lease. In the event of Tenant's exercise of the Purchase Option, the Lease, unless it has been terminated, shall nevertheless continue in full force and effect until the Closing. Time shall be of the essence with respect to Tenant's exercise of the Purchase Option and Landlord's obligations set forth in this Section 16.20, and Landlord and Tenant acknowledge and agree that the deadlines contained in this Section 16.20 shall not be extended for Force Majeure Causes or because of any cure periods under this Lease unless each of the parties hereto agrees to such extension in writing, neither party being under any obligation whatsoever to agree to such an extension.

16.21 Transfer of Landlord's Interest

Landlord acknowledges that Landlord was selected through an open and competitive procurement process conducted by Tenant and the User Agency pursuant to the provisions of Chapter 457 of the Acts of 1996, Section 2; that the experience, qualifications, capabilities, reputation, and financial viability of Landlord, Landlord's architect and Landlord's construction contractor were material factors in the selection of Landlord to provide the Premises and services hereunder; and that said legislation requires that this Lease obligate the Landlord selected by Tenant pursuant to said open and competitive process to construct the Landlord's Improvements. Accordingly, prior to the Date of Occupancy, Landlord shall not (i) sublet, assign or otherwise transfer its interest in the Property or its rights or obligations under this Lease (except for the giving of such security interests in the rents and Property as may be reasonably required by Landlord's mortgagee and which are customary in connection with the financing of similar properties), or (ii) change the identity of Landlord's architect or construction contractor except for a material default by such designer or construction contractor, and then only with the prior written approval of Tenant, which approval shall not be unreasonably withheld, conditioned or delayed, Tenant agreeing to act upon any such request by Landlord within five (5) business days after receipt by Tenant of complete information documenting the default of such architect or construction contractor, as the case may be.

Following the Date of Occupancy, Landlord shall not (i) sublet, assign or otherwise transfer its interest in the Property or its rights or obligations under the Lease, or (ii) change the identity of the Landlord's management company for the Property if Landlord does not manage the Property itself, without the prior written approval of Tenant, which

approval shall not be unreasonably withheld, conditioned or delayed provided the proposed transferee, assignee or new management company has demonstrated that it has the experience, expertise and financial strength necessary to perform its obligations under this Lease in a satisfactory manner, in Tenant's reasonable judgment, and, in the case of a transfer of Landlord's interest, such transferee, by valid written instrument, expressly assumes for itself and its successors and assigns, and for the benefit of Tenant, all of the obligations of Landlord under this Lease.

Landlord acknowledges that a transfer of all or part of the legal or beneficial ownership in Landlord, or any other act resulting in a significant change in the ownership or distribution of such ownership, or any change in the identity of the parties in control of Landlord is, for practical purposes, a transfer of the Landlord's interest. Therefore, Landlord agrees that, except for an involuntary transfer caused by death or incapacity, there shall be no change in the ownership or distribution of ownership interests in Landlord, or change in the identity of the parties in control of Landlord or in the degree of control of the Landlord by any method or means which shall deprive the individuals identified in Exhibit E of a controlling interest in Landlord. For the purposes of this section, the term "controlling interest" shall mean an interest, beneficial or otherwise, which would permit the exercise of substantial managerial influence over the operations of Landlord.

Tenant shall advise Landlord in writing whether or not it consents to a proposed transfer requiring Tenant's approval within thirty (30) days of receiving Landlord's request for such consent. In the event such consent is withheld, Tenant shall specify the reasons therefor. If Tenant fails to so notify Landlord within such time period, Tenant shall be deemed to have given its consent to the proposed transfer.

16.22 No Offset.

Tenant shall pay Landlord the Rent, Additional Rent and all other charges due under this Lease without offset, deduction, abatement or counterclaim except only as specifically provided herein to the contrary.

ARTICLE XVII: PARKING PROVISIONS

17.1 Reserved Parking Spaces.

Landlord shall provide Tenant with the Reserved Parking Spaces (as hereinafter defined) during the Lease Term as a part of the lease of the Premises, at no cost to Tenant. The Reserved Parking Spaces shall be available to Tenant beginning on the Date of Occupancy, on all days and times of day as the Premises are accessible to Tenant. The Reserved Parking Spaces shall be initially provided on the surface parking lot at the property located at 668-670 Purchase Street, New Bedford, MA (the "Purchase Street Lot"). Tenant and Landlord acknowledge and agree that the City of New Bedford (the "City') may commence construction of a new parking facility on the Purchase Street Lot within two (2) years from the date of a parking agreement between the Landlord and the New Bedford Redevelopment Authority to be recorded by Landlord in the Bristol County Registry of Deeds (the "Purchase Street Lot Agreement"). Pursuant to the

Purchase Street Lot Agreement, during the time of construction, Landlord shall provide the Reserved Parking Spaces at an alternative location (the "Substitute Parking"), which is planned to be at the property presently known as the Elm Street Municipal Parking Garage. In the event the Reserved Parking Spaces cannot be provided at the Elm Street Municipal Parking Garage pursuant to the Purchase Street Lot Agreement, despite Landlord's best efforts, Landlord shall provide the Reserved Parking Spaces at an alternative location at no greater distance from the Building than the Elm Street Municipal Parking Garage and which is reasonably acceptable to Tenant. Upon the completion of any new parking facility on the Purchase Street Lot, the Reserved Parking Spaces shall be provided to Tenant therein at no cost to Tenant for the term of this Lease.

17.2 Reserved Parking Spaces After Exercise of Purchase Option.

In the event that Tenant purchases the Property pursuant to the Purchase Option as defined in Section 16.20 of this Lease, the Property purchased thereunder shall be deemed to include Tenant's rights to use the Reserved Parking Spaces pursuant to an assignment (the "Assignment") by Landlord to Tenant of all of Landlord's rights and interest in the Purchase Street Lot Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this and two (2) copies, the Commonwealth of Massachusetts having executed these presents by the Acting Commissioner of DCAM and by the duly authorized representative of the User Agency, who incur no personal liability by reason of the execution hereof.

LANDLORD:

STAR HOLDINGS LIMITED PARTNERSHIP
a Massachusetts Limited Partnership

BY: Its sole General Partner
STAR STORE DEVELOPMENT, INC.
a Massachusetts Corporation

BY: _____
Paul C. Downey,
President and Treasurer

TENANT:

THE COMMONWEALTH OF MASSACHUSETTS, acting
by and through its DIVISION OF CAPITAL ASSET MANAGEMENT

BY: _____
Stephen J. Hines, Acting Commissioner, who hereby certifies under penalties of perjury that he has fully complied with the advertising requirements of M.G.L. Chapter 7, Section 40H, in connection with the property described herein.

UNIVERSITY OF MASSACHUSETTS AT DARTMOUTH
USER AGENCY

BY: _____

TITLE: _____

Approved as to Matters of Form:

_____
Acting General Counsel, DCAM

Approved as to Matter of Form:

_____
Office of the Attorney General