

COMMISSION FOR HIGHER EDUCATION

Friday, October 14, 2011

DECISION ITEM D: **Approval to Extend Office Lease**

Staff Recommendation

That the Commission authorize the Commissioner to enter into a lease extension for the current Commission offices at 101 West Ohio, Suite 550, as described in the attached lease amendment.

Background

The Commission's current lease expires April 30, 2012. In preparation of the current lease expiring, CHE staff worked with a property management consultant to identify options regarding extending the current lease at West Ohio or moving to an alternative location.

After reviewing various options with the property management consultant, CHE staff determined remaining in the current location would be the best option in terms of savings and the impact on the Commission's operating budget and overall operations. Alternative site options provided by the consultant included similar pricing structures compared to the current location; however, such move would cost CHE additional funds to relocate in the spring of 2012.

Currently, the Commission pays \$19.50 per square foot (base rent) for space occupied at West Ohio. In the lease extension agreement attached, CHE will pay \$17.00 per square foot (base rent) in the first year of the extension and up to \$18.00 per square foot (base rent) at the end of the lease agreement. The term of the agreement is 5 years and 4 months.

Supporting Document

Proposed Lease Amendment.

EIGHTH AMENDMENT TO OFFICE LEASE

THIS EIGHTH AMENDMENT TO OFFICE LEASE (this "Amendment") made as of the ____ day of _____, 2011, by and between WEST OHIO II, LLC ("Landlord") and INDIANA COMMISSION FOR HIGHER EDUCATION ("Tenant").

BACKGROUND

A. Tenant is currently occupying five thousand four hundred thirty seven (5,437) rentable square feet on the fifth (5th) floor and one thousand five hundred thirty two (1,532) rentable square feet on the sixth floor of the office building commonly known as 101 West Ohio Street, Indianapolis, Indiana (collectively, the "Premises"), pursuant to that certain Office Lease dated October 21, 1987 by and between RBR Associates ("RBR") and Tenant, as amended by that certain First Amendment dated December 20, 1991 by and between RBR and Tenant, that certain Second Amendment dated January 13, 1997 by and between Lincoln National Life Insurance Company ("Lincoln") (successor-in-interest to RBR) and Tenant, that certain Third Amendment to Office Lease dated December 7, 2001 by and between West Ohio, LLC ("West") (successor-in-interest to Lincoln) and Tenant, that certain Fourth Amendment to Office Lease dated July 15, 2003 by and between Landlord (successor-in-interest to West) and Tenant, that certain Fifth Amendment to Office Lease dated October 9, 2006 by and between Landlord and Tenant, that certain Sixth Amendment to Office Lease dated August 29, 2008 by and between Landlord and Tenant and that certain Seventh Amendment to Office Lease dated October 5, 2010 by and between Landlord and Tenant (collectively, the "Lease"). All undefined capitalized terms used herein shall have the meanings ascribed to such terms in the Lease.

B. Landlord and Tenant desire to amend the Lease on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, and intending to be legally bound hereby, Landlord and Tenant hereby agree as follows:

1. **Extension of Term.** The term of the Lease is hereby extended commencing as of May 1, 2012 (the "Effective Date") and expiring as of August 31, 2017.

2. **Minimum Rent.** As of the Effective Date, Minimum Rent for the Premises shall be payable in accordance with the terms of the Lease as follows:

| Period | Annual | Monthly | Rate/RSF |
|----------------------|---------------|----------------|-----------------|
| 05/01/12 – 04/30/13* | \$118,473.00 | \$9,872.75 | \$17.00 |
| 05/01/13 – 04/30/14* | \$120,215.25 | \$10,017.94 | \$17.25 |
| 05/01/14 – 04/30/15* | \$121,957.50 | \$10,163.13 | \$17.50 |
| 05/01/15 – 04/30/16* | \$123,699.75 | \$10,308.31 | \$17.75 |
| 05/01/16 – 08/31/17 | \$125,442.00 | \$10,453.50 | \$18.00 |

* Provided that Tenant is not in default under the Lease as amended hereby (or an event has occurred which but for the passage of time or the giving of notice or both, would constitute an event of default), Tenant shall be entitled to a rent credit in the amount of \$40,362.13 (the "Rent Credit"). The Rent Credit shall be applied in the following monthly installments: \$9,872.75 for the month of May 2012; \$10,017.94 for the month of May 2013; \$10,163.13 for the month of May 2014; and \$10,308.31 for the month of May 2015.

3. **Base Amount for Operating Expenses.** As of the Effective Date, "Base Amount for Operating Expenses" for the Premises shall be equal to the amount of Operating Expenses for 2012 multiplied by Tenant's Expense Share for the Premises.

4. **Landlord Work.** Landlord shall have no obligation to perform any other work in the Premises and Tenant is leasing same in its "AS-IS" "WHERE-IS" condition.

5. **Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the Lease, the Lease shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of the Lease shall be final and conclusive.

6. **Real Estate Broker.** Tenant represents that Tenant has not dealt with any broker in connection with this Amendment other than Meridian Real Estate and West Ohio II Management Co. Inc. (collectively, the "Brokers"), and insofar as Tenant knows, no other broker negotiated this Amendment or is entitled to any commission in connection therewith. Landlord shall pay a commission to the Brokers pursuant to separate agreements with the Brokers. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claims for a commission or other compensation in connection with this Amendment, made by any broker or finder, other than the Brokers, who claims to have dealt with or communicated to Tenant in connection with this Amendment, provided that Landlord has not in fact retained such broker or finder.

7. **No Other Modifications.** Except as expressly modified by the terms and conditions of this Amendment, all other terms and conditions of the Lease shall remain unmodified and in full force and effect.

8. **Binding Effect.** This Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Landlord and Tenant, intending to be legally bound hereby, have executed this Amendment as of the day and year first-above written.

LANDLORD:

agent

WEST OHIO II, LLC, by its authorized

By: AMERIMAR WEST OHIO II
MANAGEMENT CO., INC.

By: _____

Name: _____

Title: _____

TENANT:

INDIANA COMMISSION FOR
HIGHER EDUCATION

By: _____

Name: _____

Title: _____