

CITY OF MIDDLETOWN

APPLICATION SECTION 108 LOAN GUARANTEE PROGRAM

HIGHER EDUCATION PARTNERS

MAY 1, 2012

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January 30, 2012

Doug Adkins
Director, Department of Community Revitalization
One Donham Plaza
Middletown, Ohio 45042

Dear Mr. Adkins,

Please accept this letter as HEP's formal request for a HUD Section 108 Loan in accordance with the terms outlined in the application that we have been preparing over the past several months.

The proposed Section 108 loan will be loaned to Higher Education Partners (HEP), who will utilize the funding for hard and soft costs associated with the acquisition, design and redevelopment of the CG&E Building and the former Middletown Senior Citizens Center in downtown Middletown. These two prominent downtown sites will be used as part of a collaborative revitalization effort that will utilize significant private investment to bring a campus for Cincinnati State Technical and Community College (CSTCC) to the Middletown Central Business District (CBD).

As you know, Higher Education Partners was established in 2009 and has been successful in opening two privately-funded college campuses in Massachusetts. The first campus, opened in collaboration with Bristol Community College, opened in fall of 2010 with 200 students and enrollment has now risen five-fold. The second site, also in Massachusetts, was opened in collaboration with Northern Essex Community College in the fall of 2011 and similarly, has experienced steady growth from first semester to second.

City of Middletown officials proved how serious they were about bringing a college to their downtown when they took the forward-thinking steps to acquire buildings to accommodate the development of a college in their central business district. It is this action has brought us to the precipice of being able to implement this plan; a plan that was based in the belief that a downtown college would have multiple positive benefits to the area, including, the creation of day and evening student activity to support the retail sector, creating a vibrant reuse of vacant downtown buildings, and providing the opportunity for Middletown and area residents to attend college in their own community.

HEP is happy to provide any additional information that will allow this plan to move ahead and we look forward to working with you to complete the steps included in the application.

Thank you.

Sincerely,

William Luster
Higher Education Partners

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1. Project Description

In 2010, the City of Middletown, facing a troubling level of downtown disinvestment, purchased five vacant downtown buildings in the Central Business District (CBD). Taking this aggressive downtown revitalization step illustrated just how serious Middletown City officials were about creating activity and opportunity in their struggling downtown district.

City officials purchased the buildings to assist in luring a college to their struggling downtown. This plan was based in their belief that a downtown college would have multiple positive benefits to the area, including, the creation of day and evening student activity to support the retail sector, creating a vibrant reuse of vacant downtown buildings, and providing the opportunity for Middletown and area residents to attend college in their own community.

This forward thinking and bold action by the City is the key reason that Higher Education Partners (HEP) has chosen to invest \$2.15 million in creating a downtown Middletown campus for Cincinnati State Technical and Community College. Specifically, HEP will purchase and redevelop both the CG&E Building (approx 60,000 sq ft) and the former Middletown Senior Citizen's Center (20,286 sq ft) into a downtown college campus.

Now, less than two years after the City's bold purchase, their plan is very close to becoming a reality.

The proposed Section 108 loan of \$1 million will be loaned to Higher Education Partners (HEP) who will utilize the funding for soft and hard costs associated with the acquisition, design and redevelopment of the CG&E Building and acquisition of the former Middletown Senior Citizens Center in downtown Middletown. These two prominent downtown sites will be used as part of a collaborative revitalization effort that will bring a satellite campus for Cincinnati State Technical and Community College (CSTCC) to the Middletown Central Business District (CBD).

Higher Education Partners was established in 2009 and has been successful in opening two privately-funded college campuses in Massachusetts. The first campus, opened in collaboration with Bristol Community College, opened in fall of 2010 with 200 students and enrollment has now risen five-fold. The second site, also in Massachusetts, was opened in collaboration with Northern Essex Community College in the fall of 2011 and similarly, has experienced steady growth from first semester to second. Ninety percent of the students in HEP's Massachusetts projects are low-mod income students. In addition to their Middletown and Massachusetts campuses, HEP is working with a number of colleges, including but not limited to:

- Owens Community College in Toledo, Ohio
- Eastern Gateway Community College in Steubenville, Ohio
- James Rhodes Community College in Lima, Ohio
- Columbus State College in Columbus, Ohio
- Massasoit Community College in Brockton, Massachusetts

ABOUT MIDDLETOWN

Middletown is a midsized town of 48,694 (2010 Census), located approximately 30 miles north of Cincinnati and 20 miles south of Dayton. The City, once located on a hydraulic canal of the Great Miami River, has had a long heritage of industrial activity, especially paper and steel manufacturing. Like many old manufacturing towns in the Midwest, Middletown has suffered in the wake of these industries closing and has been significantly affected by job loss and a legacy of environmental issues.

In December 2008, Middletown was listed by Forbes Magazine as one of "America's 10 Fastest-Dying Towns". As of 2007, Middletown had over 10,700 individuals (22%) and over 2,700 families (16.8%) living below the poverty level, as reported by the U.S. Census 2005-2007 American Community Survey (ACS). These rates increased by over 50% since the 2000 Census and are well above the respective national rates of 13.3% and 9.8%. The 2007 average annual per capita income in the City was only \$19,634, the median household income was only \$37,000, and 9.1% of households earned less than \$10,000. The annual unemployment rate in the City was 7.2% in 2008. The average annual per capita income in 2007 inflation-adjusted dollars was only \$19,634 and 11 % of households earned less than \$10,000. Per the U.S. Bureau of Labor Statistics, the City's unemployment rate reached 12.9% as of June 2009, and is still just below 9% today.

Since 2007, when the bulk of the available economic data was last collected by the U.S. Census, the City's economic situation has only worsened. Middletown's residents were hit harder than most by the recent recession due to the low income levels that were prevalent even before the recession, as well as the City's long history of foreclosures and job losses. The City's volume of Section 8 vouchers, which have more than doubled since 2000, is the largest amount in the region.

The majority of the City's jobs are in the steel, automotive and paper industries. The City's leading employer, a Fortune 500 company, relocated their headquarters in 2007 eliminating hundreds of high paying jobs. While leaving behind a significant Brownfield, the Company took great leadership and chose to demolish the prior headquarters and associated buildings, thus leaving an attractive green space available for future redevelopment. The steel company once employed 8,000 (over a quarter of the City's labor force); today it employs around 2,100. This situation is further complicated by the City's significant disadvantages in attracting employers that offer higher paying jobs, as compared to some of the more affluent neighboring cities:

- Of residents age 25 and older, 20.4% do not have a high school diploma and only 12.2% have a bachelor's degree (2005-2007 ACS), greatly reducing the City's ability to attract high quality employers looking for an educated workforce.
- The low income level of residents greatly reduces the City's ability to attract support services such as retail/commercial enterprises, restaurants and hotels. This in turn, makes the City less desirable to other employers.
- Over 69% of Middletown's housing stock was developed prior to 1970. The age and condition of our housing limits the City's ability to attract moderate to high income residents to live in Middletown.

- The performance of local schools reflects the poverty in the community and further limits recruiting ability. Middletown City Schools have less than 80% graduation rate (2008) and have been designated as in "Continuous Improvement," previously meeting only five out of 30 state indicators for achievement (Ohio Department of Education Interactive Report Card).
- The age and types of existing available industrial facilities, namely the City's century old manufacturing plants, are not compatible with the needs of the existing marketplace.

THE PLAN

The first phase of this plan will include:

- HEP acquisition of the former CG&E and the former Middletown Senior Citizen Center buildings
- HEP renovating 20,000 sq ft of the CG&E Building into classrooms, instructional labs and administrative offices for CSTCC
- Fall 2012 campus opening for an estimated 200 students
- Potential programs to be offered by CSTCC (See Appendix G).

Funding for the project will come from two primary sources, equity from HEP and the Section 108 Loan.

Each building used in the project will include a mix of classrooms, instructional labs and administrative space. Further, the buildings will also accommodate community needs should the City or County need meeting or function space. In particular, the former Senior Citizens Center, which includes a function hall, food service capabilities, and break out rooms, as well as offices for staff, will be offered as a community resource. In addition, the buildings will be designed to be energy efficient to ensure that the development is environmentally friendly.

PROJECT LOCATION DOWNTOWN

Like many older urban downtown areas, the Middletown CBD has experienced significant disinvestment. Many of the storefronts are vacant and the historic Manchester Hotel is closed. Reinvestment is starting to occur, however, and many new projects are complete or underway:

- New United Dairy Farmers store and gas station. This project is an important turning point for the urban core as it represents the first new construction in several years.
- Pendleton Arts Center, a public/private partnership involving the renovation of a former department store into new artist studios and a banquet center. Within a year, the studio has become fully leased.
- Nationally known Beau Verre Stained Glass Studio located in a renovated historical building that was a former department store.

- Remediation and demolition of vacant Wrenn Paper mill and significant portions of Wausau Paper Mill. An active Wausau paper mill is operating in the CBD area.
- Acquisition of the tennis center by owner of adjacent golf course to create an expanded recreational complex along the river and develop a Golf Learning Center.
- Renovation of mid-rise office building along Central Avenue (main east-west corridor) to include mixed use development and renovated urban residential space.
- Preservation by the City of the Manchester Inn Hotel, the First National Bank Building, the Bank One Building, and the Masonic Temple buildings downtown for future expansion and reinvestment opportunities.

Approximately one block south of the former CG&E Building is the north end of the South Main Historic District. This district was listed on the National Register of Historic Places in 1978 and was one of the first such districts established in Ohio. The Historic District contains a variety of commercial, residential, office, and institutional buildings representing high quality architectural design which was the result of a very prosperous industrial economy in the 19th and early 20th centuries. This district is also protected by a local Historic Preservation ordinance which assures that modifications and improvements to the buildings are in keeping with the historic architectural styles. The neighborhood containing about 80 structures has been well preserved and is recognized throughout the region for its architectural beauty.

The City continues to partner creatively to improve its Central Business District. It recently partnered with the Community Building Institute to fund a new Downtown Coordinator position. The new Coordinator is onboard and spear-heading several recruitment and redevelopment efforts downtown. The Coordinator will implement a new Main Street program, will operate a façade renovation program, and will work with the Middletown Convention and Visitors Bureau to secure grants for additional downtown improvement and to attract tourists to the project area.

Middletown also recently provided seed money to the City's Community Improvement Corporation (Middletown Moving Forward, Inc.) to jumpstart fundraising efforts to position the corporation as a redevelopment entity.

PARKING FOR NEW CSTCC CAMPUS

❖ 1 N. Main St. (CG & E Building)

Cincinnati State officials estimate that the maximum number of students using this building will start at about 400 and grow to 2,000. Based on their Cincinnati campus, they are expecting that about 60% of the students will be attending classes in the daytime (7:30 am to 5:50 pm) and about 40 % of the students would be attending evening classes (6:00 pm to 10:30 pm).

There are over 900 public parking spaces within 1000 feet for the former CG&E Building. With a high level of vacancies in downtown and also a higher utilization of private parking lots, there is sufficient existing parking to support the demand for the former CG&E Building. If other buildings in the vicinity become occupied and demand more parking in the future, it is possible

to develop additional parking lots on existing vacant ground. There are several large vacant lots for possible future parking in very close proximity to the former CG&E Building.

❖ 140 N. Verity Pkwy. (Former Middletown Senior Citizens Center)

The former Middletown Senior Citizens Center is being targeted for a combination of classroom space, administrative offices, and meeting rooms. Cincinnati State anticipates that about 250 students, faculty and support staff will utilize this building with the split of 60% in the daytime and 40% in the evening.

At full occupancy of the Senior Center building there is expected to be a parking demand for about 65 to 85 parking spaces, which can be accommodated in the Manchester Hotel parking lot.

PROJECT ACCESS TO PUBLIC TRANSPORTATION

The City of Middletown operates its own bus transit service linking downtown to all areas of the City. In addition, the City partners with Butler County Regional Transit Authority to provide shuttle service to the County seat in Hamilton and to Oxford through Trenton. The County provides a night time demand jobs shuttle route to Middletown residents. The City and the County are currently exploring options to expand county-wide bus service both in county-wide locations and in run frequency to better serve the citizens of Middletown, and also to promote easy access to learning centers throughout the County including the proposed new CSTCC campus. With its central downtown location, the new campus will be well linked to public transportation for both students and staff. A bus route passes the project site and Middletown's bus station is within two blocks of each of the two campus buildings.

STUDENT AMENITIES AT CSTCC

The development site is also in close proximity to amenities, including local Pharmacies, medical services at Atrium Hospital and the newly constructed Community Health Center, the Middletown Public Library, the Middletown Arts Center, and multiple houses of worship in the surrounding neighborhoods.

Students at the new campus will benefit from many other nearby recreational and cultural amenities and services:

- YMCA
- Bicycle Trail
- Riverfront Pavilion
- 50 acre Smith Park
- Fastrax Skydiving Team at Middletown Regional Airport
- Golf and Tennis Facilities
- Pendleton Art Center
- Beau Verre Stained Glass Studio
- Sportsman Club
- Community Center

The campus will benefit the community by providing some services such as a bookstore and coffee shop, as well as drawing restaurants and other needed services for students.

CITIZEN PARTICIPATION PROCESS

At a public hearing conducted on April 17, 2012 from 4:30-5:30pm, as part of the City's citizen participation process, City staff announced that the City of Middletown, with the approval of City Council, will use the Section 108 Loan Guarantee Program to help finance the development of the Cincinnati State Campus. That announcement was early in the 30 day comment period which started on April 9, 2012 and ending on May 9, 2012. A legal ad was placed in the newspaper on April 3 and April 5, 2012. Comments received: TBA

2. Sources and Uses

Cincinnati State Technical & Community College

CG&E Building

Middletown, Ohio

CG&E Building Size: 60,000 sq. ft.

Phase One Build-Out: 20,000 sq. ft.

Project Schedule:

Board of Trustees Approval: November 2011

Building Selection: November 2011

Building Secured: February 2012

Design/Build Team Selected: February 2012

Financing: April/May 2012

Construction Start: May 2012

Construction Completion: September 2012

Sources:

Section 108 Loan \$1,000,000

HEP Equity 1,150,000

Total Sources \$ 2,150,000

Uses:

Hard Costs:

Construction	\$ 1,306,750
Equipment	\$ 456,879
Building Purchase	<u>\$ 200,000</u>
Sub Total Hard Costs	\$1,963,629

Soft Costs:

Architectural	\$ 82,871
Legal	\$ 20,000
Brokers Fee	\$ 26,000
Project Management	\$ 50,000
Building Permits	\$ 7,500
Sub Total Soft Costs	\$ 186,371

Total (Phase 1) Building Uses:

\$ 2,150,000

3. Project Structure and Participants

The principal developer of the project is Higher Education Partners (HEP). HEP is an established business with two campuses up and running in Massachusetts and several more in various stages of development in both Massachusetts and Ohio.

HEP and Cincinnati State will collaborate through a Collaboration Agreement (see Appendix F) that governs the business relationship. In essence, HEP makes an investment in physical infrastructure and makes educational space available to the College.

The two buildings to be used in the CSTCC project are the 60,000 square foot former CG&E office building and the 20,286 square foot former Middletown Senior Citizens Center. Currently vacant, these two buildings, which are separated by two city blocks, will establish the beginning of the CSTCC college campus. Included in the reuse of these buildings will be classrooms, instructional labs, student study areas, faculty and administration offices, a bookstore, and a cafeteria/coffee shop.

4. Repayment Schedule Still Valid?

Middletown, Ohio - Section 108 Loan

Proposed Loan Amount - \$1,000,000
 Loan Term - 20 years
 Balloon Payoff – 6 years
 Estimated Interest - 3.75%

YEAR	ANNUAL PRINCIPAL PAYMENT	ANNUAL INTEREST	TOTAL P & I PAYMENT	PRINCIPAL BALANCE DUE
At Closing				\$1,000,000
Year 1	\$34,231	\$36,916	\$71,147	\$965,769
Year 2	\$35,537	\$35,610	\$71,147	\$930,232
Year 3	\$36,893	\$34,254	\$71,147	\$893,339
Year 4	\$38,300	\$32,846	\$71,147	\$855,039
Year 5	\$39,761	\$31,385	\$71,147	\$815,278
Year 6	\$41,278	\$29,868	\$71,147	\$773,999
Balloon Payment:			\$773,999	\$0

Amortization table for remaining term assuming no balloon payment:

Year 7	\$42,853	\$28,293	\$71,147	\$731,146
Year 8	\$44,488	\$26,659	\$71,147	\$686,658
Year 9	\$46,185	\$24,961	\$71,147	\$640,473
Year 10	\$47,947	\$23,199	\$71,147	\$592,525
Year 11	\$49,777	\$21,370	\$71,147	\$542,749
Year 12	\$51,676	\$19,471	\$71,147	\$491,073
Year 13	\$53,647	\$17,499	\$71,147	\$437,426
Year 14	\$55,694	\$15,453	\$71,147	\$381,732
Year 15	\$57,819	\$13,328	\$71,147	\$323,913
Year 16	\$60,025	\$11,122	\$71,147	\$263,889
Year 17	\$62,315	\$8,832	\$71,147	\$201,574
Year 18	\$64,692	\$6,455	\$71,147	\$136,882
Year 19	\$67,160	\$3,987	\$71,147	\$69,722
Year 20	\$69,722	\$1,424	\$71,147	\$-

Total \$1,000,000

Principal

Total Interest \$422,932

Total Principal & Interest \$1,422,932

5. Collateral

The City's annual CDBG entitlement will be used to guarantee the Section 108 loan.

HEP General Partners will provide corporate and personal guarantees to the City of Middletown as loan security; in addition, the Section 108 Loan will be collateralized – in a junior position – by the real estate. A performance bond will be utilized with a final completion date for the project of no later than June 1, 2014.

HEP and the City of Middletown have agreed to a 20-year amortization schedule with a balloon payment to the City of Middletown at the end of year 6 to pay off the remaining balance. The HEP/City of Middletown agreement is enclosed herein as Appendix E.

The loan will be collateralized with the real estate that will be developed as part of the project in a junior position.

6. Project Implementation

The estimated project implementation schedule is as follows:

PROJECT STAGE	COMPLETION DATE
Design	1st Quarter 2012
Building Purchase by HEP Section 108 Loan required	April/May 2012
Construction Documents	April, 2012
Building Permit	April, 2012
Construction	May 2012 – September 2012

7. Eligible Activity

This funding request is eligible under the following HUD regulation:

24 CFR 570.201(q): Assistance to institutions of higher education. Provision of assistance by the recipient to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

The eligible activity in which CSTCC has demonstrated a capacity is education, which is an eligible use of funds under the public services regulation located at:

24 CFR 570.201(e): Public services. Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under Sec. 570.207(b)(4)), homebuyer down payment assistance, or recreational needs.

This application is consistent with the City of Middletown's 2010-2014 Consolidated Plan. Education, and the lack thereof, is designated as a significant problem within the City. The plan gives employment training a "medium" priority under community development needs. The plan states:

"The high level of poverty in Middletown affects more than just housing needs. Education is one of the greatest measures of future success. The 2007-08 high school graduation rates for Ohio's economically disadvantaged students were 72.7%, compared to 88.7% for students who were not economically disadvantaged.¹ Only 17% of Middletown residents have a Bachelor or Graduate degree.² Even if higher paying jobs are brought to the City, if strides are not made to improve the education level of our citizens, residents may not be qualified to take advantage of newer higher paying positions.

In the 2008-2009 school years, the Middletown City School District met only 5 of the 30 State Indicators for successful schools. The gaps in the education system begin at home, and the City of Middletown trails every school district in Butler County but one for aggregate Kindergarten readiness.³ More than 30% of the children who enter kindergarten in Ohio each year now require some type of intervention services. A large number of students in the Middletown City School District are on free or reduced lunches. The local school district trails state averages for all recorded indicators from 3rd to 8th grade, and graduates 5% less students than the average for the State of Ohio.⁴ The City must be an active partner with the school district in raising the education level of our citizens."

8. National Objective

The project meets the low-moderate income area benefit national objective. Middletown is eligible as a low-moderate income area on a citywide basis. Since transit service is provided throughout the City, the location of the buildings is convenient for all residents. The national objective for which this project falls, reads as follows:

24 CFR 570.208:

(a) Activities benefiting low- and moderate-income persons. Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) Area benefit activities. (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

BENEFITS TO LOW/MOD INCOME RESIDENTS

¹ The State of Poverty in Ohio: Building a Foundation for Prosperity; January 2010. Ohio Association of Community Action Agencies.

² See Table 2. Labor Force.

³ See United Way Success by 6; 2008-2009 Student KRA-L Performance.

⁴ See www.Reportcard.ohio.gov .

This project provides the ability to get an education to those low income students who do not own a car and are currently unable to travel to the Main Cincinnati campus 30 miles away. Downtown is surrounded by low income housing; the campus would be close enough for students living in the area to walk or bicycle to class, or to take the city bus.

CSTCC offers more affordable tuition than four year schools, while offering a curriculum designed to transfer to a four year program, such as the engineering tech degree. Students can take the first two years of a bachelor's degree at Cincinnati State and then enter a four-year college or university as a junior.

A year at Cincinnati State Technical and Community College costs around \$5,000 plus fees for an Ohio resident. That's around 50 percent less than the amount (\$8,434) you would pay at the average four-year Ohio public university, and it is only about 25 percent of the amount (\$19,710) you'd pay at the average four-year private college. After attending Cincinnati State for two years a student would have saved about \$8,500 over the average Ohio public university, and over \$30,000 for two years at the average private four-year college.⁵

Due to the increases need for financial aid, a financial aid representative will be based at the campus. In 2009-10, Cincinnati State students received more than \$56 million in loans, grants, scholarships, and other forms of financial aid.

According to a recent enrollment opportunity study conducted by a professional educational consulting firm (Maguire Associates), the Middletown campus offers a "safer" environment for females than the Main Cincinnati campus, females may be reluctant to travel to downtown Cincinnati, an area perceived as higher crime rate.

Training and certification courses provided through the Workforce Development Program at the Middletown campus will increase the wages for low/mod income residents. In addition to its academic and technical programs, the Workforce Development Center (WDC) at Cincinnati State offers many continuing education opportunities in Industrial and Quality Improvement Training; HAZMAT, Rescue, and Safety; Professional, Managerial and Leadership; and Health Business through courses, seminars, and on-site training for area businesses and industries

- The project increases opportunity for future employment: Within six months of graduation, nearly 90% of Cincinnati State grads are employed—much more than the national average for two-year colleges.
- More than 85% of employed graduates are likely to be in positions related to their majors—almost ten percent more than the national average.

10. Contact Information

For further information, please contact:

⁵ See <http://www.cincinnatistate.edu/admission-financial-aid/admissions/tuition-fees>.

Doug Adkins, Director
Department of Community Revitalization
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Middletown, OH 45042
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douga@cityofmiddletown.org

APPENDIX

- A: Certifications
- B: CG&E Building Location Map
- C: Former Middletown Senior Citizens Center Location Map
- D: City Council Vote
- E. City of Middletown/HEP Development Agreement
- F. HEP/Cincinnati State Technical College Collaboration Agreement
- G. Potential Listing of Program Offerings at CSTCC Middletown Branch

Appendix A



CPMP Non-State Grantee Certifications

Many elements of this document may be completed electronically, however a signature must be manually applied and the document must be submitted in paper form to the Field Office.

<input type="checkbox"/>	This certification does not apply.
<input checked="" type="checkbox"/>	This certification is applicable.

I.A-1. NON-STATE GOVERNMENT CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about –
 - a. The dangers of drug abuse in the workplace;
 - b. The grantee's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will –
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted –
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

- b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.
- 8.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

- 9. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- 10. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- 11. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official

Date

Judith A. Gilleland

Name

City Manager

Title

1 Donham Plaza

Address

Middletown, OH 45042

City/State/Zip

(513)425-7836

Telephone Number

<input type="checkbox"/>	This certification does not apply.
<input checked="" type="checkbox"/>	This certification is applicable.

I.A-2. Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

12. Maximum Feasible Priority - With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
13. Overall Benefit - The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2012, 2_____, 2_____, (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;
14. Special Assessments - It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force -- It has adopted and is enforcing:

15. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
16. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K and R, of title 24;

Compliance with Laws -- It will comply with applicable laws.

Signature/Authorized Official

Date

Name

Title

Address

City/State/Zip

Telephone Number

<input checked="" type="checkbox"/>	This certification does not apply.
<input type="checkbox"/>	This certification is applicable.

I.A-3. OPTIONAL CERTIFICATION

I.A-4. CDBG

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities, which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

Signature/Authorized Official

Date

Name

Title

Address

City/State/Zip

Telephone Number

<input checked="" type="checkbox"/>	This certification does not apply.
<input type="checkbox"/>	This certification is applicable.

I.A-5.

I.A-6. Specific HOME Certifications

The HOME participating jurisdiction certifies that:

Tenant Based Rental Assistance -- If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

Eligible Activities and Costs -- it is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

Appropriate Financial Assistance -- before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

Signature/Authorized Official

Date

Name

Title

Address

City/State/Zip

Telephone Number

<input checked="" type="checkbox"/> This certification does not apply.
<input type="checkbox"/> This certification is applicable.

I.A-7. HOPWA Certifications

The HOPWA grantee certifies that:

Activities -- Activities funded under the program will meet urgent needs that are not being met by available public and private sources.

Building -- Any building or structure assisted under that program shall be operated for the purpose specified in the plan:

1. For at least 10 years in the case of assistance involving new construction, substantial rehabilitation, or acquisition of a facility,
2. For at least 3 years in the case of assistance involving non-substantial rehabilitation or repair of a building or structure.

Signature/Authorized Official

Date

Name

Title

Address

City/State/Zip

Telephone Number

<input checked="" type="checkbox"/>	This certification does not apply.
<input type="checkbox"/>	This certification is applicable.

ESG Certifications

I, _____, Chief Executive Officer of Jurisdiction, certify that the local government will ensure the provision of the matching supplemental funds required by the regulation at 24 CFR 576.51. I have attached to this certification a description of the sources and amounts of such supplemental funds.

I further certify that the local government will comply with:

1. The requirements of 24 CFR 576.53 concerning the continued use of buildings for which Emergency Shelter Grants are used for rehabilitation or conversion of buildings for use as emergency shelters for the homeless; or when funds are used solely for operating costs or essential services.
2. The building standards requirement of 24 CFR 576.55.
3. The requirements of 24 CFR 576.56, concerning assurances on services and other assistance to the homeless.
4. The requirements of 24 CFR 576.57, other appropriate provisions of 24 CFR Part 576, and other applicable federal laws concerning nondiscrimination and equal opportunity.
5. The requirements of 24 CFR 576.59(b) concerning the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
6. The requirement of 24 CFR 576.59 concerning minimizing the displacement of persons as a result of a project assisted with these funds.
7. The requirements of 24 CFR Part 24 concerning the Drug Free Workplace Act of 1988.
8. The requirements of 24 CFR 576.56(a) and 576.65(b) that grantees develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted with ESG funds and that the address or location of any family violence shelter project will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter.
9. The requirement that recipients involve themselves, to the maximum extent practicable and where appropriate, homeless individuals and families in policymaking, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities as provided by 24 CFR 76.56.

10. The requirements of 24 CFR 576.57(e) dealing with the provisions of, and regulations and procedures applicable with respect to the environmental review responsibilities under the National Environmental Policy Act of 1969 and related authorities as specified in 24 CFR Part 58.
11. The requirements of 24 CFR 576.21(a)(4) providing that the funding of homeless prevention activities for families that have received eviction notices or notices of termination of utility services will meet the requirements that: (A) the inability of the family to make the required payments must be the result of a sudden reduction in income; (B) the assistance must be necessary to avoid eviction of the family or termination of the services to the family; (C) there must be a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and (D) the assistance must not supplant funding for preexisting homeless prevention activities from any other source.
12. The new requirement of the McKinney-Vento Act (42 USC 11362) to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. I further understand that state and local governments are primarily responsible for the care of these individuals, and that ESG funds are not to be used to assist such persons in place of state and local resources.
13. HUD's standards for participation in a local Homeless Management Information System (HMIS) and the collection and reporting of client-level information.

I further certify that the submission of a completed and approved Consolidated Plan with its certifications, which act as the application for an Emergency Shelter Grant, is authorized under state and/or local law, and that the local government possesses legal authority to carry out grant activities in accordance with the applicable laws and regulations of the U. S. Department of Housing and Urban Development.

Signature/Authorized Official

Date

Name

Title

Address

City/State/Zip

Telephone Number

This certification does not apply.
 This certification is applicable.

I.A-8. APPENDIX TO CERTIFICATIONS

Instructions Concerning Lobbying and Drug-Free Workplace Requirements

Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code) Check if there are workplaces on file that are not identified here. The certification with regard to the drug-free workplace is required by 24 CFR part 21.

Place Name	Street	City	County	State	Zip
Prior Cinergy Building	1 N. Main St	Middletown	Butler	OH	45042
City of Middletown	1 Donham Plaza	Middletown	Butler	OH	45042

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); "Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; "Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including:

- a. All "direct charge" employees;
- b. all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and
- c. temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Note that by signing these certifications, certain documents must be completed, in use, and on file for verification. These documents include:

1. Analysis of Impediments to Fair Housing
2. Citizen Participation Plan
3. Anti-displacement and Relocation Plan

Signature/Authorized Official

Date

Judith A. Gilleland

Name

City Manager

Title

1 Donham Plaza

Address

Middletown, OH 45042

City/State/Zip

(513)425-7836

Telephone Number

Appendix B
Former CG&E Building



Appendix C
Former Senior Citizens Center



Appendix D
City Council Vote

Appendix E

DEVELOPMENT AGREEMENT

This Agreement is made February _____, 2012 by and between HEP-OHIO I LLC, On Ohio Limited Liability Company with a business address of 800 Purchase Street, New Bedford, Massachusetts 02740 (HEP) and the City of Middletown, Ohio a municipality organized under the laws of the State of Ohio, with a business address of One Donham Plaza, Middletown, Ohio 45042 (Middletown) and in relation to Cincinnati State Technical and Community College, a non-profit corporation under the laws of the State of Ohio and a two year public Comprehensive Community College accredited by the State of Ohio (CSTCC). Michael Perik and Gerry Kavanaugh are signing as personal guarantors as set forth herein.

I. BASIC TERMS

The purpose of this Agreement is for Middletown to convey certain real property to HEP for the use by CSTCC in establishing a community college branch campus in Middletown, Ohio. However, the agreements, noted as HEP's Conditions Precedent (as hereinafter defined), must be signed, binding and in place before this agreement becomes effective.

- a. Conditions Precedent - Conditions precedent to the transfer of property called for by this Agreement are as follows (HEP's Conditions Precedent")
 - (i) HEP and CSTCC having formally entered into a collaboration agreement for the Property (as hereinafter defined) involved herein in the form attached hereto as **Exhibit A** ("Collaboration Agreement"). All parties hereto agree that minor changes to the Collaboration Agreement shall not affect the fulfillment of the HEP's Conditions Precedent herein.
- b. Transfer of Real Property - Middletown shall transfer by Quit Claim Deed to HEP and HEP shall accept Quit Claim Deeds to the following two parcels of real property:
 - (i) CG&E Building, 2 North Main Street, Middletown, Ohio more fully described in the Deed, which is attached hereto as **Exhibit B**, which is the Deed which will be recorded conveying said property to HEP ("Parcel 1").

As an exception to the conveyance called for above of Parcel 1, Middletown shall retain all rights to lease and use the portion of the rooftop area of the CG&E Building located on Parcel 1 (the "CG&E Building") that is currently used by Middletown for communication devices, antenna or other such ancillary uses thereto (the "Communication Devices") plus such other portions of the seventh floor of the CG&E Building currently utilized by Middletown to support and provide power to the Communication Devices and HEP shall allow Middletown reasonable access to the rooftop and seventh floor consistent with those uses. Middletown shall not be permitted

to utilize any other portion of the roof or seventh floor of the CG&E Building other than the area where the Communication Devices currently exist or install any additional structure, antennae or other equipment on the roof or seventh floor of the CG&E Building without the prior written consent of HEP, which consent shall not be unreasonably withheld conditioned or delayed. As a condition to the approval by HEP of any installation of additional equipment on the roof or seventh floor of the CG&E Building by Middletown, Middletown shall provide such analysis and assurance to HEP as is appropriate for the structure, antennae or other equipment that said additional proposed equipment shall not structurally impair the roof and/or the CG&E Building. The retention of this use by Middletown shall not be construed to prohibit the simultaneous use of the rooftop by HEP or CTSCC provided said use does not interfere with Middletown's use of same. If in the future Middletown is no longer using the rooftop for any Communication Devices and that there are no plans to use the rooftop for same in the near future, it agrees to convey these rights by further Quit Claim Deed to HEP six (6) months after said use is discontinued.

- (ii) Former Senior Center (the "Senior Center Building") located on the southwest corner of Columbia Avenue and Verity Parkway (Canal Street), Middletown, Ohio more fully described in the Deed, which is attached hereto as **Exhibit C**, which is the Deed which will be recorded conveying said property to HEP ("Parcel 2").

As an exception to the conveyance called for above for Parcel 2, Middletown and HEP shall have cross easements for ingress and egress through the parking lot of the former Columbia Avenue and the parking lot adjoining the Senior Center Building, which is hereby conveyed to HEP, all as set forth in the drawing attached to **Exhibit C** containing the legal description for the former Senior Center Building. This easement for ingress and egress shall also extend to the Middletown Art Center, the Dove Center and the public in general.

The CG&E Buildings and the Senior Center Building shall hereinafter collectively be referred to as the "Buildings." Parcel 1, Parcel 2 and the Buildings shall hereinafter be collectively referred to as the "Property".

- c. **As Is** – Subject to the terms set forth below, the property is being conveyed "as is" and in their existing condition and HEP accepts both the Property in said "as is" condition except as set forth in this Agreement. It is specifically contemplated that the mechanical systems in the Buildings are inoperable and need to be completely replaced. Middletown makes no warranties regarding the environmental condition of the Property or structures located thereon. HEP shall have no claim against Middletown for the condition of the Property in any respect except as set forth in this Agreement.
- d. **Personal Property Included** – The Property being conveyed also contains miscellaneous personal property owned by Middletown and said personal property is hereby also conveyed to HEP in its current "as is" condition (the "Personal Property"). HEP shall have no claim against Middletown for the

condition of the Personal Property in any respect. Middletown hereby represents and warrants to HEP that the Personal Property is owned by Middletown and that no liens, mortgages or pledges are attached to the Personal Property.

- e. Use -The use of the Buildings here being conveyed to HEP shall be as and for post-secondary educational space to include but not be limited to classrooms, instructional labs, offices and all ancillary uses associated with a post-secondary educational facility (the “Permitted Use”).
- f. Demolition; Construction; Performance Bond –HEP shall utilize best commercial efforts to begin Phase I of the interior demolition and construction of the new facilities on the Property no later than May 1, 2012 and shall utilize best commercial efforts to complete Phase I of both buildings no later than June 1, 2014 and HEP shall provide a performance bond satisfactory to the Law Director of the City of Middletown to guarantee its performance under this build out schedule and timetable. HEP shall remain the titled owner of this property until such time as a performance bond is fulfilled and released unless said change of ownership is agreed to in writing by the City. The performance bond shall name the City of Middletown as a protected party and give the City the right to obtain the bond proceeds and enter and complete the build out of this project. Reasonable delays not due to the intentional acts or non-acts of HEP including, but not limited to, force majeure, labor strikes or delays in shipment shall excuse HEP from the completion dates set forth in this Section 1.f.
- g. Consideration –The Property shall be conveyed by Middletown to HEP at the Closing as and for consideration of the transfer of the Property hereunder, HEP shall pay to the City of Middletown the sum of \$202,000.00 at the closing in cash as and for the transactions herein (the “Purchase Price”) which Purchase Price shall be allocated as follows: Parcel 1 - \$202,000.00; Parcel 2 - \$0. Parcel 2 is being donated by the Middletown to HEP.
- h. Section 108 Loan – If requested by HEP, Middletown agrees to allow and cooperate with HEP in the pursuit of a Section 108 loan for up to \$1,000,000 provided that said loan has a balloon payment requiring payment in full within six years of the date of the origination of that loan and provided that Mike Perik and Gerry Kavanaugh each personally guarantee the repayment of this loan.
- i. Conveyance Taxes – To the extent conveyance fees are due on this transaction, Middletown shall pay all state and local transfer, documentary and/or conveyance taxes customarily paid by sellers of real and personal property in the State of Ohio.
- j. Closing Prorations/Closing Statement – Middletown and HEP shall adjust, as of the day of the Closing, the following (collectively, the “Proration Items”): real

estate taxes and assessments, all ad valorem taxes, fire district taxes, tangible taxes and utility (including, but not limited to, water and sewer) bills (except as hereinafter provided). Middletown will be charged for the amount of all of the Proration items relating to the period up to and including the Closing, and HEP will be charged for all of the Proration Items relating to the period commencing on the day following the Closing. Such estimated Closing prorations shall be set forth on a closing statement to be prepared by HEP and submitted to Middletown for the Middletown's and HEP's mutual approval prior to the Closing (the "Closing Statement"). The Closing Statement, once agreed upon, shall be signed by Middletown and HEP and delivered to the title company designated by HEP for purposes of making the proration adjustments at the Closing subject to the final cash settlement. If the actual amounts of the Proration Items are not known as of the Closing, the prorations will be made at the Closing on the basis of one hundred percent (100%) of the previous year's tax bill. Final readings and final billings for utilities will be made if possible as of the Closing. Middletown will be entitled to all deposits, if any, presently in effect with the utility providers, and HEP will be obligated to make its own arrangements for deposits with the utility providers. The provisions of this Section 1.j. will survive the closing for one (1) year.

- k. Exemption from Real Estate/Tangible/Sales and Use Tax – Following the Closing and provided the Property is utilized for the Permitted Use, HEP shall, at its sole cost and expense, seek to obtain a full abatement from the State of Ohio and Butler County, Ohio of all real property taxes, tangible/personal property taxes, fire (if any) taxes, sales and use taxes, and any other exemptable taxes charged against the Property. Middletown shall reasonably cooperate with and assist HEP with respect to the application process for the forgoing abatement.
- l. Environmental – Middletown has provided to HEP-OHIO I LLC copies of all environmental reports it has in regard to 1 North Main Street, Middletown, Ohio and the former Senior Center. Middletown provides no warranties or indemnification in regard to the environmental condition of the properties.
- m. Title to the Property - The Property shall be conveyed by Middletown by Quit Claim Deed to HEP. The Property shall be conveyed by Middletown to HEP free of all encumbrances, liens, mortgages, judgment liens, mechanic's, materialmen's liens and all other liens except for the Cross Easement or other encumbrances expressly agreed to by and between Middletown and HEP.

- n. Personal Guarantee – Michael Perik and Gerry Kavanuagh individually and jointly and severally, guarantee the obligations hereunder of HEP-OHIO I LLC through the completion of the build out phase and until the obligations under the performance bond called for herein have been completed and the performance bond released.
- o. Insurance – Middletown shall, at its sole cost and expense, maintain liability and casualty insurance with respect to the Property and in the amounts currently insured until the Closing.

II. **REPRESENTATIONS OF HEP** - HEP hereby represents to the City of Middletown as follows:

- a. Organization and Good Standing - HEP is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite corporate power and authority to carry on the business in which it is engaged, to own the properties it owns and to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. HEP is duly qualified to do business and is in good standing as a foreign limited liability company in each jurisdiction in which the nature of its business or the ownership of its assets makes such qualification necessary and where the failure to be so qualified would have a material adverse effect on HEP.
- b. Authorization and Validity - The execution, delivery and performance by HEP of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and no other limited liability company approvals are necessary to properly authorize such transactions.
- c. Consents - No authorization, consent, approval, permit or license of, or filing with, any governmental authority or any other third party is required to authorize, or is required in connection with, the execution, delivery and performance of this Agreement and the Lease Agreement or any other agreements contemplated hereby or thereby on the part of HEP.
- d. No Violation - Assuming receipt of the consents and approvals set forth herein, neither the execution and performance of this Agreement, nor the consummation of the transactions contemplated hereby and thereby, will directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with, or result in a material violation of (i) any provision of the organizational documents of HEP, or (ii) any resolution adopted by HEP; (b) contravene, conflict with, or result in a violation or material breach of any provision of, or give any third party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any material contract to which

the HEP is a party; or (c) infringe upon, or misappropriate the subject matter of any, intellectual property rights of any third party. To the best of its knowledge, the HEP is not in violation of any judgment, decree, order, statute, rule, regulation, standard or policy of any governmental authority having jurisdiction over the HEP, which violation could reasonably be likely to have a material adverse effect on HEP's ability to enter and perform under this Agreement.

- e. Claims and Proceedings - To the best knowledge of HEP, no inquiry, action or proceeding has been asserted, instituted, or, to the best knowledge of HEP, threatened to restrain or prohibit the carrying out of the transactions contemplated hereby or to challenge the validity of such transactions or any part thereof or seeking damages on account thereof.

III. REPRESENTATIONS OF THE CITY OF MIDDLETOWN - The City of Middletown hereby represents to HEP.

- a. Organization and Good Standing - Middletown is a municipal corporation in the State of Ohio duly organized and validly existing and legally constituted. Middletown has and shall continuously maintain all requisite corporate power and authority to enter into this Agreement and consummate the transactions contemplated hereby.
- b. Authorization and Validity - This Agreement has been duly authorized by the Middletown and the City Manager of Middletown has been authorized to enter into it and fully bind Middletown to this Agreement prior to the time of its execution. At the Closing, Middletown shall provide HEP with a copy of all authorizations and resolutions authorizing Middletown to enter into this Agreement and to convey the Property to HEP.
- c. Consents - No authorization, consent, approval, permit or license of, or filing with, any governmental authority or any other third party is required to authorize, or is required in connection with, the execution, delivery and performance of this Agreement or any other agreements contemplated hereby on the part of Middletown. This provision specifically relates to this contract. Consents and approvals are still required for building permits, zoning certificates and the like, none of which are waived by this agreement.
- d. No Violation - Assuming receipt of the consents and approvals set forth herein, neither the execution and performance of this Agreement, nor the consummation of the transactions contemplated hereby, will directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with, or result in a material violation of (i) any provision of the organizational documents of Middletown, or (ii) any resolution adopted by Middletown; (b) contravene, conflict with, or result in a violation or material breach of any provision of, or give any third party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to

cancel, terminate or modify, any material contract to which the Middletown is a party; or (c) infringe upon, or misappropriate the subject matter of any, intellectual property rights of any third party. To the best of its knowledge, the Middletown is not in violation of any judgment, decree, order, statute, rule, regulation, standard or policy of any governmental authority having jurisdiction over Middletown, which violation could reasonably be likely to have a material adverse effect on the ability of Middletown to enter into this Agreement and convey the Property to HEP.

- e. Claims and Proceedings - No inquiry, action or proceeding has been asserted, instituted, or, to the best knowledge of Middletown, threatened to restrain or prohibit the carrying out of the transactions contemplated hereby or to challenge the validity of such transactions or any part thereof or seeking damages on account thereof.

IV. CLOSING

Subject to the satisfaction of all of the conditions precedent set forth above, including, but not limited to HEP's Conditions Precedent, the closing on the conveyance of the Property by Middletown to HEP shall occur on or before the forty fifth (45th) calendar day from the date the Collaboration Agreement is executed by and between HEP and CSTCC (the "Closing"). The Closing shall be held at the offices of Don Imhoff, Attorney at Law, at 300 N. Main Street, Suite 500, Middletown, Ohio 45042. Notwithstanding anything to the contrary and for the avoidance of doubt, if HEP and CSTCC shall not execute the Collaboration Agreement on or before April 1, 2012, this Agreement and the obligations of the parties contained herein shall be deemed null and void and of no further effect.

V. OTHER TERMS

- a. Amendment - This Agreement may not be amended or modified except by an instrument in writing signed by the parties hereto.
- b. Waiver - Any party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracy in the representations and warranties of another Party contained herein or in any document delivered by such Party pursuant hereto or (c) waive compliance with any agreement of another Party or condition to another Party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in a writing executed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition or as a waiver of any other term or condition of this Agreement. The failure of any Party to assert any of its rights under this Section V shall not constitute a waiver of any of such rights. No course of dealing between or among any

persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party under or by reason of this Agreement. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

c. Further Assurances - Each of the parties hereto shall use reasonable best efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable laws and to execute and deliver such documents and other papers as may be required to carry out the provisions of this Agreement and to consummate and make effective the transactions contemplated hereby.

d. Notices - All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly signed or made as of the date delivered if delivered personally or by overnight courier, when confirmed by telephone if delivered by facsimile, when confirmed by telephone or by response e-mail if delivered by electronic transmission or three (3) business days after being mailed by registered or certified mail (postage prepaid, return receipt requested), to the parties at the following addresses (or at such other address for a party as shall be specified by like notice, except that notices of changes of address shall be effective upon receipt):

If to the City of Middletown: The City of Middletown
One Donham Plaza
Middletown, Ohio 45042
Attention: City Manager
Telephone: 513-425-7836
Facsimile: 513- 425-7792

With a copy, to: The City of Middletown
One Donham Plaza
Middletown, Ohio 45042
Attention: Law Director
Telephone: 513-425-7830
Facsimile: 513-425-7780

If to HEP, to: HEP-OHIO I LLC
800 Purchase Street, Suite 420
New Bedford, Massachusetts 02740
Attention: Jonathon Muller, Chief Financial Officer
Telephone: 508-454-0531
Facsimile: _____

With a copy, to: Adler Pollock & Sheehan P.C.

One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
Attention: John D. Russell, Esquire
Telephone: 401-274-7200
Facsimile: 401-751-0604

- e. Severability - Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law or public policy, such provision shall be ineffective only to the extent of such prohibition or invalidity, and all other terms of this Agreement shall remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.
- f. Construction - The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any person. The parties intend that each representation, warranty and covenant contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant. The word "including" shall mean including without limitation regardless of whether such words are included in some contexts but not others.
- g. Non-merger - Any provisions of this Agreement that call for continuing obligations or duties following the closing on the real estate herein shall not be merged into the deed or deeds herein, but shall survive closing and shall remain binding on the parties. The obligations and duties that shall survive closing and not be merged into the deed shall include but not be limited to the obligations in Paragraphs I.b(i); I.b(ii); I.f.; I.e.; I.h.; and I.n.
- h. Captions - The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.
- i. Entire Agreement - The exhibits and schedules identified in this Agreement are incorporated herein by reference. This Agreement and the documents referred to herein contain the entire agreement between the parties and supersede any prior understandings, agreements or representations by or

between the parties, written or oral, which may have related to the subject matter hereof in any way, including the summary of principle terms, if any.

- j. Counterparts - This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.
- k. Governing Law and Forum Selection - This Agreement is governed by and construed and enforced in accordance with the laws of the State of Ohio without regard to the conflict of law provisions thereof, and each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the United States District Court for the Southern District of Ohio, or in the state courts of the State of Ohio, if the legal action, suit or proceeding lacks the subject matter jurisdiction to be brought in the United States District Court for the District of Ohio and irrevocably accepts and submits to the sole and exclusive jurisdiction of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party.
- l. Parties in Interest - Nothing in this Agreement, express or implied, is intended to confer on any third party other than the parties and their respective successors and assigns any rights or remedies under or by virtue of this Agreement.
- m. Delivery by Facsimile or PDF - This Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by means of portable document format ("PDF") transmission, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such contract, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract shall raise the use of a facsimile machine or PDF transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or PDF transmission as a defense to the formation of a contract and each such Party forever waives any such defense.
- n. Brokerage Fees - HEP and Middletown represent and warrant to the other party hereto that either has not dealt with any broker or finder in connection with this Agreement. HEP agrees to indemnify and hold Middletown free and harmless from and against all claims for broker commissions or fees and/or finder's fees by any person or entity claiming to have been retained by HEP in connection with this Agreement. Middletown agrees to indemnify and hold HEP free and harmless from and against all claims for brokerage commissions

or fees and/or finder's fees by any other person or entity claiming to have been retained by Middletown in connection with this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed this agreement as of the day and year first above written.

HEP-OHIO I LLC

Michael Perik, Authorized Signatory

PERSONAL GUARANTORS:

Michael Perik, Individually and jointly and severally

Gerry Kavanaugh, Individually and jointly and severally

CITY OF MIDDLETOWN

By: _____

Name: Judith A. Gilleland

Title: City Manager

Attest: _____

Name: Betsy Parr

Title: Clerk of City Council

Authorized by Ordinance No. O2011-_____,

adopted

December 20, 2011

Approved as to form:

Les Landen, Law Director of City of Middletown

Appendix F

HEP Draft 3/5/12

COLLABORATION AGREEMENT

This COLLABORATION AGREEMENT (this “**Agreement**”) is made as of March ___, 2012 (the “**Effective Date**”) by and between HEP-Ohio I, LLC, a Delaware limited liability company, with a business address of c/o Higher Education Partners, 800 Purchase Street, New Bedford, Massachusetts 02740 (“**HEP**”), and Cincinnati State Technical and Community College, a two-year public comprehensive state community college and a political subdivision of the State of Ohio (“**CSTCC**”).

W I T N E S S E T H:

WHEREAS, HEP and CSTCC desire to collaborate to create an environment and facility for CSTCC to: (i) expand the number of students admitted to CSTCC’s degree-granting programs for education and training at the Facility (as hereinafter defined); (ii) expand specialties for which CSTCC is able to offer education, training and degrees at the Facility; and (iii) accelerate the pace of education and training, offering it to a wider audience of prospective students through the CSTCC’s day and evening courses, new online distance learning opportunities and other best practices (collectively, the “**Collaboration**”).

NOW, THEREFORE, in consideration of these premises and the mutual covenants, agreements, representations and warranties herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HEP and CSTCC hereby agree as follows and commencing as of the Effective Date:

1. DEFINITIONS. THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW.

1.1 “Academic Programs” means all for-credit academic programs and non-credit offerings created, managed and delivered by CSTCC at the Facility.

1.2 “Accrediting Body” means any entity or organization, whether governmental or government-chartered, private or quasi-private, that engages in the granting or withholding of accreditation of public postsecondary institutions or Academic Programs provided by such institutions in accordance with standards and requirements related to the performance, operations, financial condition or academic standards of such institutions.

1.3 “Affiliate” with respect to any Person (as hereinafter defined), shall mean any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this Agreement, “control” (including with correlative meanings, the terms “controlling”, “controlled by” or “under common control with”) as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

1.4 “Annual Budget” means the annual operating and capital budget agreed to by the Parties for each Fiscal Year, as more particularly described in Section 7.2.

1.5 “Architect” means that certain architect or engineer engaged by HEP to design the Facility.

1.6 “Board of Trustees” means the Board of Trustees of CSTCC.

1.7 “Code” shall have the meaning set forth in Section 11.

1.8 “Collaboration” has the meaning set forth in the Preamble.

1.9 “Collaboration Activities” means all activities undertaken by the Parties that are reasonably related to, and for the advancement of, the Collaboration.

1.10 “Confidential Information” means any and all information or data, whether in written or physical form, marked “Confidential” and exchanged by the Parties pursuant to and in execution of their obligations and in exercise of their rights under this Agreement.

1.11 “Cost Overrun” shall have the meaning set forth in Section 4.3(b).

1.12 “CSTCC Content” means the works of authorship and other content created by CSTCC for instructional purposes in connection with the Academic Programs, including, without limitation, presentations, curriculum, course descriptions, course materials, webcasts, video and audio clips, pictures, sound files, graphics, logos and other similar materials and content.

1.13 “CSTCC Controlled Accounts and Records” means the full and accurate accounts and records required to be maintained by CSTCC in connection with CSTCC Controlled Collaboration Activities, including, without limitation, records with respect to the Academic Programs and CSTCC Content; provided, however, in no event shall CSTCC Controlled Accounts and Records include records with respect to the Facility, Equipment or expenses incurred under the Joint Marketing Plan.

1.14 “CSTCC Controlled Collaboration Activities” shall have the meaning set forth in Section 2.2.

1.15 “CSTCC Direct Costs” means all costs and expenses incurred by CSTCC directly related to the performance by CSTCC of the CSTCC Controlled Collaboration Activities in accordance with this Agreement, provided that such costs and expenses are contemplated by the Initial Budget or Annual Budget, as the case may be, and consistent with Standard Academic Administrative Practices.

1.16 “CSTCC Indemnified Parties” means CSTCC and its directors, trustees, managers, officers, employees, affiliates, successors and assigns.

1.17 “CSTCC Personal Property” means all equipment, materials and other personal property owned by CSTCC used in connection with, or located at, the Facility.

1.18 “Day” means calendar day.

1.19 “Dispute” means any controversy or claim, whether based on contract, tort, statute, or other legal or equitable theory (including any claim of fraud, misrepresentation, or fraudulent inducement), arising out of or related to this Agreement.

1.20 “DOE” means U.S. Department of Education.

1.21 “Educational Agency” means and includes, without limitation, any and all applicable Person(s), Accrediting Body, entity or organization, municipal, state or federal authority, agency, regulatory body and licensing board, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding Educational Approvals (as hereinafter defined) for, or otherwise regulates, postsecondary institutions or Academic Programs provided by such institutions, their agents or employees

in accordance with standards relating to performance, operation, financial condition or academic standards of such institutions, and the provision of financial assistance to such institutions or students attending such institutions, including, without limitation, OBR, DOE, Ohio Board of Registration in Nursing, National League for Nursing Accreditation Commission, Accreditation Council for Occupational Therapy Education, Commission on Accreditation of Allied Health Education Programs, Commission on Accreditation for Health Informatics and Information Management Education, Commission on Massage Therapy Accreditation, and Commission on Accreditation for Physical Therapy Education.

1.22 “Educational Approvals” means any applicable and necessary licenses, permits, consents, franchises, approvals, authorizations, certifications or accreditations issued by any Educational Agency in connection with the operations of postsecondary institutions or participation of such institutions in any student financial assistance programs including the Title IV Programs (as hereinafter defined).

1.23 “Education Records” means all records described by 34 CFR § 99.3 of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, maintained by, for or on behalf of, CSTCC.

1.24 “Enrollment Data” shall have the meaning set forth in Section 7.2(c).

1.25 “Environmental Laws” means any and all laws, regulations, or other applicable requirements relating to: (a) releases or threatened releases of Hazardous Substances (as hereinafter defined); (b) pollution or protection of employee health or safety, public health or the environment; or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances.

1.26 “Equipment” means all necessary and reasonable equipment for the proper operations of the Facility including, but not limited to, technology, security systems, furniture and other applicable systems, all as more particularly set forth on Exhibit A attached hereto and made a part hereof.

1.27 “Extended Term” shall mean the four (4) five (5) year periods following the end of the Initial Term as more particularly described in Section 3.2.

1.28 “Facility” means the Real Property after Substantial Completion.

1.29 “Facility Service Area” means the area within a ten (10) mile radius of the Facility.

1.30 “Fiscal Year” means July 1 of any given calendar year until June 30 of the following calendar year.

1.31 “Final Plans and Specifications” means the working drawings and specifications describing the size, character, design, construction, materials, finishes, structure and mechanical, electrical and other systems of the Facility produced by the Architect and approved by the Parties in accordance with this Agreement.

1.32 “Force Majeure Event” means (a) any fire, explosion, unusually severe weather, natural disaster or Act of God; (b) epidemic; (c) any nuclear, biological, chemical, or similar attack; (d) any other public health or safety emergency; (e) any act of terrorism; (f) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (g) damage to machinery or equipment; any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (h) any strike, lockout or other labor dispute or action; (i) any action taken in response to any of the foregoing events by any civil or military authority; or (j) any other similar event beyond a Party’s reasonable control; provided that financial inability in and of itself shall not be a Force Majeure Event.

1.33 “Governmental Authority” means any applicable municipal, state or federal governmental agency, authority, department, commission, board, bureau, court or instrumentality of the United States, any domestic state, or any foreign country, and any political subdivision or agency thereof, and includes any authority having governmental or quasi-governmental powers, including any administrative agency or commission, but expressly excludes any Educational Agency.

1.34 “Hazardous Substances” means any hazardous chemical, hazardous substance, hazardous waste, pollutants, contaminants or similar term (including, without limitation, petroleum products, asbestos containing materials, and PCBs) as defined in the Comprehensive Environmental

Responsibility Compensation and Liability Act as amended (42 U.S.C. 9601, et seq.), any rules or regulations promulgated thereunder or any other applicable federal, state or local law, rule or regulation dealing with environmental protection, including petroleum and petroleum products.

1.35 “HEP Content” means any academic programs, software, content or other intellectual property or rights developed or acquired by HEP, at HEP's sole cost and expense, and used by CSTCC in connection with this Agreement or otherwise.

1.36 “HEP Controlled Accounts and Records” means the full and accurate accounts and records required to be maintained by HEP in connection with HEP Controlled Collaboration Activities.

1.37 “HEP Controlled Collaboration Activities” shall have the meaning set forth in Section 2.3.

1.38 “HEP Operational Costs” means all costs and expenses incurred by HEP in performing the HEP Controlled Collaboration Activities in accordance with the terms of this Agreement.

1.39 “Initial Academic Programs” means the Academic Programs that are proposed to be offered by CSTCC during its first twelve (12) months of Academic Program offerings and as more particularly set forth in the Initial Budget.

1.40 “Initial Budget” means the budget for the period commencing on the Effective Date and ending **[June 30, 2012]**, which budget is more particularly described in Section 7.1 and which (to the extent it is completed) is set forth on Exhibit B, attached hereto and made a part hereof.

1.41 “Initial Term” shall have the meaning set forth in Section 3.1.

1.42 “Joint Approval Activities” shall have the meaning set forth in Section 2.4.

1.43 “Joint Marketing Plan” means the marketing plans developed jointly by the Parties that include, among other things, the activities and requirements regarding the production of Marketing Materials and all other activities relating to the promotion of the Academic Programs.

1.44 “Joint Materials” means the works of authorship and other content created by CSTCC and HEP under the Joint Marketing Plan or otherwise under this Agreement and which may be made available to each Party under this Agreement, including, but not limited to, presentations, webcasts, video and audio clips, pictures, sound files, graphics, logos, and other similar materials and content; provided, however, in no event shall any CSTCC Content or HEP Content be considered or deemed Joint Materials.

1.45 “Laws” mean any federal, national, supranational, state, provincial, local or similar statutes, laws, ordinances, regulations, rules, codes, orders, requirements, rules of law (including common law), or Accrediting Body standard or policy.

1.46 “Loss” means liabilities, losses, damages, claims, demands, causes of action, deficiencies, taxes, fines, costs and expenses, interest, awards, judgments and penalties.

1.47 “Marketing Materials” means any written materials created specifically for the Academic Programs to encourage or promote student enrollment in the Academic Programs, including, without limitation, advertisements, brochures, pamphlets, newsletters, statement stuffers, fulfillment materials, seminars, convention exhibits, telemarketing scripts or talking points, take-one displays, emails, website postings and any other advertisement or marketing materials for the Academic Programs in any media.

1.48 “Major Capital Improvement” means any improvement, repair or replacement to the Facility, or the personal property, fixtures, machinery, equipment, systems or apparatus located therein or used in connection therewith that is: (a) capitalized by HEP in accordance with generally accepted accounting principles, (b) not included within the Work, and (c) not funded or reimbursed by Revenue as either a CSTCC Direct Cost or a HEP Operational Cost in accordance with the terms of this Agreement.

1.49 “OBR” means the Ohio Board of Regents.

1.50 “Organizational Documents” means the articles or certificate of incorporation, by-laws, charter, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company operating agreement, trust agreement and all other similar organizational documents of any Person other than an individual.

1.51 “Parties” (collectively) or **“Party”** (individually) shall refer to HEP and/or CSTCC.

1.52 “Person” means any individual, partnership, limited liability company, corporation, cooperative, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Authority, Educational Agency, body or entity or any department, agency or political subdivision thereof.

1.53 “Preliminary Design Documents” means the drawings illustrating the scale and relationship of the various Facility components, which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, as well as major architectural and interior finishes.

1.54 “Project Development Schedule” shall mean the schedule for completion of the Work and other Collaboration Activities necessary to commence the Academic Programs, which schedule is set forth on Exhibit C.

1.55 “Real Property” means the land and improvements described on Exhibit D attached hereto and made a part hereof located in Middletown, Ohio to be acquired or leased by HEP in connection with this Agreement and improved in accordance with the design documents.

1.56 “Revenue” means, collectively, the following: (a) all student related charges, fees, collections and revenue recognized or collected by CSTCC, including, without limitation, participation or material fees, tuition, rental payments, State Subsidy and any other subsidies received from any municipal, state or federal agency, board, entity or from any other source from or on behalf of (i) students enrolled in classes held at the Facility, and (ii) students whose principal place of residence is located within the Facility Service Area who enroll in CSTCC online classes, regardless of whether the in-person class occurs at the Facility or another CSTCC location; and (b) any other charges, fees, collections and revenue otherwise recognized or collected by CSTCC in connection with the Academic Programs or the Facility. State Subsidy shall only be included in Revenue to the extent, and in the year: (a) it is actually collected, and (b) it is attributable to students utilizing the Facility.

1.57 “Service Fee” means fifteen percent (15%) of Revenue in accordance with Exhibit E attached hereto and made a part hereof.

1.58 “Standard Academic Administrative Practices” means the educational, operational and business standards, practices and procedures used by comparable community colleges located in the State of Ohio for comparable facilities and academic programs.

1.59 “State Subsidy” means Revenue collected by CSTCC relating to state share of instruction; provided, however, State Subsidy shall only be included in Revenue to the extent and in the year that it is actually collected.

1.60 “Substantial Completion” means that (a) the Work (as hereinafter defined) has been completed in accordance with the Final Plans and Specifications and Initial Budget, and (b) all required permits from the applicable Governmental Authorities necessary for HEP and CSTCC to occupy the Facility have been issued.

1.61 “Term” means, together, the Initial Term and the Extended Term as described in Section 3.

1.62 “Title IV Programs” means the programs of federal student financial assistance administered pursuant to Title IV of the Higher Education Act of 1965, as amended.

1.63 “Work” means the labor, material, equipment and services required to complete the Facility and install all Equipment in accordance with the Final Plans and Specifications and Initial Budget, and includes all labor, material, equipment and services provided or to be provided by HEP to fulfill HEP’s obligations for development of the Facility as more particularly described in Section 4.

2. COLLABORATION.

2.1 Collaboration Activities. The Parties agree to cooperate and perform all Collaboration Activities necessary for the success of the Collaboration in good faith and in accordance with the terms and conditions set forth in this Agreement.

2.2 CSTCC Controlled Collaboration Activities. Notwithstanding any other provision of this Agreement to the contrary, the Parties expressly acknowledge and agree that the operation and control of

the Academic Programs and all Educational Approvals relating thereto shall be under the exclusive control of CSTCC. Without limiting the foregoing, CSTCC shall have sole responsibility for, and control over, the following activities, which shall be carried out in accordance with Laws, this Agreement, Educational Approvals, existing collective bargaining agreements and established CSTCC policies and procedures and Standard Academic Administrative Practices (collectively, the **"CSTCC Controlled Collaboration Activities"**):[Note: Under review by CSTCC.]

- (a) establishment of standards for the admission of students to the Academic Programs and management of student admission and enrollment services;
- (b) management of all general administrative and operational services related to the Academic Programs including without limitation the following:
 - (i) the provision of academic student services, including "help desk" and student advisement and retention services, and student completion, satisfaction and monitoring services;
 - (ii) financial management services, including, but not limited to student billing services, Revenue collection services, and other bursar services; and
 - (iii) general human resources and employee administrative services and functions in support of the Academic Programs, including, but not limited to payroll services.
- (c) administration and management of financial aid for students enrolled in the Academic Programs, and management of relationships with providers of student financial aid;
- (d) design, development and adoption of each Academic Program and the curricula and course materials therefore, including approval of the courses to be offered and the nature and level of the credit ascribed thereto;
- (e) development of the CSTCC Content;
- (f) establishment for the Academic Programs of: (i) the applicable standards, prerequisites, requirements, and measures of student performance; (ii) the standards for the evaluation of the performance of students enrolled in such Academic Programs; and (iii) the processes for the evaluation of such student performance;
- (g) establishment of procedures and requirements for the awarding of academic degrees and other credentials to students enrolled in the Academic

Programs, and awarding, in accordance with such procedures, all academic degrees and other credentials to such students who have qualified to receive them;

(h) procurement and continued maintenance of all necessary Educational Approvals for the Academic Programs and the locations at which the Academic Programs are offered;

(i) recruitment and selection of licensed, accredited and qualified faculty and other instructional staff for the Academic Programs; and

(j) implementation of standards for the appointment, supervision and evaluation of faculty and other instructional staff for the Academic Programs and supervision and management of such faculty and staff.

2.3 HEP Controlled Collaboration Activities. Notwithstanding any other provision of this Agreement, the Parties expressly acknowledge and agree that HEP will retain each and all rights, duties, responsibilities and functions as are necessary for management, ownership, repair and operation of the Facility in accordance with this Agreement (collectively, the "**HEP Controlled Collaboration Activities**").

2.4 Joint Approval of Collaboration Activities. Notwithstanding any other provision of this Agreement to the contrary, the Parties shall not undertake any of the following Collaboration Activities ("**Joint Approval Activities**") without the prior written consent of each Party:

(a) modify, limit, change or eliminate any Academic Program or other source of potential Revenue at the Facility unless such action is (i) uniform across all CSTCC facilities and operations, (ii) contemplated by the Initial Budget or Annual Budget, and (iii) consistent with Standard Academic Administrative Practices; **[NOTE: Open – CSTCC counsel to provide example of concern]**

(b) increase any CSTCC Direct Cost unless such increase is (i) uniform across all CSTCC facilities and operations, (ii) contemplated by the Initial Budget or Annual Budget, and (iii) consistent with Standard Academic Administrative Practices;

(c) increase any HEP Operational Cost unless such increase is contemplated by the Initial Budget or Annual Budget, and consistent with customary real estate practices; or

(d) initiate any action that could reasonably be expected to adversely affect in any material respect the tax liabilities or tax and financial reporting position of either Party.

I.B. Notwithstanding anything set forth in Section 2.4(a), however, no involuntary loss of accreditation by CSTCC for any Academic Program shall be considered a Joint Approval Activity. In addition, notwithstanding anything set forth in Section 2.4(b), CSTCC may increase any CSTCC Direct Cost not otherwise in compliance with the limitations set forth in Section 2.4(b) without HEP's prior written approval so long as CSTCC agrees that such increase is not considered a CSTCC Direct Cost for purposes of Exhibit E.

2.5 Disputes Related to Joint Approval Activities. If the Parties are unable to agree upon the resolution of any Joint Approval Activity, then such disagreements shall be resolved in accordance with the dispute resolution procedures set forth in Section 20.5.

2.6 Level of Service.

(a) Each of the Parties agrees that, in performing the Collaboration Activities under this Agreement, it shall: (a) allocate the performance of the Collaboration Activities to sufficient personnel with appropriate experience, knowledge and competence; and (b) perform such Collaboration Activities at a performance level equal to the level at which it is then providing the same or similar services with respect to its own business and operations.

(b) Each Party shall have responsibility for and complete discretion with respect to supervision and management of its employees and third-party contractors providing the Collaboration Activities.

2.7 Board of Trustees. CSTCC shall use all reasonable efforts to provide HEP with advance notice of all Board of Trustee meetings or Board of Trustee subcommittee meetings where the agenda includes a discussion about the Collaboration, the Facility or the Academic Programs. Such notice shall be provided by facsimile or email in accordance with Section 21.6 and no later than CSTCC is required to notify the public under the State of Ohio's open meeting laws. HEP shall not be permitted to attend executive sessions of the Board without the permission of the chairperson of the Board of Trustees.

2.8 Joint Marketing Plan.

(a) The Parties shall collaborate and use commercially reasonable efforts to establish, and conduct the applicable activities under, the Joint Marketing Plan. The Parties shall consult and negotiate with each other in good

faith to establish the Joint Marketing Plan and to amend or modify the Joint Marketing Plan on an annual basis or more frequently as the Parties may agree. The Parties shall operate within the constraints of the marketing budget set forth in the Initial Budget or the Annual Budget, as applicable.

(b) Subject to HEP's compliance with the terms and conditions of this Agreement, CSTCC hereby grants to HEP a limited, nonexclusive, nontransferable and non-assignable license to use any trademarks and logos approved by CSTCC in the Joint Marketing Plan solely in connection with exercising its rights and performing its obligations under the Joint Marketing Plan. Subject to CSTCC's compliance with the terms and conditions of this Agreement, HEP hereby grants to CSTCC a limited, nonexclusive, nontransferable and non-assignable license to use any trademarks and logos approved by HEP in the Joint Marketing Plan solely in connection with exercising its rights and performing its obligations under the Joint Marketing Plan.

3. TERM.

3.1 Initial Term. Unless earlier terminated in accordance with Section 17.1 of this Agreement, the initial term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the later of: (i) the conclusion of the 2032 summer semester; or (ii) the twentieth (20th) anniversary of the date of Substantial Completion (the “Initial Term”).

3.2 Extended Term. CSTCC shall have the right to extend the Initial Term for up to four (4) terms of five (5) years (each an “Extended Term”) following the expiration of the Initial Term, provided that (a) CSTCC shall not be in default under the terms of this Agreement at the end of the Initial Term or then current Extended Term, as the case may be; and (b) CSTCC provides notice to HEP of CSTCC’s exercise of its option to extend this Agreement at least one year in advance of the expiration of the Initial Term or then current Extended Term, as the case may be. All terms and provisions of this Agreement applicable during the Initial Term shall be applicable to each Extended Term.

I.C. **3.3 Extension after Major Capital Improvement.** The Term of this Agreement may be extended for a period of time mutually acceptable to CSTCC and HEP to reflect the investment in the Facility of, and condition to, any Major Capital Improvement. Prior to the start of any such Major Capital Improvement, CSTCC and HEP shall enter into a written amendment of this Agreement to reflect any extension of the Term and the other terms or conditions,

if any, of the Major Capital Improvement. Notwithstanding any term or condition of this Agreement to the contrary, HEP shall not be required to make any Major Capital Improvement without the terms of this Agreement being amended to the satisfaction of HEP, in HEP's sole and absolute discretion.

4. ACQUISITION OF THE FACILITY AND COMPLETION OF THE WORK.

4.1 Acquisition of the Real Property.

(a) HEP shall utilize all commercially reasonable efforts to purchase or acquire all necessary rights in the Real Property for the purposes set forth in this Agreement in accordance with the Project Development Schedule. If HEP is unable to acquire the Real Property for the amount set forth in the Initial Budget, then, upon sixty (60) Days prior written notice to CSTCC, HEP shall have the right to terminate this Agreement and the Parties shall have no further obligations pursuant to this Agreement.

(b) HEP represents to CSTCC that that HEP has visited the Facility and become familiar with the conditions under which the Work is to be performed and has received all clarifications needed by HEP to assure itself that the Work can be performed in accordance with the Initial Budget and the Project Development Schedule.

4.2 Architect. HEP shall, at HEP's sole cost and expense, engage the Architect, to prepare Preliminary Design Documents and Final Plans and Specifications in consultation with CSTCC.

4.3 CSTCC Approval of Preliminary Design Documents and Initial Budget.

(a) HEP shall cause the Architect to prepare the Preliminary Design Documents for the Facility and shall deliver such Preliminary Design Documents to CSTCC for its review and approval. CSTCC's approval of the Preliminary Design Documents shall not be unreasonably withheld or delayed. Any disapproval by CSTCC shall include specific reasons for the disapproval. If CSTCC disapproves any portion or all of the Preliminary Design Documents, then the Parties shall meet to resolve any disagreements in an expeditious manner so as not to delay the completion of the design of the Facility. If CSTCC fails to approve or disapprove the Preliminary Design Documents within thirty (30) Days after receipt from HEP, then the Preliminary Design Documents shall be deemed to have been approved by CSTCC.

(b) During CSTCC's review and approval of the Preliminary Design Documents, the Parties shall meet to review the preliminary Initial Budget and mutually prepare and agree to the final Initial Budget. Such final Initial Budget shall include a budget for completion of the Work. If the estimated construction cost of the Work in the final Initial Budget exceeds the amount allocated for construction cost of the Work in the preliminary Initial Budget by more than ten percent (10%) (hereinafter, a "Cost Overrun"), then HEP shall have the right to either of the following:

- (i) HEP may pay any such Cost Overrun as part of the Work without any reimbursement from Revenue; or
- (ii) HEP may elect to be reimbursed from Revenue to the extent such Cost Overrun is actually incurred by HEP after payment of the Quarterly CSTCC Amount.
- (c) The final Initial Budget, once established by the Parties' mutual agreement, shall be considered the "Initial Budget" for purposes of this Agreement and revised only upon the written mutual agreement of the Parties.

4.4 Final Plans and Specifications.

(a) After CSTCC's approval of the Preliminary Design Documents and the Parties' mutual agreement on the Initial Budget, HEP shall cause the Architect to prepare Final Drawings and Specifications. During preparation of the Final Drawings and Specifications, HEP shall notify CSTCC in writing of any proposed material changes that impact the Initial Budget or the Project Development Schedule.

4.5 Scope of Work.

(a) HEP shall manage, direct, supervise and coordinate the Work, including the planning, development, design, construction and renovation of the Facility, and shall enter into all contracts in connection with the same.

(b) HEP shall engage, through a competitive process, a contractor or multiple contractors licensed in the State of Ohio to complete the Work in accordance with the Final Plans and Specifications, Initial Budget and Project Development Schedule. HEP shall indemnify, defend and hold harmless CSTCC, from and against all Losses actually suffered or incurred by the CSTCC arising out of or by virtue of or resulting from the procurement of such contractor or contractors in violation of applicable Laws.

(c) HEP shall provide and pay for, at HEP's sole cost and expense, all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work. HEP shall pay sales, consumer,

use, and other similar taxes, and shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

4.6 Prevailing Wage. HEP shall comply with all applicable provisions of Ohio Revised Code [Chapter 4115](#) and [Ohio Administrative Code 4101:9-4](#) relating to payment of prevailing wage for execution and completion of the Work.

4.7 Local, Women and Minority Owned Business Enterprises. HEP shall use good faith efforts, where practicable, to utilize local, women- and minority-owned contractors and subcontractors to complete the Work.

4.8 Schedule; Substantial Completion.

(a) HEP shall use commercially reasonable efforts to commence and complete the Work in accordance with the Project Development Schedule, subject to delay caused by CSTCC or Force Majeure Events. CSTCC acknowledges that use of the Facility for the Academic Programs shall not be available until the Work is completed and Substantial Completion is achieved.

(b) If HEP is delayed in progress of the Work by a delay caused by CSTCC or by Force Majeure Event, then the Substantial Completion date set forth in the Project Development Schedule shall be extended for such reasonable time as the Parties may mutually determine.

(c) Additional costs incurred by HEP as a result of delays caused by CSTCC or any Force Majeure Event shall be deemed a Cost Overrun and treated by HEP in either manner permitted by Section 4.3.

5. OPERATIONS OF THE FACILITY.

5.1 Facility Use.

(a) CSTCC and HEP shall have the exclusive right during the Term to utilize the Facility for the sole purpose of the Collaboration, the Academic Programs, and other events referenced in Section 5.1(c). The use of the Facility shall at all times be in accordance with all Laws.

(b) HEP and CSTCC agrees that no other Person will occupy the Facility as a tenant or subtenant during the Term without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Failure to consent or withhold consent within twenty (20) days after written consent shall be deemed a party's consent. HEP agrees that no for-credit academic programs or courses or non-credit offerings that are competitive with

the Academic Programs will be conducted in the Facility without receiving the prior written consent of CSTCC, which consent may be withheld in CSTCC's sole discretion.

(c) CSTCC may approve short-term, temporary use of the Facility by other state agencies and non-profit organizations commensurate with CSTCC's current practices, with prior written consent of HEP, which consent shall not be unreasonably withheld, conditioned or delayed. CSTCC shall be responsible for any costs, damages, expenses, repairs and maintenance related to such temporary use of the Facility. CSTCC shall provide prior written notice to HEP of any grant of temporary use of the Facility to any state agency or non-profit organizations and shall also obtain an indemnity agreement from any temporary non-profit user (other than a state agency) that shall indemnify CSTCC and HEP from any and all Losses (including reasonable attorneys' fees and expenses) resulting from the acts or non-acts of any temporary user at, on or about the Facility. CSTCC shall provide a copy of the foregoing indemnity to HEP prior to such temporary use.

(d) CSTCC shall be responsible for all damage to the Facility and the Equipment to the extent caused by the negligence or willful misconduct of CSTCC or any of its employees, contractors, students or other invitees.

(e) CSTCC shall be responsible to secure and insure, unless self-insured, all CSTCC Personal Property. HEP shall not be responsible for any damage to CSTCC Personal Property unless caused by the gross negligence or willful misconduct of HEP or any of HEP's employees, contractors or agents.

5.2 Services and Utilities. HEP shall provide the following services and utilities to the Facility during the Term: heating, air conditioning, electricity, garbage disposal services, cable television and internet, snow removal from sidewalks and parking areas, general custodial/cleaning services, restroom supplies, water and sewer services, security, security systems, casualty and all risk insurance for the replacement value of the Facility, and general building and structural maintenance and landscaping. Such costs, expenses and fees shall be included in the HEP Operational Costs, and shall be reimbursable to HEP pursuant to the HEP cost recovery provisions set forth on Exhibit E attached hereto and made a part hereof.

5.3 Equipment.

(a) HEP shall be responsible for furnishing, supplying and installing all Equipment. The Equipment shall be maintained in good working order by HEP during the Term. CSTCC shall promptly notify HEP in writing when any of the Equipment requires repair, restoration or replacement. Except for the gross negligence of HEP, HEP shall have no liability to CSTCC as a result of

malfunctioning or inoperable equipment, but HEP shall use its reasonable efforts to make such repair, restoration or replacement within thirty (30) Days of receiving written notice from CSTCC.

(b) Any of the Equipment that is malfunctioning or inoperable due to normal wear and tear shall be repaired, restored or replaced by HEP. Such costs, expenses and fees (excluding the initial purchase and procurement of Equipment set forth on the final Initial Budget) shall be included in the HEP Operational Costs, and shall be reimbursable to HEP pursuant to the HEP cost recovery provisions set forth on Exhibit E.

(c) Notwithstanding anything set forth in Section 5.3(b) to the contrary, however, any costs, expenses and fees for repair, restoration or replacement of Equipment shall be at the sole cost and of CSTCC or HEP (as applicable) to the extent caused by or arising out of the negligence, willful misconduct or misuse by CSTCC or HEP, or their respective employees, licensees, invitees or students (as applicable). In such event, the costs, expenses and fees for repair, restoration or replacement of Equipment shall not be HEP Operational Costs or CSTCC Direct Costs and shall not be reimbursable to either Party pursuant to the HEP cost recovery provisions set forth on Exhibit E.

6. PAYMENT OF SERVICE FEE; OPERATING AND CAPITAL EXPENSES.

6.1 Payment of Service Fee; Reimbursement of HEP Operational Costs. CSTCC shall promptly pay HEP pursuant to timely submitted invoices for HEP Operational Costs, and payment shall be made to HEP in accordance with Exhibit E (as such Exhibit E may be modified from time to time during the Term by mutual written agreement of the Parties). Payment to HEP of the Revenue and Service Fee owed to HEP pursuant to this Agreement shall be paid consistent with the schedule set forth on Exhibit E.

6.2 Operating and Capital Expenses. HEP shall pay all necessary operating and capital expenses at the Facility described in the Initial Budget and Annual Budget and all such necessary operating and capital expenses shall be considered HEP Operational Costs; provided, however, capital expenses incurred by HEP in connection with the development of the Facility as set forth in the Initial Budget shall not be included in HEP Operational Costs; and provided, further, however, HEP shall not be required to make Major Capital Improvements without the mutual agreement by CSTCC and HEP to the terms and amount of such Major Capital Improvement and the extension of the Term as set forth in

Section 3.3. Commencing on the dates set forth in the Initial Budget or the Annual Budget, HEP shall provide CSTCC with capital in amounts equal to the amounts specified in the Initial Budget or Annual Budget, as applicable. HEP shall pay CSTCC the amounts owed pursuant to this Section 6.2 in accordance with the terms set forth on Exhibit E.

6.3 Terms and Method of Payment. All amounts payable by either Party shall be remitted to the recipient Party in United States dollars to a bank to be designated in the invoice or otherwise in writing by the recipient Party, unless otherwise provided for and agreed upon in writing by the Parties.

7. BUDGETS AND FINANCIAL INFORMATION COVENANTS.

7.1 Initial Budget. A preliminary Initial Budget is set forth on Exhibit B attached hereto and made a part hereof. Such initial budget shall include, among other line items, budgeted costs for acquiring the Real Property, designing and completing the Work, designing and preparing the Initial Academic Programs and CSTCC Content, completing the initial Joint Marketing Plans and creating initial Marketing Materials, and such other items necessary to advance the Collaboration. The Initial Budget shall be prepared in accordance with, and reflect, the Standard Academic Administrative Practices.

7.2 Annual Budget. The Annual Budget for each Fiscal Year shall include the following:

- (a) a projected income statement, balance sheet and financing plan, including, without limitation, operational and capital expenditure budgets for the forthcoming academic year;
- (b) a projected cash flow statement on a monthly basis and semester basis;
- (c) projected student enrollment numbers for each Academic Program and other additional data reasonably necessary for budgetary planning purposes (collectively, the “**Enrollment Data**”);
- (d) projected Revenue;
- (e) projected municipal, state and federal subsidies;

- (f) projected maintenance and purchase requirements for Equipment;
- (g) projected costs and expenses incurred by the Parties in connection with the performance of the Collaboration Activities; and
- (h) such other items reasonably requested by either Party.

7.3 Annual Budget Approval Process.

(a) At least sixty (60) Days before the first Day of each Fiscal Year, CSTCC will provide HEP with projected student Enrollment Data for each Academic Program and the projected Revenue for the following Fiscal Year. In no event shall the projected Revenue provided by CSTCC be understood by HEP to be a commitment of funds from the state or any other source. The Parties will then consult and negotiate with each other in good faith and use reasonable efforts to mutually agree upon an Annual Budget for the following Fiscal Year. Such Annual Budget shall be prepared in accordance with and reflect Standard Academic Administrative Practices. If the Parties are unable to mutually agree upon an Annual Budget on or before the date that is thirty (30) Days prior to the commencement of the following Fiscal Year (the "**Annual Budget Approval Date**"), then the Annual Budget in effect on the Annual Budget Approval Date shall be the Annual Budget for the following Fiscal Year until such time as the Parties mutually agree to a new Annual Budget.

(b) On or before the date that is one hundred sixty (160) Days after the first Day of each Fiscal Year, CSTCC will provide HEP with (i) the actual student Enrollment Data for such Fiscal Year to date, (ii) the projected student Enrollment Data for each Academic Program for the remainder of the Fiscal Year, (iii) the actual Revenue for the Fiscal Year to date, and (iv) the projected Revenue for the remainder of the Fiscal Year ("Revised Budget Information"). The Parties will then consult and negotiate with each other in good faith and use reasonable efforts to mutually agree upon a revised Annual Budget for the remainder of such Fiscal Year based on the Revised Budget Information. Such revised Annual Budget shall be prepared in accordance with and reflect Standard Academic Administrative Practices. If the Parties are unable to mutually agree upon a revised Annual Budget on or before the date that is thirty (30) Days after HEP's receipt of the Revised Budget Information, then the Annual Budget in effect as of the Annual Budget Approval Date described in Section 7.3(a) shall be the Annual Budget for the remainder of the Fiscal Year until such time as the Parties mutually agree to a revised Annual Budget.

7.4 Three Year Forecast. On or before the Annual Budget Approval Date, the Parties will mutually agree upon a projected Annual Budget for the two (2) Fiscal Years following the academic year for the then current Annual Budget. The projected budgets shall be for planning

purposes only and shall have no binding effect on subsequent Annual Budgets.

7.5 Audit Rights.

(a) CSTCC shall be responsible for maintaining full and accurate CSTCC Controlled Accounts and Records. CSTCC shall keep the CSTCC Controlled Accounts and Records available during all reasonable business hours during the Term at its principal offices, or at such other location as required by applicable Laws, for audit, inspection and copying by HEP and Persons authorized by HEP or any Governmental Authority having jurisdiction over HEP.

(b) HEP shall be responsible for maintaining full and accurate HEP Controlled Accounts and Records consistent with generally accepted accounting standards. The HEP Controlled Accounts and Records shall include records with respect to the operations of the Facility and HEP's Collaboration Activities. HEP shall keep the HEP Controlled Accounts and Records available during all reasonable business hours during the Term at its principal offices, or at such other location as required by applicable Laws, for audit, inspection and copying by CSTCC and Persons authorized by CSTCC or any Governmental Authority or Educational Agency having jurisdiction over CSTCC.

(c) HEP shall have the right, upon thirty (30) Days' written notice to CSTCC, to audit, or have its agents or representatives, audit, the CSTCC Controlled Accounts and Records, and supporting documents and materials in the possession of or under the control of CSTCC with respect to such matters, at the place or places where such records are normally retained by CSTCC. HEP, or its agents and representatives, shall have free and full access thereto during normal business hours for such purposes and shall be permitted to make copies thereof and extracts therefrom.

(d) CSTCC shall have the right, upon thirty (30) Days' written notice to HEP, to audit, or have its agents or representatives audit, subject to such confidentiality requirements under Ohio law and as may reasonably be imposed by HEP, the HEP Controlled Accounts and Records, and supporting documents and materials in the possession of or under the control of HEP with respect to such matters, at the place or places where such records are normally retained by HEP. CSTCC, or its agents and representatives, shall have free and full access thereto during normal business hours for such purposes and shall be permitted to make copies thereof and extracts therefrom. Any such records in the possession of CSTCC become public records and may be subject to disclosure requests per Ohio Public Records Law, R.C. 149.43.

(e) In the case of a dispute as a result of such audit over amounts due under this Agreement by one Party to the other Party, the individuals appointed pursuant to Section 8 shall consult together with a view to resolving the dispute.

If the dispute is not resolved within thirty (30) Days, then either Party may seek resolution pursuant to Section 20.5.

(f) The cost of any audit shall be borne by the Party performing the audit, without reimbursement from the Collaboration, except that the other Party shall pay such costs if the audit reveals a discrepancy of greater than 5% of the amount owed to the Party performing the audit.

7.6 Financial Records.

(a) CSTCC shall prepare and maintain the financial records specified in this Section 7.6 for the Collaboration with respect to the CSTCC Controlled Accounts and Records and HEP shall prepare and maintain the financial records specified in this Section 7.6 for the Collaboration with respect to the HEP Controlled Accounts and Records. Such financial records shall be separate and distinct from the financial statements of each Party.

(b) As soon as practicable, but in any event within one hundred and twenty (120) Days after the end of each Fiscal Year:

(i) with respect to the CSTCC Controlled Accounts and Records, CSTCC shall deliver to HEP: (A) a balance sheet as of the end of such Fiscal Year; and (B) statements of income and of cash flows for such Fiscal Year, and a comparison between (1) the actual amounts as of and for such Fiscal Year and (2) the comparable amounts for the prior year and as included in the Annual Budget for such Fiscal Year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such amounts, all such financial statements audited and certified by independent public accountants selected by CSTCC;

(ii) with respect to the HEP Controlled Accounts and Records, HEP shall deliver to CSTCC: (A) a balance sheet as of the end of such Fiscal Year; and (B) statements of income and of cash flows for such Fiscal Year, and a comparison between (1) the actual amounts as of and for such Fiscal Year and (2) the comparable amounts for the prior year and as included in the Annual Budget for such Fiscal Year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such amounts, all such financial statements audited and certified by independent public accountants selected by CSTCC;

(c) Each Party shall deliver to the other with respect to the CSTCC Controlled Accounts and Records and HEP Controlled Accounts and Records, respectively:

(i) as soon as practicable, but in any event within thirty (30) business days after the end of each of the first three (3) quarters of each Fiscal Year, unaudited statements of income and of cash flows for such fiscal quarter, and an unaudited balance sheet as of the end of such fiscal quarter, all prepared in accordance with GAAP, except that such financial statements may (A) be subject to normal year-end

audit adjustments and (B) not contain all notes thereto that may be required in accordance with GAAP;

(ii) as soon as practicable, but in any event within thirty (30) business days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet as of the end of such month; and

(iii) such other information relating to the financial condition, business, prospects, or corporate affairs of the Collaboration as HEP or CSTCC may from time to time request in form and substance as may be required by HEP or CSTCC to timely meet their respective financial reporting obligations with any Educational Agency or Governmental Authority, including without limitation, the Securities and Exchange Commission.

(d) As soon as practicable, but in any event within thirty (30) business days after the end of each month, CSTCC shall deliver to HEP a draft trial balance and account level details necessary for HEP to determine amounts to be capitalized under HEP's accounting policies.

8. COORDINATORS. EACH OF THE PARTIES SHALL APPOINT ONE INDIVIDUAL WHO SHALL SERVE AS A CONTACT PERSON FOR PURPOSES OF COMMUNICATING WITH THE OTHER PARTY AND CARRYING OUT THE INFORMATION, INSPECTION AND AUDIT RIGHTS SET FORTH UNDER THIS AGREEMENT, AND WHO SHALL BE AUTHORIZED TO ACT ON BEHALF OF HIS OR HER RESPECTIVE PARTY AS TO MATTERS PERTAINING TO THIS AGREEMENT (EACH, A "COORDINATOR").

9. INSURANCE.

9.1 CSTCC Insurance.

(a) Unless it is self-insured, CSTCC shall, at its sole cost and expenses, at all times during the Term maintain and keep in full force and effect professional liability insurance, casualty and all risk insurance with respect to all CSTCC Personal Property located at, on or about the Facility, general liability insurance, worker's compensation and such other types of insurance as the Parties shall mutually agree to and in the following minimum amounts set forth below:

(a) commercial general liability insurance and property damage insurance with

respect to the Facility for which the combined single limit of liability shall be not less than Two Million Dollars (\$2,000,000) per occurrence/annual aggregate; (b) casualty and all risk insurance on any and all personal property owned by CSTCC and located at, on or about the Facility; (c) workers' compensation insurance in the amounts as required by laws applicable to, and covering, employees of CSTCC during the Term; (d) employers' liability insurance protecting CSTCC against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of One Million Dollars (\$1,000,000) each accident; and (e) business or commercial automobile liability insurance covering all vehicles used in the operations of CSTCC with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Such insurance policies shall name HEP as an additional insured and contain a clause that the insurer shall not cancel or reduce the insurance coverage limits below the levels required herein without first giving HEP thirty (30) Days prior written notice. CSTCC's insurance policies shall be carried with an insurance company or companies with a general policy holders' rating of not less than "A-VIII" as rated in the most current available Best's Key Rating Guide and which are qualified to do business in the State of Ohio. CSTCC shall provide HEP with a copy of all required insurance policies on the Effective Date and thereafter upon reasonable request by HEP.

9.2 Notification of Certain Matters. Each Party shall give prompt notice to the other of: (a) the occurrence or non-occurrence of any event that results in the breach of any covenant or agreement herein; (b) any notice or other communication from any Person alleging that the authorization, license, permit, consent, waiver or approval of such Person is or may be required in connection with this Agreement and the transactions contemplated hereby; (c) any notice or other communication from any Governmental Authority or Educational Agency in connection with this Agreement and the transactions contemplated hereby; (d) the occurrence or non-occurrence of any event that results in the violation and alleged violation of any Environmental Laws that relates to the activities of the Collaboration; and (e) any fact, event, change, development, circumstance or effect occurring after the date hereof (or of which it became aware after the date hereof) that has or could reasonably be expected to have caused reputational harm to the Collaboration.

9.3 Future Changes. Notwithstanding anything to the contrary set forth in this Section 9, if, because of changes in the insurance industry or other reasons, any of the provisions of this Section 9 become impracticable or commercially unreasonable to fulfill, then the requirements of this Section 9 shall be deemed modified to be consistent with commercially

reasonable practice, and the Parties shall in good faith negotiate a reasonable amendment to this Agreement. In any case, the amounts of coverage and other requirements of this Section 9 shall be reviewed periodically by the Parties, not less often than every five (5) Fiscal Years, and may be modified following such review to amounts or conditions then determined by the Parties to be commercially reasonable and consistent with the Standard Academic Administrative Practices.

10. OWNERSHIP OF INTELLECTUAL PROPERTY.

10.1 CSTCC Ownership Rights. Except for the rights granted to HEP in Section 10.3, CSTCC shall own all right, title and interest in and to any and all Academic Programs and CSTCC Content not funded in whole or in part through this Agreement.

10.2 HEP Ownership Rights. Except for the rights granted to CSTCC in Section 10.3, HEP shall own all right, title and interest in and to any and all HEP Content not funded in whole or in part through this Agreement.

10.3 Ownership Rights in Joint Materials. In the event that HEP and CSTCC develop Joint Materials, each Party grants the other Party a perpetual, irrevocable, paid-up, royalty-free, exclusive and worldwide right and license to: (i) copy, distribute, transmit, display, perform, and create derivative works of the Joint Materials, in whole or in part, including, without limitation, the right to add to, subtract from, arrange, rearrange, revise, modify, change and adapt the Joint Materials and any part or element thereof; and (ii) use the Joint Materials and/or any subject matter of the Joint Materials, in whole or in part. Either Party may sublicense the rights granted to it under this Section 10.3; provided, however that said Party receives the prior written consent of the other Party and the sub-licensee executes a confidentiality agreement.

11. BANKRUPTCY- 365(N). ALL RIGHTS AND LICENSES GRANTED UNDER OR PURSUANT TO THIS AGREEMENT BY CSTCC TO HEP ARE, AND SHALL OTHERWISE BE DEEMED TO BE, FOR PURPOSES OF SECTION 365(N) OF TITLE 11, UNITED STATES CODE (THE “CODE**”), LICENSES OF RIGHTS TO “INTELLECTUAL PROPERTY” AS DEFINED UNDER THE CODE. THE PARTIES AGREE THAT HEP, AS A LICENSEE OF SUCH RIGHTS UNDER THIS AGREEMENT, SHALL RETAIN AND MAY FULLY EXERCISE ALL OF ITS RIGHTS AND ELECTIONS UNDER THE CODE. THE PARTIES FURTHER AGREE THAT, IN THE EVENT OF THE COMMENCEMENT OF A BANKRUPTCY PROCEEDING BY OR AGAINST CSTCC UNDER THE CODE, HEP SHALL BE ENTITLED TO A COMPLETE DUPLICATE OF (OR COMPLETE ACCESS TO, AS APPROPRIATE) ANY SUCH INTELLECTUAL PROPERTY, INCLUDING THE CSTCC CONTENT, AND ALL EMBODIMENTS OF SUCH INTELLECTUAL PROPERTY, AND SAME, IF NOT ALREADY IN ITS POSSESSION, SHALL BE PROMPTLY DELIVERED TO HEP: (A) UPON ANY SUCH COMMENCEMENT OF A BANKRUPTCY PROCEEDING UPON WRITTEN REQUEST THEREFORE BY HEP; OR (B) IF NOT DELIVERED UNDER (A) ABOVE, UPON WRITTEN REQUEST THEREFORE BY LICENSEE, IN THE EVENT OF THE REJECTION OF THIS AGREEMENT BY OR ON BEHALF OF CSTCC. [NOTE: UNDER REVIEW BY CSTCC AND ITS COUNSEL]**

12. REPRESENTATIONS AND WARRANTIES OF CSTCC. CSTCC HEREBY REPRESENTS AND WARRANTS TO HEP AS FOLLOWS:

12.1 Organization and Good Standing. CSTCC is a public institution of higher education in the State of Ohio duly organized, validly existing and in good standing under the laws of the State of Ohio. CSTCC has and shall act in good faith to continuously maintain all requisite statutory power and authority to carry on the business in which it is engaged, to own the properties it owns, to lease the properties it leases, and to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. CSTCC is duly qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership of its assets makes such qualification necessary and where the failure to be so qualified would have a material adverse effect on CSTCC.

12.2 Authorization and Validity. The execution, delivery and performance by CSTCC of this Agreement, and the consummation of the transactions contemplated hereby and thereby, have been approved and duly authorized by the Board of Trustees and/or the President, and no other organizational approvals are necessary to properly authorize such transactions.

12.3 Consents. Except as set forth on Exhibit F attached hereto and made a part hereof, no authorization, consent, approval, permit or license of, or filing with, any Governmental Authority, Educational Agency or any other Person, is required to authorize, or is required in connection with, the execution, delivery and performance of this Agreement or any other agreements contemplated hereby or thereby on the part of CSTCC.

12.4 Educational Approvals. CSTCC shall make all reasonable efforts in good faith to obtain and continuously maintain throughout the Term: (a) all approvals required pursuant to its policies and procedures and all applicable Laws to offer the Academic Programs; and (b) all applicable Educational Approvals to offer the Initial Academic Programs at the Facility and to award Title IV Program funds and other student financial assistance in connection with such Academic Programs.

12.5 No Violation. Assuming receipt of the consents and approvals set forth on Exhibit F attached hereto and made a part hereof, neither the

execution and performance of this Agreement, nor the consummation of the transactions contemplated hereby, will directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with, or result in a violation of: (i) any provision of the Organizational Documents of CSTCC; or (ii) any resolution adopted by the Board of Trustees; or (b) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any material contract to which CSTCC is a party. CSTCC is not in violation of any judgment, decree, order, statute, rule, regulation, standard or policy of any Governmental Authority or Educational Agency having jurisdiction over CSTCC, which violation could reasonably be likely to have a material adverse effect on CSTCC or the Collaboration.

12.6 Claims and Proceedings. No inquiry, action or proceeding has been asserted, instituted, or threatened against CSTCC to restrain or prohibit the carrying out of the transactions contemplated hereby or to challenge the validity of such transactions or any part thereof or seeking damages on account thereof.

12.7 CSTCC Content. [Note: Under review by CSTCC and its counsel.]

(a) CSTCC covenants and warrants to HEP that CSTCC has the necessary authority to grant to HEP CSTCC's rights in the CSTCC Content pursuant to Section 10.1. Such CSTCC Content will be free and clear of any claims or encumbrances or liens and will not infringe any patent, copyright or other proprietary right or violate or misappropriate a trade secret, of or relating to any CSTCC personnel or, to CSTCC's knowledge, any other person or entity. All personnel contributing to the creation of any such CSTCC Content under this Agreement are subject to agreements with CSTCC so that CSTCC may fulfill its obligations under this Agreement, including, without limitation, the rights granted to HEP under Section 10.1.

(b) CSTCC has the authority to grant to HEP use of CSTCC's trademarks and logos. Such logos and trademarks of CSTCC will be free and clear of any claims or encumbrances or liens and will not infringe any patent, copyright or other proprietary right or violate or misappropriate a trade secret, of or relating to any CSTCC personnel or, to CSTCC's knowledge, any other person or entity.

12.8 Compliance with Laws. (a) CSTCC has all applicable licenses, permits, authorizations, certifications, accreditations, consents and

similar approvals necessary to conduct the business and operations of CSTCC, in the manner and to the full extent that they are now being conducted and in accordance with applicable Laws, including with respect to participation in the Title IV Programs; (b) no proceeding for the suspension or cancellation of any Educational Approval is pending or threatened against CSTCC; (c) CSTCC has not received any notice that any Educational Approval will not be renewed, and CSTCC has no knowledge of any basis for non-renewal; and (d) there is no threatened or pending investigation, audit, or review of any Educational Approval.

13. REPRESENTATIONS OF HEP. HEP HEREBY REPRESENTS AND WARRANTS TO CSTCC AS FOLLOWS:

13.1 Organization and Good Standing. HEP is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite corporate power and authority to carry on the business in which it is engaged, to own the properties it owns and to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. HEP is duly qualified to do business and is in good standing as a foreign limited liability company in each jurisdiction in which the nature of its business or the ownership of its assets makes such qualification necessary and where the failure to be so qualified would have a material adverse effect on HEP.

13.2 Authorization and Validity. The execution, delivery and performance by HEP of this Agreement and the consummation of the transactions contemplated hereby and thereby, have been duly authorized and no other limited liability company approvals are necessary to properly authorize such transactions.

13.3 Consents. Except as set forth on Exhibit F attached hereto and made a part hereof, no authorization, consent, approval, permit or license of, or filing with, any Governmental Authority or any other Person is required to authorize, or is required in connection with, the execution, delivery and performance of this Agreement or any other agreements contemplated hereby or thereby on the part of HEP.

13.4 No Violation. Assuming receipt of the consents and approvals set forth on Exhibit F, neither the execution and performance of this

Agreement (including the Collaboration Activities), nor the consummation of the transactions contemplated hereby and thereby, will directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with, or result in a material violation of (i) any provision of the Organizational Documents of HEP, or (ii) any resolution adopted by HEP; (b) contravene, conflict with, or result in a violation or material breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any material contract to which HEP is a party; or (c) infringe upon, or misappropriate the subject matter of any, intellectual property rights of any third party. To the best of its knowledge, HEP is not in violation of any judgment, decree, order, statute, rule, regulation, standard or policy of any Governmental Authority having jurisdiction over HEP, which violation could reasonably be likely to have a material adverse effect on the Collaboration.

13.5 Claims and Proceedings. No inquiry, action or proceeding has been asserted, instituted, or, to the best knowledge of HEP, threatened to restrain or prohibit the carrying out of the transactions contemplated hereby or to challenge the validity of such transactions or any part thereof or seeking damages on account thereof.

13.6 Bankruptcy Remote Entity. HEP agrees that the bankruptcy remote provisions described on Exhibit H are included in the operating agreement of HEP and shall not be modified without the prior written approval of CSTCC, such approval not to be unreasonably withheld, conditioned or delayed.

13.7 Real Property Responsibilities. HEP agrees that the Real Property acquired by it pursuant to Section 4.1(a) will be owned, leased, managed and operated pursuant to and consistent with all federal, state and local laws and ordinances.

14. SIGNING DELIVERABLES.

14.1 Deliverables by CSTCC. Concurrent with the execution of this Agreement, and to the extent such documents exist independently from those currently maintained by CSTCC for said purposes, CSTCC shall deliver the following documents to HEP, as set forth below:

(a) CSTCC will deliver all third party consents set forth on Exhibit G; and

(b) CSTCC will deliver documents that demonstrate that CSTCC has all Educational Approvals necessary to offer the Initial Academic Programs at the Facility and to award Title IV Program funds and other student financial assistance in connection with such Initial Academic Programs.

14.2 Deliverables by HEP. Concurrent with the execution of this Agreement, HEP shall deliver to CSTCC all third party consents set forth on Exhibit G.

15. NONCOMPETITION.

15.1 CSTCC Competition. During the Term, CSTCC shall not take any action within the Facility Service Area that is competitive with the Academic Programs or the Collaboration, including, but not limited to, the offering of any academic programs within the Facility Service Area. It is expressly acknowledged by HEP that CSTCC's continued acceptance of grants and the administration, growth and development of academic programs currently offered at CSTCC's "Green Tree" facility located within the Facility Service Area consistent with its past practice is not competitive with the Academic Programs or the Collaboration in violation of this Section 15.1.

15.2 HEP Competition. During the Term, HEP shall not maintain or provide another facility within the Facility Service Area for any academic program that is competitive with the Academic Programs.

16. ACCREDITATION AND LICENSES.

16.1 Compliance with Laws. The Parties have set forth the terms, conditions and responsibilities in this Agreement in the good faith belief that they are fully in compliance with all legal and accreditation requirements generally applicable to CSTCC or HEP or specifically applicable to the Collaboration; provided, however, in the event that either Party reasonably determines that the performance of any particular service by either Party is in violation of such legal or accreditation requirements, the Parties agree that such service shall be promptly modified to the extent reasonably necessary to secure continued compliance with such legal and accreditation requirements.

16.2 CSTCC Responsibilities. During the Term, CSTCC shall, at its sole cost and expense, maintain the following in full force and effect: (a) all applicable municipal, state and federal authorizations, including but not

limited to authorizations by any applicable Laws or Educational Agency or Governmental Authority; (b) accreditation by any other Accrediting Body; and (c) eligibility and certification to participate in the Title IV Programs, including but not limited to complying with the Higher Education Act of 1965, as amended, and its implementing regulations and the terms and conditions of the Program Participation Agreement between CSTCC and DOE, as in effect from time to time.

17. TERMINATION; REMEDIES FOR DEFAULT.

17.1 Termination. This Agreement may be terminated prior to expiration of the Term as follows:

(a) upon the mutual written agreement of the Parties;

(b) by either Party for material breach of any of the terms hereof by the other Party if such breach shall not have been cured within sixty (60) Days after written notice of breach is delivered to the defaulting Party (or, if such breach requires more than sixty (60) Days to cure, if such cure is not commenced within sixty (60) Days and thereafter diligently prosecuted);

(c) If voluntary or involuntary proceedings by or against a Party are instituted in bankruptcy under any insolvency law, or a receiver or custodian is appointed for such Party, or proceedings are instituted by or against such Party for corporate reorganization, dissolution, liquidation or winding-up of such Party, which proceedings, if involuntary, shall not have been dismissed within sixty (60) Days after the date of filing, or if such Party makes an assignment for the benefit of creditors, or substantially all of the assets of such Party are seized or attached and not released within sixty (60) Days thereafter, then the other Party may immediately terminate this Agreement effective upon notice of such termination; and

(d) A Party shall have the right to immediately terminate this Agreement upon written notice to the other Party if a Force Majeure Event prohibits the other Party's material performance under this Agreement for a period of at least ninety (90) consecutive Days.

17.2 Effect of Termination.

(a) If this Agreement is terminated (except in the case of failure by CSTCC to make all required payments to HEP under this Agreement), then each of the Parties shall negotiate in good faith and enter into a transition services agreement under which HEP shall continue to provide the HEP Controlled Collaboration Activities on terms and conditions substantially similar to the terms and conditions set forth in this Agreement and existing as of immediately prior to

such termination for a period of twenty four (24) months following notice of termination.

(b) In the event of a termination or expiration of this Agreement in accordance with the terms hereof, this Agreement shall immediately become null and void and have no further force or effect, and neither HEP nor CSTCC, nor any of their respective Affiliates, shall have any liability of any nature whatsoever hereunder, or in connection with the transactions contemplated hereby, except that all obligations of the Parties specifically intended to be performed after the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

17.3 Remedies. Upon any Party's material breach of any obligation arising under this Agreement, then, subject to the terms of this Agreement, the non-breaching Party shall have all rights and remedies available at law or in equity.

18. INDEPENDENT CONTRACTOR STATUS. HEP SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR TO CSTCC WITH RESPECT TO THE COLLABORATION ACTIVITIES TO BE PERFORMED BY HEP HEREUNDER. NOTHING CONTAINED IN THIS AGREEMENT SHALL CREATE OR BE DEEMED TO CREATE AN EMPLOYMENT RELATIONSHIP, PARTNERSHIP, ASSOCIATION OR JOINT VENTURE RELATIONSHIP BETWEEN HEP, ON THE ONE HAND, AND CSTCC, ON THE OTHER. THE TERMS OF THIS AGREEMENT ARE NOT INTENDED TO CAUSE EITHER OF THE PARTIES OR THEIR AFFILIATES TO BECOME A JOINT EMPLOYER FOR ANY PURPOSE.

19. CONFIDENTIALITY.

19.1 General. To the full extent permitted under Ohio law, CSTCC agrees to protect any information or data deemed "confidential" by HEP and disclosed by HEP pursuant to this Agreement. If CSTCC receives any request pursuant to the Ohio Public Records Act, R.C. 149.43, for disclosure

of any information or data designated “confidential” by and received from HEP, then CSTCC agrees not to disclose such information without giving HEP prior written notice. The notice to HEP shall identify the confidential information or data or portions thereof that are the subject of the public records request so that HEP may seek appropriate legal action, including injunctive relief, to prevent disclosure of the information or data at issue.

19.2 Exceptions. Notwithstanding the foregoing, a Party may disclose Confidential Information as follows:

- (a) disclosures to the Party’s Affiliates and its Affiliates’ employees, lenders, actual or potential investors, counsel, accountants or other representatives; provided that the disclosing Party causes such Persons to comply with this Section 19 and execute and deliver a confidentiality agreement to the other Party;
- (b) in order to comply with any Law, stock exchange rule, tax audit or tax compliance procedures, governmental regulation or any other governmental requirement; provided that prior to making any such disclosure the disclosing Party notifies the other Party of any proceeding about which it is aware that may result in disclosure;
- (c) to the extent that the Confidential Information is or becomes publicly available through no fault of the disclosing Party;
- (d) to the extent that the same information is in the possession of the disclosing Party prior to receipt of the Confidential Information;
- (e) to the extent that the same information is independently developed by the disclosing Party without in any way relying on any Confidential Information;
- (f) to the extent that the same information becomes available to the disclosing Party on a non-confidential basis from a source other than the other Party or its Affiliates, which source is not prohibited from disclosing or using such information;
- (g) to the other Party in connection with this Agreement; and
- (h) in connection with bona fide potential purchasers of the ownership interests of either HEP or CSTCC or bona fide potential purchasers of equity of one or more of Affiliates of either HEP or CSTCC if such potential purchasers have agreed in writing (i) to only use the Confidential Information for purposes of evaluating the purchase of an ownership interest or such equity and (ii) to abide by the terms of this Section 19 or reasonably similar obligations.

20. LIABILITY AND DISPUTE RESOLUTION.

20.1 HEP Indemnification. From and after the Effective Date, HEP shall indemnify, defend and hold harmless the CSTCC Indemnified Parties, from and against all Losses actually suffered or incurred by the CSTCC Indemnified Parties or which any such CSTCC Indemnified Party may suffer, sustain or become subject to, arising out of or by virtue of or resulting from any of the following: (i) any breach of any representation, warranty, covenant or agreement made or to be performed by HEP pursuant to this Agreement; (ii) injury or damage to person or property to, on or about the Facility arising out of the negligent act or omission of HEP's employees, agents, contractors or students; and (iii) the reasonable costs to CSTCC Indemnified Parties of enforcing this indemnity against HEP.

20.2 CSTCC Responsibilities. CSTCC expressly agrees and acknowledges that it shall be responsible for any Loss arising out of or by virtue of or resulting from any of the following: (i) any breach of any representation, warranty, covenant or agreement made or to be performed by CSTCC pursuant to this Agreement; and (ii) injury or damage to person or property to, on or about the Facility arising out of the negligent act or omission of the CSTCC Indemnified Parties.

20.3 Limitation of Liability. NO PARTY WILL BE LIABLE TO ANY OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM ANY OTHER PARTY'S RIGHTS) FOR PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT.

20.4 Express Disclaimer of Warranty. HEP MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) OF ANY KIND WITH RESPECT TO THE FACILITY, THE EQUIPMENT, OR HEP PROVIDED COLLABORATION ACTIVITIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.

20.5 Dispute Resolution.

(a) In the event of any Dispute arising between the Parties, then either Party shall give written notice of such Dispute to the other Party and the matter at

issue shall be immediately referred to each Party's Coordinator for resolution. During the ten (10) business day period after delivery of such notice (the "**Coordinator Resolution Period**"), the Coordinator for each Party shall meet and negotiate in good faith to resolve the Dispute. If the Coordinators are unable to resolve the Dispute during Coordinator Resolution Period, then the matter at issue shall be immediately referred to the Chief Executive Officer (or equivalent executive officer) of each of the Parties for resolution. During the fifteen (15) business day period after expiration of the Coordinator Resolution Period (the "**CEO Resolution Period**"), the Chief Executive Officer (or equivalent executive officer) of each of the Parties shall meet and negotiate in good faith to resolve the Dispute.

(b) If the Chief Executive Officer (or equivalent executive officer) of each of the Parties is unable to settle the Dispute during the CEO Resolution Period, then the Parties may agree to make a good faith effort to settle the Dispute by confidential third party non-binding mediation in Ohio, which mediation shall be conducted in accordance with the Ohio Uniform Mediation Act, R.C. Chapter 2710 then in effect. The mediator shall be chosen by mutual agreement of the Parties. The costs of such mediation shall be shared by the Parties. If, upon choosing mediation, the Parties cannot settle the dispute within sixty (60) Days after appointing a mediator, then any Dispute involving a claim for money damages against CSTCC shall be settled by litigation exclusively in the Ohio Court of Claims in Columbus, Ohio. If the Dispute involves claims for injunctive or declaratory relief only, such Dispute shall be settled by litigation in the Court of Common Pleas in Butler County, Ohio.

(c) Notwithstanding the foregoing, either Party may seek interim equitable relief pursuant to Section 20.6 against another Party through any court of competent jurisdiction to protect its rights and interests, or to enforce the obligations of the other Party while participating in good faith negotiations or mediation.

20.6 Specific Performance. Nothing in this Section 20 shall be construed to preclude either Party from seeking specific enforcement or temporary and/or preliminary injunctive relief from any court of competent jurisdiction in Hamilton County, Ohio.

21. MISCELLANEOUS.

21.1 Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by the Parties.

21.2 Waiver. Any Party to this Agreement may: (a) extend the time for the performance of any of the obligations or other acts of the other Party; (b) waive any inaccuracy in the representations and warranties of the other

Party contained herein or in any document delivered by such Party pursuant hereto; or (c) waive compliance with any agreement of the other Party or condition to the other Party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in a writing executed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition or as a waiver of any other term or condition of this Agreement. The failure of any Party to assert any of its rights under this Section 21.2 shall not constitute a waiver of any of such rights. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

21.3 Force Majeure. No Party shall have any liability under this Agreement for such Party's failure or delay in performing any of the obligations imposed by this Agreement to the extent such failure or delay is the result of any Force Majeure Event. This Force Majeure provision shall apply to each Party's obligations hereunder except those that require the payment of money. If any Party contends that it is entitled to an extension of time for performance as a result of this Section 21.3, then such Party shall provide written notice of such Force Majeure Event to the other Party within seven (7) Days after such Party has knowledge of the occurrence of such Force Majeure Event and its effect upon such Party's obligations hereunder. A Party's failure to provide such notice shall be deemed such Party's waiver of any claim for an extension.

21.4 Expenses. Except as otherwise provided herein, each of the Parties shall pay all of its respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers or other representatives and consultants and appraisal fees, costs and expenses) incurred in connection with the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby.

21.5 Further Assurances. Each of the Parties shall use reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Laws and to execute and deliver such documents and other papers as may be required to

carry out the provisions of this Agreement and to consummate and make effective the transactions contemplated hereby.

21.6 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly signed or made as of the date delivered if delivered personally or by overnight courier, when confirmed by telephone if delivered by facsimile, when confirmed by telephone or by response e-mail if delivered by electronic transmission or three (3) business days after being mailed by registered or certified mail (postage prepaid, return receipt requested), to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice, except that notices of changes of address shall be effective upon receipt):

If to CSTCC, to: Cincinnati State Technical and Community College

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to: Ohio Attorney General's Office
Education Section
30 E. Broad St., 16th Floor
Columbus, OH 43215
Telephone: 614-xxx-xxxx
Facsimile: 614-xxx-xxxx

If to HEP, to: HEP-Ohio I, LLC
c/o Higher Education Partners LLC
800 Purchase Street, Suite 420
New Bedford, Massachusetts 02740
Attention: Jonathon Muller, Chief Financial Officer
Telephone: 508-454-0531
Facsimile: _____

With a copy to: Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
Attention: John D. Russell, Esq.
Telephone: 401-274-7200
Facsimile: 401-751-0604

With a copy to: Thompson Hine LLP
3900 Key Center
127 Public Square

Cleveland, Ohio 44114-1291
Attention: Alan S. Ritchie, Esq.
Telephone: 216-566-5616
Facsimile: 216-566-5800

21.7 Binding Agreement; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by a Party by operation of law or otherwise without the prior written consent of the other Party. Notwithstanding anything to the contrary in this Section 21.7, without the consent of the other Party, each Party and its permitted assigns may at any time, in their sole discretion, assign, in whole or in part, their rights under this Agreement to any subsequent purchaser of such assigning Party, such permitted transferee or any of their divisions or any material portion of their assets (whether such sale is structured as a sale of stock, sale of assets, merger, recapitalization or otherwise).

21.8 Public Announcements. All press releases and public announcements pertaining to the Collaboration shall be approved prior to issuance and in writing by the Coordinators appointed pursuant to Section 8, unless such release is otherwise required by Laws or the rules and regulations of any national securities exchange.

21.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law or public policy, such provision shall be ineffective only to the extent of such prohibition or invalidity, and all other terms of this Agreement shall remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

21.10 Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any person. The Parties intend that each representation, warranty and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact

that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant. The word “including” shall mean including without limitation regardless of whether such words are included in some contexts but not others.

21.11 Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

21.12 Entire Agreement. The exhibits and schedules identified in this Agreement are incorporated herein by reference. This Agreement and the documents referred to herein contain the entire agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way, including the summary of principle terms, if any.

21.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

21.14 Governing Law and Forum Selection. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Ohio without regard to the conflict of law provisions thereof, and each Party agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement shall be brought exclusively in the Ohio Court of Claims if the suit seeks money damages from CSTCC or any other State entity. If the legal action, suit or proceeding seeks only injunctive or declaratory relief, then suit shall be brought exclusively in the state courts of the State of Ohio. Each Party further accepts and agrees to submit to the jurisdiction of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party.

21.15 Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the Parties and their

respective successors and assigns any rights or remedies under or by virtue of this Agreement.

21.16 Delivery by Facsimile or PDF. This Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by means of portable document format (“PDF”) transmission, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such contract, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No Party hereto or to any such contract shall raise the use of a facsimile machine or PDF transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or PDF transmission as a defense to the formation of a contract and each such Party forever waives any such defense.

21.17 Hazardous Substances. Except as needed for classroom and instructional use with any Academic Program and as permitted by applicable laws related to the same, HEP, CSTCC and their respective agents, employees, invitees, licensees or contractors shall not keep on or around the Facility for use, handling, transport, disposal, treatment, generation, storage, or sale, any Hazardous Substances. Any Party that breaches this Section 21.17 and introduces any Hazardous Substances to the Facility shall defend, indemnify, and hold the other Party harmless from and against any and all costs, fees, penalties, remediation costs, and charges assessed against, incurred by, or imposed upon the other Party (as well as any reasonable attorneys’ and consultants’ fees and costs) to the extent the foregoing are a result of a Party’s use or transportation of Hazardous Substances at, on or about the Facility during the Term.

21.18 Brokerage Fees. HEP and CSTCC represent and warrant to the other Party hereto that either has not dealt with any broker or finder in connection with this Agreement. Except as provided otherwise in the Initial Budget or subsequent applicable Annual Budgets, HEP agrees to indemnify and hold CSTCC free and harmless from and against all claims for broker commissions or fees and/or finder’s fees by any person or entity claiming to have been retained by HEP in connection with this Agreement. CSTCC agrees to be responsible for all judgments arising from claims for brokerage commissions or fees and/or finder’s fees by any other person or entity claiming to have been retained by CSTCC in connection with this

Agreement. Notwithstanding the foregoing, it is understood that a broker may be utilized by HEP to obtain the Facility and HEP shall be solely responsible for such fees and costs in connection with the retention of said broker.

21.19 Subordination, Non-Disturbance and Attornment.

(a) **Existing Encumbrances.** In the event a mortgage, deed of trust or other encumbrance against the Facility is placed of record by HEP, HEP shall provide to CSTCC a commercially reasonable subordination, nondisturbance and attornment agreement (“**Subordination, Nondisturbance and Attornment Agreement**”) in favor of CSTCC from any ground lessor(s), lien holder(s), or any mortgage holder(s), against the Facility, and as to all advances made or hereafter to be made thereon. The Subordination, Nondisturbance and Attornment Agreement shall be in recordable form and shall be recorded by HEP at the expense of HEP.

(b) **Future Encumbrances.** Within thirty (30) business days after CSTCC’s receipt of a written request from HEP, or any mortgagee or beneficiary of HEP, CSTCC shall, in writing, subordinate its rights hereunder to the interest of any future ground lessor of the Facility and to the future lien of any mortgage or deed of trust recorded against the Facility, and as to all advances made or hereafter to be made thereon, provided, however, that, as a condition precedent to such subordination to such future encumbrance by CSTCC, the ground lessor or the mortgagee or trustee named in said mortgage or trust deed shall execute a commercially reasonable subordination, nondisturbance and attornment agreement in favor of CSTCC in a form reasonably acceptable to CSTCC.

22. PURCHASE OF FACILITY AT END OF TERM.

22.1 Right to Purchase. Upon the expiration of the Term of this Agreement, expressly excluding any termination or expiration of this Agreement as a result of a default by either Party hereunder, CSTCC shall have the right to acquire, for the Purchase Price (defined below), all of HEP's right, title and interest in and to the Facility in accordance with the terms of this Section 22; provided, that the following conditions are satisfied: (a) CSTCC shall not be in default under the terms of this Agreement; (b) CSTCC shall provide written notice to HEP expressly exercising CSTCC's rights under this Section 22 not later than six (6) months prior to the scheduled expiration of the Term of this Agreement; (c) CSTCC has the necessary funds available, all approvals necessary for such purchase have been obtained, and all requirements by law have been satisfied; and (d) within sixty (60) Days after such written notice, CSTCC

and HEP shall enter into a mutually acceptable purchase agreement reflecting, including among other terms and conditions to be negotiated at the time of purchase, the terms of this Section 22 and other mutually acceptable terms and conditions (the "Purchase Agreement").

22.2 Purchase Price. The purchase price for the Facility shall be negotiated at the time such right to purchase may be exercised by CSTCC, but in no event shall the purchase price exceed the price paid by HEP for acquisition of the property prior to the Work being completed (the "Purchase Price").

22.3 General Terms of Purchase and Sale. CSTCC and HEP agree that the terms and conditions of the Purchase Agreement shall include, but shall not be limited to, the following: (a) title to the Facility shall be transferred by a quit claim deed, subject to all easements, zoning ordinances, covenants, conditions and restrictions of record; (b) closing costs shall be split between the Parties as is the custom in Butler/Warren County; and (c) the Facility shall be transferred in its as-is, where-is condition without representation or warranty from HEP of any kind; and (d) CSTCC's remedies for default shall be limited to specific performance of HEP's obligations under the Purchase Agreement.

I.C-1. [Signatures on Next Page]

IN WITNESS WHEREOF, each of the Parties hereto have executed this Agreement as of the Effective Date.

HEP-Ohio I, LLC

By: Higher Education Partners, its sole member

By:

—
Gerard Kavanaugh, Authorized Signatory

—
Michael Perik, Authorized Signatory

**CINCINNATI STATE TECHNICAL AND
COMMUNITY COLLEGE**

By: _____

Name: _____

Title: _____

EXHIBITS

EXHIBIT A	List of Equipment
EXHIBIT B	Initial Budget
EXHIBIT C	Project Development Schedule
EXHIBIT D	Description of Real Property
EXHIBIT E	Cost Reimbursement and Service Fee Payment Schedule
EXHIBIT F	Authorizations, Consents, Approvals, Permits and Licenses
EXHIBIT G	Third Party Consents
EXHIBIT H	Bankruptcy Remote Provisions

EXHIBIT A

List of Equipment

EXHIBIT B

Initial Budget

[Attach the preliminary Initial Budget, current as of the Effective Date. Such Initial Budget shall include Facility acquisition costs, construction budget, equipment budget, initial marketing costs, and costs for Initial Academic Programs.]

EXHIBIT C

Project Development Schedule

EXHIBIT D
Description of Real Property

EXHIBIT E

Cost Reimbursement and Service Fee Payment Schedule

A. Costs, Expenses and Fees Related to HEP Acquiring, Constructing and Equipping the Facility.

HEP shall be responsible for, and shall pay without reimbursement from CSTCC, the following: costs and expenses related to acquiring the Real Property, the Architect's fees, costs and expenses related to the Work, costs and expenses related to the initial procurement and installation of the Equipment included within the Initial Budget.

B. Monthly Statements of Revenue and Expenses

1. On or before the 15th Day of each calendar month, CSTCC shall prepare and deliver to HEP monthly Statements of Income reflecting all Revenue received or recognized and CSTCC Direct Costs paid for the preceding month.
2. On or before the 15th Day of each calendar month, HEP shall prepare and deliver to CSTCC monthly statements of HEP Operational Costs incurred during the preceding month.

C. Quarterly Reconciliation of Monthly Statements of Income

1. On or before the 15th Day of the second month following the end of a calendar quarter, CSTCC shall submit to HEP a reconciliation invoice reflecting the Statements of Income prepared by each Party through the end of the previous calendar quarter not previously reconciled. The invoice shall reconcile Revenue, CSTCC Direct Costs and HEP Operational Costs for such calendar quarter.
2. If the sum of CSTCC Direct Costs plus 5% of such CSTCC Direct Costs ("Quarterly CSTCC Amount") is greater than the total Revenue, then (a) CSTCC shall retain the total Revenue, and (b) HEP shall pay to CSTCC the difference between the total Revenue and the Quarterly CSTCC Amount.
3. If the Quarterly CSTCC Amount is less than the total Revenue, then (a) CSTCC shall retain from total Revenue the Quarterly CSTCC Amount, and (b) CSTCC shall pay to HEP all surplus Revenue, which shall be held by HEP subject to the annual reconciliation procedures described in Part D of this Exhibit E below.

D. Annual Reconciliation of Quarterly Statements

1. On or before July 15 following the end of each Fiscal Year, HEP shall prepare an annual Statement of Income reflecting all (a) Revenue, (b) Quarterly CSTCC Amounts, (c) HEP Operational Costs plus 5% of such HEP Operational Costs ("Quarterly HEP Amounts"), and (d) the Service Fee through the end of the previous Fiscal Year.

2. If the sum of the Quarterly CSTCC Amounts for such Fiscal Year ("CSTCC Fiscal Year Amount") is greater than the total Revenue for the Fiscal Year, then HEP shall pay to CSTCC the difference between the total Revenue and the CSTCC Fiscal Year Amount.
3. If total Revenue for the Fiscal Year exceeds the CSTCC Fiscal Year Amount plus the sum of the Quarterly HEP Amounts plus the Service Fee, then HEP shall pay to CSTCC the surplus Revenue.
4. All payments required to be made by either Party pursuant to this Exhibit E shall be paid to the other Party no later than thirty (30) Days after the issuance of the applicable quarterly reconciliation invoice or annual Statement of Income, as applicable.

EXHIBIT F

Authorizations, Consents, Approvals, Permits and Licenses

1. CSTCC

2. HEP

EXHIBIT G

Third Party Consents

1. CSTCC

2. HEP

EXHIBIT H

Bankruptcy Remote Provisions

The Operating Agreement for HEP shall contain provisions substantially similar to the following:

1. Unless required by applicable law, to be evidenced by an opinion of counsel, the member or members of HEP shall not, without the unanimous written consent of the Board of Managers, amend, alter, change or repeal (a) the purpose of HEP; (b) the powers of HEP, (c) the management of HEP, (d) limitations on HEP's activities (set forth in No. 3 below), or (e) amend the Operating Agreement.
2. HEP shall not incur any debt other than as contemplated by the Collaboration Agreement.
3. The Board of Managers shall cause HEP to:
 - A. maintain its own records, accounts, books of account and bank accounts separate from those of any other person and shall not commingle its records, accounts, books of account and bank accounts with the organizational or other records, accounts, books of account or bank accounts of any other person and such records, accounts, books of account and bank accounts shall reflect the separate existence of HEP;
 - B. act solely in its own name and through its duly authorized officers or agents in the conduct of its business, prepare all HEP correspondence in HEP's name, hold itself out as a separate entity from any other person, conduct its business so as not to mislead others as to the identity of the entity with which they are concerned, correct any known misunderstanding regarding its separate identity, refrain from engaging in any activity that compromises the separate legal identity of HEP, and strictly comply with all organizational formalities to maintain its separate existence;
 - C. except as expressly permitted by the Collaboration Agreement, not commingle its assets with assets of any other person or acquire obligations or securities of any member;
 - D. maintain financial statements separate from any other person;
 - E. except as expressly permitted by the Collaboration Agreement (1) pay its liabilities and operating expenses, if any, only out of its funds and (2) not pay from its assets any obligations or indebtedness of any other person;
 - F. maintain an arm's length relationship with the members, all affiliates of HEP and any trust in which it holds a beneficial interest, not enter into any contract or agreement with the members or any affiliate of HEP or any trust in which it holds a beneficial interest except on terms that are intrinsically fair, commercially reasonable, and substantially similar to those that would be available on an arms-length basis with third parties, and transact all business with the members, all affiliates of HEP and any trust in which it holds a beneficial interest pursuant to enforceable agreements;

- G. except pursuant to the Collaboration Agreement not be, become or hold itself out as being liable for the debts of any other party, or hold out its credit as being available to satisfy the obligations of others;
- H. use invoices and checks separate from any other person;
- I. not pledge properties or assets of HEP, lend or advance any moneys to, or make an investment in or for the benefit of, guarantee (directly or indirectly), endorse or otherwise become contingently liable (directly or indirectly) for the obligations of any other person, except as permitted by the Collaboration Agreement;
- J. maintain adequate capital for the normal obligations reasonably foreseeable in a business of HEP's size and character and in light of its proposed business operations and liabilities;
- K. not engage, directly or indirectly, in any business other than the actions required or permitted to be performed under the Collaboration Agreement or Operating Agreement; and
- L. cause the officers, agents and other representatives of HEP, if any, to act at all times with respect to HEP consistently and in furtherance of the foregoing and in the best interests of HEP.

4. Failure of HEP, or the members or board of managers on behalf of HEP, to comply with any of the foregoing covenants or any other covenants contained in the Operating Agreement or Collaboration Agreement shall not affect the status of HEP as a separate legal entity or the limited liability of the members.

Appendix G

Middletown Program Possibilities for Survey Purposes

11/15/11

Division	Program
Associate Degrees	
Business	Culinary Arts Hospitality Management Pastry Arts Medical Administrative Assistant Pre-Business Administration Legal Assistant International Trade Management Supply Chain Management
Center for Innovative Technologies	Business Information Systems Network Administration
Center for Innovative Technologies & WDC	Industrial Electrical Maintenance (ATS) Industrial Mechanical Maintenance (ATS)
Health & Public Safety	Health & Fitness Nursing Public Safety Health IT
Humanities & Sciences	Associate of Arts Associate of Science
Certificates	
Business	Paralegal
Center for Innovative Technologies	Web Design
Center for Innovative Technologies & WDC	Industrial Electrical Maintenance Industrial Controls & Instrumentation Programmable Logic Controllers Machine Maintenance
Health & Public Safety	Medical Assisting Nurse Aide Training
Humanities & Sciences	Deaf Studies Addiction Studies Human Services Early Childhood Education - Teacher Assistant, School Age, Child Development Associate
Workforce Development Center & CIT	AK Steel Electrical Maintenance Apprentice
Courses	
Center for Innovative Technologies	Renewable Energy & Efficiency CAD
Humanities & Sciences	Spanish for EMS Academic Foundations (Developmental Ed)
Workforce Development Center	Various

