

MATERIAL SUPPORTING THE AGENDA

Volume XXXIIIb

This volume contains the Material Supporting the Agenda furnished to each member of the Board of Regents prior to the meetings held on

December 5-6, 1985

The material is divided according to the standing committees and the meetings that were held and is color coded as follows:

White paper - for documentation of all items that were presented before the deadline date.

Blue paper - all items submitted to the Executive Session and distributed only to the Regents, Chancellor and Executive Vice Chancellors of the System.

Yellow paper - emergency items distributed at the meeting.

Material distributed at the meeting as additional documentation is not included in the bound volume, because sometimes there is an unusual amount and other times some people get copies and some do not get copies. If the Executive Secretary was furnished a copy, then that material goes into the appropriate subject file.



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Material Supporting the Agenda  
of the  
Board of Regents  
The University of Texas System

Meeting No.: 813

Date: December 5-6, 1985

Location: Odessa, Texas

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BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

CALENDAR

Place: Dining Room Area of Student Lounge  
Classroom Building  
The University of Texas of the Permian Basin  
4901 East University  
Odessa, Texas

Host Institution: The University of Texas of the Permian Basin

Thursday, December 5, 1985

1:30 p.m. Meeting of the Board of Regents

See Pages B of R 1 - 5,  
Items A - M

Friday, December 6, 1985

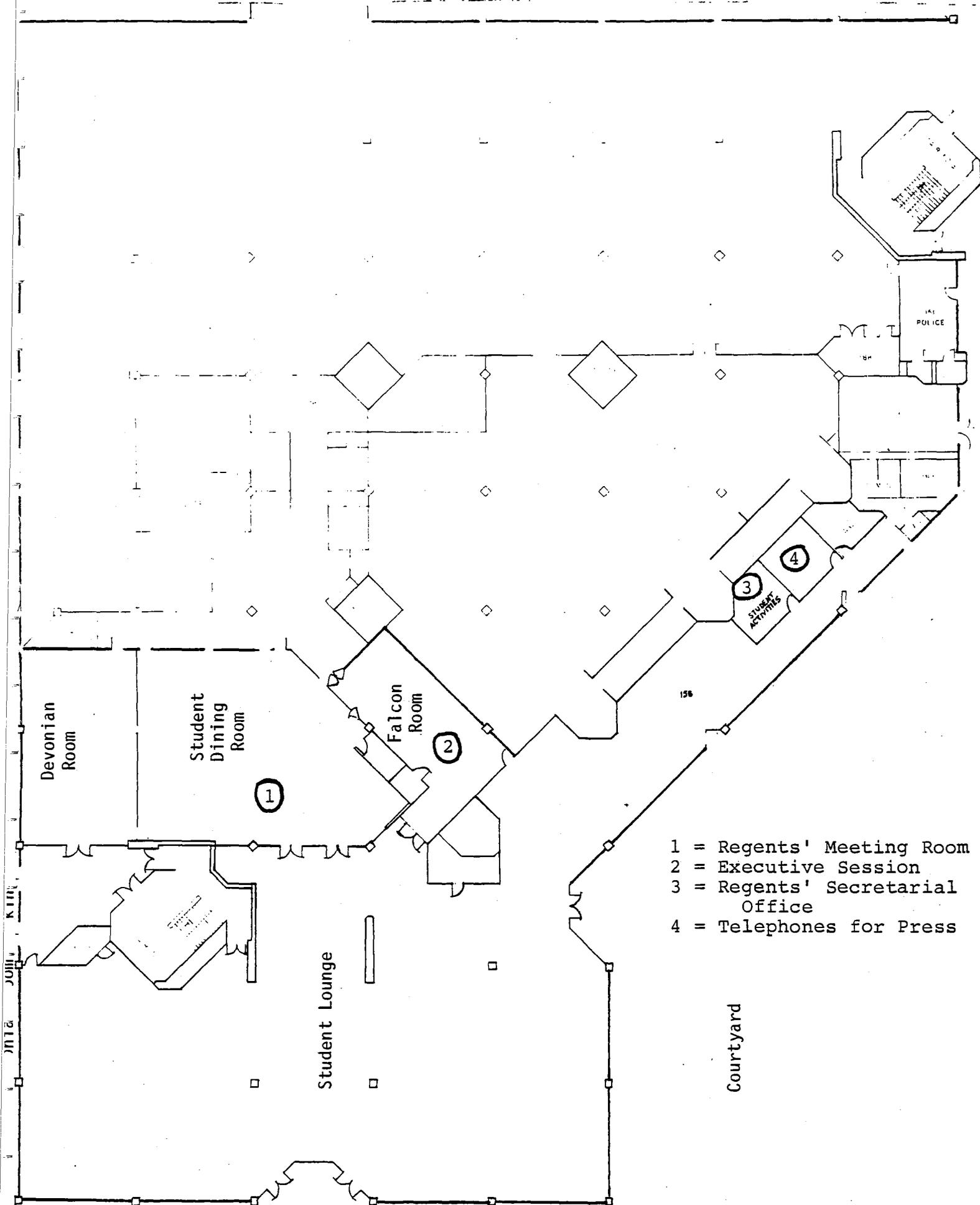
9:00 a.m. Meeting of the Board of Regents

See Page B of R - 6,  
Items N - R

Telephone Numbers

President Leach	(915) 367-2100
The Odessa Hilton 5200 East University	(915) 368-5885

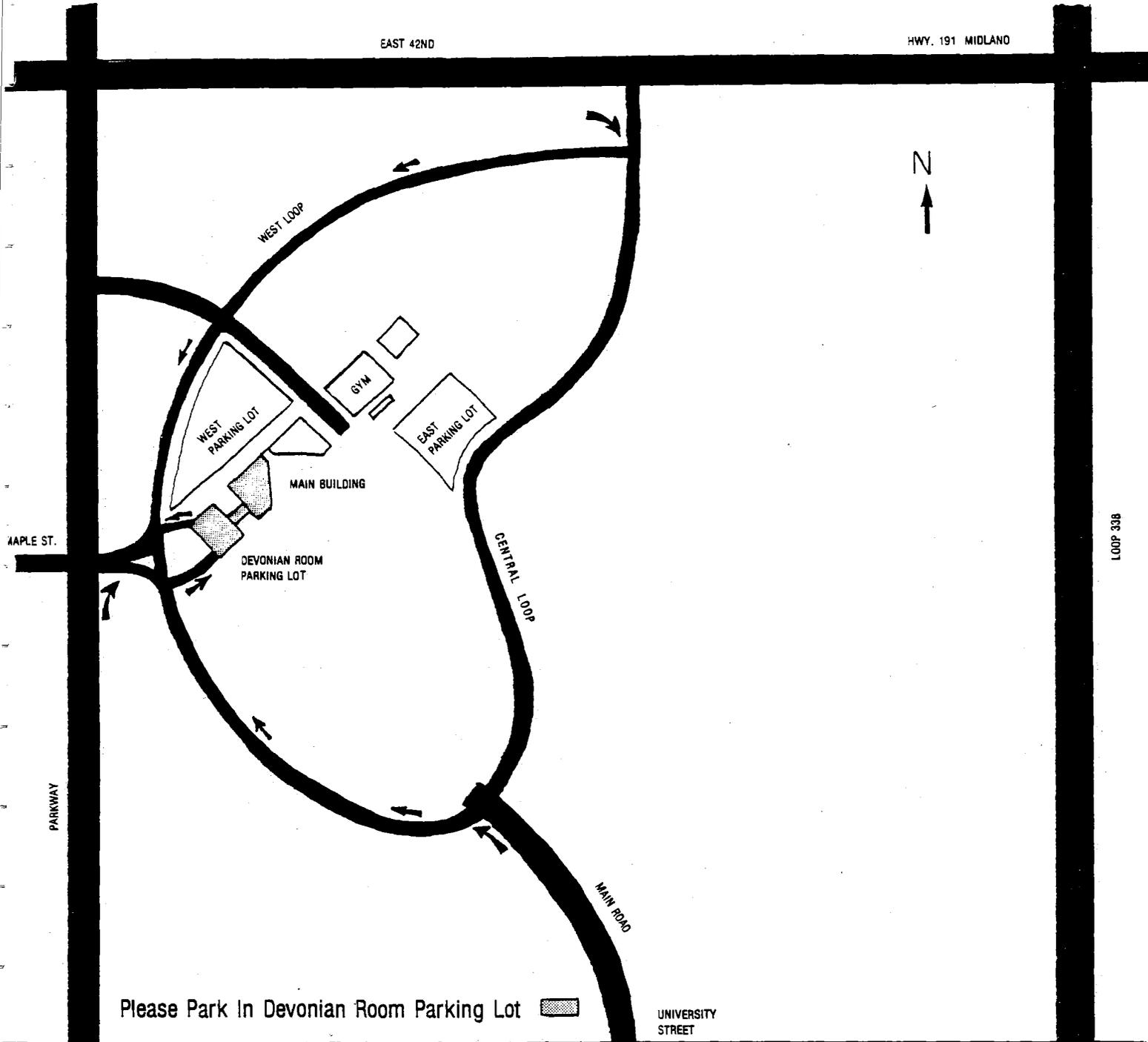
Parking area in front of building



Classroom Building, U. T. Permian Basin

EAST 42ND

HWY. 191 MIDLAND



APPLE ST.

PARKWAY

Please Park In Devonian Room Parking Lot



UNIVERSITY STREET

HILTON

HWY. 80 TO AIRPORT AND MIDLAND

INTERSTATE 20 & MIDLAND

LOOP 338

# Meeting of the Board



E. SPECIAL ITEM

U. T. System: Matters Related to the Issuance of Permanent University Fund Variable Rate Bonds.--

RECOMMENDATION

As a supplement to traditional long-term bond issues, the Office of the Chancellor recommends that the U. T. Board of Regents authorize the Office of Asset Management to enter into a financing program that includes the immediate issuance of up to \$75 million in debt instruments in the form of variable rate notes, flexible rate notes, term rate notes or a revolving credit note with the provision that the program may be increased to \$100 million by the U. T. Board of Regents at a future meeting.

Specifically, it is recommended that the U. T. Board of Regents:

- a. Approve the Resolution authorizing the issuance of obligations in an aggregate principal amount not to exceed \$100,000,000 to provide financing to pay Project Costs for Eligible Projects; authorizing such obligations to be issued, sold and delivered in various forms, including flexible rate notes, term rate notes, variable rate notes and a revolving credit note, and prescribing the terms, features and characteristics of such instruments; approving and authorizing certain authorized officers and employees to act on behalf of the Board of Regents of The University of Texas System in the selling and delivery of such obligations, within the limitations and procedures specified herein; making certain covenants and agreements in connection therewith; resolving other matters incident and related to the issuance, sale, security and delivery of such obligations, substantially in the form set forth in Attachment A (In approving the Resolution the Board will be approving a Revolving Credit Agreement substantially in the form set forth in Attachment B; a Notice of Sale and Bidding Instructions document substantially in the form set out in Attachment C; an Issuing and Paying Agency Agreement substantially in the form set forth in Attachment D; a Remarketing Agreement substantially in the form set forth in Attachment E; a Dealer Agreement substantially in the form set forth in Attachment F; and a Trust Agreement between The University of Texas System [as Trustor] and the State Treasurer [as Trustee] substantially in the form set forth in Attachment G)
- b. Appoint McCall, Parkhurst & Horton of Dallas, Dallas County, Texas, and Vinson & Elkins of Houston, Harris County, Texas, as co-bond counsel
- c. Appoint Goldman Sachs & Co., New York, New York, as Dealer/Remarketing Agent

SUPPLEMENTAL MATERIAL

SPECIAL ITEM

December 5-6, 1985

U. T. System: Matters Related to the Issuance of  
Permanent University Fund Variable Rate Bonds.--

RECOMMENDATION

As a supplement to traditional long-term bond issues, the Office of the Chancellor recommends that the U. T. Board of Regents authorize the Office of Asset Management to enter into a financing program that includes the issuance of \$100 million in debt instruments in the form of commercial paper notes, variable rate notes, and a revolving credit note.

Specifically, it is recommended that the U. T. Board of Regents:

- a. Approve the Resolution authorizing the issuance of obligations in an aggregate principal amount not to exceed \$100,000,000 to provide financing to pay Project Costs for Eligible Projects; authorizing such obligations to be issued, sold and delivered in various forms, including commercial paper notes, variable rate notes and a revolving credit note, and prescribing the terms, features and characteristics of such instruments; approving and authorizing certain authorized officers and employees to act on behalf of the Board of Regents of The University of Texas System in the selling and delivery of such obligations, within the limitations and procedures specified herein; making certain covenants and agreements in connection therewith; resolving other matters incident and related to the issuance, sale, security and delivery of such obligations, substantially in the form set forth in Attachment A (In approving the Resolution the Board will be approving a Credit Agreement substantially in the form set forth in Attachment B; a Notice of Sale and Bidding Instructions document substantially in the form set out in Attachment C; an Issuing and Paying Agency Agreement substantially in the form set forth in Attachment D; a Remarketing Agreement substantially in the form set forth in Attachment E; an Official Statement substantially in the form set forth in Attachment F; and a Trust Agreement between The University of Texas System [as Trustor] and the State Treasurer [as Trustee] substantially in the form set forth in Attachment G)
- b. Appoint McCall, Parkhurst & Horton of Dallas, Dallas County, Texas and Vinson & Elkins of Houston, Harris County, Texas as co-bond counsel
- c. Appoint Goldman Sachs & Co., New York, New York, as Dealer/Remarketing Agent
- d. Appoint Morgan Guaranty Trust Company, New York, New York as Paying Agent/Registrar and Tender Agent

- e. Appoint the following positions in U. T. System Administration, or their successors in function, as Authorized Representatives pursuant to the terms of the Resolution and its exhibits:
  - (1) Executive Vice Chancellor for Asset Management
  - (2) Manager of Debt Administration
  - (3) Director of Asset Strategy and Planning
  - (4) Vice Chancellor and General Counsel
  - (5) Manager of Endowment Real Estate
  
- f. Authorize the Executive Vice Chancellor for Asset Management to establish an appropriate account or accounts for the payment of Bond Counsel, Dealer, Paying Agent/Registrar fees, and other miscellaneous costs out of bond proceeds
  
- g. Repeal that certain Resolution adopted at Meeting Number 807, February 1985, found on Page 36 of the bound Minutes of that meeting and captioned as follows: "RESOLUTION MAKING COVENANTS AS TO THE INVESTMENT OF THE PERMANENT UNIVERSITY FUND IN CONNECTION WITH PERMANENT UNIVERSITY FUND BONDS AND NOTES AND COVENANTING TO MAKE PROMPT TRANSFER OF INCOME TO THE TEXAS A&M UNIVERSITY SYSTEM OF ITS PART OF THE INCOME FROM THE PERMANENT UNIVERSITY FUND"

#### BACKGROUND INFORMATION

Financing eligible projects with variable rate bonds will enable the U. T. Board of Regents to borrow at short term rates substantially below those of fixed rate 20 year serial bonds. The financing program envisions bonds with a final maturity not to exceed 30 years and a lien subordinate to the Refunding Bonds and any Additional Parity Bonds. Interest rate options would include: a) commercial paper rates (from 1 to 270 days), b) variable rates computed on a flexible, daily, weekly, monthly, quarterly, semi-annual, or term basis, and c) conversion to a fixed rate basis. The notes would be sold and remarketed through a remarketing agent and delivered and paid through a New York paying and tender agent.

It is anticipated that the Office of Asset Management, Bond Counsel, the Office of General Counsel, and the designated Dealer/Remarketing Agent will make necessary presentations at the meeting.

12/4/85

ATTACHMENT A

A RESOLUTION approving and authorizing the issuance of obligations in an aggregate principal amount at any one time outstanding of not to exceed \$100,000,000 (except for a promissory note which may be in the principal amount of \$109,000,000) to provide interim financing to pay Project Costs for Eligible Projects; authorizing such obligations to be issued, sold and delivered in various forms, including commercial paper notes, variable rate notes and a revolving note, and prescribing the terms, features and characteristics of such instruments; approving and authorizing certain authorized officers and employees to act on behalf of the Board of Regents of The University of Texas System in the selling and delivery of such obligations, within the limitations and procedures specified herein; making certain covenants and agreements in connection therewith; resolving other matters incident and related to the issuance, sale, security and delivery of such obligations, including the approval of an Issuing and Paying Agent/Registrar Agreement, Credit Agreement, Trust Agreement with the Texas State Treasurer, Official Statement and Remarketing Agreement; and providing an effective date.

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EXHIBITS

- Exhibit A Credit Agreement
- Exhibit B Trust Agreement
- Exhibit C Paying Agent Agreement
- Exhibit D Remarketing Agreement
- Exhibit E Bid Forms

DRAFT 12/4/85

A RESOLUTION approving and authorizing the issuance of obligations in an aggregate principal amount at any one time outstanding of not to exceed \$100,000,000 (except for a promissory note which may be in the principal amount of \$109,000,000) to provide interim financing to pay Project Costs for Eligible Projects; authorizing such obligations to be issued, sold and delivered in various forms, including commercial paper notes, variable rate notes and a revolving note, and prescribing the terms, features and characteristics of such instruments; approving and authorizing certain authorized officers and employees to act on behalf of the Board of Regents of The University of Texas System in the selling and delivery of such obligations, within the limitations and procedures specified herein; making certain covenants and agreements in connection therewith; resolving other matters incident and related to the issuance, sale, security and delivery of such obligations, including the approval of an Issuing and Paying Agent/Registrar Agreement, Credit Agreement, Trust Agreement with the Texas State Treasurer, Official Statement and Remarketing Agreement; and providing an effective date.

WHEREAS, the Board of Regents (the "Board") of The University of Texas System (the "System") hereby determines to issue obligations pursuant to the provisions of Section 18 of Article VII of the Constitution of the State of Texas, Article 717q, V.A.T.C.S., as amended and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code) to provide interim financing for Eligible Projects (hereinafter defined); and

WHEREAS, an amendment to Section 18 of Article VII of the Texas Constitution, adopted by vote of the people of Texas on November 6, 1984 (the "1984 Constitutional Amendment") authorizes the Board to issue bonds and notes not to exceed a total amount of twenty percent of the cost value of investments and other assets of the Permanent University Fund (hereinafter defined) (exclusive of real estate) at the time of issuance thereof, and to pledge all or any part of its two-thirds interest in the Available University Fund (hereinafter defined) to secure the payment of the principal and interest of those bonds and notes, for the purpose of

acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, major repair and rehabilitation of buildings and other permanent improvements, acquiring capital equipment and library books and library materials, and refunding bonds or notes issued under such section or prior law, at or for the System administration and certain component institutions of the System; and

WHEREAS, the Board has issued its Board of Regents of The University of Texas System Permanent University Fund Refunding Bonds, Series 1985 pursuant to the 1984 Constitutional Amendment, being payable from and secured by a first lien on and pledge of the Interest of the University (hereinafter defined) in the Available University Fund; and

WHEREAS, the Board hereby finds that the purposes for which the Board may issue bonds and notes constitute a "public utility", as contemplated by Article 717q, V.A.T.C.S., as amended; and

WHEREAS, the Board intends to fund or refund the herein authorized interim obligations through the issuance of its bonds or notes pursuant to the Constitutional Amendment (hereinafter defined); and

WHEREAS, arrangements relating to such interim financing have been settled and the Board hereby finds and determines that the issuance of obligations, including commercial paper notes, variable rate notes, and a promissory note, subject to the terms, conditions, and limitations hereinafter prescribed, should be approved and authorized at this time; now, therefore,

BE IT RESOLVED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this resolution or any resolution amendatory or supplemental hereto, shall be construed, are used and are intended to have the following meanings, to-wit:

"Acts" shall mean, collectively, Article 717q, V.A.T.C.S., as amended, and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code).

"Advances" shall have the same meaning given said term in the Agreement.

"Agreement" or "Credit Agreement" shall mean the Credit Agreement approved and authorized to be entered into by Section 2.05, as from time to time amended or supplemented, or other credit facility provided in lieu thereof in accordance with the provisions of Section 6.04(a).

"Authorized Representative" shall mean one or more of the following officers or employees of the System, to-wit: the Executive Vice Chancellor for Asset Management, the Vice Chancellor and General Counsel, the Director of Asset Strategy and Planning, the Manager of Debt Administration, and the Manager of Endowment Real Estate or such other officer or employee of the System authorized by the Board to act as an Authorized Representative.

"Available University Fund" shall mean, as provided in the Constitutional Amendment, all of the dividends, interest, and other income from the Permanent University Fund (less administrative expenses), including the net income attributable to the surface of Permanent University Fund land.

"Bank" shall mean MBank Dallas, N.A., Dallas, Texas, a national banking association or any subsequent lender which becomes a party to the Agreement.

"Board of Regents" or "Board" shall mean the Board of Regents of the System.

"Bond Counsel" shall mean Messrs. McCall, Parkhurst & Horton, and Messrs. Vinson & Elkins.

"Bond Resolution" shall mean, collectively, the resolutions authorizing any Fund Priority Obligations.

"Business Day" shall mean any day (a) when banks are open for business in Dallas, Texas, and Austin, Texas and (b) when banks are not authorized to be closed in New York, New York.

"Commercial Paper Note" shall mean a Note issued pursuant to the provisions of this Resolution, having the terms and characteristics specified in Section 2.03 and in the form described in Section 2.07(a).

"Constitutional Amendment" shall mean the 1984 Constitutional Amendment, and any amendment thereto or any other amendment to the Constitution of the State of Texas relating to the Permanent University Fund hereafter approved by the voters of the State of Texas.

"Conversion Date" shall mean: (a) when used with respect to the Fixed Rate, the Fixed Rate Conversion Date; (b) when used with respect to any particular type of Variable Rate Period, the Daily Rate Conversion Date, the Weekly Rate Conversion Date, the Monthly Rate Conversion Date, the Quarterly Rate Conversion Date, the Semiannual Rate Conversion Date, and the Term Rate Conversion Date, as applicable; and (c) when used with respect to Flexible Rate Periods, the Flexible Rate Conversion Date.

"Daily Rate Conversion Date" shall mean the day on which the Variable Rate Notes first bear interest at a Daily Rate pursuant to Section 3.02(h) or (i).

"Daily Rate" shall mean the interest rate to be determined for the Variable Rate Notes on each Business Day pursuant to Section 3.02(b).

"Daily Rate Period" shall mean the period during which the Variable Rate Notes bear interest at a Daily Rate pursuant to Section 3.02(b), commencing on a Business Day and extending to but not including the next Business Day.

"Dealer" or "Remarketing Agent" shall have the meaning given said term in Section 5.04.

"Eligible Project" shall mean the acquisition of land either with or without permanent improvements, the construction and equipping of buildings or other permanent improvements, major repair and rehabilitation of buildings and other permanent improvements, the acquisition of capital equipment and library books and library materials. The term "Eligible Project" shall not include the construction, equipping, repairing or rehabilitating of buildings or other permanent improvements that are to be used for student housing, intercollegiate athletics, or auxiliary enterprises.

"Fiscal Year" shall mean the twelve-month operational period of the System commencing on September 1 of each year and ending on the following August 31.

"Fitch" shall mean Fitch Investors Service or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"Fixed Rate" shall mean the rate at which the Variable Rate Notes shall bear interest from and including the Fixed Rate Conversion Date to the maturity date thereof.

"Fixed Rate Conversion Date" shall mean the date on which the Variable Rate Notes are converted to bear interest at the Fixed Rate pursuant to Section 3.04 which Fixed Rate Conversion Date shall be an Interest Payment Date on which interest is payable for the Variable Rate Period from which the conversion is made or in the event of conversion from Flexible Rate Periods, the day following an Interest Payment Date on which interest is payable on all Variable Rate Notes.

"Fixed Rate Period" shall mean the period during which the Variable Rate Notes bear interest at the Fixed Rate.

"Flexible Rate" shall mean, when used with respect to any particular Variable Rate Notes, the interest rate determined for each Flexible Rate Period applicable thereto pursuant to Section 3.03.

"Flexible Rate Conversion Date" shall mean the date on which the Variable Rate Notes first begin to bear interest at Flexible Rates which Flexible Rate Conversion Date shall be an Interest Payment Date on which interest is payable for the Variable Rate Period from which the conversion is to be made; provided, however, that in the case of a conversion from a Term Rate Period, the Conversion Date shall be an Interest Payment Date on which a new Term Rate Period would otherwise have commenced pursuant to Section 3.02(g).

"Flexible Rate Period" shall mean each period during which a Variable Rate Note bears interest at a Flexible Rate.

"Fund Priority Obligations" shall mean the Series 1985 Bonds and any other obligations issued by the Board pursuant to the Constitutional Amendment which are secured by and payable from a lien on and pledge of the Interest of the University in the Available University Fund prior in rank and dignity to the lien and pledge securing the payment of the Notes.

"Holder" or "Noteholder" shall mean the Registered Owner or any person, firm, association, or corporation who is in possession of any Note drawn, issued or endorsed to such person, firm, association or corporation or to the order of such person, firm, association or corporation or to bearer or in blank.

"Interest of the University" and "Interest" in the Available University Fund shall mean the System's two-thirds interest in the Available University Fund as apportioned and provided in the Constitutional Amendment.

"Interest Payment Date" shall mean (a) when used with respect to Variable Rate Notes bearing interest at the Daily, Weekly or Monthly Rate, the first Business Day of each calendar month to which interest at such rate has accrued; (b) when used with respect to Variable Rate Notes bearing interest at the Quarterly Rate, the first Business Day of the third calendar month following the month in which the Quarterly Rate Conversion Date occurs and the first Business Day of each third calendar month thereafter to which interest at such rate has accrued; (c) when used with respect to Variable Rate Notes bearing interest at the Semiannual Rate or Term Rate or Fixed Rate, the first day of the sixth calendar month following the month in which the Semiannual, Term or Fixed Rate Conversion Date occurs and the first day of each sixth month thereafter to which interest at such rate has accrued; and (d) when used with respect to any particular Variable Rate Note bearing interest at a Flexible Rate, the last day of each Flexible Rate Period applicable thereto.

"Interest Period" shall mean the period from and including any Interest Payment Date to and including the day immediately preceding the next following Interest Payment Date.

"Investment Company" shall mean an open-end diversified management investment company registered under the Investment Company Act of 1940, as amended.

"Issuing and Paying Agent", "Paying Agent/Registrar", "Paying Agent" or "Registrar" shall mean the agent appointed pursuant to Section 2.02, or any successor to such agent.

"Maximum Interest Rate" shall mean the lesser of (a) 15% per annum and (b) the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the Board in the exercise of its borrowing powers (prescribed by Article 717k-2, V.A.T.C.S., as amended, or any successor provision).

"Maximum Maturity Date" shall mean December 1, 2015.

"Monthly Rate" shall mean the interest rate to be determined for the Variable Rate Notes on a monthly basis pursuant to Section 3.02(d).

"Monthly Rate Conversion Date" shall mean the day (which is also an Interest Payment Date) on which the Variable Rate Notes first bear interest at a Monthly Rate pursuant to Section 3.02(h) or (i).

"Monthly Rate Period" shall mean each period during which the Variable Rate Notes bear interest at a Monthly

Rate commencing on the first Business Day of each calendar month and ending on the last day prior to the first Business Day of the following month.

"Moody's" shall mean Moody's Investors Service, Inc. or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"1985 Constitutional Amendment Bond Resolution" shall mean the resolution adopted by the Board on October 24, 1985, authorizing the issuance of the Series 1985 Bonds.

"1984 Constitutional Amendment" shall mean the amendment to Section 18 of Article VII of the Constitution of the State of Texas approved by the voters on November 6, 1984.

"Note" or "Notes" shall mean the evidences of indebtedness authorized to be issued and at any time outstanding pursuant to this Resolution and shall include Commercial Paper Notes, Variable Rate Notes, or the Revolving Note as appropriate.

"Note Date" shall have the meaning given in Section 2.02.

"Permanent University Fund", "Permanent Fund", and "Fund" used interchangeably herein shall mean the Permanent University Fund as created, established, implemented, and administered pursuant to Article VII, Sections 10, 11, 11a, 15, and 18 of the Texas Constitution, as currently or hereafter amended, and further implemented by the provisions of Chapter 66, Texas Education Code.

"Permanent University Fund Obligations" shall mean, collectively, all bonds or notes of the Board or the Board of Regents of The Texas A&M University System heretofore or hereafter issued and delivered pursuant to the provisions of the Constitutional Amendment, payable from and secured by a lien on and pledge of income from the Permanent University Fund.

"Project Costs" shall mean all costs and expenses incurred in relation to Eligible Projects, including without limitation design, planning, engineering, and legal costs, acquisition costs of land, interests in land, right-of-way, and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an Eligible Project, and financing costs, including interest during construction and thereafter, underwriter's discount and/or fees, legal, financial, and other professional services, and

reimbursement for such Project Costs attributable to Eligible Projects incurred prior to the issuance of any Project Notes.

"Project Note" shall mean, as appropriate, a Note or all the Notes other than the Revolving Note.

"Quarterly Rate" shall mean the interest rate to be determined for the Variable Rate Notes on a quarterly basis pursuant to Section 3.02(e).

"Quarterly Rate Conversion Date" shall mean the date on which the Variable Rate Notes first bear interest at a Quarterly Rate pursuant to Section 3.02(h) or (i).

"Quarterly Rate Period" shall mean each period during which the Variable Rate Notes bear interest at a Quarterly Rate (a) commencing initially on a Quarterly Rate Conversion Date and (b) ending on the last day preceding either the commencement date of the following Quarterly Rate Period or the Conversion Date on which a different Rate Period shall become effective.

"Rate Period" shall mean the period during which a particular rate of interest determined for the Variable Rate Notes is to remain in effect pursuant to Article III.

"Registered Owner" shall mean the person or entity in whose name any Note is registered in the Registration Books.

"Registration Books" shall mean the books or records relating to the registration, payment and transfer or exchange of the Project Notes maintained by the Issuing and Paying Agent pursuant to Section 2.10.

"Regular Record Date" shall mean the close of business on the (a) Business Day immediately preceding the Interest Payment Date in the case of Variable Rate Notes bearing interest at Flexible, Daily, Weekly, Monthly, and Quarterly Rates and (b) fifteenth (15th) day of the month immediately preceding the Interest Payment Date in the case of Variable Rate Notes bearing interest at Semiannual or Term Rates or at the Fixed Rate.

"Resolution" shall mean this resolution and any amendment, modification, or supplement hereto as permitted hereby.

"Revolving Note" shall mean the refunding promissory bond issued pursuant to the provisions of this Resolution and the Agreement in evidence of Advances made by the Bank under the Agreement to refund a Project Note or Notes, or the interest thereon, having the terms and characteristics

contained therein and issued in accordance therewith, including any renewals or modifications thereof.

"Semiannual Rate" shall mean the interest rate to be determined for the Variable Rate Notes on a semiannual basis pursuant to Section 3.02(f).

"Semiannual Rate Conversion Date" shall mean the day on which the Variable Rate Notes first bear interest at a Semiannual Rate pursuant to Section 3.02(h) or (i).

"Semiannual Rate Period" shall mean each period during which the Variable Rate Notes bear interest at a Semiannual Rate.

"Series 1985 Bonds" shall mean The Board of Regents of The University of Texas System Permanent University Fund Refunding Bonds, Series 1985, dated October 15, 1985, and issued in the aggregate principal amount of \$345,970,000.

"Short Term Obligations" shall mean bonds or other evidences of indebtedness hereafter issued and incurred by the Board (other than the Notes) payable from the same sources, or any portion of such sources, securing the payment of the Notes and equally and ratably secured by a parity lien on and pledge of such sources securing the Notes, or any portion thereof.

"Special System Account" shall mean The State Treasurer - University of Texas Special System Account established by the Treasurer of the State of Texas pursuant to the Trust Agreement.

"Standard & Poor's" or "S&P" shall mean Standard & Poor's Corporation or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

"Term Rate" shall mean the interest rate to be determined for the Variable Rate Notes of a term of one or more years pursuant to Section 3.02(g).

"Term Rate Conversion Date" shall mean the day on which the Variable Rate Notes first bear interest at a Term Rate pursuant to Section 3.02(h) or (i).

"Term Rate Period" shall mean each period during which the Variable Rate Notes bear interest at a Term Rate.

"University" or "System" shall mean The University of Texas System.

"Variable Rate" shall mean, as the context requires, the Daily, Weekly, Monthly, Quarterly, Semiannual, or Term Rate applicable to Variable Rate Notes.

"Variable Rate Conversion Date" shall mean the day on which the Variable Rate Notes first bear interest at a Variable Rate pursuant to Section 3.02(h) or (i).

"Variable Rate Note" shall mean a Note issued pursuant to the provisions of this Resolution, having the terms and characteristics specified in Section 2.04 and Articles III and IV and in substantially the form described in Section 2.07(b).

"Variable Rate Period" shall mean each period during which the Variable Rate Notes bear interest at a specific Variable Rate.

"Weekly Rate" shall mean the interest rate to be determined for the Variable Rate Notes on a weekly basis pursuant to Section 3.02(c).

"Weekly Rate Conversion Date" shall mean the day on which the Variable Rate Notes first bear interest at a Weekly Rate pursuant to Section 3.02(h) or (i).

"Weekly Rate Period" shall mean the period during which the Variable Rate Notes bear interest at a Weekly Rate.

Section 1.02. Construction of Terms Utilized in this Resolution. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

## ARTICLE II

### AUTHORIZATION OF NOTES

Section 2.01. General Authorization. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State of Texas, particularly the Constitutional Amendment and the Acts, Project Notes shall be and are hereby authorized to be issued in an aggregate principal amount not to exceed ONE HUNDRED NINE MILLION DOLLARS (\$109,000,000) at any one time outstanding for the purpose of financing Project Costs of Eligible Projects and to refinance, renew, or refund Notes, including interest thereon; and a refunding bond herein called the Revolving Note shall be and is hereby authorized to be

issued in an aggregate principal amount not to exceed One Hundred Nine Million Dollars (\$109,000,000) at any one time outstanding for the purpose of refunding Project Notes, including interest thereon, and evidencing Advances under the Agreement relating thereto; all in accordance with and subject to the terms, conditions, and limitations contained herein and, with respect to the Revolving Note, in the Agreement. For purposes of this Section 2.01, any portion of outstanding Notes to be paid from money on deposit in the Series A Note Payment Fund or the Special System Account and from the available proceeds of Notes, Short Term Obligations, Fund Priority Obligations or other obligations of the Board issued pursuant to the Constitutional Amendment on the day of calculation shall not be considered outstanding.

Section 2.02. Terms Applicable to Notes - General. Subject to the limitations contained herein, Commercial Paper Notes herein authorized shall be dated as of their date of issuance or prior thereto, but within 30 days of the date of issuance as determined herein or as otherwise determined by an Authorized Representative, and Variable Rate Notes herein authorized shall be dated as of the date of original issuance of such Variable Rate Notes (the "Note Date"), and Project Notes shall bear no interest or bear interest at such rate or rates (either fixed, variable, floating, adjustable, or otherwise) per annum computed either on the basis of (i) actual days elapsed and on a 365-day year, or (ii) a 360-day year composed of twelve 30-day months (but in no event in any case to exceed the Maximum Interest Rate in effect on the date of issuance thereof), as provided herein or otherwise as may be determined by an Authorized Representative, and shall mature on or prior to the Maximum Maturity Date. Subject to the provisions of Articles III and IV, an Authorized Representative may establish a formula, index or other method for establishing the interest rates.

Project Notes issued hereunder may contain terms and provisions for the redemption or prepayment thereof prior to maturity, subject to any applicable limitations contained herein, as provided herein or otherwise as shall be determined by an Authorized Representative.

Subject to applicable terms, limitations, and procedures contained herein and to the provisions of Articles III and IV, Project Notes may be sold in such manner at public or private sale and at par or at such discount or premium (within the interest rate and yield restrictions provided herein) as an Authorized Representative shall approve at the time of the sale thereof; provided, however, that if any Project Notes are required to be sold through competitive bidding, such Project Notes shall be sold in accordance with the procedures set forth in Section 5.01.

The Project Notes shall be issued in registered form, without coupons, provided, however, Commercial Paper Notes may be registered to bearer. Both principal of and interest on the Project Notes shall be payable in the manner provided in Section 2.07 for Commercial Paper Notes and Variable Rate Notes, respectively.

The selection and appointment of Morgan Guaranty Trust Company of New York, New York, New York to serve as Paying Agent/Registrar for the Project Notes is hereby confirmed and the Board covenants and agrees to keep and maintain the Registration Books at the principal corporate office of the Paying Agent/Registrar, all as provided herein and pursuant to such reasonable rules and regulations as the Paying Agent/Registrar may prescribe. The Board covenants to maintain and provide a Paying Agent/Registrar at all times while the Project Notes are outstanding, which shall be a national or state banking association or corporation organized and doing business under the laws of the United States of America or of any State and authorized under such laws to exercise trust powers. Should a change in the Paying Agent/Registrar for the Project Notes occur, the Board agrees to promptly cause a written notice thereof to be (i) sent to each Registered Owner of the Project Notes then outstanding by United States Mail, first class, postage prepaid and (ii) published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two calendar weeks, provided, however, the publication of such notice shall not be required if notice is given to each Holder. Such notice shall give the address of the successor Paying Agent/Registrar. A successor Paying Agent/Registrar may be appointed without the consent of the Holders.

The Board and the Paying Agent/Registrar may treat the bearer (in the case of Project Notes so registered) or the Registered Owner of any Project Note as the absolute owner thereof for the purpose of receiving payment thereof and for all other purposes, and the Board and the Paying Agent/Registrar shall not be affected by any notice or knowledge to the contrary.

Section 2.03. Commercial Paper Notes. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, Commercial Paper Notes to be designated "Board of Regents of The University of Texas System Permanent University Fund Commercial Paper Notes, Series A" are hereby authorized to be issued and sold and delivered from time to time in such principal amounts as determined by an Authorized Representative in denominations of any multiple of \$1,000, with a minimum denomination of \$100,000, numbered in ascending consecutive numerical order in the order of their issuance and to mature and become due

and payable on such dates as an Authorized Representative shall determine at the time of sale; provided, however, that no Commercial Paper Note shall (i) mature after the Maximum Maturity Date or (ii) have a term in excess of 270 days.

Interest, if any, on Commercial Paper Notes shall be payable at maturity with principal.

Section 2.04. Variable Rate Notes. Under and pursuant to authority granted hereby and subject to the limitations contained herein, Variable Rate Notes to be designated "Board of Regents of The University of Texas System Permanent University Fund Variable Rate Notes, Series A", are hereby authorized to be issued and sold and delivered from time to time in such principal amounts as determined by an Authorized Representative, such Variable Rate Notes to be in denominations provided in the Form of Variable Rate Notes in Section 2.07(b), to be numbered in ascending consecutive numerical order in the order of their issuance and to mature and become due and payable on the date selected by an Authorized Representative in accordance with this Resolution but not later than the Maximum Maturity Date. Variable Rate Notes shall be payable and subject to purchase on demand of the Holder and redemption prior to maturity under the terms and conditions and at the redemption price or prices as set forth in Section 2.07(b) and Articles III and IV or as otherwise determined by an Authorized Representative; provided, however, any premium associated with a redemption prior to maturity of a Variable Rate Note shall not exceed three percent (3%) of the principal amount thereof.

Variable Rate Notes are hereby authorized to be issued bearing interest at a variable, floating, or adjustable rate not to exceed the Maximum Interest Rate and interest thereon shall be payable at maturity and at such intervals prior to maturity all as determined in accordance with the provisions of Articles III and IV and in the form of Variable Rate Notes set forth in Section 2.07(b).

To exercise its option to redeem Variable Rate Notes, the Authorized Representative shall deliver notice to the Paying Agent of its intention to redeem the Variable Rate Notes (a) with respect to Variable Rate Notes bearing interest at Flexible, Daily, Weekly, or Monthly Rates at least twelve (12) days prior to the proposed redemption date; and (b) with respect to Variable Rate Notes bearing interest at Quarterly, Semiannual or Term Rates or at a Fixed Rate at least thirty five (35) days prior to the proposed redemption date. The Paying Agent shall cause notice of any redemption of Variable Rate Notes to be mailed to each Registered Owner of Variable Rate Notes to be redeemed at the respective addresses appearing in the Registration Books. If such notice shall (i) be mailed at least ten (10) days prior to

the redemption date with respect to Variable Rate Notes bearing interest at Flexible, Daily, Weekly, or Monthly Rates and at least thirty (30) days prior to the redemption date with respect to Variable Rate Notes bearing interest at Quarterly, Semiannual, or Term Rates or at a Fixed Rate, (ii) identify the Variable Rate Notes to be redeemed (specifying the CUSIP numbers (as defined herein), if any, assigned to the Variable Rate Notes), (iii) specify the redemption date and the redemption price, and (iv) state that (a) on the redemption date the Variable Rate Notes called for redemption will be payable at the principal corporate trust office of the Paying Agent, (b) from the redemption date interest will cease to accrue, and (c) no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Variable Rate Notes, and, if due provision for the payment of the redemption price is made, then the Variable Rate Notes which are to be redeemed thereby automatically shall be deemed to have been redeemed prior to their scheduled maturities, and they shall not bear interest after the redemption date, and they shall not be regarded as being outstanding except for the right of the Registered Owner thereof to receive the redemption price from the Paying Agent. No defect affecting any Variable Rate Notes, whether in the notice of redemption or mailing thereof (including any failure to mail such notice) shall affect the validity of the redemption provisions for any other Variable Rate Notes.

Section 2.05. Credit Agreement. The Agreement, substantially in the form attached hereto as Exhibit A, is hereby approved, and shall be entered into with the Bank. The form of Revolving Note contained in the Agreement is also approved, including the interest rate to be determined as set forth therein. The Chairman of the Board and the Executive Secretary of the Board are hereby authorized to execute and deliver the Agreement and the Chairman of the Board and the Executive Secretary of the Board are hereby authorized and directed to execute and deliver the Revolving Note and any other documents called for thereunder and the Executive Secretary of the Board is authorized to place the Board seal on such instruments.

Section 2.06. Revolving Note. Under and pursuant to authority granted hereby and by the Agreement and subject to the limitations contained herein and in the Agreement, the Revolving Note to be designated "Board of Regents of The University of Texas System Credit Agreement Promissory Note" is hereby authorized to refund outstanding Notes and interest thereon in accordance with the terms of this Resolution, the Agreement and the form of Revolving Note set forth in Exhibit A to the Agreement.

Section 2.07. Forms of Project Notes. The Project Notes and the Certificate of Authentication to appear on each of the Project Notes shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Resolution and may have such letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Banks Association) ("CUSIP" numbers) and such legends and endorsements thereon as may, consistently herewith, be approved by an Authorized Representative. Any portion of the text of any Project Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Project Notes.

The Project Notes shall be printed, lithographed, or engraved or produced in any other similar manner, or type-written, all as determined and approved by an Authorized Representative.

(a) Form of Commercial Paper Note:

UNITED STATES OF AMERICA  
STATE OF TEXAS  
BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM PERMANENT UNIVERSITY FUND  
COMMERCIAL PAPER NOTE, SERIES A

Note	Interest	Note	
Number _____	Rate _____	Date _____	\$ _____

On \_\_\_\_\_ (the "Maturity Date") for value received, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (the "Board")

Promises To Pay To The Order Of \_\_\_\_\_  
The Principal Sum Of \_\_\_\_\_  
Payable At \_\_\_\_\_  
(the "Issuing and Paying Agent").

on the Maturity Date specified above, and to pay interest, if any, on said principal amount specified above at said Maturity Date, from the above specified Note Date to said Maturity Date at the per annum Interest Rate shown above (computed on the basis of actual days elapsed and a 365-day year) solely from the sources hereinafter identified and as hereinafter stated; both principal and interest on this Commercial Paper Note being payable in immediately available lawful money of the United States of America at the principal corporate office of the Issuing and Paying Agent specified above, or its successor. No interest will accrue on the principal amount hereof after said Maturity Date.

This Commercial Paper Note is one of an issue of commercial paper notes (the "Commercial Paper Notes") which, together with other forms of obligations, including the below-referenced Revolving Note (such other obligations and the Commercial Paper Notes being hereinafter collectively referred to as the "Notes"), has been duly authorized and issued in accordance with the provisions of a resolution (the "Resolution") passed by the Board, an agency and political subdivision of the State of Texas, for the purpose of financing Project Costs of Eligible Projects (each as defined in the Resolution) and to refinance, renew, or refund the Notes issued pursuant to the provisions of the Resolution; all in accordance and in strict conformity with the provisions of Section 18 of Article VII of the Constitution of the State of Texas, Article 717q, V.A.T.C.S., as amended, and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code).

This Commercial Paper Note, together with the other Notes, is payable from and equally secured by (i) the proceeds from (a) the sale of the Fund Priority Obligations, Short Term Obligations (each as defined in the Resolution) or other obligations of the Board under the Constitutional Amendment (as defined in the Resolution) issued for such purpose and (b) the sale of Project Notes (as defined in the Resolution) issued pursuant to the Resolution for such purpose, (ii) Advances under the Credit Agreement (each as defined in the Resolution), (iii) the amounts held in the Series A Note Payment Fund and the Special System Account (each as defined in the Resolution), and (iv) the Interest of the University in the Available University Fund (each as defined in the Resolution), such lien on and pledge of the Interest of the University in the Available University Fund, however, being junior and subordinate to the lien and pledge thereof securing the payment of the Fund Priority Obligations now outstanding and hereafter issued by the Board.

This Commercial Paper Note, together with the other Notes, is payable solely from the sources hereinabove identified securing the payment thereof. The Notes do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the Board, except with respect to the Interest of the University in the Available University Fund, and the holder hereof shall never have the right to demand payment of this obligation from any sources or properties of the Board except as identified above.

It is hereby certified and recited that all acts, conditions, and things required by law and the Resolution to exist, to have happened, and to have been performed precedent to and in the issuance of this Commercial Paper Note, do exist, have happened, and have been performed in regular

and in due time, form, and manner as required by law and that the issuance of this Commercial Paper Note, together with all other Notes, is not in excess of the principal amount of Notes permitted to be issued under the Resolution.

This Commercial Paper Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Commercial Paper Note shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Commercial Paper Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the Board has authorized and caused this Commercial Paper Note to be executed on its behalf by the manual or facsimile signatures of the Chairman of the Board and the Executive Secretary of the Board and its official seal impressed or a facsimile thereof to be printed hereon.

BOARD OF REGENTS OF THE UNIVERSITY  
TEXAS SYSTEM

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Executive Secretary

(SEAL)

ISSUING AND PAYING AGENT'S  
CERTIFICATE OF AUTHENTICATION

This Commercial Paper Note is one of the Commercial Paper Notes delivered pursuant to the within-mentioned Resolution.

MORGAN GUARANTY TRUST COMPANY OF NEW YORK  
as Issuing and Paying Agent

By \_\_\_\_\_  
Countersignature

(b) Form of Variable Rate Note.

\$ \_\_\_\_\_ Number \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM PERMANENT UNIVERSITY FUND  
VARIABLE RATE NOTE, SERIES A

Interest Rate	Maturity Date	Tender Date	Note Date	Principal Amount
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INTEREST RATE MODE:

<u>Flexible</u>	<u>Daily</u>	<u>Weekly</u>	<u>Monthly</u>	<u>Quarterly</u>	<u>Semiannual</u>	<u>Term</u>	<u>Fixed</u>
<input type="checkbox"/>							

REGISTERED OWNER:

THE BOARD OF REGENTS (the "Board") OF THE UNIVERSITY OF TEXAS SYSTEM (the "System") being an agency and political subdivision of the State of Texas, FOR VALUE RECEIVED, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of the registered owner set forth above, or the assignee thereof, on the Maturity Date specified above the principal amount specified above and to pay interest, if any, on said principal amount from the above specified Note Date to said Maturity Date or earlier redemption date or the date of payment pursuant to a demand for payment at the rate determined as herein provided from the most recent Interest Payment Date to which interest has been paid or duly provided for or from the Note Date if no interest has been paid, such payments of interest to be made on each Interest Payment Date until the principal hereof has been paid or provided for as aforesaid. Both principal of and interest on this Note are payable in immediately available funds or clearing house funds, depending on the interest rate mode, the principal amount of notes owned and the instructions of the registered owner, in lawful money of the United States of America; the principal hereof being payable upon presentation and surrender of this Note at the principal corporate office of the Paying Agent/Registrar executing the Certificate of Authentication appearing hereon, or its successor, and the interest hereon to be payable to the registered owner hereof whose name appears on the registration and transfer books (the "Registration Books") kept by the Paying Agent/Registrar as of the close of business on the record date by check mailed to such registered owner or by such

other method requested by and at the risk and expense of the registered owner provided, that (i) if the registered owner has submitted a written request with the Paying Agent/Registrar prior to the record date, interest for any Daily, Weekly, Monthly or Quarterly Rate Period shall be paid by federal funds check, by deposit to the account of the registered owner if such account is maintained by the Paying Agent/Registrar or by wire transfer within the continental United States; or (ii) interest for Flexible Rate Periods will be paid in immediately available funds; provided further that interest accrued during any Flexible Rate Period and at the maturity of this Note shall be paid only upon its presentation and surrender. The record date for any Interest Payment Date shall be the close of business on the Business Day immediately preceding the Interest Payment Date, except that, while this Note bears interest at Semiannual or Term Rates, or at a Fixed Rate the regular record date shall be the close of business on the 15th day of the calendar month immediately preceding such Interest Payment Date.

THIS NOTE is one of an issue of variable rate notes (the "Variable Rate Notes") which, together with other forms of obligations, including the below referenced Revolving Note (such other obligations and the Variable Rate Notes being hereinafter collectively referred to as the "Notes"), has been duly authorized and issued in accordance with the provisions of a resolution (the "Resolution") passed by the Board for the purpose of financing Project Costs of Eligible Projects and to refinance, renew, or refund the Notes issued pursuant to the provisions of the Resolution; all in accordance and in strict conformity with the provisions of Section 18 of Article VII of the Constitution of the State of Texas, Article 717q, V.A.T.C.S., as amended, and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code). Capitalized terms used herein and not otherwise defined shall have the meaning given in the Resolution.

This Note, together with the other Notes, is payable (which includes the obligation to purchase upon tender as provided herein) from and equally secured by (i) the proceeds from (a) the sale of Fund Priority Obligations, Short Term Obligations or other obligations of the Board under the Constitutional Amendment issued for such purpose and (b) the sale of Project Notes issued pursuant to the Resolution for such purpose, (ii) Advances under the Credit Agreement, (iii) the amounts held in the Series A Note Payment Fund and the Special System Account, and (iv) the Interest of the University in the Available University Fund, such lien on and pledge of the Interest of the University in the Available University Fund, however, being junior and subordinate to the lien and pledge thereof securing the

payment of Fund Priority Obligations now outstanding and hereafter issued by the Board.

This Note, together with the other Notes, is payable solely from the sources hereinabove identified securing the payment thereof. The Notes do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the Board, except with respect to the Interest of the University in the Available University Fund, and the holder hereof shall never have the right to demand payment of this obligation from any sources or properties of the Board except as identified above.

#### INTEREST ON VARIABLE RATE NOTES

\*The originally issued Variable Rate Notes shall bear interest at the Flexible Rate for a Flexible Rate Period which ends on December 20, 1985. At the end of the initial Flexible Rate Period, the Variable Rate Note shall be subject to mandatory tender, without right of retention by the registered owner. Thereafter, the Variable Rate Notes shall continue in the Flexible Rate Mode until converted to another interest rate mode in accordance with the Resolution.

The rate of interest applicable to any Rate Period shall be determined in accordance with the applicable provisions of the Resolution and, for Flexible Rate Periods and Rate Periods, as hereinafter defined pursuant to the terms of the Remarketing Agreement between the Board and Goldman, Sachs & Co. or any successor thereto (the "Remarketing Agent"). All computations of interest shall be based on 365-day years for the actual number of days elapsed; except for interest at Semiannual or Term Rates, which shall be computed on the basis of 360-day years of twelve 30-day months.

The Variable Rate Notes may bear interest at Flexible Rates or a Variable Rate effective for periods ("Flexible Rate Periods" in the case of Flexible Rates and "Rate Periods" in the case of Variable Rates) established in accordance with the Resolution, from time to time. The Variable Rate Notes may be converted to bear interest at a Fixed Rate from the conversion date until maturity in accordance with the Resolution.

The Variable Rate Notes may bear interest as follows:

\*This paragraph will only appear on the Variable Rate Notes which are issued prior to the end of the initial Flexible Rate Period.

Flexible Rate Mode.

While the Variable Rate Notes bear interest at Flexible Rates, the interest rate for each particular Variable Rate Note will remain in effect for the duration (not exceeding 180 days) of the Flexible Rate Period. While the Variable Rate Notes are in the Flexible Rate Mode, Variable Rate Notes may have successive Flexible Rate Periods of any duration up to 180 days each and any Variable Rate Note may bear interest at a rate and for a period different from any other Variable Rate Note.

Variable Rate Modes.

The Variable Rate Notes may bear interest at a Variable Rate computed on a Daily, Weekly, Monthly, Quarterly, Semi-annual, or Term basis.

Daily Rate.

While the Variable Rate Notes bear interest at a Daily Rate, the interest rate established for the Variable Rate Notes will be effective from day to day until changed.

Weekly Rate.

While the Variable Rate Notes bear interest at a Weekly Rate, the rate of interest on the Variable Rate Notes will be determined weekly to be effective for a seven-day period commencing on Wednesday of the following week.

Monthly Rate.

While the Variable Rate Notes bear interest at a Monthly Rate, the interest rate will be determined monthly to be effective for a one-month period.

Quarterly Rate.

While the Variable Rate Notes bear interest at a Quarterly Rate, the rate of interest will be determined quarterly to remain in effect for a three-month period.

Semiannual Rate.

While the Variable Rate Notes bear interest at a Semiannual Rate, the rate of interest will be determined semiannually to remain in effect for a six-month period.

Term Rate.

While the Variable Rate Notes bear interest at a Term Rate, the interest rate determined will remain in effect for a term of one year or any whole multiple of one year selected in accordance with the Resolution.

Fixed Rate Mode.

At the option of an Authorized Representative, the Variable Rate Notes bearing interest at a Variable Rate or Flexible Rates may be converted to bear interest at a Fixed Rate to the Maturity Date.

An interest rate mode will remain in effect until changed. During each Rate Period, and unless otherwise established by an Authorized Representative, the rate of interest on the Variable Rate Notes shall be that rate which, in the determination of the Remarketing Agent, if borne by the Variable Rate Notes on the date of such determination under prevailing market conditions, would result in the market value of the Variable Rate Notes being 100% of the principal amount thereof. While this Note bears interest at the Flexible Rate Mode, and unless otherwise established by an Authorized Representative, each Flexible Rate and Flexible Rate Period shall be determined by the Remarketing Agent in connection with the sale of the Variable Rate Notes to which they relate by the offer and acceptance of purchase commitments for such Variable Rate Notes at a Flexible Rate or Rates and for such Flexible Rate Periods as it deems to be advisable in order to minimize the net interest cost on the Variable Rate Notes under prevailing market conditions. In the event that the Remarketing Agent is unable, or fails, to determine the Variable Rate or the Flexible Rates, the Variable Rate or the Flexible Rates shall remain those in effect for the then current Rate Period or Flexible Rate Period.

Variable Rate Notes which bear interest at Flexible Rates will be issued in denominations of any multiple of \$1,000, with a minimum denomination of \$100,000. Variable Rate Notes which bear interest at a Daily, Weekly, Monthly, or Quarterly Rate will be issued in denominations of \$100,000 and whole multiples thereof. Variable Rate Notes which bear interest at a Semiannual, Term Rate or Fixed will be issued in the denomination of \$5,000 and whole multiples thereof. In the event of a change in interest rate mode so that a registered owner owns Variable Rate Notes in an unauthorized denomination, the principal amount of Variable Rate Notes in excess of the authorized denomination is subject to mandatory tender for purchase at the principal amount thereof plus accrued interest on the date of conversion to the new interest rate mode.

#### OPTIONAL TENDERS

While this Variable Rate Note bears interest at a Variable Rate the registered owner of this Variable Rate Note has the right to tender this Variable Rate Note to the Paying Agent/Registrar for purchase at the principal amount hereof plus accrued interest (from the same sources from which the principal and interest hereon are payable) as follows: (i) during a Daily Rate Period on any Business Day upon notice to the Paying Agent/Registrar and Remarketing Agent prior to 11:00 a.m., New York time, on such Business Day, (ii) during a Weekly Rate Period on any Business Day upon notice to the Paying Agent/Registrar given on a Business Day at least 7 days prior to the Tender Date, (iii) during a Monthly Rate Period on any Interest Payment Date upon at least 3 Business Days notice to the Paying Agent/Registrar, (iv) during a Quarterly or Semiannual Rate Period on any Interest Payment Date upon notice to the Paying Agent/Registrar given on a Business Day at least 7 days prior to the Tender Date, and (v) during a Term Rate Period on the first day of the succeeding Rate Period upon notice to the Paying Agent/Registrar given on a Business Day at least 7 days prior to the Tender Date. AFTER THE VARIABLE RATE NOTES HAVE BEEN CONVERTED TO BEAR INTEREST AT A FIXED RATE THEY SHALL NOT BE SUBJECT TO TENDER FOR PURCHASE.

#### MANDATORY TENDERS

While this Variable Rate Note bears interest at a Flexible Rate or at a Variable Rate, this Variable Rate Note shall be tendered for purchase at the principal amount thereof plus accrued interest (from the same sources from which the principal and interest hereon are payable) to the Paying Agent/Registrar on the effective date of (i) a change from one interest rate mode to a different interest rate mode (except for changes between a Daily Rate and Weekly Rate) and (ii) a change from one Flexible Rate Period to another Flexible Rate Period; provided, however, that the registered owner of this Variable Rate Note may elect to retain this Variable Rate Note (or his investment in this Variable Rate Note in the event this Variable Rate Note bears interest at a Flexible Rate) upon written notice to the Paying Agent/Registrar as provided in the Resolution.

Interest on any Variable Rate Note as to which a registered owner has not elected to continue to own after a mandatory tender date (as described above) and which is not tendered on the mandatory tender date, but for which there has been irrevocably deposited with the Paying Agent/Registrar an amount sufficient to pay the purchase price thereof, shall cease to accrue on the mandatory tender date, and the registered owner of such Variable Rate Note

shall not be entitled to any payment other than the purchase price for such Variable Rate Note and such Variable Rate Note shall no longer be outstanding and entitled to the benefits of the Resolution, except for the payment of the purchase price of such Variable Rate Note from monies held by the Paying Agent/Registrar for such payment. On the mandatory tender date, the Paying Agent/Registrar shall authenticate and deliver substitute Variable Rate Notes in lieu of such untendered Variable Rate Notes.

#### WRITTEN NOTICE OF RATE MODE CHANGE

While the Variable Rate Notes bear interest at Flexible Rates or a Variable Rate, the Paying Agent/Registrar shall give notice to the registered owners of all Variable Rate Notes of the conversion from one interest rate mode to another at the times described in the Resolution. ANY REGISTERED OWNER OF VARIABLE RATE NOTES WHO MAY BE UNABLE TO TAKE TIMELY ACTION ON ANY NOTICE SHOULD CONSIDER WHETHER TO MAKE ARRANGEMENTS FOR ANOTHER PERSON TO ACT IN HIS OR HER STEAD. If a new interest rate mode for the Variable Rate Notes is not selected in a timely fashion in accordance with the Resolution, the interest rate mode then in effect will continue until changed by timely notice.

#### INTEREST PAYMENT DATES

While this Variable Rate Note bears interest at a Flexible Rate, interest is payable on the last day of each Flexible Rate Period. While this Variable Rate Note bears interest at Daily, Weekly, or Monthly Rates, interest is payable on the first Business Day of each month. During Quarterly Rate Periods, interest is payable on the first Business Day of the third calendar month after the date each interest rate becomes effective. During any Semiannual or Term Rate Period, interest is payable on the first Business Day of the sixth calendar month after the date each interest rate becomes effective. After the Variable Rate Notes have been converted to bear interest at a Fixed Rate, interest is payable on January 1 and July 1 of each year. Each such date is herein defined as an "Interest Payment Date".

#### OPTIONAL REDEMPTION

During any Flexible, Daily, Weekly, Monthly, Quarterly, or Semiannual Rate Period, this Variable Rate Note is subject to redemption by the Board on any Interest Payment Date, in whole or in part, at a redemption price equal to the principal amount thereof plus interest accrued to the redemption date.

[Insert - Term or Fixed Rate Redemption Provisions selected by an Authorized Representative, if any]

It is hereby certified and recited that all acts, conditions, and things required by law and the Resolution to exist, to have happened, and to have been performed precedent to and in the issuance of this Variable Rate Note, do exist, have happened, and have been performed in regular and due time, form, and manner as required by law and that the issuance of this Variable Rate Note, together with all other Notes, is not in excess of the principal amount of Notes permitted to be issued under the Constitutional Amendment or the Resolution.

This Variable Rate Note is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Variable Rate Note shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Variable Rate Note shall have been authenticated by the execution by the Paying Agent/Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the Board has authorized and caused this Variable Rate Note to be executed on its behalf by the manual or facsimile signatures of the Chairman of the Board and the Executive Secretary of the Board and its official seal impressed or a facsimile thereof to be printed hereon.

BOARD OF REGENTS OF THE UNIVERSITY  
OF THE TEXAS SYSTEM

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Executive Secretary

(SEAL)

PAYING AGENT/REGISTRAR'S  
CERTIFICATE OF AUTHENTICATION

This Variable Rate Note is one of the Variable Rate Notes delivered pursuant to the within mentioned Resolution.

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK,  
as Paying Agent/Registrar

Registered This Date: By \_\_\_\_\_  
Countersignature

Section 2.08. Execution - Authentication. The Notes shall be executed on behalf of the Board by the Chairman of

the Board under its seal reproduced or impressed thereon and attested by the Executive Secretary of the Board. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Board on the date of passage of this Resolution shall be deemed to be duly executed on behalf of the Board, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of the initial sale and delivery of Notes authorized to be issued hereunder and with respect to Notes delivered in subsequent sales, exchanges and transfers, all as authorized and provided in Article 717k-6, V.A.T.C.S., as amended.

No Project Note shall be entitled to any right or benefit under this Resolution, or be valid or obligatory for any purpose, unless there appears on such Project Note a certificate of authentication substantially in the applicable form provided in Section 2.07, executed by the Paying Agent/Registrar by manual signature, and such certificate upon any Project Note shall be conclusive evidence, and the only evidence, that such Project Note has been duly certified or registered and delivered.

Section 2.09. Notes Mutilated, Lost, Destroyed, or Stolen. If any Note shall become mutilated, the Board, at the expense of the Holder of said Note, shall execute and the Paying Agent/Registrar shall authenticate and deliver a new Note of like tenor and number in exchange and substitution for the Note so mutilated, but only upon surrender to the Paying Agent/Registrar of the Note so mutilated. If any Note shall be lost, destroyed, or stolen, evidence of such loss, destruction, or theft may be submitted to the Board and the Paying Agent/Registrar and if such evidence be satisfactory to them and indemnity satisfactory to them shall be given, the Board, at the expense of the Holder, shall execute and the Paying Agent/Registrar shall authenticate and deliver a new Note of like tenor in lieu of and in substitution for the Note so lost, destroyed, or stolen. In the event any such Note shall have matured the Paying Agent/Registrar instead of issuing a duplicate Note may pay the same without surrender thereof after making such requirement as it deems fit for its protection, including a lost instrument bond. Neither the Board nor the Paying Agent/Registrar shall be required to treat both the original Note and any duplicate Note as being outstanding for the purpose of determining the principal amount of Notes which may be issued hereunder, but both the original and the duplicate Note shall be treated as one and the same. The Board and the Paying Agent may charge the Holder of such Note with their reasonable fees and expenses for such service.

Section 2.10. Negotiability, Registration and Exchangeability. The Notes issued hereunder shall be, and shall have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any of the obligations, shall be conclusively deemed to have agreed that such Notes shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

Registration Books relating to the registration, payment, and transfer or exchange of the Project Notes shall at all times be kept and maintained by the Board at the corporate trust office of the Registrar, and the Registrar shall obtain, record, and maintain in the Registration Books the name and, to the extent provided by or on behalf of such Registered Owner, the address of each Registered Owner of the Project Notes, except for Commercial Paper Notes registered to bearer, issued under and pursuant to the provisions of this Resolution. Any Project Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for Project Notes of like tenor and character and of other authorized denominations upon the Registration Books by the Holder thereof in person or by his duly authorized agent, upon surrender of such Project Note to the Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder thereof or by his duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Project Note at the corporate trust office of the Registrar, the Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Project Notes, executed on behalf of and furnished by the Board, of like tenor and character and of authorized denominations, and having the same maturity, bearing interest at the same rate, and of a like aggregate principal amount as the Project Note or Project Notes surrendered for transfer.

Furthermore, Project Notes may be exchanged for other Project Notes of like tenor and character and of authorized denominations and having the same maturity, bearing the same rate of interest, and of like aggregate principal amount as the Project Notes surrendered for exchange, upon surrender of the Project Notes to be exchanged at the corporate trust office of the Registrar. Whenever any Project Notes are so surrendered for exchange, the Registrar shall register and deliver new Project Notes of like tenor and character as the Project Notes exchanged, executed on behalf of, and furnished by, the Board to the Holder thereof requesting the exchange.

The Board and the Registrar may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer. The Registrar or the Board may also require payment from the Holder of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Project Note shall be delivered.

The Board and the Paying Agent/Registrar shall not be required to transfer or exchange any Project Note selected, called or being called for redemption in whole or in part unless said Project Note has been tendered for purchase and remarketed for a period which ends no later than the redemption date.

New Project Notes delivered upon any transfer or exchange shall be valid special obligations of the Board, evidencing the same debt as the Project Notes surrendered, shall be secured by this Resolution and shall be entitled to all of the security and benefits hereof to the same extent as the Project Notes surrendered.

The Board reserves the right to change the above registration and transferability provisions of the Project Notes at any time on or prior to the delivery thereof in order to comply with applicable laws and regulations of the United States of America in effect at the time of issuance thereof. In addition, to the extent that the provisions of this Section conflict with or are inconsistent with the provisions of Section 2.07(b) or Articles III and IV, such other provisions shall control.

Section 2.11. Series A Note Payment Fund. There is hereby created and established with the Issuing and Paying Agent a separate and special fund to be designated as the "Board of Regents of The University of Texas System Series A Note Payment Fund" (the "Series A Note Payment Fund"). All amounts required to be deposited by the Board pursuant to Section 2.12 shall be deposited to the Series A Note Payment Fund and shall be used to pay principal of, premium, if any, and interest on Notes at the respective interest payment, maturity, redemption, or purchase dates of each issue of such Notes as provided herein, including the repayment of any amounts owed with respect to the Revolving Note in evidence of Advances under the Agreement. Amounts remaining in the Series A Note Payment Fund not then necessary for the purposes thereof may be transferred to the Series A Note Construction Account (created pursuant to Section 2.14) upon request of an Authorized Representative.

Additionally all Advances under the Agreement shall be deposited into the Series A Note Payment Fund and used to pay the principal of, premium, if any, and interest on the Project Notes, including the purchase price pursuant to Articles III and IV.

Pending the expenditure of moneys in the Series A Note Payment Fund or the Series A Note Construction Account for authorized purposes, moneys deposited therein may be invested at the direction of an Authorized Representative in those securities and obligations permitted by law for the investment of funds of the Board. Any income received from investments in the Series A Note Payment Fund shall be retained in the Series A Note Payment Fund, and any income received from investments in the Series A Note Construction Account shall be retained in the Series A Note Construction Account.

Section 2.12. Pledge of Revenues; Payments. The Notes are special obligations of the Board payable from and secured solely by the funds pledged therefor pursuant to this Resolution. The Board agrees to make payments into the Series A Note Payment Fund at such times and in such amounts as are necessary to provide for the full payment of the principal of, premium, if any, and the interest on the Notes when due, whether by reason of maturity, redemption, or tender for purchase. Payments from the Series A Note Payment Fund shall be made from the first moneys deposited to the account of the Series A Note Payment Fund. Unless paid from the proceeds from the sale of Fund Priority Obligations, Short Term Obligations, Notes, or other obligations of the Board issued pursuant to the Constitutional Amendment, or, with respect to the Project Notes, the Advances under and pursuant to the Agreement, such payments are to be made from the amounts required to be deposited in the Series A Note Payment Fund.

To provide security for the payment of the principal of and interest on the Notes as the same shall become due and payable, there is hereby pledged, subject only to the provisions of this Resolution permitting the application thereof for purposes and on the terms and conditions set forth herein, (i) the proceeds from (a) the sale of the Fund Priority Obligations or Short Term Obligations or other obligations of the Board under the Constitutional Amendment issued for such purpose and (b) the sale of Project Notes issued pursuant to this Resolution for such purpose, (ii) Advances under the Credit Agreement, (iii) the amounts held in the Series A Note Payment Fund and the Special System Account, provided, however, amounts in the Series A Note Payment Fund attributable to and derived from Advances under and pursuant to the Agreement are pledged to, and shall be used to pay, the principal of, premium, if any, and interest

on the Project Notes, and (iv) the Interest of the University in the Available University Fund, such pledge of Interest of the University in the Available University Fund, however, being subordinate to the pledge thereof securing the payment of Fund Priority Obligations as described below, and it is hereby resolved and declared that the principal of and interest on the Notes shall be and are hereby equally and ratably secured by and payable from a lien on and pledge of the sources hereinabove identified in clauses (i), (ii), (iii), and (iv) subject and subordinate only to the exceptions noted therein.

Section 2.13. Application of Prior Covenants. The covenants and agreements (to the extent the same are not inconsistent herewith) contained in the 1985 Constitutional Amendment Bond Resolution are hereby incorporated herein and shall be deemed to be for the benefit and protection of the Notes and the Holders thereof in like manner as applicable to the Fund Priority Obligations, provided, however, in the event of any conflict between the terms, covenants, and agreements contained herein and the terms, covenants, and agreements contained in the 1985 Constitutional Amendment Bond Resolution, the provisions of the 1985 Constitutional Amendment Bond Resolution shall control over the provisions hereof.

In accordance with the provisions of the 1985 Constitutional Amendment Bond Resolution, the Notes represent obligations which are subordinate to the Fund Priority Obligations. As described in Section 9 of the 1985 Constitutional Amendment Bond Resolution, there heretofore has been established in the Treasury of the State of Texas a fund known as "Board of Regents of The University of Texas System Permanent University Fund Bonds Interest and Sinking Fund" (hereinafter called the "Interest and Sinking Fund"). The Fund Priority Obligations are payable from moneys required to be transferred to the Interest and Sinking Fund. After provision has been made for the payment of the principal of and interest on the Fund Priority Obligations, based upon the projection of monies to be deposited into the Interest and Sinking Fund from the Available University Fund which demonstrates that the deposits to the Series A Note Payment Fund will not impair the obligation of the Board to pay the principal of and interest on the Fund Priority Obligations as the same mature and come due, the balance of the Interest of the University in the Available University Fund shall be made available to the Board to deposit into the Series A Note Payment Fund such amounts as are necessary to pay the interest on and/or the principal, and premium, if any, of the Notes to the extent not paid from the proceeds of Notes, Short Term Obligations, Fund Priority Obligations, or other obligations of the Board issued pursuant to the Constitutional Amendment, or with respect to the Project Notes, from

the proceeds of Advances under the Agreement. After provision has been made for the payment of the interest and any premium on and/or principal of the Notes, the balance of the Interest of the University in the Available University Fund each year shall be made available to the Board in the manner provided by law and by regulations of the Board to be used by the Board as it may lawfully direct.

To the end that money will be available at the Paying Agent/Registrar in ample time to pay the principal of and interest and any premium on the Notes as such principal, interest and premium respectively come due, respectively, an Authorized Representative, or such officer or employee as may hereafter be designated by the Board to perform the following duties, shall perform the following duties:

(1) Concurrently with the issuance of the Notes there is being established in the Treasury of the State of Texas the Special System Account. If there is on deposit in the Special System Account from the Interest of the University in the Available University Fund, monies sufficient to pay the interest and any premium on and/or principal of the Notes as the same come due and mature or are required to be purchased, and to pay such fees and expenses of the Bank and the Remarketing Agent as described above in this Section, an Authorized Representative or such other designated officer or employee shall transfer from the Special System Account to the Paying Agent/Registrar for deposit in the Series A Note Payment Fund moneys sufficient to pay such amounts, and thereafter shall direct the Comptroller of Public Accounts of the State of Texas (hereinafter called the "Comptroller of Public Accounts") to restore the Special System Account to an amount equal to the amount such official estimates will be necessary from the Interest of the University in the Available University Fund, to pay said interest on and/or principal of and, premium, if any, on the Notes, including the purchase price thereof.

(2) If it is anticipated that there shall not be on account in the Series A Note Payment Fund or the Special System Account, from the Interest of the University in the Available University Fund, monies sufficient to pay the interest on and/or principal of, and premium, if any, on the Notes as the same are due, an Authorized Representative or such other designated officer or employee shall implement the procedures necessary to cause the Comptroller of Public Accounts

to withdraw from the Interest and Sinking Fund the amount of such interest and/or principal and any premium which will become due on the scheduled payment date and deposit said amount in the Series A Note Payment Fund or, if such deposit cannot be made within the time required, to make an Advance in such amount.

Section 2.14. Series A Note Construction Account. There is hereby created and established a separate account hereby designated as the "Board of Regents of The University of Texas System Series A Note Construction Account" (the "Series A Note Construction Account"). The Series A Note Construction Account shall be maintained by the Board in an official depository of the System. Moneys deposited in the Series A Note Construction Account shall remain therein until from time to time expended for the Project Costs, and shall not be used for any other purposes whatsoever, except as otherwise provided below, and for temporary investment thereof as provided in Section 2.11.

Any amounts remaining in the Series A Note Construction Account and not necessary for the payment of Project Costs shall be paid into the Series A Note Payment Fund and used either for the payment of such maturities or purchases of the Project Notes coming due at such times as may be selected by the Authorized Representative or for the payment of the Revolving Note, as the case may be. In the event no Project Notes are outstanding and there are no outstanding amounts under the Revolving Note, any amounts in the Series A Note Construction Account not anticipated to be needed to pay Project Costs shall be transferred to the Interest and Sinking Fund.

Section 2.15. Cancellation. All Project Notes which at maturity are surrendered to the Paying Agent/Registrar for the collection of the principal and interest thereof or are surrendered for transfer or exchange pursuant to the provisions hereof or are purchased on behalf of the Board through an Advance shall, upon payment or issuance of new Project Notes, be cancelled by the Paying Agent/Registrar and forthwith transmitted to the Board, and the Board, thereafter shall have the custody of all thereof.

Section 2.16. Fiscal and Other Agents. In furtherance of the purposes of this Resolution, the Board may from time to time appoint and provide for the payment of such additional fiscal, paying or other agents or trustees as it may deem necessary or appropriate in connection with the Notes.

Section 2.17. Trust Agreement. The Chairman and the Executive Secretary of the Board are hereby authorized and directed to execute and deliver the Trust Agreement with the

Texas State Treasurer in substantially the form attached hereto as Exhibit B.

### ARTICLE III

#### INTEREST RATES ON VARIABLE RATE NOTES

Section 3.01. Initial Interest Rates; Subsequent Rates. The Variable Rate Notes originally issued hereunder shall bear interest at the Flexible Rate for an initial Flexible Rate Period which ends on December 20, 1985. At the end of said initial Flexible Rate Period, the Variable Rate Notes shall be subject to mandatory tender, without right of retention by the Registered Owner. Thereafter, the Variable Rate Notes shall bear interest at the Flexible Rates determined from time to time in accordance with the provisions of Section 3.02, except that the Rate Period applicable to the Variable Rate Notes may be converted to or from Variable Rate Periods, Flexible Rate Periods, or to the Fixed Rate Period pursuant to Section 3.02, 3.03, or 3.04.

Section 3.02. Variable Rates; Conversions to Variable Rate Periods.

(a) Determination by Remarketing Agent. Subject to the further provisions of this Article III with respect to particular Variable Rates or conversions between Rate Periods, the Variable Rate to be applicable to Variable Rate Notes during any Variable Rate Period shall be determined by the Remarketing Agent. The Remarketing Agent shall determine the Variable Rate in accordance with this section on the Rate Determination Date and shall notify the Authorized Representative of such determination of the Variable Rate by providing telephonic notice of such rate to an Authorized Representative. The Variable Rate so determined shall become effective on the first day of the next succeeding Rate Period.

(i) In each case the Variable Rate for the Variable Rate Period in question shall be determined by the Remarketing Agent on the date or dates ("Rate Determination Date") and at the time or times required pursuant to Section 3.02 (b), (c), (d), (e), (f), or (g) below, whichever is applicable.

(ii) The Variable Rate so to be determined shall be the lowest rate of interest which, in the judgment of the Remarketing Agent, would cause the Variable Rate Notes to have a market value equal to the principal amount thereof, plus accrued interest, under prevailing market conditions as of the date of determination; provided that: (A) if the Remarketing Agent fails for

any reason to determine or notify the Authorized Representative or the Paying Agent of the Variable Rate for any Variable Rate Period when required hereunder, the Variable Rate for such period shall be deemed to be determined as the Variable Rate then in effect; and (B) in no event shall the Variable Rate for any Variable Rate Period exceed the Maximum Rate.

(iii) All determinations of Variable Rates pursuant to this Section shall be conclusive and binding upon the Board, the Paying Agent, the Bank, and the Holders of the Variable Rate Notes to which such rates are applicable. The Board, the Paying Agent, and the Remarketing Agent shall not be liable to any Holders for failure to give any notice required above or for failure of any Holders to receive any such notice.

(b) Daily Rates. A Daily Rate shall be determined for each Daily Rate Period as follows:

(i) Daily Rate Periods shall commence on each Business Day and shall extend to, but not include, the next succeeding Business Day.

(ii) The Daily Rate for each Daily Rate Period shall be effective from and including the commencement date thereof and shall remain in effect to, but not including, the next succeeding Business Day. Each such Daily Rate shall be determined between 1:00 p.m. and 4:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of the Daily Rate Period to which it relates and made available to the Paying Agent by the Remarketing Agent by the close of business on the day such rate is determined. If the Daily Rate is not determined for any day the Daily Rate determined for the preceding day shall remain in effect.

(iii) Notice of Daily Rates determined for each Daily Rate Period shall be given by the Paying Agent by first class mail to each Registered Owner by monthly statement within 7 Business Days after each Interest Payment Date on which Interest at a Daily Rate or Rates is to be paid.

(c) Weekly Rates. A Weekly Rate shall be determined for each Weekly Rate Period as follows:

(i) Weekly Rate Periods shall commence on Wednesday of each week and end on Tuesday of the following week; except that (A) in the case of a conversion to a Weekly Rate Period from a different Variable Rate Period or from a Flexible Rate Period, the initial

Weekly Rate Period shall commence on the Conversion Date from such other Variable Rate Period and end on Tuesday of the following week; and (B) in the case of a conversion from a Weekly Rate Period to a different Rate Period or to the Fixed Rate, the last Weekly Rate Period prior to conversion shall end on the last day immediately preceding the Conversion Date.

(ii) The Weekly Rate for each Weekly Rate Period shall be effective from and including the commencement date of such period and shall remain in effect through and including the last day thereof. Each such Weekly Rate shall be determined by the Remarketing Agent on the eighth (8th) day prior to the commencement date of the Weekly Rate Period to which it relates or the immediately succeeding Business Day, if such eighth (8th) day is not a Business Day, and made available to the Paying Agent by the Remarketing Agent by the close of business on the day such rate is determined.

(iii) Notice of Weekly Rates determined for each Weekly Rate Period shall be given by the Paying Agent by first class mail to each Registered Owner by monthly statement within 7 Business Days after each Interest Payment Date on which interest at a Weekly Rate or Rates is to be paid.

(d) Monthly Rates. A Monthly Rate shall be determined for each Monthly Rate Period as follows:

(i) Monthly Rate Periods shall commence on the first Business Day of each calendar month and end on the last day prior to the first Business Day of the following month.

(ii) The Monthly Rate for each Monthly Rate Period shall be effective from and including the commencement date of such period and shall remain in effect through and including the last day thereof. Each such Monthly Rate shall be determined by the Remarketing Agent not later than 12:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of such period and made available to the Paying Agent by the Remarketing Agent by the close of business on the day such rate is determined.

(iii) Notice of Monthly Rates determined for each Monthly Rate Period shall be given by the Paying Agent by first class mail to each Registered Owner within 7 Business Days after its determination pursuant to Section 3.02(d)(ii) above.

(e) Quarterly Rates. A Quarterly Rate shall be determined for each Quarterly Rate Period as follows:

(i) Quarterly Rate Periods shall (A) commence initially on a Quarterly Rate Conversion Date; and (B) end on the last day preceding either the commencement date of the following Quarterly Rate Period or the Conversion Date on which a different type of Rate Period shall become effective.

(ii) The Quarterly Rate for each Quarterly Rate Period shall be effective from and including the commencement date of such period and shall remain in effect through and including the last date thereof. Each such Quarterly Rate shall be determined by the Remarketing Agent not later than 12:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of such period and made available to the Paying Agent by the Remarketing Agent by the close of business on the same day.

(iii) Notice of a Quarterly Rate shall be given by the Paying Agent by first class mail to each Registered Owner promptly after such actual Quarterly Rate is determined pursuant to Section 3.02(e)(ii) above.

(f) Semiannual Rates. A Semiannual Rate shall be determined for each Semiannual Rate Period as follows:

(i) Semiannual Rate Periods shall (A) commence initially on the Conversion Date to a Semiannual Rate Period from a different type of Rate Period and on the first day of each sixth (6th) calendar month thereafter; and (B) end on the last day preceding either the commencement date of the following Semiannual Rate Period or the Conversion Date on which a different type of Rate Period shall become effective.

(ii) The Semiannual Rate for each Semiannual Rate Period shall be effective from and including the commencement date of such period and shall remain in effect through and including the last day thereof. Each such Semiannual Rate shall be determined by the Remarketing Agent for each Semiannual Rate Period shall be determined not later than 12:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of such period and made available to the Paying Agent by the Remarketing Agent by the close of business on the day such rate is determined.

(iii) Notice of each Semiannual Rate shall be given by the Paying Agent by first class mail to each

Registered Owner promptly after such actual Semiannual Rate is determined pursuant to Section 3.02(f)(ii) above.

(g) Term Rates. A Term Rate shall be determined for each Term Rate Period as follows:

(i) Term Rate Periods shall (A) commence initially on the Term Rate Conversion Date and on the first day of a calendar month which is an integral multiple of twelve (12) calendar months thereafter; and (B) end on the last day preceding either the commencement date of the following Term Rate Period or the Conversion Date on which a different Rate Period, shall become effective.

(ii) The Term Rate for each Term Rate Period shall be effective from and including the commencement date of such period and remain in effect through and including the last day thereof. Each such Term Rate shall be determined for each Term Rate Period not later than 12:00 p.m., New York City time, on the day immediately preceding the commencement date of such period and made available to the Paying Agent by the Remarketing Agent by the close of business on the day such rate is determined.

(iii) Notice of each Term Rate shall be given by the Paying Agent by first class mail to each Registered Owner promptly after such actual Term Rate is determined pursuant to Section 3.02(g)(ii) above.

(h) Conversions between Variable Rate Periods. At the option of an Authorized Representative, the Variable Rate Notes may be converted from one Variable Rate Period to another. To accomplish the proposed conversion, the Authorized Representative shall give written notice of the proposed conversion together with a copy of the opinion referred to in Section 3.02(h)(v), if applicable, to the Remarketing Agent not fewer than one day prior to the date that notice is required to be given pursuant to Section 3.02(h)(ii). The conversion shall be accomplished as follows:

(i) The Conversion Date of a conversion to a different Variable Rate Period shall be an Interest Payment Date on which interest is payable for the Variable Rate Period from which the conversion is to be made; provided, however, that if the conversion is from a Term Rate Period to a different Variable Rate Period, the Conversion Date shall be limited to an Interest Payment Date on which a new Term Rate Period would otherwise have commenced pursuant to Section 3.02(g)

above; and provided, further, that if the conversion is between Daily and Weekly Rate Periods, the Conversion Date may be any Wednesday, regardless of whether the Wednesday is an Interest Payment Date.

(ii) The Authorized Representative shall give written notice of any such conversion to the Paying Agent and the Bank, not fewer than forty-five (45) days prior to the proposed Conversion Date, or twenty (20) days in the case of conversions between Daily and Weekly Rate Periods. Such notice shall specify the proposed Conversion Date and the Variable Rate Period to which the conversion will be made, and in the case of conversion to a Term Rate Period, or to a new Term Rate Period if the previous Rate Period is a Term Rate Period, the number of years to be included within such Term Rate Period.

(iii) Not fewer than fifteen (15) days prior to the Conversion Date in the case of conversions between Daily and Weekly Rate Periods and not fewer than thirty (30) days prior to the Conversion Date in all other cases (including Flexible Rate Periods), the Paying Agent, except as provided in Section 3.05, shall mail (by first class mail) a written notice of the conversion to the Registered Owners. Such notice shall

(A) contain the information set forth in the notice from the Authorized Representative pursuant to Section 3.02(h)(ii) above,

(B) set forth the dates by which the Remarketing Agent will determine and the Paying Agent will notify the Registered Owners of the Variable Rate for the Variable Rate Period commencing on the Conversion Date pursuant to Section 3.02(h)(iv) below, and

(C) set forth the matters required to be stated pursuant to Section 4.03 with respect to purchases of Variable Rate Notes governed by such Section.

(iv) The Variable Rate for the Variable Rate Period commencing on the Conversion Date shall be determined by the Remarketing Agent in the manner provided in Section 3.02(a) above on the date set forth in Section 3.02(b), (c), (d), (e), (f), or (g) above, whichever is applicable to the Variable Rate Period to which the conversion shall be made.

(v) Any conversion pursuant to this Section 3.02(h) from a Flexible, Daily, Weekly, Monthly,

Quarterly, or Semiannual Rate Period to a Term Rate Period; or from a Term Rate Period to another Term Rate Period; or from a Term Rate Period to a Flexible, Daily, Weekly, Monthly, Quarterly, or Semiannual Rate Period; or from a Flexible, Daily, Weekly, Monthly, Quarterly, Semiannual or Term Rate Period to a Fixed Rate shall be subject to the condition that on or before the date of such conversion, an Authorized Representative shall have delivered to the Paying Agent and the Remarketing Agent an opinion of nationally recognized bond counsel to the effect that the conversion is authorized hereunder and will not adversely affect the exemption of interest on the Variable Rate Notes from federal income taxation. If said opinion is not delivered, the conversion shall not occur and the Variable Rate Notes shall remain in the same Rate Period.

(i) Conversions from Flexible Periods. At the option of an Authorized Representative, the Variable Rate Notes may be converted from Flexible Rate Periods to a Variable Rate Period. To accomplish the proposed conversion, an Authorized Representative shall give written notice of the proposed conversion together with a copy of the opinion referred to in Section 3.02(h)(v), if applicable, to the Remarketing Agent not fewer than one day prior to the date that notice is required to be given pursuant to subparagraph 3.02(i)(ii). The conversion shall be accomplished as follows:

(i) The Conversion Date shall be both (A) the first Business Day of a calendar month, and (B) the last Interest Payment Date on which interest is payable for any Flexible Rate Periods theretofore established for the Variable Rate Notes to be converted pursuant to Section 3.03.

(ii) The Authorized Representative shall give written notice of any such conversion to the Paying Agent and the Bank no fewer than forty-five (45) days prior to the proposed Conversion Date. Such notice shall specify the proposed Conversion Date and the type of Rate Period to which the conversion will be made, and in the case of conversion to a Term Rate Period, the number of years to be included within such Term Rate Period. The Paying Agent shall give notice of conversion to Registered Owners prior to the Conversion Date in the manner prescribed by Section 3.02(h)(iii). Notwithstanding the foregoing, however, no conversion shall be effected unless, prior to the date on which such notice is required to be given, the Paying Agent shall have received written confirmation from the Remarketing Agent to the effect that it has not

established and will not establish any Flexible Rate Periods extending beyond the Conversion Date and, if applicable, the opinion required by Section 3.02(h)(v) above shall be delivered prior to the Conversion Date. If said opinion is not delivered, the conversion shall not occur and the Variable Rate Notes shall remain in the same Rate Period.

(iii) The Variable Rate for the Variable Rate Period commencing on the Conversion Date shall be established and notice thereof shall be given in the same manner as is provided for conversions from one Variable Rate Period to another pursuant to Section 3.02(h)(iii) above, except as provided in Section 3.05.

Section 3.03. Flexible Rates; Conversions to Flexible Rate Periods.

(a) Flexible Rates. A Flexible Rate for each Flexible Rate Period shall be determined as follows:

(i) The Flexible Rate Period for each Variable Rate Note shall be of such duration, not exceeding 180 days, as may be offered by the Remarketing Agent and specified by the purchaser pursuant to Section 4.02 or 4.03 hereof and any Variable Rate Note may bear interest at a Flexible Rate for a Flexible Rate Period different from any other Variable Rate Note; provided that each such Flexible Rate Period shall (A) commence on a Business Day (initially, the Flexible Rate Conversion Date), and (B) end on a day which is a Business Day.

(ii) The Flexible Rate for each Flexible Rate Period shall be effective from and including the commencement date of such period through but not including the last day thereof. Each such Flexible Rate shall be determined by the Remarketing Agent in connection with the sale of the Variable Rate Note or Variable Rate Notes to which it relates pursuant to Section 4.02 or 4.03 hereof. Flexible Rates shall be determined for Variable Rate Notes prior to the commencement of each Flexible Rate Period with respect to such Variable Rate Note by the Remarketing Agent in connection with the remarketing of Variable Rate Notes, by the offer and acceptance of purchase commitments for such Variable Rate Notes at a rate or rates it deems to be advisable in order to minimize the net interest cost on the Variable Rate Notes under prevailing market conditions and shall notify an Authorized Representative of the Flexible Rate Period and the Flexible Rate for each Variable Rate Note by providing telephonic notice of such period and rate to an Authorized

Representative. If the Flexible Rate Period is approved by an Authorized Representative (and it will be deemed to be approved if it is not rejected by an Authorized Representative within thirty minutes after such telephonic notice), it shall become effective on the first day of the next Rate Period. If the period is rejected by the Authorized Representative, the next succeeding Rate Period shall be a Flexible Rate Period of one day's duration. Longer Flexible Rate Periods may be established pursuant to Section 4.02(b) hereof.

(b) Conversions to Flexible Rate Periods. At the option of an Authorized Representative, the Variable Rate Notes may be converted from a Variable Rate Period to Flexible Rate Periods. To accomplish the proposed conversion, the Authorized Representative shall give written notice of the proposed conversion together with a copy of the opinion referred to in Section 3.02(h)(v), if applicable, to the Remarketing Agent not fewer than one day prior to the date that notice is required to be given pursuant to Section 3.03(b)(ii). The conversion shall be accomplished as follows:

(i) In any such case, the Flexible Rate Conversion Date shall be an Interest Payment Date on which interest is payable for the Variable Rate Period from which the conversion is to be made; provided, however, that in the case of a conversion from a Term Rate Period, the Conversion Date shall be an Interest Payment Date on which a new Term Rate Period would otherwise have commenced pursuant to Section 3.02(g).

(ii) The Authorized Representative shall give written notice of any such conversion to the Paying Agent and the Bank in the manner and at the times prescribed by Sections 3.02(h)(ii) and (iii) above.

(iii) Not fewer than thirty (30) days prior to the Conversion Date, the Paying Agent, except as provided in Section 3.05, shall mail (by first class mail) a written notice of the conversion to the Registered Owner of all Variable Rate Notes, specifying the Conversion Date and setting forth the matters required to be stated pursuant to Section 4.03 with respect to purchases of Variable Rate Notes governed by such Section.

(iv) Any conversion at the direction of an Authorized Representative pursuant to this Section 3.03(b) shall be subject to the condition, if required by Section 3.02(h)(v), that on or before the date of such conversion, the Authorized Representative shall have delivered to the Paying Agent and the Remarketing

Agent an opinion of nationally recognized bond counsel to the effect that the conversion is authorized hereunder and will not adversely affect the exemption of interest on the Variable Rate Notes from federal income taxation. If said opinion is not delivered or if conversion is to be made on the determination of the Remarketing Agent and is rejected by the Authorized Representative, the conversion shall not occur and the Variable Rate Notes shall remain in the same Rate Period.

Section 3.04. Fixed Rate Conversion at Option of Authorized Representative. At the option of an Authorized Representative, the Variable Rate Notes bearing interest at a Variable Rate or Flexible Rates may be converted to bear interest at a Fixed Rate to their final maturity. Any such conversion, shall be made as follows:

(a) The Fixed Rate Conversion Date shall be an Interest Payment Date on which interest is payable for the Variable Rate Period from which the conversion is to be made or an Interest Payment Date on which interest is payable for all Variable Rate Notes during Flexible Rate Periods.

(b) (i) The Authorized Representative shall give written notice of any such conversion to the Remarketing Agent, the Paying Agent, and the Bank, not fewer than forty-five (45) days prior to the proposed Conversion Date. Such notice shall specify the Fixed Rate Conversion Date.

(ii) Not fewer than thirty (30) days prior to the Fixed Rate Conversion Date, the Paying Agent shall mail (by first class mail) a written notice of the conversion to the Holder of all Variable Rate Notes, specifying the Conversion Date and setting forth the matters required to be stated pursuant to Section 3.04(c) hereof.

(c) Notice of conversion shall be given by first class mail by the Paying Agent to the Holders of all Variable Rate Notes. Such notice shall inform the Holders of:

(i) the proposed Fixed Rate Conversion Date;

(ii) the dates by which the Authorized Representative will determine and the Paying Agent will notify the Holders of the Fixed Rate pursuant to Section 3.04(d) below;

(iii) the conditions to the conversion pursuant to Section 3.04(e) below; and

(iv) the matters required to be stated pursuant to Section 4.04 hereof with respect to purchases of Variable Rate Notes governed by such Section.

(d) Not later than 12:00 p.m., New York City time, on the Business Day prior to the Fixed Rate Conversion Date an Authorized Representative shall determine the Fixed Rate for the Variable Rate Notes and make the Fixed Rate available to the Paying Agent. Such determination shall be conclusive and binding upon the Board, the Paying Agent and the Holders of the Variable Rate Notes to which such rate will be applicable. Promptly after the date of determination, the Paying Agent shall give notice of such Fixed Rate by first class mail to the Board, the Remarketing Agent, the Bank and the Holders (as of the Fixed Rate Conversion Date).

(e) Any conversion to a Fixed Rate pursuant to this Section 3.04 shall be subject to the following conditions:

(i) on or before the Fixed Rate Conversion Date, an Authorized Representative shall have delivered to the Paying Agent and the Remarketing Agent an opinion of nationally recognized bond counsel to the effect that the conversion is authorized hereunder and will not adversely affect the exemption of interest on the Variable Rate Notes from federal income taxation; and

(ii) as of the Fixed Rate Conversion Date, sufficient funds shall be available to purchase Variable Rate Notes which are then required to be purchased pursuant to Section 4.04 hereof. If the foregoing conditions are not met for any reason, the conversion shall not be effective, the Variable Rate Notes shall continue to bear interest at the last effective Variable Rate (if the conversion was to have been made from a Variable Rate Period), at Flexible Rates determined by the Remarketing Agent pursuant to the provisions of Section 3.03(a) as of the date on which the conversion was to occur (if the conversion was to have been made from Flexible Rate Periods). The Paying Agent shall promptly notify the Registered Owners of such fact and shall give all additional notices and take all further actions required pursuant to Section 4.06.

#### Section 3.05. Notices to Registered Owners.

In the event that the Remarketing Agent has not provided the Registrar with complete registration information, including the name and address of any Registered Owner of a Variable Rate Note, any notice which the Paying Agent is required to give to such Registered Owner with respect to such Variable Rate Note shall be sent by the Paying Agent to the Remarketing Agent and it shall be the sole

responsibility of the Remarketing Agent to furnish such notice to the Registered Owner. Where the Registrar has not been provided with complete registration information, including name and address of any Registered Owner, the Registrar and Paying Agent shall have no responsibility nor incur any liability in connection with the giving of such notice.

#### ARTICLE IV

##### TENDER AND PURCHASE OF VARIABLE RATE NOTES

###### Section 4.01. Tenders During Variable Rate Periods.

(a) Purchase Dates. The Holders of Variable Rate Notes bearing interest at Variable Rates may elect to have their Variable Rate Notes (or portions thereof in amounts equal to the lowest denomination then authorized pursuant to Section 2.07 hereof or whole multiples of such lowest denomination) purchased at a purchase price equal to 100% of the principal amount of such Variable Rate Notes (or portions), plus accrued interest, if any, on the following purchase dates and upon the giving of the following telephonic or written notices meeting the further requirements of subsection (b) below:

(i) Variable Rate Notes bearing interest at Daily Rates may be tendered for purchase at a price payable in immediately available funds on any Business Day prior to conversion from a Daily Rate Period to a different Rate Period, upon telephonic notice of tender given to the Paying Agent and the Remarketing Agent not later than 11:00 a.m., New York City time, on the purchase date.

(ii) Variable Rate Notes bearing interest at Weekly Rates may be tendered for purchase at a price payable in immediately available funds on any Business Day prior to conversion from a Weekly Rate Period to a different Rate Period upon delivery of a written notice of tender to the Paying Agent not later than 5:00 p.m., New York City time, on a Business Day not fewer than seven (7) days prior to the purchase date.

(iii) Variable Rate Notes bearing interest at Monthly Rates may be tendered for purchase on any Interest Payment Date for such Variable Rate Notes at a price payable in immediately available funds upon delivery of a written notice of tender not later than 5:00 p.m., New York City time, on a Business Day which is not fewer than three (3) Business Days prior to the purchase date.

(iv) Variable Rate Notes bearing interest at a Quarterly or Semiannual Rate may be tendered for purchase on Interest Payment Date for such Variable Rate Notes at a price payable in clearing house funds upon delivery of a written notice of tender not later than 5:00 p.m., New York City time, on a Business Day which is not fewer than seven (7) days prior to the purchase date.

(v) Variable Rate Notes bearing interest at a Term Rate may be tendered for purchase on the commencement date the following Rate Period for such Variable Rate Notes at a price payable in clearing house funds upon delivery of a written notice of tender not later than 5:00 p.m., New York City time, on a Business Day which is not fewer than seven (7) days prior to the purchase date.

(vi) Notwithstanding any provision in this subsection to the contrary, any Registered Owner who has elected to retain Variable Rate Notes upon a conversion from one Rate Period to another in the manner prescribed in Section 4.03 or Section 4.04 may no longer elect to have their Variable Rate Notes purchased as provided in this Section 4.01.

(b) Notice of Tender. Each notice of tender:

(i) shall, in the case of a written notice, be delivered to the Paying Agent at its corporate trust office and be in form satisfactory to the Paying Agent;

(ii) shall state, whether delivered in writing or by telephone (A) the principal amount of the Variable Rate Note to which the notice relates, (B) that the Holder irrevocably demands purchase of such Variable Rate Note or a specified portion thereof in an amount equal to the lowest denomination, then authorized pursuant to Section 2.07(b) hereof or a whole multiple of such lowest denomination, hereof or a whole multiple of such lowest denomination, (C) the date on which such Variable Rate Note or portion is to be purchased, and (D) payment instructions with respect to the purchase price; and

(iii) shall automatically constitute, whether delivered in writing or by telephone, (A) an irrevocable offer to sell the Variable Rate Note (or portion thereof) to which the notice relates on the purchase date to any purchaser selected by the Remarketing Agent, at a price equal to the principal amount of such Variable Rate Note (or portion thereof) plus any interest thereon accrued and unpaid as of the purchase

date, (B) an irrevocable authorization and instruction to the Paying Agent to effect transfer of such Variable Rate Note (or portion thereof) upon payment of such price to the Paying Agent on the purchase date, (C) an irrevocable authorization and instruction to the Paying Agent to effect the exchange of the Variable Rate Note to be purchased in whole or in part for other Variable Rate Notes in an equal aggregate principal amount so as to facilitate the sale of such Variable Rate Note (or portion thereof to be purchased), and (D) an acknowledgement that such Registered Owner will have no further rights with respect to such Variable Rate Note (or portion thereof) upon payment of the purchase price thereof to the Paying Agent on the purchase date, except for the right of such Registered Owner to receive such purchase price upon surrender of such Variable Rate Note to the Paying Agent and that after the purchase date such Registered Owner will hold an undelivered certificate as agent for the Paying Agent.

The determination of the Paying Agent as to whether a notice of tender has been properly delivered pursuant to the foregoing shall be conclusive and binding upon the Registered Owner. The Paying Agent may waive nonconforming tenders.

(c) Variable Rate Notes to be Remarketed. Not later than 11:00 a.m., New York City time, on the Business Day immediately following the date of receipt of any notice of tender (or immediately upon such receipt, in the case of Variable Rate Notes bearing interest at Daily Rates), the Paying Agent shall notify, by telephone promptly confirmed in writing, in the case of a Daily or Weekly Rate, and in writing in all other cases an Authorized Representative, the Remarketing Agent and the Bank of the principal amount of Variable Rate Notes (or portions thereof) to be purchased and the date of purchase.

(d) Remarketing of Tendered Variable Rate Notes. Unless otherwise instructed by an Authorized Representative, the Remarketing Agent shall offer for sale and use its best efforts to find purchasers for all Variable Rate Notes or portions thereof for which notice of tender has been received pursuant to Section 4.01(c) above. The terms of any sale by the Remarketing Agent shall provide for the payment of the purchase price for tendered Variable Rate Notes by the Remarketing Agent to the Paying Agent (in exchange for new registered Variable Rate Notes) (i) in immediately available funds at or before 2:00 p.m., New York City time, on the purchase date, in the case of Variable Rate Notes bearing interest at Daily, Weekly, Monthly, or Quarterly Rates, and (ii) in clearing house funds at or before 12:00 p.m., New York City time, on the purchase date, in the case of Variable Rate Notes bearing interest at Semiannual or

Term Rates. Notwithstanding the foregoing, the Remarketing Agent shall not sell any Variable Rate Note for which a notice of conversion from one type of Variable Rate Period to another, to Flexible Rate Periods or to a Fixed Rate Period has been given by the Paying Agent unless the Remarketing Agent has advised the person to whom the sale is made of the conversion.

(e) Purchase of Tendered Variable Rate Notes.

(i) Notice. At or before 3:00 p.m., New York City time, on the Business Day immediately preceding the date fixed for purchase of tendered Variable Rate Notes (or 12:45 p.m., New York City time, on the purchase date in the case of Variable Rate Notes bearing interest at Daily Rates), the Remarketing Agent shall give notice by telephone, telegram, telecopy, telex, or other similar communication to the an Authorized Representative and the Paying Agent of the principal amount of tendered Variable Rate Notes which were remarketed. Not later than 5:00 p.m. (or 1:30 p.m., in the case of Variable Rate Notes bearing interest at Daily Rates), New York City time, on the date of receipt of such notice the Paying Agent shall give notice by telephone, telegram, telecopy, or other similar communication to an Authorized Representative and the Bank specifying the principal amount of tendered Variable Rate Notes as to which the Remarketing Agent has not found a purchaser. At or before 3:00 p.m., New York City time on the day prior to the purchase date to the extent known to the Remarketing Agent, but in any event, no later than 11:00 a.m. (or 1:00 p.m., in the case of Variable Rate Notes bearing interest at Daily Rates), New York City time, on the date fixed for purchase, the Remarketing Agent shall give notice to the Paying Agent by telephone (promptly confirmed in writing) of any change in the names, addresses, and taxpayer identification numbers of the purchasers, the denominations of Variable Rate Notes to be delivered to each purchaser, and, if available, payment instructions for regularly scheduled interest payments.

(ii) Sources of Payment. The Remarketing Agent shall cause to be paid to the Paying Agent for deposit in the Series A Note Payment Fund on the date fixed for purchase of tendered Variable Rate Notes, all amounts representing proceeds of the remarketing of such Variable Rate Notes, such payments to be made in the manner and at the time specified in Section 4.01(d) above. If such amounts, plus all other amounts received by the Paying Agent for the purchase of tendered Variable Rate Notes, are not sufficient to pay the

principal amount plus the accrued and unpaid interest thereon to the purchase date (if any), the Paying Agent shall immediately notify the Authorized Representative and the Bank, of any deficiency. The Board shall deliver or through Advances under the Credit Agreement (provided that any Advance under the Credit Agreement shall be in an amount equal to an authorized denomination of the Notes being purchased) cause to be delivered to the Paying Agent (A) immediately available funds in an amount at least equal to such deficiency prior to 3:30 p.m., New York City time, on the date set for purchase of tendered Variable Rate Notes bearing interest at Daily, Weekly, Monthly, or Quarterly Rates, and (B) clearing house funds in an amount at least equal to such deficiency prior to 3:30 p.m., New York City time on the date set for purchase of tendered Variable Rate Notes bearing interest at Semiannual or Term Rates. All monies received by the Paying Agent as remarketing proceeds and additional amounts, if any, received from the Board or the Bank, if any, shall be deposited by the Paying Agent in the Series A Note Payment Account to be used solely for the payment of the purchase price of tendered Variable Rate Notes and shall not be commingled with other funds held by the Paying Agent; if any such monies exceed the amounts required to pay the purchase price of tendered Variable Rate Notes, such excess shall be paid to the Bank to the extent necessary to repay any Advance under the Credit Agreement and then to the Board.

(iii) Payments by the Paying Agent. At or before 3:00 p.m., New York City time, on the date set for purchase of tendered Variable Rate Notes and upon receipt by the Paying Agent of 100% of the aggregate purchase price of the tendered Variable Rate Notes, the Paying Agent shall pay the purchase price of such Variable Rate Notes to the Holders thereof at its corporate trust office or by bank wire transfer. Such payments shall be made in immediately available funds, unless the Variable Rate Notes to be purchased bear interest at Semiannual or Term Rates, in which event such payments shall be made in clearing house funds. The Paying Agent shall apply in order (A) moneys paid to it by the Remarketing Agent as proceeds of the remarketing of such Variable Rate Notes by the Remarketing Agent, (B) moneys made available by the Board, and (C) moneys drawn on the Credit Agreement, if any. If sufficient funds are not available for the purchase of all tendered Variable Rate Notes, no purchase shall be consummated.

(iv) Registration and Delivery of Tendered or Purchased Variable Rate Notes. On the date of

purchase, the Paying Agent shall register and deliver (or hold) or cancel all Variable Rate Notes purchased on any purchase date as follows: (A) Variable Rate Notes purchased or remarketed by the Remarketing Agent shall be registered and made available (delivered in the case of Variable Rate Notes bearing interest at Flexible Rates) to the Remarketing Agent by 2:00 p.m. in accordance with the instructions of the Remarketing Agent; (B) Variable Rate Notes purchased with amounts drawn under the Credit Agreement, if any, or purchased for cancellation upon the directions of an Authorized Representative shall be cancelled; and (C) Variable Rate Notes purchased with amounts provided by the Board shall be registered in the name of the Permanent University Fund and shall be held in trust by the Paying Agent on behalf of the Permanent University Fund and shall not be released from such trust unless the Paying Agent shall have received written instructions from an Authorized Representative.

(v) Sale of Variable Rate Notes to Refund Advances Under Revolving Note. In the event that any Variable Rate Notes are purchased with amounts drawn under the Credit Agreement or are registered to the Permanent University Fund pursuant to subparagraph (iv) above to the extent requested by an Authorized Representative, the Remarketing Agent shall offer for sale and use its best efforts to sell such Variable Rate Notes registered to the Permanent University Fund or new Variable Rate Notes in a principal amount equal to the principal amount of Variable Rate Notes purchased and cancelled pursuant to a draw under the Credit Agreement, as the case may be, at a price equal to the principal amount thereof plus accrued interest. Variable Rate Notes to be sold to refund the amounts due under the Revolving Note shall not be delivered upon remarketing unless the Credit Agreement is reinstated for the principal amount thereof and interest thereon in accordance with its terms and the Remarketing Agent has been advised of such reinstatement by the Bank.

(vi) Delivery of Variable Rate Notes; Effect of Failure to Surrender Variable Rate Notes. All Variable Rate Notes to be purchased on any date shall be required to be delivered to the corporate trust office of the Paying Agent at or before 1:00 p.m. New York City time, on the purchase date except for Variable Rate Notes delivered in accordance with Section 4.07 hereof which may be delivered on the purchase date. If the Registered Owner of any Variable Rate Note (or portion thereof) that is subject to purchase pursuant to this Section fails to deliver such Variable Rate

Note to the Paying Agent for purchase on the purchase date, and if the Paying Agent is in receipt of the purchase price therefor, such Variable Rate Note (or portion thereof) shall nevertheless be deemed purchased on the day fixed for purchase thereof and ownership of such Variable Rate Note (or portion thereof) shall be transferred to the purchaser thereof as provided in Section 4.01(e)(iv) above. Any Registered Owner who fails to deliver such Variable Rate Note for purchase shall have no further rights thereunder except the right to receive the purchase price thereof upon presentation and surrender of said Variable Rate Note to the Paying Agent. The Paying Agent shall, as to any tendered Variable Rate Notes which have not been delivered to it (i) promptly notify the Remarketing Agent of such nondelivery and (ii) place a stop transfer against an appropriate amount of Variable Rate Notes registered in the name of such Registered Owner(s) on the Registration Books. The Paying Agent shall place such stop(s) commencing with the lowest serial number Variable Rate Note registered in the name of such Registered Owner(s) until stop transfers have been placed against an appropriate amount of Variable Rate Notes until the appropriate tendered Variable Rate Notes are delivered to the Paying Agent. Upon such delivery, the Paying Agent shall make any necessary adjustments to the bond Registration Books.

Section 4.02. Tenders During Flexible Rate Periods.

(a) Purchase Dates. Each Variable Rate Note bearing interest at a Flexible Rate shall be subject to mandatory tender for purchase, on the last day of each Flexible Rate Period applicable to such Variable Rate Note at a purchase price equal to 100% of the principal amount thereof, plus interest accrued during such Flexible Rate Period, subject, however, to the right of the Registered Owner to elect to retain his investment in the Variable Rate Note by irrevocable telephonic or written notice delivered to the Paying Agent or the Remarketing Agent, if authorized to receive such notice by the Paying Agent not later than 3:00 p.m. on the Business Day before the expiration of the then current term of such Flexible Rate for that Variable Rate Note (or 12:45 p.m., New York City time, on the expiration date, in the event of Variable Rate Notes with a Flexible Rate Period of one day). In the event a Registered Owner of a Variable Rate Note bearing interest at a Flexible Rate desires to retain his investment, the Registered Owner must present his Variable Rate Note to the Paying Agent in exchange for payment of principal and accrued interest in immediately available funds and the Paying Agent will authenticate and deliver to the Remarketing Agent for redelivery to such Registered Owner a substitute Variable Rate Note for the

term of the succeeding Flexible Rate Period in replacement of the old Variable Rate Note. Each such Flexible Rate Period and mandatory tender date for a Variable Rate Note shall be established on the date of purchase of such Variable Rate Note as hereinafter provided. The Registered Owner of any Variable Rate Note bearing interest at a Flexible Rate and tendered for purchase as provided in this Section 4.02(a) shall provide the Paying Agent with payment instructions for the purchase price of its Variable Rate Note upon tender thereof to the Paying Agent. The Paying Agent shall notify by telephone the Remarketing Agent immediately upon receipt of notice of any election to retain Variable Rate Notes.

(b) Remarketing of Tendered Variable Rate Notes. Not later than 3:00 p.m., New York City time, on the Business Day immediately preceding each purchase date (or 12:45 p.m., New York City time, on the purchase date, in the event of Variable Rate Notes with a Flexible Rate Period of one day), the Remarketing Agent shall offer for sale and use its best efforts to find purchasers for all Variable Rate Notes bearing interest at Flexible Rates required to be purchased on the ensuing purchase date. Subject to the provisions of Section 3.03, in remarketing the Variable Rate Notes, the Remarketing Agent shall offer and accept purchase commitments for the Variable Rate Notes for such Flexible Rate Periods and at such Flexible Rates as it deems to be advisable in order to minimize the net interest cost on the Variable Rate Notes under prevailing market conditions; provided, however, that the foregoing shall not prohibit the Remarketing Agent from accepting purchase commitments for longer Flexible Rate Periods (and at higher Flexible Rates) than are otherwise available at the time of any remarketing if the Remarketing Agent determines that, under prevailing market conditions, a lower net interest cost on the Variable Rate Notes can be achieved over the longer Flexible Rate Period. Notwithstanding the foregoing, no Flexible Rate Period may be established which exceeds 180 days or, if the Remarketing Agent has given or received notice of any conversion to a Variable Rate Period or Fixed Rate Period, the remaining number of days prior to the Conversion Date. The terms of any sale by the Remarketing Agent shall provide for the authorization of the payment of the purchase price by the Remarketing Agent to the Paying Agent in immediately available funds in exchange for Variable Rate Notes registered in the name of the new Registered Owner delivered to the Remarketing Agent at or before 2:15 p.m., New York City time, on the purchase date. Such payment by the Remarketing Agent pursuant to authorization shall be made no later than 2:45 p.m., New York City time on such date, unless the Remarketing Agent shall notify the Paying Agent that the Variable Rate Notes are to be reauthenticated in accordance with instructions from the Remarketing Agent.

(c) Purchase of Tendered Variable Rate Notes. The provisions of Section 4.01(e) shall apply to tenders pursuant to this Section 4.02; provided that, for the purpose of so applying such provisions;

(i) The notices required pursuant to Section 4.01(e)(i) shall be given on the date of purchase at or before (A) 1:00 p.m., New York City time, in the case of the notice from the Remarketing Agent as to the principal amount of Variable Rate Notes remarketed, (B) 1:30 p.m., New York City time, in the case of the notice from the Paying Agent of the principal amount of Variable Rate Notes remarketed, and (C) 1:00 p.m., New York City time, in the case of the notice from the Remarketing Agent providing information concerning the purchasers of the Variable Rate Notes;

(ii) the manner and time of payment of remarketing proceeds shall be as specified in subsection 4.02(b) above;

(iii) all payments to tendering Holders shall be paid in immediately available funds on the purchase date; and

(iv) the deliveries of Variable Rate Notes under Section 4.02(a) shall be required to be made at or before 3:00 p.m., New York City time, on each purchase date.

Section 4.03. Tender Upon Variable or Flexible Rate Conversion.

(a) Conversions to Variable Rate Periods. On any Variable Rate Conversion Date pursuant to Section 3.02(h) or 3.02(i) hereof, the Variable Rate Notes shall be subject to optional or mandatory tender on such date as follows:

(i) Variable Rate Notes to be converted from Flexible Rate Periods to a Variable Rate Period or from any Variable Rate Period to a different type of Variable Rate Period (other than Variable Rate Notes to be converted from a Weekly Rate Period to a Daily Rate Period or from a Daily Rate Period to a Weekly Rate Period) are subject to mandatory tender for purchase on the Conversion Date at a purchase price equal to the principal amount thereof;

(ii) Holders of Variable Rate Notes may elect to retain their Variable Rate Notes (or authorized portions as described above) notwithstanding a mandatory tender pursuant to this subparagraph and Section 4.05 hereof, as follows:

(A) Upon a conversion to a Daily Rate Period or Weekly Rate Period from any Variable Rate Period (other than a Daily or Weekly Rate Period) or Flexible Rate Periods, a Registered Owner may elect to retain its Variable Rate Notes by delivering a written notice to the Paying Agent at its corporate trust officer of such election no later than 5:00 p.m. New York City time on a Business Day which is at least fifteen (15) days (or seven (7) days in the case of conversion from Flexible Rate Periods) prior to the Conversion Date; or

(B) Upon a conversion to a Variable Rate Period (other than a Daily or Weekly Rate Period) from a different type of Rate Period or from Flexible Rate Periods, a Registered Owner may elect to retain its Variable Rate Notes by delivering a written notice to the Paying Agent at its corporate trust office of such election no later than 5:00 p.m., New York City time on a Business Day which is at least (i) seven (7) days prior to the Conversion Date in the event of a conversion to a Monthly Rate Period; or (ii) thirteen (13) days in the case of a conversion to a Quarterly Rate Period; or (iii) fifteen (15) days in the case of a conversion to a Semiannual or Term Rate Period.

(C) Promptly upon receipt of any such notices, the Paying Agent shall notify the Remarking Agent of the Variable Rate Notes to be retained pursuant to such notices.

(b) Conversion To Flexible Rate Periods From Variable Rate Periods. On any Flexible Rate Conversion Date pursuant to Section 3.03(b) hereof, the Variable Rate Notes are subject to mandatory tender for purchase on the applicable Conversion Date at a purchase price equal to the principal amount thereof, subject, however, to the right of the Registered Owner to elect to retain his investment in his Variable Rate Notes as provided in Section 4.02(a) by irrevocable written notice delivered to the Paying Agent not later than 5:00 p.m., New York City time, at least three (3) Business Days prior to the Flexible Rate Conversion Date.

(c) Mandatory Denomination Tender. On any conversion to a Daily, Weekly, Monthly, or Quarterly Rate Period, any Variable Rate Note in a denomination which is not a whole multiple of \$100,000 is subject to mandatory tender for purchase on the applicable Conversion Date at a purchase price equal to the principal amount thereof; provided, however, that any Registered Owner may elect to retain any

portion of its Variable Rate Notes which is in the denominations of any multiple of \$100,000 in the manner described in Section 4.03(d) hereof. On any conversion to a Semiannual or Term Rate period, any Variable Rate Note in a denomination which is not a whole multiple of \$5,000 is subject to mandatory tender for purchase on the applicable Conversion Date at a purchase price equal to the principal amount thereof; provided, however, that any Registered Owner may elect to retain any portion of its Variable Rate Notes which is in the denomination of any multiple of \$5,000 in the manner described in Section 4.03(d) hereof. On any conversion to Flexible Rate Periods, any Variable Rate Note which is not in the denomination of \$100,000 or a whole multiple of \$1,000 above \$100,000 is subject mandatory tender for purchase on the Flexible Rate Conversion Date at a purchase price equal to the principal amount thereof; provided, however, that any Registered Owner may elect to retain any portion of its Variable Rate Note which is in the denomination of \$100,000 or a whole multiple of \$1,000 above \$100,000 in the manner described in Section 4.03(d) hereof. To the extent that any Variable Rate Note is not in an authorized denomination on a Mandatory Tender Date the excess amount shall be cancelled and retired.

(d) Notice of Election to Retain. Notices of elections to retain Variable Rate Notes pursuant to Sections 4.03(a), (b) and (c) above shall state the name of the Registered Owner, specify the principal amount of the Variable Rate Notes (or portions thereof) to which such notice relates, and direct the Paying Agent not to purchase the Variable Rate Notes (or portions) so specified. Any such notice delivered to the Paying Agent shall be irrevocable and binding upon the Registered Owner delivering the same and all subsequent Holders of the Variable Rate Notes to be retained, including any Variable Rate Notes to be issued in exchange therefor or upon transfer thereof. Any Registered Owner who elects to retain its Variable Rate Notes pursuant to this Section shall no longer have the right to tender its Variable Rate Notes for optional purchase pursuant to Section 4.01 hereof prior to the applicable Conversion Date.

(e) Notice to Holders. Any notice of a Conversion Date given to Holders pursuant to Section 3.02(h)(iii), 3.02(i)(iii) or 3.03(b)(iii) hereof shall, in addition to the requirements of such Section: (i) state whether the Variable Rate Notes to be converted will be subject to mandatory tender for purchase on the Conversion Date and the time at which Variable Rate Notes are to be tendered for purchase; (ii) specify the date and time by which any notice of a tender or of an election to retain Variable Rate Notes pursuant to this Section must be received; and (iii) if appropriate, specify the matters required to be stated in

notices of elections to retain Variable Rate Notes (or contain a form thereof).

(f) Remarketing. Promptly after receipt of any election to retain Variable Rate Notes, but in any event not later than 1:00 p.m., New York City time, on the Business Day immediately following the last day on which notices of elections to retain Variable Rate Notes may be delivered to the Paying Agent pursuant to Section 4.03(a) or (b) above, the Paying Agent shall notify an Authorized Representative, the Remarketing Agent, and the Bank by telephone, telegram, telecopy, or other similar communication, of the principal amount of Variable Rate Notes to be tendered for purchase on the Conversion Date. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for such Variable Rate Notes. The terms of any sale by the Remarketing Agent shall provide for the payment of the purchase price of tendered Variable Rate Notes by the Remarketing Agent to the Paying Agent in immediately available funds (or clearing house funds if Variable Rate Notes are converted from a Term or Semiannual Rate Period) at or before 2:00 p.m., New York City time, on the Conversion Date.

(g) Purchase of Tendered Variable Rate Notes. The provisions of Section 4.01(e) shall apply to tenders pursuant to this Section 4.03 with respect to Variable Rate Notes bearing interest at Variable Rates; provided that, for the purpose of so applying such provisions:

(i) the notices required pursuant to Section 4.01(e) shall be given as therein described, except that the provisions relating specifically to Variable Rate Notes bearing interest at Daily Rates shall be disregarded;

(ii) the manner and time of payment of remarketing proceeds referred to in Section 4.01(e)(ii) shall be as specified in Section 4.03(f) above;

(iii) all payments to tendering Holders referred to in Section 4.01(e)(iii) shall be made in immediately available funds unless the Variable Rate Notes to be purchased bear interest at Semiannual or Term Rates, in which event such payments shall be made in clearing house funds; and

(iv) the deliveries of Variable Rate Notes under Section 4.01(e)(vi) shall be required to be made at or before 1:00 p.m., New York City time, on the Conversion Date (or 5:00 p.m., New York City time, on the second (2nd) Business Day prior to the Conversion Date in the case of Variable Rate Notes bearing interest at Semiannual or Term Rates).

The provisions of Section 4.02(c) shall apply to tenders pursuant to this Section 4.03 with respect to Variable Rate Notes bearing interest at Flexible Rates.

Section 4.04. Tender Upon Fixed Rate Conversion.

(a) Mandatory Tender Upon Conversion. Any Variable Rate Notes to be converted to bear interest at the Fixed Rate pursuant to Section 3.04 hereof shall be subject to mandatory tender for purchase on the Fixed Rate Conversion Date at a price equal to the principal amount thereof; provided that the Holders of any such Variable Rate Notes may elect to retain their Variable Rate Notes notwithstanding a mandatory tender pursuant to this Section by delivering to the Paying Agent at its corporate trust office not later than 5:00 p.m., New York City time, on a Business Day which is not fewer than fifteen (15) days prior to the Fixed Rate Conversion Date a written notice of such election. Such written notice shall:

(i) state that the person delivering the same is a Registered Owner (specifying the numbers and denominations of the Variable Rate Notes of such Registered Owner);

(ii) state that the Registered Owner is aware of the fact that, after the Fixed Rate Conversion Date, the Variable Rate Notes will no longer be subject to tender at the option of the Registered Owner;

(iii) direct the Paying Agent not to purchase the Variable Rate Notes of such Registered Owner; and

(iv) be irrevocable and binding upon the Registered Owner delivering such notice and all subsequent Holders of the Variable Rate Notes to be retained, including any Variable Rate Notes issued in exchange therefor or upon transfer thereof.

(b) Notice to Holders. Any notice of conversion given to Holders pursuant to Section 3.04(c) hereof shall, in addition to the requirements of such Section, specify the date and time by which any notice of election to retain Variable Rate Notes pursuant to this Section must be received, and specify the matters required to be stated in such notices (or contain the form thereof).

(c) Remarketing. At or before 4:00 p.m., New York City time, on the Business Day immediately following the last day on which notices of elections to retain Variable Rate Notes may be delivered to the Paying Agent pursuant to Section 4.04(a) above, the Paying Agent shall notify an Authorized Representative, the Remarketing Agent, and the

Bank by telephone, telegraph, telecopy, telex, or other similar communication, of the principal amount of Variable Rate Notes to be tendered for purchase on the Fixed Rate Conversion Date. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for such Variable Rate Notes; provided that in no event shall the Remarketing Agent sell any such Variable Rate Note for sale to any person unless the Remarketing Agent has advised such person of the fact that, after the Fixed Rate Conversion Date, the Variable Rate Notes will no longer be subject to tender at the option of the Registered Owner. The terms of any sale by the Remarketing Agent shall provide for the payment of the purchase price to the Paying Agent of the tendered Variable Rate Notes in immediately available funds (or clearinghouse funds in the event of conversion from a Term Rate or Semiannual Rate) at or before 3:00 p.m., New York City time.

(d) Purchase of Tendered Variable Rate Notes. The provisions of Section 4.01(e) shall apply to mandatory tenders pursuant to this Section 4.04; provided that, for the purpose of so applying such provisions:

(i) the notices required pursuant to Section 4.01(e)(i) shall be given as therein described, except that the provisions relating specifically to Variable Rate Notes bearing interest at Daily Rates shall be disregarded;

(ii) the manner and time of payment of remarketing proceeds referred to in Section 4.01(e)(ii) shall be as specified in subsection 4.04(c) above; and

(iii) the deliveries of Variable Rate Notes under Section 4.01(e)(vi) shall be required to be made at or before 1:00 p.m., New York City time, (3:00 p.m., New York City time in the case of Variable Rate Notes bearing interest at Flexible Rate), on the Conversion Date (or 5:00 p.m., New York City time, on the second (2nd) Business Day prior to the Conversion Date in the case of Variable Rate Notes bearing interest at Semiannual or Term Rates).

Section 4.05. Mandatory Tender Upon Expiration of Credit Agreement.

(a) At all times prior to conversion to a Fixed Rate, the Variable Rate Notes shall be subject to mandatory purchase upon the expiration or termination of the Credit Agreement, subject to the right of the Registered Owner to retain his Variable Rate Note, which purchase shall occur:

(i) on the last Business Day prior to the termination or expiration of the Credit Agreement, provided that no such tender and purchase shall be required if the Credit Agreement is renewed prior to the date of notice to Registered Owner pursuant to subsection 4.05(b) below; or

(ii) on the last Business Day prior to the substitution of a new Credit Agreement, for such Variable Rate Notes, provided that no such tender and purchase shall be required if prior to the date of notice to the Registered Owner pursuant to subsection 4.05(b) below, the Remarketing Agent and the Paying Agent shall have received confirmation from Standard & Poor's or Moody's or Fitch (or any of them) to the effect that the rating or ratings assigned by any of such agencies to the Variable Rate Notes will not be lowered as a result of the expiration or substitution.

(b) Not later than thirty (30) days prior to the purchase date, the Paying Agent shall mail a written notice of the purchase to the Holders of all Variable Rate Notes subject to purchase, which notice shall specify (i) the purchase date, and (ii) the event requiring the purchase pursuant to subsection (a) above.

(c) The Holders of any Variable Rate Notes may elect to retain their Variable Rate Notes notwithstanding a mandatory tender pursuant to this Section by delivering to the Paying Agent at its corporate trust office not later than 5:00 p.m., New York City time, on a Business Day which is not fewer than fifteen (15) days prior to the mandatory tender date a written notice of such election. Such written notice shall:

(i) state that the person delivering the same is a Registered Owner (specifying the numbers and denominations of the Variable Rate Notes of such Registered Owner);

(ii) state that the Registered Owner is aware of the fact that after the Credit Agreement termination or expiration date, the Credit Agreement will no longer be in effect;

(iii) direct the Paying Agent not to purchase the Variable Rate Notes of such Holders; and

(iv) be irrevocable and binding upon the Holder delivering such notice and all subsequent Holders of the Variable Rate Notes to be retained, including Variable Rate Notes issued in exchange therefor or upon transfer thereof.

Section 4.06. Inadequate Funds for Tenders. If the funds available for purchases of Variable Rate Notes pursuant to this Article IV are inadequate for the purchase of all Variable Rate Notes tendered on any purchase date, the Paying Agent shall, after any applicable grace period: (a) return all tendered Variable Rate Notes to the Holders thereof; (b) return all moneys received for the purchase of such Variable Rate Notes to the Persons providing such moneys; and (c) notify an Authorized Representative of the return of such Variable Rate Notes and moneys and the failure to make payment for tendered Variable Rate Notes.

Section 4.07. Tenders or Waivers By Investment Companies. The Registered Owner of any Variable Rate Note issued hereunder may, at its option, notify the Remarketing Agent and the Paying Agent in writing that it is an Investment Company, or is holding Note(s) on behalf of an Investment Company and in such notice either (a) irrevocably waive its option to retain its Note(s) subject to mandatory tender pursuant to Section 4.03(a), (b) or (c) and 4.04(a) hereof or (b) irrevocably elect to have its Note(s) purchased on the next date on which such Note(s) may be purchased pursuant to Section 4.01 hereof. In the event of a notice under clause (b) above, the notice from the purchaser shall contain the information required under Section 4.01(b) hereof. Any notice delivered by an Investment Company with respect to its Note(s) shall be irrevocable with the same effect described in Section 4.01(b)(iii).

Section 4.08. Mandatory Tender at End of Initial Flexible Rate Period. Notwithstanding any provision of this Resolution to the contrary, the Variable Rate Notes initially issued hereunder shall be subject to mandatory tender, without right of retention by the Registered Owner at the end of the initial Flexible Rate Period (December 20, 1985).

## ARTICLE V

### ISSUE AND SALE OF NOTES

Section 5.01. Issuance and Sale of Notes. (a) Except as provided in subsection (b) of this Section, all Project Notes issued to provide funds to pay Project Costs shall be sold through competitive bidding in the manner set forth in this Resolution and as required by the Constitutional Amendment. In connection with sales of Project Notes to provide funds to pay Project Costs (specifically excluding Project Notes described in Section 5.01(b)), an Authorized Representative shall prepare a Notice to Bidders and Bidding Instructions with respect thereto.

(b) All Project Notes sold to refund Notes, including amounts outstanding under the Revolving Note which evidence

Advances under the Agreement are hereby deemed to be "refunding bonds" within the meaning of the Constitutional Amendment and therefore may be sold in the manner determined by an Authorized Representative to be most economically advantageous to the Board.

(c) The Commercial Paper Notes shall be completed and delivered by the Issuing and Paying Agent in accordance with telephonic, computer or written instructions of any Authorized Representative and in the manner specified in the Issuing and Paying Agent Agreement and below. To the extent such instructions are not written, they shall be confirmed in writing within 24 hours. Said instructions shall specify such principal amounts, dates of issue, maturities, rates of discount or interest, and other terms and conditions which are hereby authorized and permitted to be fixed by any Authorized Representative at the time of sale of the Commercial Paper Notes. Such instructions shall include the purchase price of the Commercial Paper Notes, and a request that the Issuing and Paying Agent authenticate such Commercial Paper Notes by counter signature of its authorized officer or employee and deliver them to the named purchaser or purchasers thereof upon receipt of payment in accordance with the custom then prevailing in the New York financial market in regard to obligations such as the Commercial Paper Notes. Such instructions shall also specify the amounts of the proceeds of such issue of Commercial Paper Notes which are to be deposited to the Series A Note Payment Fund and to be transferred to the Series A Note Construction Account. Such instructions shall also contain provisions representing that all action on the part of the Board necessary for the valid issuance of the Commercial Paper Notes then to be issued, or the incurring of Advances under the Revolving Note then to be incurred, has been taken, that all provisions of Texas and federal law necessary for the valid issuance of such Commercial Paper Notes with provision for original issue discount and interest exemption from federal income taxation have been complied with, and that such Commercial Paper Notes in the hands of the Holders thereof will be valid and enforceable special obligations of the Board according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that, based upon the advice of Bond Counsel, the earned original issue discount on the Commercial Paper Notes or stated interest on the Commercial Paper Notes, as the case may be, is exempt from federal income tax. Such instructions shall also certify that:

(i) if the Commercial Paper Notes are being issued to pay Project Costs, (A) the bidding

requirements set forth in this Resolution have been satisfied and (B) attached to such instructions is (1) a No-Arbitrage Certificate (as described in Section 6.05), (2) an approving opinion of Bond Counsel, and (3) an opinion of the general counsel of the University that the Commercial Paper Notes are being issued to pay Project Costs for Eligible Projects;

(ii) no Event of Default under Section 7.01 has occurred and is continuing as of the date of such Certificate and that the Issuing and Paying Agent has not received a No-Issuance Notice (as defined in the Agreement);

(iii) the Board is in compliance with the covenants set forth in Section 2.13 and Article VI as of the date of such instructions;

(iv) that the sum of the interest payable on such Commercial Paper Note and any discount established for such Commercial Paper Note will not exceed a yield (calculated on the principal amount of the Commercial Paper Note on the basis of a 365-day year and actual days elapsed) to the maturity date of such Commercial Paper Note in excess of the Maximum Interest Rate in effect on the date of issuance of such Commercial Paper Note;

(v) that the aggregate principal amount of Fund Priority Obligations, Notes (including the principal amount of the Commercial Paper Notes to be sold pursuant to such instructions), Short Term Obligations and other obligations of the Board issued under the Constitutional Amendment does not exceed a total amount of 20 percent of the cost value of investments and other assets of the Permanent University Fund (exclusive of real estate) as of the time of the sale of the Commercial Paper Notes; and

(vi) that, based upon the projected monies to be deposited into the Interest and Sinking Fund from the Interest of the University in the Available University Fund, the payment of the interest on and/or principal of any Note from monies on deposit in the Interest and Sinking Fund by the Board will not impair the obligation of the Board to pay the principal of and/or interest on any Fund Priority Obligation as the same matures and comes due.

(d) The Revolving Note shall be delivered to the Bank and thereafter Advances may be made thereunder in accordance with the terms of the Agreement.

(e) Variable Rate Notes shall be issued and sold at public or private sale in the same manner provided for the issuance and sale of Commercial Paper Notes in subsections (a), (b) and (c) of this Section 5.01 and pursuant to the provisions of Articles III and IV; except that the certification described in Section 5.01(c)(iv) shall be calculated on the basis of a 360-day year of twelve 30-day months or a 365-day year and actual days elapsed, as applicable.

Section 5.02. Proceeds of Sale of Project Notes. The proceeds of the sale of any Project Notes (net of all expenses and costs of sale and issuance) shall be deposited into Series A Note Payment Fund, and shall be applied for any or all of the following purposes as directed by an Authorized Representative:

(i) Proceeds to be used for the payment and redemption or purchase of outstanding Project Notes at or before maturity and the refunding of any Advances (evidenced by the Revolving Note) under the Agreement shall be expended therefor.

(ii) Proceeds not to be retained in the Series A Note Payment Fund as provided in subparagraph (i) above shall be transferred to the Series A Note Construction Account and used and applied in accordance with the provisions of Section 2.14.

Section 5.03. Issuing and Paying Agent Agreement. That the Paying Agent/Registrar Agreement (the "Issuing and Paying Agent Agreement" or the "Paying Agent/Registrar Agreement") by and between the Board and Morgan Guaranty Trust Company of New York, New York, New York, relating to the Project Notes, in the form attached hereto as Exhibit C, is hereby approved as to form and content and an Authorized Representative is hereby authorized and directed to execute the same for and on behalf of the Board and, in connection with the execution thereof, approve such changes, additions, or amendments thereto as may be necessary and proper to carry out the purpose and intent of such Issuing and Paying Agent Agreement. The Board is hereby authorized to enter into any supplemental agreements with the Issuing and Paying Agent or with any successor Issuing and Paying Agent.

Section 5.04. Remarketing Agreement. That the Remarketing Agreement (the "Remarketing Agreement") in the form attached hereto as Exhibit D with Goldman, Sachs & Co. (the "Dealer" or "Remarketing Agent") pertaining to the sale, from time to time, of Project Notes or the purchase of Project Notes from the Board, all for a fee as set forth in said Remarketing Agreement, is hereby approved as to form and content and an Authorized Representative is hereby authorized and directed to execute the same for and on

behalf of the Board and, in connection with the execution thereof, approve such changes, additions, or amendments thereto as may be necessary and proper to carry out the purpose and intent of such Remarketing Agreement. The Board may enter any supplemental agreements with the Dealer or with any successor Dealer selected by the Board.

Section 5.05. Initial Sale. The Variable Rate Notes shall be originally issued as Flexible Rate Notes in the aggregate principal amount of \$100,000,000. The initial Variable Rate Notes shall be sold through competitive bid in accordance with the procedures described in the Official Notice of Sale and Official Bid Form attached hereto as Exhibit E; provided, that, an Authorized Representative may vary the date and times of such competitive sale.

## ARTICLE VI

### COVENANTS OF THE BOARD

Section 6.01. Limitation on Issuance. Unless this Resolution and the Agreement is amended and modified by the Board in accordance with the provisions of Section 8.01 hereof, the Board covenants that there will not be issued and outstanding at any time more than \$100,000,000 in principal amount of Project Notes. The Board, however, does reserve the right to issue additional Project Notes in excess of said amount by resolution duly adopted by the Board. For purposes of this Section 6.01 any portion of outstanding Project Notes to be paid on the day of calculation from moneys on deposit in the Series A Note Payment Fund and the proceeds of Notes, Short Term Obligations, Fund Priority Obligations or other obligation of the Board issued pursuant to the Constitutional Amendment shall not be considered outstanding.

Additionally, the Board covenants and agrees that the total principal amount of all Project Notes outstanding at any one time and the total amount of interest accrued or to accrue thereon in the succeeding 214 days following such date of calculation shall not exceed the sum total of the "Available Bank Loan Commitment" (as defined in the Agreement) plus the amount on deposit in the Series A Note Payment Fund and the Special System Account.

Section 6.02. General Covenant. The Board covenants and agrees that while the currently outstanding Permanent University Fund Obligations are outstanding, the Board will maintain and invest and keep invested the Permanent University Fund in a prudent manner and as required by law.

Section 6.03. Payment of Fund Priority Obligations and Notes. The Board hereby covenants and reaffirms to the holders or owners of any Fund Priority Obligations that the payment from time to time of the interest on and/or principal of the Notes shall not impair the ability or the obligation of the Board to pay the principal of and/or interest on any Fund Priority Obligations, and that the Board further covenants (i) that it shall establish appropriate procedures with the State Treasurer and the Comptroller of Public Accounts with respect to deposits into the Series A Note Payment Fund and the Special System Account, and (ii) that such procedures shall not impair the ability of the Board to pay the principal of and/or interest on the Fund Priority Obligations.

Section 6.04. Maintenance of Available Credit Facilities Requirement. (a) The Board agrees and covenants that at all times while there are outstanding Commercial Paper Notes or Variable Rate Notes which have not been converted to a Fixed Rate it will maintain credit facilities with banks in amounts such that, assuming that all then outstanding Commercial Paper Notes and Variable Rate Notes which have not been converted to a Fixed Rate were to become due and payable immediately, the amount available for borrowing under the credit facilities would be sufficient at that time to pay principal of all such Commercial Paper Notes and Variable Rate Notes which have not been converted to a Fixed Rate, and interest thereon for 214 days computed at the rate of 15% per annum. No Commercial Paper Notes or Variable Rate Notes which have not been converted to a Fixed Rate shall be issued which if, after giving effect to the issuance thereof and, if applicable, the immediate application of the proceeds thereof to retire other Commercial Paper Notes and Variable Rate Notes which have not been converted to a Fixed Rate covered by the credit facility, the aggregate principal amount of all Commercial Paper Notes and Variable Rate Notes which have not been converted to a Fixed Rate and interest thereon covered by the credit facility would exceed the amount of the credit commitment under the credit facility. The availability for borrowing of such amounts under the credit facilities may be subject to reasonable conditions precedent, including but not limited to, bankruptcy of the Board. In furtherance of the foregoing covenant, the Board agrees that it will not issue any Project Notes or make any borrowings which will result in a violation of such covenant, will not amend the Agreement in a manner which will cause a violation of such covenant and, if and to the extent necessary to maintain compliance with such covenant, and will arrange for new credit facilities prior to, or contemporaneously with, the expiration of the Agreement.

(b) The Agreement presently satisfies the covenant contained in paragraph (a) above with respect to the issuance of up to \$100,000,000 in aggregate principal amount at any one time outstanding of Commercial Paper Notes and Variable Rate Notes, which have not been converted to a Fixed Rate.

Section 6.05. Available Funds. To the extent Notes cannot be issued to renew or refund outstanding Notes, the Board in good faith shall endeavor to sell a sufficient principal amount of Fund Priority Obligations, Short Term Obligations, or other obligations of the Board under the Constitutional Amendment in order to have funds available, together with other moneys available therefor, to pay the Notes and the interest thereon, or any renewals thereof, as the same shall become due, and other amounts due under the Agreement.

Section 6.06. Notes to Remain Tax Exempt. The Board covenants that it will execute and deliver to the Issuing and Paying Agent a No-Arbitrage Certificate in the form prescribed by Bond Counsel in connection with the original issuance of the Notes, and each issuance of Notes thereafter to pay Project Costs, and that in connection with any other issuance of Notes, it will execute and deliver to the Issuing and Paying Agent a confirmation that the facts, estimates, circumstances and reasonable expectations contained therein continue to be accurate as of such issue date. The Board represents and covenants that it will not expend, or permit to be expended, the proceeds of any Notes in any manner inconsistent with its reasonable expectations as certified in the No-Arbitrage Certificates to be executed from time to time with respect to the Notes; provided, however, that the Board may expend Note proceeds in any manner if the Board first obtains an unqualified opinion of Bond Counsel that such expenditure will not impair the exemption from federal income taxes of interest paid on the Notes. The Board represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The Board further covenants with the Holders of all Notes at any time outstanding that no use of the proceeds of any of the Notes or any other funds of the Board will be made which will cause any of such Notes to be "arbitrage bonds" subject to federal income taxation by reason of Section 103(c) of the Internal Revenue Code of 1954, as amended. To that end, so long as any of the Notes are outstanding, the Board, with respect to such proceeds and other funds, shall comply with all requirements of said Section 103(c) and of all regulations of the United States Department of the Treasury issued thereunder, to the extent that such regulations are, at the time, applicable and in effect.

Section 6.07. Supplemental Resolutions. Other than as permitted in Section 6.10 with respect to the issuance of additional obligations of the Board secured by the Interest of the University in the Available University Fund, the Board will not adopt any supplemental resolutions, pursuant to this Resolution or otherwise, without, to the extent required by the Agreement, the consent of the Bank, or which would materially adversely affect the ability of the Board to make payments on the Notes when due.

Section 6.08. Opinion of Bond Counsel. The Board shall cause the legal opinion of Bond Counsel as to the validity of the Notes and as to the exemption of interest on the Notes from federal income taxation to be furnished to any Holder without cost.

Section 6.09. Compliance With Bond Resolution and Other Documents. The Board will comply with the terms and provisions of the Bond Resolution, and any other resolution or contract to which the Board is a party, the non-compliance with which would materially adversely affect the ability of the Board to make payments on the Notes when due.

Section 6.10. Reservation of Right to Issue Obligations of Superior Lien, Obligations of Inferior Lien and Short Term Obligations. The Board hereby expressly reserves the right to hereafter issue obligations payable from and secured by a lien on and pledge of the Interest of the University in the Available University Fund prior in right and claim to the lien on and pledge of the Interest of the University in the Available University Fund covering the payment of the Notes. Furthermore, the Board expressly reserves the right to hereafter issue additional Notes or Short Term Obligations when and as the Board shall determine and authorize without any limitation as to principal amount or otherwise, which additional Notes or Short Term Obligations may be equally and ratably payable from and secured by a lien on and pledge of the Interest of the University in the Available University Fund of equal rank and dignity with the lien and pledge securing the payment of the Notes and may or may not be secured by the Agreement. The Board also retains the right to issue obligations or other evidences of indebtedness or to incur contractual obligations secured by a lien on and pledge of the Interest of the University in the Available University Fund junior and subordinate to the lien and pledge securing the Notes. Notwithstanding any of the above to the contrary, the Board covenants that the lien created by this Resolution will not be impaired in any manner as a result of any action or non-action on the part of the Board or officers of the System, and that the Board will, subject to the provisions hereof, continuously preserve the Fund and each and every part thereof.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF NOTEHOLDERS

Section 7.01. Events of Default. If one or more of the following events (an "Event of Default" or "Events of Default") shall happen, to-wit:

(a) if default shall be made in the due and punctual payment of any installment of principal of any Project Note when and as the same shall become due and payable, whether at stated maturity as therein expressed, by declaration or otherwise;

(b) if the Board shall fail to make due and punctual payment of any installment of interest on any Project Note when and as such interest installment shall become due and payable and such failure shall continue for 5 Business Days;

(c) if an "Event of Default" under the Agreement occurs;

(d) if default shall be made by the Board in the performance or observance of any other of the covenants, agreements or conditions on its part in this Resolution or in the Project Notes contained, and such default shall continue for a period of 60 days after written notice thereof to the Board by the Holders of not less than 10% in principal amounts of the Project Notes then outstanding; or

(e) if default shall be made in the due and punctual payment of a Note upon tender for payment pursuant to the demand payment provisions thereof.

Section 7.02. Suits at Law or in Equity and Mandamus. In case one or more Events of Default shall occur, then and in every such case the Holder of any Note at the time outstanding shall be entitled to proceed to protect and enforce such Holder's rights by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Resolution, or in aid of the exercise of any power granted in this Resolution, or to enforce any other legal or equitable right vested in the Holders by this Resolution or the Notes or by law. The provisions of this Resolution shall be a contract with each and every Holder and the duties of the Board shall be enforceable by any Holder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Section 7.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised at any time or from time to time, and as often as may be necessary, by any Holder.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Amendments or Modifications Without Consent of Holders. This Resolution and the rights and obligations of the Board and of the Holders may be modified or amended at any time by a supplemental resolution, without notice to or the consent of any Holders, but only to the extent permitted by law, and, subject to the rights of the Holders, only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Board in the Resolution contained, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Board; or

(2) to cure any ambiguity, or to cure or correct any defective provision contained in the Resolution, upon receipt by the Board of an approving opinion of Bond Counsel, that the same is needed for such purpose, and will more clearly express the intent of the Resolution;

(3) to supplement the security for the Notes, replace or provide additional credit facilities, or change the form of the Notes or make such other changes in the provisions hereof as the Board may deem necessary or desirable and which shall not materially adversely affect the interests of the Noteholders;

(4) to make any changes or amendments requested by Standard & Poor's, Moody's, or Fitch as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the Board, materially adversely affect the interests of the Holders; or

(5) to make any changes or amendments with respect to Commercial Paper Notes if there are no Commercial Paper Notes then outstanding or with respect

to any mode of the Variable Rate Notes if there are no Variable Rate Notes then outstanding in such mode;

provided, however, except for such changes as may be required by Moody's, Standard & Poor's or Fitch as the condition for the granting or maintenance of a rating on the Project Notes by any such entity, nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions of this Resolution or in the Notes so as to:

- (1) Make any change in the stated maturity of any of the outstanding Project Notes;
- (2) Reduce the rate of interest borne by any of the outstanding Project Notes;
- (3) Reduce the amount of the principal payable on any of the outstanding Project Notes;
- (4) Modify the terms of payment of principal of or interest on the outstanding Project Notes, or impose any conditions with respect to such payment;
- (5) Affect the rights of the Holders of less than all of the outstanding Project Notes; and
- (6) Reduce or restrict the pledge made herein (Section 2.12) for payment of the Project Notes.

and provided, further, that, except as provided in Section 8.02 hereof, no change, modification or amendment shall be made in the Resolution or become valid and effective without the approval of such change, modification or amendment by the Attorney General of the State of Texas if, in the opinion of Bond Counsel, such approval is required by the Constitutional Amendment and the Acts and, to the extent required by the Agreement, without the consent of the Bank.

Section 8.02. Additional Actions. The Chairman of the Board, the Executive Secretary of the Board, the Authorized Representatives and the other officers of the Board are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale, and delivery of the Notes and otherwise to effectuate the purposes of this Resolution, the Agreement, the Remarketing Agreement, the Trust Agreement, and the Issuing and Paying Agent Agreement. In addition, the Chairman of the Board, General Counsel to the System, and Bond Counsel are hereby authorized to approve, subsequent to the date of the adoption of this Resolution, any amendments to the documents attached hereto

as Exhibits A through E, inclusive, and any technical amendments to this Resolution as may be required by Moody's, Standard & Poor's, or Fitch as a condition to the granting of a rating on the Project Notes.

Section 8.03. Resolution to Constitute a Contract; Equal Security. In consideration of the acceptance of the Notes, the issuance of which is authorized hereunder, by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Board and the Holders from time to time of the Notes and the pledge made in this Resolution by the Board and the covenants and agreements set forth in this Resolution to be performed by the Board shall be for the equal and proportionate benefit, security, and protection of all Holders, without preference, priority, or distinction as to security or otherwise of any of the Notes authorized hereunder over any of the others by reason of time of issuance, sale or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Resolution or, with respect to the Revolving Note, the Agreement.

Section 8.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

Section 8.05. Payment and Performance on Business Days. Except as provided to the contract in the Form of Notes or in Article III and IV, whenever under the terms of this Resolution or the Notes, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Notes, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the Notes, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment.

Section 8.06. Defeasance. If, when all or any portion of the Project Notes shall have become due and payable in accordance with their terms or otherwise as provided in this Resolution, the entire principal and interest so due and payable upon said Project Notes shall be paid, or if at or

prior to the date said Project Notes have become due and payable, sufficient moneys or direct obligations of, or obligations guaranteed by, the United States of America the principal of and interest on which will provide sufficient moneys for such payment upon maturity, to the date upon which the Project Notes have been called for redemption or to a mandatory tender date (after taking into account any demand payment provisions), shall be held by the Issuing and Paying Agent and provision shall also be made for paying all other sums payable hereunder by the Board with respect to said Project Notes, the rights, title and interest of the Holders of the Project Notes in the Interest of the University in the Available University Fund shall thereupon cease, terminate and become discharged and said Project Notes shall no longer be deemed outstanding for purposes of this Resolution and all the provisions of this Resolution, including all covenants, agreements, liens and pledges made herein, shall be deemed duly discharged, satisfied and released.

Section 8.07. Limitation of Benefits With Respect to the Resolution. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Resolution or the Notes is intended or should be construed to confer upon or give to any person other than the Board, the Holders, the Issuing and Paying Agent/Registrar and the parties to the Remarketing Agreement and the Agreement, any legal or equitable right, remedy or claim under or by reason of or in respect to this Resolution or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Resolution and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Board, the Noteholders, the Issuing and Paying Agent/Registrar and the parties to the Remarketing Agreement and the Agreement as herein and therein provided.

Section 8.08. Approval of Attorney General. No Notes herein authorized to be issued shall be sold or delivered by an Authorized Representative until the Attorney General of the State of Texas shall have approved this Resolution, the Agreement, and other agreements and proceedings as may be required in connection therewith, and therefor the Notes to be issued in accordance with such proceedings, all as is required by the Constitutional Amendment and the Acts.

Section 8.09. Approval of Official Statement. The form of Official Statement, to be used by the Dealer in the offering of the Variable Rate Notes, and the use thereof by the Dealer in connection therewith, is hereby approved, with such changes as are approved in accordance with the provisions of Section 8.02.

PASSED AND ADOPTED, this the \_\_\_\_\_ day of \_\_\_\_\_,  
1985.

ATTEST:

\_\_\_\_\_  
Executive Secretary

\_\_\_\_\_  
Chairman

(Seal)

DRAFT OF 12/3/85

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\$109,000,000

CREDIT AGREEMENT

dated as of

December \_\_, 1985

among

BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM,

MBANK DALLAS, NATIONAL ASSOCIATION

and

MBANK AUSTIN, NATIONAL ASSOCIATION,  
as Agent

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CREDIT AGREEMENT

This Credit Agreement is effective and dated as of December \_\_, 1985, among the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (the "Board"), MBANK DALLAS, NATIONAL ASSOCIATION, a national banking association ("Bank"), and MBANK AUSTIN, NATIONAL ASSOCIATION, Austin, Texas, as Agent for Bank ("Agent").

W I T N E S S E T H:

WHEREAS, The University of Texas System (hereinafter sometimes referred to as the "System") is governed by the Board; and

WHEREAS, the Board has determined to issue obligations pursuant to the provisions of Section 18 of Article VII of the Constitution of the State of Texas, Article 717q, V.A.T.C.S., as amended and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code) to provide interim financing for Eligible Projects (hereinafter defined); and

WHEREAS, an amendment to Section 18 of Article VII of the Texas Constitution, adopted by vote of the people of Texas on November 6, 1984 (the "1984 Constitutional Amendment") authorizes the Board to issue bonds and notes not to exceed a total amount of twenty percent (20%) of the cost value of investments and other assets (exclusive of real estate) of the Permanent University Fund (hereinafter defined) at the time of issuance thereof, and to pledge all or any part of its two-thirds (2/3) interest in the "Available University Fund" (hereinafter defined) to secure the payment of the principal and interest of those bonds and notes, for the purpose of acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, major repair and rehabilitation of buildings and other permanent improvements, acquiring capital equipment and library books and library materials, and refunding bonds or notes issued under the 1984 Constitutional Amendment or prior law, at or for System administration and certain component institutions of the System; and

WHEREAS, the Board has issued its Board of Regents of The University of Texas System Permanent University Fund Refunding Bonds, Series 1985 (the "Series 1985 Bonds"), pursuant to the 1984 Constitutional Amendment, being payable from and secured by a first lien on and pledge of the Interest of the University (hereinafter defined) in the Available University Fund; and

WHEREAS, pursuant to its Resolution, adopted December 5, 1985 (the "Resolution"), the Board has authorized the issuance of obligations in an aggregate principal amount not to exceed One Hundred

Nine Million Dollars (\$109,000,000) to provide interim financing to pay Project Costs for Eligible Projects (as such terms are hereinafter defined); and has authorized such obligations to be evidenced by Notes, and to refinance, renew, or refund Notes (hereinafter defined), including interest thereon including Commercial Paper Notes, Variable Rate Notes, and a Promissory Note (as such terms are defined in the Resolution) in an aggregate principal amount not to exceed One Hundred Nine Million Dollars (\$109,000.00) at any one time outstanding; and

WHEREAS, Bank has agreed to make certain loans to the Board in amounts up to, but not exceeding, One Hundred Nine Million Dollars (\$109,000,000) in aggregate principal amount outstanding at any time, such loans to be made to enable the Board to refund Project Notes (hereinafter defined), including interest thereon all pursuant to this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

#### ARTICLE I

#### DEFINITIONS

Section 1.01. Definitions. The terms defined below have the following meanings when used herein unless the context shall indicate a contrary meaning:

"Acts" shall mean, collectively, Article 717q, V.A.T.C.S., as amended, and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code).

"Advance" or "Advances" shall mean the disbursement or disbursements of funds advanced by Bank to the Board under the Promissory Note.

"Agent" shall mean MBank Austin, National Association, a national banking association with its offices in Austin, Texas, in its capacity as agent for the Bank hereunder, and any successor agent appointed in accordance with this Agreement.

"Agreement" shall mean this Credit Agreement, as from time to time amended or supplemented.

"Authorized Representative" shall mean one or more of the following officers or employees of the System, to-wit: The Executive Vice Chancellor for Asset Management, the Vice Chancellor and General Counsel, the Director Asset Strategy and Planning, the Manager of Debt Administration, and the Manager Endowment Real Estate or such other officer or employee of the System authorized by the System to act as an Authorized Representative.

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"Available Bank Loan Commitment" shall mean, with respect to Bank and at any date, the Bank Loan Commitment less the aggregate principal amount of Advances made by Bank to the Board.

"Available University Fund" shall mean, as provided in Article VII, Section 18 of the Texas Constitution, all of the dividends, interest, and other income from the Permanent University Fund (less administrative expenses), including the net income attributable to the surface of Permanent University Fund land.

"Bank" shall mean MBank Dallas, National Association, Dallas, Texas, a national banking association.

"Bank Loan Commitment" shall mean One Hundred Nine Million Dollars (\$109,000,000), being the maximum principal amount for which Bank is committed to make Advances, as such amount may be reduced pursuant to subsection 2.07 hereof.

"Basic Interest Rate" shall mean a rate of interest per annum equal to ninety percent (90%) of the Index Rate.

"Board of Regents" or "Board" shall mean the Board of Regents of The University of Texas System.

"Bond Counsel" shall mean Messrs. McCall, Parkhurst & Horton, and Messrs. Vinson & Elkins.

"Business Day" shall mean any day (a) when banks are open for business in Dallas, Texas, and Austin, Texas and (b) when banks are not authorized to be closed in New York, New York.

"Code" shall mean the Internal Revenue Code of 1954, as amended, and when reference is made to a particular section thereof, the applicable Treasury Regulations from time to time promulgated or proposed thereunder.

"Commercial Paper Note" shall mean a Note issued pursuant to the provisions of the Resolution, having the terms and characteristics specified in Section 2.03 thereof and in the form described in Section 2.07(a) thereof.

"Constitutional Amendment" shall mean the 1984 Constitutional Amendment, and any amendment thereto hereafter approved by the voters of the State of Texas.

"Constitutional Amendment Bond Resolution" shall mean any resolution authorizing the issuance of the Constitutional Amendment Bonds.

"Constitutional Amendment Bonds" shall mean the Series 1985, Bonds and any additional bonds and notes, including refunding bonds and notes, issued on a parity with the Series 1985 Bonds

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pursuant to the Constitutional Amendment, but not including the Notes and any Short Term Obligations not issued on a parity with the Series 1985 Bonds.

"Dealer" or "Remarketing Agent" shall mean the dealer or remarketing agent selected from time to time by the Board to remarket the Project Notes in accordance with Section 5.04 of the Resolution. The initial Dealer shall be Goldman, Sachs & Co.

"Default" or "Event of Default" shall mean any of the events described in Section 7.01 hereof.

"Dollar-Day" shall mean, for each day during any annual period (365 or 366 days, as the case may be) ending on any October 1 during the term of this Agreement, the quotient of (i) the sum of the aggregate principal amount of all Advances outstanding hereunder at 5:00 P.M. (local time in Austin, Texas) on such day, divided by (ii) the amount of the Bank Loan Commitment at such time on each such day.

"Eligible Project" shall mean the acquisition of land either with or without permanent improvements, the construction and equipping of buildings or other permanent improvements, major repair and rehabilitation of buildings and other permanent improvements, the acquisition of capital equipment and library books and library materials, and refunding bonds or notes issued under the Constitutional Amendment or prior law (law in effect prior to November 6, 1984). The term "Eligible Project" shall not include the construction, equipping, repairing or rehabilitating of buildings or other permanent improvements that are to be used for student housing, intercollegiate athletics, or auxiliary enterprises.

"Fiscal Year" shall mean the twelve-month operational period of the Fund commencing on September 1 of each year and ending on the following August 31.

"Fund Priority Obligations" shall mean the Series 1985 Bonds and any other obligations issued by the Board pursuant to the Constitutional Amendment which are secured by and payable from a lien on and pledge of the Interest of the University in the Available University Fund prior in rank and dignity to the lien and pledge securing the payment of the Notes, including any Constitutional Amendment Bonds.

"Holder" shall mean Bank and any other holder of the Promissory Note or any entity to which the Bank or any such other holder sells a participation in the Promissory Note (whether or not the Board was given notice of such sale and whether or not the Holder has an interest in the Promissory Note at the time amounts are payable to such Holder thereunder and under this Agreement) and

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any affiliated group (within the meaning of Section 1504 of the Code or any successor section thereto) of which any Holder is a member.

"Index Rate" shall mean a rate of interest per annum equal, calculated on the basis of a year of 365 or 366 days, as the case may be, to the interest rate applicable to 13-week United States Treasury bills on the basis of the average per annum rate at which such bills shall have been sold at a discount rate at the most recent Treasury auction prior to the date of determination of such Index Rate, such Index Rate being determined as of the date of the initial Advance, and thereafter such Index Rate being determined as of and adjusted on the first day of each January, April, July, and October during the term of this Agreement.

"Interest of the University" and "Interest" in the Available University Fund shall mean, with respect to the Constitutional Amendment Bonds, the System's two-thirds interest in the Available University Fund.

"Issuing and Paying Agent", "Paying Agent" or "Registrar" shall mean such agent appointed pursuant to the Resolution, or any successor to such agent.

"Maturity Date" shall mean the date seven years after the Term Loan Conversion Date, as such Term Loan Conversion Date may have been extended pursuant to Section 2.13 hereof.

"Maximum Interest Rate" shall mean the lesser of (a) the maximum nonusurious rate of interest permitted to be charged by applicable federal or Texas law (whichever shall permit the higher lawful rate) from time to time in effect and (b) the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the Board in the exercise of its borrowing powers (currently prescribed by Article 717k-2, V.A.T.C.S., as amended, or any successor provision).

"1984 Constitutional Amendment" shall mean the amendment to Section 18 of Article VII of the Constitution of the State of Texas approved by voters November 6, 1984.

"1985 Constitutional Amendment Bond Resolution" shall mean the resolution adopted by the Board on October 24, 1985, authorizing the issuance of the Series 1985 Bonds.

"Notice of Advance" shall mean a written borrowing request in substantially the form of Exhibit "B" attached hereto, with appropriate completions, executed by an Authorized Representative, which requests an Advance.

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"Note" or "Notes" shall mean the evidences of indebtedness authorized to be issued and at any time outstanding pursuant to the Resolution and shall include Commercial Paper Notes, Variable Rate Notes, or the Promissory Note, as appropriate.

"Notice of Default" shall mean a notice of a Default on an Event of Default under this Agreement.

"Permanent University Fund", "Permanent Fund", and "Fund" used interchangeably herein shall mean the Permanent University Fund as created, established, implemented, and administered pursuant to Article VII, Sections 10, 11, 11a, 15 and 18 of the Texas Constitution, as currently or hereafter amended, and further implemented by the provisions of Chapter 66, Texas Education Code.

"Permanent University Fund Obligations" shall mean, collectively, all bonds or notes of the Board or the Board of Regents of The Texas A&M University System heretofore or hereafter issued and delivered pursuant to the provisions of the Constitutional Amendment, including without limitation the Promissory Note, payable from and secured by a lien on and pledge of income from the Permanent University Fund.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof.

"Principal Debt" shall mean, at any time, the outstanding principal amount of all Advances under the Promissory Note.

The term "Principal and Interest Requirements" means, with respect to any Fiscal Year, the amounts of principal of and interest on Fund Priority Obligations, Notes, and Short Term Obligations scheduled to be paid in such Fiscal Year from the Interest of The University in the Available University Fund. For purposes hereof, amortization of principal (a) with respect to Short Term Obligation shall be based on average annual amortization over the term of the obligation in question and (b) with respect to the Notes, shall be based upon the amortization required under the Promissory Note and Section 2.03 of this Agreement, assuming for purposes of such calculation that the Term Loan Conversion Date is the date at which Principal and Interest Requirements are being computed. If the rate or rates of interest to be borne by any Fund Priority Obligations, Notes or Short Term Obligations is not fixed, but is variable or adjustable by any formula, agreement, or otherwise, and therefore cannot be calculated as actually being scheduled to be paid in a particular amount for any particular period, then for the purposes of the previous sentence such Fund Priority Obligations, Notes or Short Term Obligations shall be deemed to bear interest at all times to maturity or due date at

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the annual rate equal to (A) with respect to Short Term Obligations and Fund Priority Obligations, the lesser of (i) the maximum rate then permitted by law, or (ii) the maximum rate specified therein to be borne by such Fund Priority Obligations or Short Term Obligations during the next Fiscal Year and (B) with respect to the Notes, the lesser of (i) the maximum rate then permitted by law, or (ii) the Term Interest Rate.

"Project Costs" shall mean all costs and expenses incurred in relation to Eligible Projects, including without limitation design, planning, engineering and legal costs, acquisition costs of land, interests in land, right-of-way and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an Eligible Project, and financing costs, including interest during construction and thereafter, underwriter's discount and/or fees, legal, financial, and other professional services, and reimbursement for such Project Costs attributable to Eligible Projects incurred prior to the issuance of any Project Notes.

"Project Note" shall mean, as appropriate, a Note or all the Notes, other than the Promissory Note.

"Promissory Note" shall mean the refunding promissory bond issued pursuant to the provisions of the Resolution and this Agreement in evidence of Advances made by the Bank under this Agreement to refund a Project Note or Project Notes, such refunding promissory bond to be in substantially the form of Exhibit "A" attached hereto, with appropriate completions, and any and all renewals, extensions or modifications thereof. The Promissory Note is the "Revolving Note" referred to in the 1985 Constitutional Amendment Bond Resolution.

"Resolution" shall mean the Resolution of the Board, adopted on December 5, 1985, relating to the issuance of the Project Notes and the Promissory Note.

"Revolving Credit Period" shall mean the period from the Closing Date (as defined in Section 3.01) to but not including the Term Loan Conversion Date.

"Series 1985 Bonds" shall have the meaning set forth on page 1 of this Agreement.

"Short Term Obligations" shall mean bonds or other evidences of indebtedness hereafter issued and incurred by the Board (other than the Notes and this Agreement) payable from the same sources, or any portion of such sources, securing the payment of the Notes and equally and ratably secured by a parity lien on and pledge of such sources securing the Notes, or any portion thereof.

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"Special System Account" shall mean The State Treasurer-University of Texas Special System Account established by the Treasurer of the State of Texas pursuant to the Resolution.

"Stepped-Up Interest Rate" shall mean a rate of interest per annum equal to one hundred thirty percent (130%) of the Index Rate.

"Term Loan" shall mean the Principal Debt evidenced by the Promissory Note from, after, and including the Term Loan Conversion Date.

"Term Loan Conversion Date" shall mean the third anniversary of the Closing Date (as defined in Section 3.01) or such later date, if any, as may be agreed to pursuant to Section 2.13(a) hereof.

"Term Interest Rate" shall mean a rate of interest per annum equal to one hundred thirty-five percent (135%) of the Index Rate.

"Variable Rate Note" shall mean a Note issued pursuant to the provisions of the Resolution, having the terms and characteristics specified in Section 2.04 and Articles III and IV thereof and in substantially the form described in Section 2.07(b) thereof the interest rate on which is adjusted from time to time in accordance with Article III thereof.

Section 1.02. Incorporation of Certain Definitions by Reference. Any terms with an initial capital letter which are used herein and which are not otherwise defined herein shall have the meanings assigned to them in the Resolution as in effect on the date hereof unless the context shall indicate a contrary meaning.

Section 1.03. Accounting Terms. All accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with Section 61.065 of the Texas Education Code.

## ARTICLE II

### REVOLVING CREDIT

Section 2.01. Commitment to Lend. Bank agrees that it will, during the Revolving Credit Period, and on the terms and conditions set forth in this Agreement, lend to the Board from time to time amounts up to, but not to exceed, an aggregate principal amount at any one time outstanding equal to the Bank Loan Commitment. Each Advance hereunder shall be made in such amount as may be requested by an Authorized Representative to refund amounts due or to come due under one or more Project Notes, including any

amounts payable as a result of the exercise of any demand provision contained in the Project Notes. Within the foregoing limits, the Board may borrow under this Section 2.01, prepay under Section 2.08 and reborrow under this Section 2.01 at any time and from time to time during the Revolving Credit Period.

Section 2.02. Method of Borrowing.

(a) Each Advance shall be made to the Board (or as directed by it) pursuant to its borrowing request made to the Agent as prescribed in this Section 2.02, which request shall be so made not later than 2:15 p.m. (local time in New York, New York) on the date of the proposed Advance, which date shall be a Business Day. A request for an Advance shall be made to the Agent by delivery or telecopy of a completed and signed Notice of Advance.

(b) Each telephone, telex, telecopy, computer or other electronic message requesting an Advance shall specify therein: (i) the requested time and date of such Advance (which may be the date of such request if the request for such Advance, howsoever made, is given by an Authorized Representative to the Agent no later than 2:15 p.m., local time in New York, New York on such date, and which otherwise may be any date not later than five (5) days after such request), and (ii) the amount of such Advance. Each Notice of Advance shall provide the foregoing information and shall further affirm certain other matters as set forth in the form of Notice of Advance. Upon receipt of the initial request for each Advance, the Agent shall promptly notify Bank of the contents thereof.

(c) Upon receipt by the Agent of the Notice of Advance, the Board's request for an Advance as therein set out shall not be revocable by the Board. At or prior to 3:30 p.m. (local time in New York, New York) on the date for which the Advance is requested, Bank shall make available, in Federal or other immediately available funds, to the Paying Agent the funds necessary for such Advance, and subject to satisfaction of the applicable conditions set forth in Section 3.02 hereof, for the account of the holders of Project Notes, as directed by the Board in its Notice of Advance.

Section 2.03. Promissory Note. The obligation of the Board to repay to Bank the principal of, and all other amounts payable in respect of, the Advances shall be evidenced by a single Promissory Note, payable to the order of Bank, and due and payable as follows:

(a) as to the principal thereof, no principal shall be due until after the Term Loan Conversion Date, when the Principal Debt outstanding on the Term Loan Conversion Date shall be and become due and payable in twenty-eight (28) successive quarterly installments, each to be in an amount

equal to one-twenty-eighth (1/28th) of the Principal Debt, such installments commencing on the first day of January immediately following the Term Loan Conversion Date, and continuing thereafter on the first day of each April, July, October, and January thereafter, through and including the Maturity Date; and

(b) as to the accrued interest thereon, quarterly on the first day of each January, April, July, and October during the term of the Promissory Note, including without limitation the Term Loan Conversion Date and the Maturity Date; such installments of interest shall be payable in addition to the installment payments of principal due as set forth in the Promissory Note; and

(c) Bank is authorized to make a notation on the Promissory Note as to the date and amount of each Advance and each payment of principal, or interest, with respect thereto.

Section 2.04. Interest and Payments In Respect of Promissory Note. Interest shall be calculated and paid on the Promissory Note, and payments on the Promissory Note shall be made in accordance with the following provisions:

(a) The Principal Debt shall bear interest, for each day elapsed from and including the date such principal amount is advanced until, but not including, the date paid or prepaid at a rate of interest that is the lesser of (i) the Maximum Interest Rate; or (ii) either: (A) the Basic Interest Rate, for each such day for which interest is not calculated under clause (B) immediately following; or (B) the Stepped-Up Interest Rate for each such day when the sum of all Dollar-Days in the then current annual period exceeds 90; or (c) the Term Rate at all times from, after, and including the Term Loan Conversion Date.

(b) Notwithstanding anything contained herein or in the Promissory Note to the contrary:

(i) if the rate or amount of interest applicable to an outstanding Advance evidenced by the Promissory Note, when calculated or determined under the foregoing provisions, at any time would exceed the Maximum Interest Rate or would produce an amount which would be greater than the amount of interest determined at such rate, then the applicable rate and amount of interest payable in regard to the Promissory Note shall be reduced to the Maximum Interest Rate and the amount determined at a rate per annum equal to the Maximum Interest Rate; and

(ii) in the event that the amount of interest accrued in respect of any Advance is, as a result of the above limitations, less than the amount of interest which would have otherwise accrued at a rate determined solely under clause 2.04(a)(ii)(A) or (B) above in this Section, then the Promissory Note will continue to bear interest at the Maximum Interest Rate until such date (or the Maturity Date, if earlier) as the cumulative amount of interest accrued on the Promissory Note equals the cumulative amount of interest which would otherwise have accrued in accordance clause 2.04(a)(ii)(A) and (B) of this Section ("Interest Recapture"), at which date the rate of interest on the Promissory Note shall revert to the rates otherwise provided for in this Section; and to the extent and for such periods as is necessary for the Bank to obtain Interest Recapture as to Advances previously made and repaid (or until the Maturity Date, if earlier), each subsequent Advance made prior to Interest Recapture in respect of a previous Advance shall itself bear interest at the Maximum Interest Rate until Interest Recapture in respect of such prior Advances shall occur (unless the Maturity Date shall occur prior thereto); and

(iii) in all events, all interest accruing on or becoming payable in respect of the Promissory Note, including not only amounts so denominated herein but also any other payment, consideration, value, benefit or other compensation for the use, forbearance or detention of money, shall never exceed an amount or produce a rate in excess of the maximum amount or rate that may lawfully be contracted for, charged, reserved, received or paid under applicable law in respect of the Promissory Note.

(c) Beginning five (5) days after the date any amount of principal or interest is due under the Promissory Note, any overdue principal of and, to the extent permitted by law, overdue interest on, any Advance shall bear interest, payable on demand, for each day the same is overdue until paid, at a rate per annum equal to the lesser of (i) the sum of 1% per annum plus the otherwise applicable rate for such day, or (ii) the Maximum Interest Rate.

(d) The entire outstanding principal amount of the Promissory Note shall be due and payable on the Maturity Date.

(e) Computation of the commitment fee, which is provided for in Section 2.05 hereof, and of interest on the Promissory Note shall be made on the basis of a year of 365

or 366 days, as the case may be, applied to and payable for the actual number of days elapsed; provided, however, that any calculation so made that would cause the interest paid, payable or accruing on the indebtedness of the Board under this Agreement and the Promissory Note to exceed the Maximum Interest Rate shall be adjusted so to reduce the interest paid, payable and accruing hereunder to such Maximum Interest Rate, as more fully set out in this Agreement.

(f) Notwithstanding anything contained herein to the contrary, the Basic Interest Rate may be changed at any time upon the mutual written agreement of the Board and the Bank. If any such change in the Basic Interest Rate is so agreed to, this Agreement and the Promissory Note shall remain outstanding and continue in full force and effect, without modification other than as to the change in the Basic Interest Rate, and all Advances will continue to be made under the Promissory Note in accordance with this Agreement, modified only to reflect the agreement of the parties with respect to the changed Basic Interest Rate.

Section 2.05. Commitment Fees. The Board shall pay to the Agent, for the account of the Bank, a commitment fee calculated (in the manner set out in Section 2.04(e) above) at the rate of 1/5 of 1% per annum on the Available Bank Loan Commitment for each day during the Revolving Credit Period. Such commitment fee shall accrue from and including the Closing Date to (but excluding) the Term Loan Conversion Date and, subject to Section 2.07 hereof, shall be payable (i) on the first day of each January, April, July, and October during the term hereof and (ii) on the Term Loan Conversion Date. No commitment fee shall be payable or accrue in respect of Advances advanced and outstanding under the Bank Loan Commitment.

Section 2.06. Agent's Fees. The Board shall pay to the Agent a closing fee, payable at Closing, in the amount of \$50,000, and a maintenance fee of \$2,500 each quarter-annual period or portion thereof during the term of this Agreement. Such maintenance fee shall accrue from and including the Closing Date to (but excluding) the Maturity Date and shall be payable (i) quarterly on the first day of each January, April, July, and October during the term hereof, (ii) on the Term Loan Conversion Date, and (iii) on the Maturity Date.

Section 2.07. Termination or Reduction of Commitment. The Board may, upon at least three Business Days' notice to the Agent, terminate entirely at any time or reduce from time to time by an aggregate amount of \$1,000,000 or any integral multiple thereof, the Bank Loan Commitment at the time; provided that the Board may not reduce the Bank Loan Commitment if such proposed reduction would cause the then Available Bank Loan Commitment to be less

than the amount of Available Bank Loan Commitment required to be maintained by the Board under the second paragraph of Section 4.01 of the Resolution.

Section 2.08. Optional Prepayments. The Board may prepay, without penalty or premium, the principal outstanding under the Promissory Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 or any integral multiple thereof, by giving notice to the Agent by 11:00 A.M. (local time in Austin, Texas) on the date on which such prepayment is to be made and by paying the principal amount thereof to be prepaid together with accrued interest thereon to (but not including) the date of prepayment. Upon receipt of a notice of prepayment pursuant to this Section, the Agent shall promptly notify Bank of the contents thereof, and after such notice has been given by the Agent to Bank such notice shall not thereafter be revocable by the Board.

Section 2.09. General Provisions as to Payment. The following general provisions shall apply to all payments under the Promissory Note:

(a) The Board shall make each payment of principal and interest on the Promissory Note not later than 11:00 A.M. (local time in Austin, Texas), on the day when due, in Federal or other funds immediately available at the office of the Agent in Austin, Texas. The Agent will promptly distribute to Bank such payment received by the Agent for the account of Bank. Upon receipt by the Agent of such funds for payment hereunder, the Board shall for all purposes hereof have paid such amount. Payments of the Agent's fees payable by the Board to the Agent shall be made in like manner.

(b) Whenever any payment of principal of and interest on the Promissory Note shall be due on any day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. If the date for any payment or prepayment of principal is extended by the preceding sentence, operation of law or otherwise, interest thereon shall be payable for the period of such extension at the rate applicable thereto under other provisions of this Agreement.

Section 2.10. Changes in Rate of Interest. The following provisions shall apply to all changes in the interest rate on the Promissory Note:

(a) Any change in the interest rate on the Promissory Note resulting from a change in the Index Rate shall become effective as of the opening of business on the day on which such change in the Index Rate shall become effective.

(b) The Agent shall promptly notify the Board of the effective date and the amount of each change in the Index Rate and of the new Index Rate as of such date, and the new Basic Interest Rate, Stepped-Up Interest Rate, and Term Interest Rate calculated upon the basis of such new Index Rate; provided that any failure by the Agent to notify the Board of a change in Index Rate, Basic Interest Rate, Stepped-Up Interest Rate, or Term Interest Rate shall not affect or defer the effectiveness of such change in the rate of interest accruing on the Promissory Note.

(c) The Agent shall, at least ten (10) Business Days prior to the date of any scheduled payment of principal, interest or fees in respect of the Promissory Note, give the Board written notice of the amount so to be paid, subject to adjustments to reflect intervening changes in the rate of interest applicable to such Promissory Note or in the amount of the Principal Debt outstanding or of the Available Bank Loan Commitment.

Section 2.11. Security For Promissory Note. The Promissory Note is the special obligation of the Board, payable solely from and secured by the funds pledged therefor pursuant to the Resolution, including specifically Section 2.12 thereof, and this Agreement, as authorized thereby. To provide ratable security for the payment of the principal of and interest on the Project Notes and the Promissory Note, as the same shall become due and payable, the Board has pledged, pursuant to the Resolution, and as to the Promissory Note does hereby grant to Bank a lien on and pledge of, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth therein and to the provisions of Section 6.03 hereof (allowing issuance of certain debt), all of the following: (i) the proceeds from (a) the sale of Fund Priority Obligations or Short Term Obligations or other obligations of the Board under the Constitutional Amendment issued for such purpose, and (b) the sale of Project Notes issued pursuant to the Resolution for such purpose, (ii) the amounts held in the Series A Note Payment Fund and the Special System Account, provided, however, amounts in the Series A Note Payment Fund attributable to and derived from Advances under and pursuant to this Agreement are pledged to, and shall be used to pay, the principal of, premium, if any, and interest on the Project Notes, and (iii) the Interest of the University in the Available University Fund (all the items of property referred to in the immediately preceding clauses (i), (ii) and (iii), and all proceeds thereof, being hereinafter collectively referred to as the "Collateral"). Notwithstanding anything contained herein to the contrary, the security interest in and pledge of the Interest of the University in the Available University Fund is subordinate and inferior to the pledge thereof ("Fund Priority Lien") securing the payment of Fund Priority Obligations, and the principal of,

and premium (if any) and interest on the Project Notes and Promissory Note shall be and the same are hereby equally and ratably secured solely by and payable from an security interest in, lien on, and pledge of the sources hereinabove identified in clauses (i), (ii) and (iii), subject and subordinate only to the Fund Priority Lien. The Promissory Note shall further be entitled to the benefits of Article VI hereof.

Section 2.12. Application of Prior Covenants-Available Revenues. In accordance with the provisions of the 1985 Constitutional Amendment Bond Resolution, the Notes represent obligations which are subordinate to the Fund Priority Obligations. As described in Section 9 of the 1985 Constitutional Amendment Bond Resolution, there heretofore has been established in the Treasury of the State of Texas a fund known as "Board of Regents of The University of Texas System Permanent University Fund Bonds Interest and Sinking Fund" (hereinafter called the "Interest and Sinking Fund"). The Fund Priority Obligations are payable from moneys required to be transferred to the Interest and Sinking Fund. After provision has been made for the payment of the principal of and interest on the Fund Priority Obligations, based upon the projection of monies to be deposited into the Interest and Sinking Fund from the Available University Fund which demonstrates that the deposits to the Series A Note Payment Fund will not impair the obligation of the Board to pay the principal of and premium on the Fund Priority Obligations as the same mature and come due, the balance of the Interest of the University in the Available University Fund shall be made available to the Board to deposit into the Series A Note Payment Fund such amounts as necessary to pay the interest on and/or the principal of the Promissory Note to the extent not paid from the proceeds of Project Notes, Short Term Obligations, or Fund Priority Obligations, or other obligations of the Board issued pursuant to the Constitutional Amendment. After provision has been made for the payment of the interest and any premium on and/or principal of the Promissory Note, the balance of the Interest of the University in the Available University Fund each year shall be made available to the Board in the manner provided by law and by regulations of the Board as it may lawfully direct.

To the end that money will be available in ample time to pay the principal of and interest on the Promissory Note as such principal and interest respectively come due, the Comptroller of The University of Texas System, or such officer as may hereafter be designated by the Board to perform the duties now vested in such officer shall perform such duties as are described in Section 2.13 of the Resolution.

Section 2.13. Extension or Modification of Agreement. This Agreement may be extended or modified in accordance with the following conditions and provisions:

(a) At any time not less than 60 days prior to December \_\_, 1986, and each December \_\_ thereafter during the term of this Agreement, the Board may, by written notice to the Agent, request that the Term Loan Conversion Date be extended by one more whole year after the then-existing Term Loan Conversion Date. Upon receipt of such notice, the Agent shall promptly send a copy thereof to Bank, noting thereon the date it was received by the Agent. Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension. Bank will use its best efforts to notify the Agent of its decision within 30 days of receipt of such request by the Agent (and the Agent shall promptly notify the Board of each such decision of which it is notified), it being understood and agreed that the failure of Bank to notify the Agent of any decision within such 30-day period shall be deemed to be a rejection and that Bank shall incur no liability or responsibility whatsoever by reason of its failure to notify the Agent of the Bank's decision within such 30-day period.

(b) If the Board shall desire to increase the authorized aggregate principal amount of Project Notes that may be outstanding during the term of this Agreement ("Additional Notes") and to provide for such Additional Notes to have the benefit of an irrevocable revolving credit agreement to which one or more national banking associations or state-chartered banks would be party ("New Credit Agreement"), then the Board shall notify the Agent (who shall in turn notify Bank), in writing, of the amount, terms and conditions of such New Credit Agreement and of the Additional Notes.

Section 2.14. Notice of Paying Agent. The Resolution appoints Morgan Guaranty Trust Company of New York as the initial Paying Agent. The Board will give notice to the Agent of the appointment of any substitute Paying Agent, which notice shall specify the name and address of the Paying Agent.

Section 2.15. Failure of Bank to Advance. The failure of Bank to make any requested Advances under the Promissory Note shall not release Bank from its agreement to make such Advances, nor shall receipt and acceptance by the Board of any Advance or portion thereof from Bank be a release, discharge or waiver of any claim, demand or cause of action of, or for the benefit of, the Board arising out of or in connection with any such failure to advance funds.

Section 2.16. Compliance With Law. Notwithstanding any term or provision of this Agreement or of the Promissory Note, the maximum amount of interest which may be payable by, charged to, or collected from the Board, or any other person either primarily or conditionally liable for the payment of the Promissory Note, shall

be limited to, and shall in no event or under any circumstances exceed, the maximum amount of interest which could be lawfully charged under applicable law (including, to the extent applicable, the provisions of Article 717k-2, Vernon's Texas Civil Statutes, as in effect at the time and the provisions of any applicable amendment thereto or other successor or superseding provision of law) so that, notwithstanding any term or provision of this Agreement or the Promissory Note the aggregate of the interest on any Advance, including all fees and other amounts which constitute interest under applicable state law (and any applicable Federal statutes) shall never exceed the maximum amount of interest which under said laws, could be lawfully charged on or in respect of such Advance. Accordingly, the Board, the Bank and the Agent stipulate and agree that this Agreement and the Promissory Note shall not be construed to create a contract to pay interest for the use, forbearance or detention of money at a rate in excess of the Maximum Interest Rate or maximum amount permitted to be charged under applicable state law (and any applicable Federal statutes), and the Board shall never be liable for interest in excess of the maximum amount or Maximum Interest Rate that could be lawfully charged under such laws.

Specifically and without limiting the generality of the foregoing, it is further agreed among the Board, the Bank and the Agent that the maximum amount of interest contracted for and payable on or under the Promissory Note, now or hereafter shall be calculated in order that strict compliance may be had with the applicable state laws (and any applicable Federal statutes), and such parties agree that:

(a) in the event of voluntary prepayment of any Advance or payment prior to the normal maturity date of the Promissory Note, if the aggregate amount of any interest calculated thereunder or thereon, plus the amounts of any interest accruing after maturity, plus any other amounts which constitute interest on the Promissory Note would, in the aggregate, if charged or paid thereof (if calculated in accordance with provisions other than those set forth in this Section) exceed the maximum amount of interest which, under applicable state laws (and any applicable Federal statutes), may lawfully be charged or paid on or in respect of the Advance involved, then in such event the amount of such excess shall not be charged, payable or due (if not previously paid) or (if any to the extent paid) shall be credited toward the payment of the principal of the Advance involved so as to reduce the amount of the final payment of principal due thereon and if, and to the extent, the entire principal amount has been paid in full, refunded to the Board; and

(b) if under any circumstances the aggregate amounts paid on any Advance prior to or incident to final payment

thereof include any amounts which under applicable state laws (and any applicable Federal statutes) would be deemed interest and which would exceed the maximum amount of interest which, under applicable state laws (and any applicable Federal statutes), could lawfully have been paid and collected on or in respect of such Advance, such payment and collection shall be deemed to have been the result of mathematical error on the part of all parties hereto, and the party receiving such excess payment shall promptly refund the amount of such excess (to the extent only of the excess of such interest payments above the maximum amount which could lawfully have been collected and retained under said state laws and any applicable Federal statutes) upon discovery of such error by the party receiving such payment or notice thereof from the party making such payment.

(c) The provisions of this Section 2.16 shall control over any other provisions of this Agreement, the Promissory Note, any other instrument or writing evidencing, respecting or affecting any Advance, and Bank further agrees that any limitations or restrictions imposed on it, or on payments which it may receive, by reason of this Section 2.16 shall apply and be recognized in all circumstances and to all payments, regardless of the source or payor thereof.

(d) All commitment fees prescribed in Section 2.05 hereof shall constitute exclusively consideration for the Bank's agreement to have available funds in the amount committed by the Bank in respect of Advances and to make such Advances in the future as provided herein and shall not constitute or be treated as compensation for the use of, forbearance, or detention of money actually loaned and advanced hereunder.

(e) All maintenance fees prescribed in Section 2.06 hereof shall constitute exclusively consideration for the Agent's administration and maintenance of this Agreement as provided herein and shall not constitute or be treated as compensation for the use of, forbearance, or detention of money actually loaned and advanced hereunder.

Section 2.17. Events of Taxability.

(a) The interest rate specified in subsection 2.04(a) hereof is based upon the intention and understanding of the parties that the interest paid by the Board on the Promissory Note will be excludable from the gross income of the recipient thereof for Federal income tax purposes under Section 103(a)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). At any time, whether or not any Advances are outstanding, any Holder may, by written notice to an Authorized Representative, request the Board

to supply the unqualified opinion of its Bond Counsel, which counsel shall be reasonably satisfactory to such Holder, addressed to such Holder, to the effect that (except as to matters governed by subsection 2.17(d) hereof) payments of interest on the Promissory Note received by such Holder are excludable from such Holder's gross income for Federal income tax purposes. If (i) the Board does not supply such opinion by the expiration of 30 days after receipt of such request, or (ii) such Holder shall have received written notice from the Commissioner or any District Director of Internal Revenue that interest on the Promissory Note is includable in its gross income, or the Internal Revenue Service shall assert a proposed adjustment or deficiency of such Holder's federal income tax based upon the inclusion therein of interest on the Promissory Note (to the extent held by such Holder), then, in either of such events, the Board shall pay to such Holder (at an account of such Holder at a national bank in Austin, Texas or New York, New York) in Federal or other immediately available funds the amounts determined under the following clauses (A) and (B) ("Additional Payments"), the amounts so to be paid being limited however by the Maximum Interest Rate and Section 2.16 hereof, as such apply:

(A) an amount equal to the excess of:

(1) the amount of interest which would have been payable on each Advance of such Holder if such Advance had borne interest from the date thereof at an interest rate per annum equal to the Stepped-Up Interest Rate, as in effect from time to time, over

(2) the amount of interest actually paid or accrued hereunder on such Advance; plus

(B) an amount equal to the sum of:

(1) the amount of any interest and of any penalties, additions to tax and additional amounts payable under Chapter 68 of the Code or any successor provisions thereto (such penalties, additions to tax and additional amounts being referred to as "Additions to Tax") which are deductible for federal income tax purposes and which are payable to the United States as a consequence of the failure to include the interest referred to in Clause (A)(2) above in the federal gross income of such Holder; and

(2) an amount which, after giving effect to all taxes attributable to the inclusion of such amount in the gross income of such Holder under the laws of any Federal, state or local governmental or other taxing authority (such taxes to be calculated at the maximum statutory rate applicable to such Holder, after taking into account deductions attribut-

able to imposition of federal, state and local taxes), shall be equal to the amount of any interest or Additions to Tax which are not deductible for federal income tax purposes and which are payable to the United States as a consequence of the failure to include the interest referred to in Clause (A)(2) above in the federal gross income of such Holder;

provided that (X) if the rate or amount of interest determined pursuant to clause (A)(1) above on any Advance exceeds at any time the Maximum Interest Rate or the amount which would have accrued at the Maximum Interest Rate, then the rate and amount of interest applicable under Clause (A)(1) above shall be reduced to the Maximum Interest Rate and to the amount determined at the Maximum Interest Rate and (Y) if the rate or amount of interest under Clause (A)(1) is reduced pursuant to clause (X) above and the rate and amount of interest at any time thereafter, if determined solely under Clause (A)(1) above, would be less than the Maximum Interest Rate and the amount accruing at such rate, then the rate of interest applicable under Clause (A)(1) above shall be the Maximum Interest Rate for such time or until such date (or the Maturity Date, if earlier) as the cumulative amount of interest so accrued for purposes of Clause (A)(1) on such Advance evidenced by the Promissory Note equals the cumulative amount of interest which would otherwise have accrued in accordance with Clause (A)(1) at which date the rate of interest for purposes of Clause (A)(1) shall revert to the rates otherwise provided for in this Section; and provided further that at no time shall the aggregate amount by which the amount of interest determined has been increased pursuant to this clause (Y) exceed the aggregate amount by which the amount of interest determined has theretofore been reduced pursuant to clause (X) hereof.

(b) Additional Payments to be made pursuant to this Section 2.17 in respect of periods prior to and including the interest payment date immediately preceding the date of a written demand therefor shall be paid by the Board promptly on demand by any Holder, which demand or series of demands, as the case may be, may be made at any time subsequent to the end of the 30-day period referred to in clause (i) of the first paragraph of subsection 2.17(a), if the required opinion is not rendered, or subsequent to the receipt of any notice referred to in clauses (ii) and (iii) of such paragraph. Payments to be made in respect of periods subsequent to such interest payment date shall be payable on each date thereafter on which interest on the Promissory Note is due and payable.

(c) If any such Additional Payments are made by the Board pursuant to a demand asserting that interest on the Promissory Note is not exempt from federal income tax of such Holder, but it is later determined by a final and non-appealable administrative or judicial decision that such interest is in fact exempt

from such taxation, each Holder shall promptly refund to the Board all such Additional Payments made by the Board to such Holder and all interest repaid to such Holder by the Internal Revenue Service as soon as the issue of the includability of payments of interest on the Promissory Note is so finally determined, and such Holder shall also pay to the Board interest at the interbank federal funds rate charged from time to time by Bank on the amounts if any paid by the Board pursuant to Clauses (A) and (B) of subsection 2.17(a) (net of any amounts paid by Bank to the Internal Revenue Service), as limited by any applicable Maximum Interest Rate. This Section will not be construed to require such Holder to initiate at its own expense a claim or proceeding to obtain a refund of taxes paid, but the Holder and the Board shall cooperate with each other in any claim or proceeding to determine tax liability or to recover taxes paid in error in respect of interest on the Promissory Note and the reasonable cost and expenses incident to such determination, claim or proceeding shall be solely payable by the Board, and in the event the Board provides to the Holder an opinion of Bond Counsel that reasonable grounds exist to contest a determination of taxability or a notice of inclusion of interest income in gross income, or adjustment or deficiency based thereon, the Holder will, if in good faith it concurs in such opinion, contest or pursue administrative redetermination thereof, at the expense and with the approval of the Board as above provided.

(d) In the event that, as a result of a change in the Code after the date of this Agreement, (i) all or any part of any payment of interest on the Promissory Note, any interest paid or accrued by any Holder (by reason of such Holder holding the Promissory Note or receiving interest on the Promissory Note), or any other amount in respect of or related to holding the Promissory Note or receiving interest on the Promissory Note, as a whole or in part, becomes an item of tax preference or similar item subject to the tax imposed by Sections 56-58 of the Code or any successor sections thereto or any other Federal tax on preference or similar items or is not deductible by such Holder from its "Gross Income" for federal income tax purposes in the year paid or accrued to the same extent as such amount is deductible pursuant to the Code as in effect on the date hereof, (ii) tax is imposed measured by reference to the principal amount of the Promissory Note, or (iii) the after-tax economic yield on interest payments received by any Holder with respect to the Promissory Note is reduced (taxes described in clauses (i), (ii) and (iii) being referred to in this Agreement as a preference tax), then such Holder may at any time on or after the date (the "Effective Date") on which such change in the Code was enacted give notice thereof to the Board, with a copy to the Agent (which shall in turn promptly notify Bank thereof). During the 30 days next succeeding the giving of such notice, Bank and the Board shall negotiate in good faith in order to arrive at such a mutually acceptable increase (expressed as a percentage of the Index Rate) in the rate of interest payable on

all Advances as will adequately and fairly compensate all Holders for the increased cost of making, funding or maintaining such Advances or the reduction in the amount of any sum deductible or received or receivable by any Holder. If within such 30-day period the Board and the Bank agree in writing upon an increase, additional interest at such rate of increase shall be effective and accrue from the Effective Date with respect to all Advances whether made before or after the Effective Date. If the Board and the Bank fail to agree upon an increase in the rate of interest within such 30-day period (the last day of such 30-day period being herein referred to as the "Determined Date"), the increase in the rate of interest payable on the Promissory Note (effective as provided below) based upon the Basic Interest Rate shall be 110% of the Index Rate; provided that the provisions of paragraphs 2.04(a)(i) and (ii) shall apply with respect to limitations of interest and Interest Recapture for purposes of this subsection 2.17(d) (references therein to Clauses 2.04(a)(i) and (ii) however, being used in this subsection 2.17(d) as references to the rate so established under this subsection 2.17(d)). The determination of such increase shall be made in good faith by Bank, and the Board shall have no right to examine the Federal income tax returns or any other returns, documents or records of any Holder with respect thereto. Additional interest at such rate of increase shall be effective from the Effective Date with respect to the Promissory Note whether made before or after the Effective Date. Bank shall notify the Board as promptly as practicable after the Determined Date of the amount of such increase, which notice shall include such explanation of the basis of Bank's determination as in its discretion is appropriate. Any additional interest payable pursuant to this subsection with respect to the Promissory Note shall be paid by the Board to the Agent for the account of Bank.

(e) The obligations of the Board under subsections (a), (b), and (c) of this Section shall survive the term of this Agreement, provided that Bank or the Holder agrees, as a condition of such survival of obligations, that it shall timely file all returns and reports in respect of taxes affected by such provisions.

### ARTICLE III

#### CONDITIONS

Section 3.01. Conditions to Closing. The Revolving Credit Period shall commence on the date (the "Closing Date") on which the conditions set out in subsections 3.01(a) and (b) shall have been satisfied.

(a) The Agent shall have received all of the following, with a copy for Bank:

(i) counterparts of this Agreement duly executed by the Board, the Agent, and Bank;

(ii) a duly executed Promissory Note, dated the Closing Date, complying with the provisions of Section 2.03 and substantially in the form set out in Exhibit "A" hereto;

(iii) copies of the Resolution, including supplemental resolutions thereto which have been adopted as of such time, all certified by the Secretary or an Assistant Secretary of the Board as being in full force and effect;

(iv) a certificate of the Secretary or an Assistant Secretary of the Board certifying the names and signatures of each Authorized Representative;

(v) an opinion of the general counsel for the Board, dated the Closing Date, substantially in the form of Exhibit "C" hereto, with such changes, modifications, deletions or additions as may be acceptable to such counsel and counsel for the recipients thereof;

(vi) an opinion of Bond Counsel, dated the Closing Date, substantially in the form of Exhibit "D" hereto, with such changes, modifications, deletions or additions as may be acceptable to such counsel and counsel for the recipients thereof;

(vii) a favorable opinion of Messrs. Winstead, McGuire, Sechrest & Minick, P.C., Dallas, Texas counsel to Bank and Agent, substantially in the form of Exhibit "E" hereto, with such changes, modifications, deletions or additions as may be acceptable to such counsel and counsel for the recipients thereof, to the effect that, while they have not independently considered the matters covered by the opinions furnished pursuant to the preceding provisions in this subsection 3.01(a) to the extent necessary to enable them to express the conclusions stated therein, (1) such opinions, this Agreement and other documents furnished pursuant to the preceding provisions of this subsection 3.01(a) appear to be in substantially acceptable legal form and (2) such opinions and such other documents appear substantially responsive to the requirements of this Agreement;

(viii) a certificate, dated the Closing Date, of an Authorized Representative to the effect that (i) each of the representations and warranties of the Board contained in Article IV of this Agreement is true and correct on and as of the date of such certificate as though made on and as of such date and (ii) on such date no Default has occurred and is continuing;

(ix) a certificate of the Agent acknowledging payment of the Agent's fees then payable, as agreed to by the Board and the Agent; and

(x) a no-arbitrage certificate from the Board dated the Closing Date.

(b) In addition, the Board shall have received all of the following, with a copy for Paying Agent:

(i) Counterparts of this Agreement, duly executed by the Board, the Agent and Bank;

(ii) A certificate, dated the Closing Date, of an officer of Bank, authorized to execute and deliver such certificate, to the effect that each of the representations and warranties of Bank contained in this Agreement are true and correct on and as of the date of such certificate as though made on and as of such date; and

(iii) An opinion of Winstead, McGuire, Sechrest & Minick, P.C., special counsel to the Bank and Agent, dated the Closing Date and substantially in the form of Exhibit "F", with such changes, modifications, deletions or additions as may be acceptable to such counsel and counsel for the recipients thereof.

Section 3.02. Conditions to Advances. The obligation of Bank to make any Advance, when so requested hereunder upon or after the Closing Date and during the Revolving Credit Period, is subject to receipt by the Agent of a Notice of Advance as required by Section 2.02 and to the satisfaction of the following further conditions:

(a) At the time the Advance is made, the Board shall not have commenced a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, shall not have made a general assignment for the benefit of its creditors, shall not have declared a moratorium with respect to its debts, shall not have failed generally to pay its debts as they become due, and shall not have taken any action to authorize any of the foregoing; and

(b) At the time the Advance is made, no involuntary case or other proceeding shall have been commenced against the Board seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insol-

vency or other similar law now or hereafter in effect and no trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property shall have been appointed.

In addition, Bank shall have no obligation to make an Advance to the Board to pay the principal of or any interest on any Project Notes which were issued by the Board after receipt by the Paying Agent, the Dealer, and an Authorized Representative of a Notice of Default. The events or occurrences set out in clauses (a) and (b) above are referred to herein and in the Project Notes as "Events of Bankruptcy."

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF THE BOARD

Section 4.01. Organization and Powers. The Board (a) is duly established and validly existing under the laws of the State of Texas under and pursuant to the Constitution of the State of Texas and is an agency and political subdivision of the State of Texas, (b) has all corporate powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted, (c) has full power and authority to operate the System and to acquire, construct, finance and operate the Eligible Projects, and (d) has full power and authority to execute, deliver and perform this Agreement, to borrow hereunder and to execute, deliver and perform the Promissory Note.

Section 4.02 Authorization; Contravention. The execution, delivery and performance by the Board of this Agreement and the Promissory Note and the making of the Advances under the Promissory Note have been duly authorized by all necessary action by the Board and do not contravene, or result in the violation of or constitute a default under, any provision of applicable law or regulation, the Acts, or any order, rule or regulation of any court, governmental agency or instrumentality or any agreement, resolution or instrument to which the Board is a party or by which it or any of its property is bound.

Section 4.03. Governmental Consent or Approval. No authorization, consent, approval, permit, license, or exemption of, or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality that has not been obtained or issued is or will be necessary for the valid execution, delivery or performance by the Board of the Resolution, this Agreement and the Promissory Note.

Section 4.04. Binding Effect. This Agreement constitutes a valid and binding agreement of the Board and the Promissory Note when duly executed on behalf of the Board and delivered in accor-

dance with this Agreement and the Resolution, will constitute valid and binding obligations of the Board.

Section 4.05. Restrictions on Use of Proceeds. The proceeds of the Advances will be applied by the Board only to the refunding of the Project Notes. No part of the proceeds of Advances or any other loan or any series of bonds or notes or any other funds of the Board shall at any time be used by the Board in a manner that would cause the Promissory Note or the Project Notes to be treated as "arbitrage bonds" within the meaning of Section 103(c) (or any successor section thereto) of the Code. None of the funds borrowed by virtue of this Agreement will be used in any manner or for any purpose except in the manner and for the purposes authorized by Texas law and the Resolution adopted by the Board.

Section 4.06. Tax Exempt Status. The Board has not taken any action that would cause interest on the Promissory Note to be subject to Federal income taxation, or to taxation by the State of Texas or any political subdivision thereof.

Section 4.07. Federal Reserve Regulations. No part of the proceeds of any Advance will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended from time to time) or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any other purpose which would violate any of the regulations of said Board of Governors.

Section 4.08. Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Board, threatened against or affecting the Board, the System or relating to the Acts, or this Agreement in any court or before or by any governmental department, agency or instrumentality which, if adversely determined, would materially affect the ability or authority of the Board to perform its obligations under this Agreement and the Promissory Note, or which in any manner questions the validity of this Agreement or the Promissory Note, except any action, suit or proceeding which may be brought subsequent to the date hereof as to which Bank has received an opinion of counsel satisfactory to Bank, in form and substance satisfactory to Bank and its counsel, to the effect that such action, suit or proceeding is without substantial merit.

Section 4.09. No Event of Default Under the Resolutions. No "Event of Default" specified in the Resolution and no event which, with the giving of notice or lapse of time or both would become such an event of default, has occurred and is continuing.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES  
OF THE BANK

Bank represents and warrants:

Section 5.01. Organization and Powers. Bank (a) is duly established and validly existing under the laws of the United States of America as a national banking association, being duly chartered thereunder; and (b) has full power and authority to execute, deliver and perform this Agreement and to make Advances in accordance with its Bank Loan Commitment and this Agreement.

Section 5.02. Authorization; Contravention. The execution, delivery and performance by Bank of this Agreement and its Advances to be made hereunder have been duly authorized by all necessary action by Bank and do not contravene, or result in the violation of or constitute a default under, any provision of applicable law or regulation, its charter, or any order, rule or regulation of any court, governmental agency or instrumentality or any material agreement, resolution or instrument to which Bank is a party or by which it or any of its property is bound.

Section 5.03. Governmental Consent or Approval. No authorization, consent, approval, permit, license, or exemption of, or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality that has not been obtained or issued is or will be necessary for the valid execution, delivery or performance by Bank of this Agreement.

Section 5.04. Bank Obligations Valid. Bank represents that this Agreement is a valid and binding agreement of it, assuming that this Agreement is a valid and binding agreement of the Board.

Section 5.05. Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Bank, threatened against or affecting the Bank, or relating to this Agreement in any court or before or by any governmental department, agency or instrumentality which, if adversely determined, would materially affect the ability or authority of the Bank to perform its obligations under this Agreement, or which in any manner questions the validity of this Agreement or the Promissory Note.

ARTICLE VI  
COVENANTS

The Board agrees that during the term of this Agreement and while any amount payable under the Promissory Note remains unpaid:

Section 6.01. Information. The Board will deliver to the Agent, with a copy to Bank:

(a) as soon as reasonably available after the end of each Fiscal Year, and in any event within 120 days after the end of such Fiscal Year, a copy of the annual report of the Fund including a balance sheet of the Fund as of the end of such fiscal year and related statements of income and sources and uses of funds prepared in accordance with Section 61.065 of the Texas Education Code accompanied by a certificate of an Authorized Representative (i) to the effect that as of the date of such certificate no Default has occurred, (ii) or if such Default has occurred, specifying the nature of such Default, the period of its existence and the action which the Board is taking or proposes to take with respect thereto; and

(b) as soon as available and in any event within 60 days after the end of each fiscal quarter, a copy of the most recent quarterly unaudited financial statements of the Fund;

(c) as soon as practicable but in any event within ten (10) Business Days after the issuance thereof, copies of any prospectus, official statement, offering circular, placement memorandum or similar or corresponding document, and any supplements thereto and updates and amendments thereof, that the Board makes available in connection with the offering for sale of any securities of which it is the issuer, and, on request, copies of such other financial reports as the Board shall customarily and regularly provide to the public;

(d) forthwith upon the occurrence of any Default, a certificate of an Authorized Representative setting forth the details thereof and the action which the Board is taking or proposes to take with respect thereto;

(e) concurrently with the delivery of the reports set out in subsection (b) above, a report showing the aggregate amount of Project Notes issued at the end of the preceding quarter; and

(f) upon written request by the Agent, at the request of Bank, any other financial information reasonably requested.

Section 6.02. Access to Records. The Board will furnish to the Agent such information regarding the financial condition, results of operations or business of the Board and the Fund as Bank may reasonably request and will permit any officers, employees or agents of the Agent or Bank to visit and inspect any of the properties of the Board and to discuss matters reasonably pertinent to an evaluation of the credit of the Fund, all at such reasonable times as Bank may reasonably request. Further, the

Agent, at its request, will be kept informed of regular and special meetings of the Board, and a representative of the Agent or Bank may attend any such meeting subject to provisions of Texas law authorizing executive sessions of the Board. All information received by or provided to Bank or the Agent pursuant to this Agreement, unless otherwise made public by the Board, will be held as confidential information by Bank and the Agent.

Section 6.03. Proceeds of Project Notes; Limitation on Certain Debt.

(a) The proceeds of the Project Notes will be used by the Board solely for the purpose of paying or prepaying, as the case may be, in whole or in part, other Project Notes, the Promissory Note or Project Costs of Eligible Projects or, to the extent not so used, for temporary investment while in the Series A Note Payment Fund or Special System Account.

(b) The Board shall, however, have the right to issue Fund Priority Obligations or Short Term Obligations pursuant to Section 6.10 of the Resolution.

Section 6.04. No Amendment of Certain Contracts or Resolutions. The Board will not consent to any amendment to or modification or waiver of any of the provisions the Resolution which would be materially adverse to Bank's interests. The Board will give the Bank notice as promptly as practicable of any proposed amendments to, modifications or waiver of any provisions of the Agreement or the Resolution and of any meeting of the Board at which any of the foregoing will be discussed or considered.

Section 6.05. Sales of Fund Priority Obligations or Short Term Obligations. The Board shall use its best efforts and reasonable diligence to offer and sell Fund Priority Obligations or Short Term Obligations or to obtain a New Credit Agreement, in an amount sufficient to pay when due the aggregate outstanding principal amount of the Promissory Note and all other amounts due to the Bank hereunder in respect thereof not previously paid from other funds available to the Board. The Board covenants that Advances outstanding under the Promissory Note at the time shall be retired in full or pro rata if not in full, with proceeds of Fund Priority Obligations or Short Term Obligations sold, issued or created by the Board prior to any other payment or use of the proceeds of such Fund Priority Obligations or Short Term Obligations.

Section 6.06. Other Covenants. The Board shall fully and faithfully perform each of the covenants required of it pursuant to the provisions of the Resolution and the resolutions of the Board authorizing the Fund Priority Obligations.

Section 6.07. Taxes and Liabilities. The Board will pay all its indebtedness and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default.

Section 6.08. Supplemental Resolutions and Further Assurances. The Board will not adopt any supplemental resolutions, pursuant to the Resolution or otherwise, which would adversely affect the ability of the Board to make payments on the Promissory Note when due; provided that nothing herein shall prevent the Board from issuing additional Short Term Obligations and Fund Priority Obligations as provided in this Agreement and Section 6.10 of the Resolution. The Board will at any and all times, insofar as it may be authorized so to do by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, recordings, filings, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, revenues and other funds hereby pledged or assigned to the payment of the Promissory Note, or intended so to be, of which the Board may become bound to pledge or assign.

Section 6.09. Additional Borrowings. The Board may issue Fund Priority Obligations or Short Term Obligations in such amounts and on such terms as the Board shall determine, subject only to the covenants contained herein.

Section 6.10. Efforts to Pay. In the event that the Promissory Note is not paid at maturity or upon proper declaration that such Promissory Note is due and payable, the Board shall as quickly as possible take all actions reasonably necessary to allow payment from any available funds.

## ARTICLE VII

### ADDITIONAL PARITY OBLIGATIONS

Section 7.01. Additional Short Term Obligations. The Board reserves the right and shall have full power at any time and from time to time, to authorize, issue, and deliver additional Short Term Obligations, in as many separate installments or series as deemed advisable by the Board but only for the purposes and to the extent provided in the Amendment to Section 18, Article VII, of the Texas Constitution, adopted by vote of the people of Texas on November 6, 1984, or in any Amendment hereafter made to said Section 18, Article VII, of the Texas Constitution, or for refunding purposes as provided by law. Such additional Short Term

Obligations, when issued, and the interest thereon, shall be equally and ratably secured by and payable from a lien on and pledge of the Interest of The University of Texas System in the Available University Fund, in the same manner and to the same extent as are the Notes, and the Notes and the additional Short Term Obligations, when issued, and the interest thereon, shall be on a parity and in all respects of equal dignity. It is further covenanted that no installment or series of additional Short Term Obligations shall be issued and delivered unless the Executive Vice Chancellor for Asset Management of The University of Texas System, or some other officer of The University of Texas System designated by the Board executes:

(a) a certificate to the effect that for the fiscal year immediately preceding the date of said certificate the amount of the Interest of The University of Texas System in the Available University Fund was at least 1-1/2 times the average annual Principal and Interest Requirements of the installment or series of additional Short Term Obligations then proposed to be issued and all then outstanding Fund Priority Obligations, Notes, and Short Term Obligations which will be outstanding after the issuance and delivery of said proposed installment or series.

(b) a certificate to the effect that the total principal amount of (i) Fund Priority Obligations, Notes, and Short Term Obligations, and (ii) all other obligations of the Board which are secured by and payable from a lien on and pledge of the Interest of The University of Texas System in the Available University Fund, that will be outstanding after the issuance and delivery of the installment or series of additional Short Term Obligations then proposed to be issued will not exceed 20% of the cost value of investments and other assets of the Permanent University Fund (exclusive of real estate) at the time the proposed series or installment of additional Short Term Obligations is issued.

#### ARTICLE VIII

##### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. If one or more of the following events ("Events of Default") shall have occurred and be continuing:

(a) the Board shall fail to pay any principal due under the Promissory Note;

(b) the Board shall fail to pay any interest on the Promissory Note or any maintenance fee or commitment fee within 5 Business Days of the due date thereof;

(c) any representation, warranty, certification or statement made by the Board in this Agreement or in any certificate, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect in any material respect when made, and Agent shall, upon the request of Bank, have given the Board 5 days' written notice thereof;

(d) breach by the Board of any covenant or agreement or condition contained in Section 6.03 through 6.10, inclusive, or a breach by the Board of any other covenant or agreement or condition (other than those referred to or contained in clauses (a), (b), (c) above) contained in this Agreement or the Promissory Note and the continuation thereof for more than 60 days after written notice thereof has been given to the Board by the Agent at the request of Bank without cure or correction to the satisfaction of the Bank;

(e) if default shall be made by the Board in the performance or observance of any covenant, agreement or condition on its part in the Resolution or in the Project Notes contained, and such default shall continue for a period of 60 days after written notice thereof to the Board by the holders of not less than 10% in aggregate principal amount of the Project Notes then outstanding, or if the holder of any Fund Priority Obligations exercises its rights as a result of an event of default under the constituent instruments under which such obligations were issued or incurred to declare the principal thereof (and interest accrued thereon) to be payable prior to the maturity thereof; notwithstanding anything contained herein to the contrary, the parties hereto acknowledge that, as of the date of this Agreement, the Board has not agreed to, and there are not outstanding, any constituent instruments under which Fund Priority Obligations were issued which grant to any holder of any Fund Priority Obligations any rights to declare the principal of such Fund Priority Obligations (or interest accrued thereon) to be payable prior to the stated maturity thereof, and the Board does not presently intend to adopt any resolution granting or creating any such rights; or

(f) the Board shall commence a voluntary case or other proceeding seeking (i) liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a receiver, liquidator, custodian, or other similar official with respect to the Board or any substantial part of its property, or shall consent to or acquiesce in any such relief or the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it; or

(g) a receiver, liquidator, custodian or other official, appointed in an involuntary case or proceeding commenced against the Board, appointed without consent or acquiescence of the Board, takes charge of a substantial part of its properties and such action as to its properties is not promptly stayed, discharged or vacated; or

(h) the Board shall make a general assignment for the benefit of creditors, or declare a moratorium with respect to its debts, or shall fail generally to pay its debts as they become due in accordance with its customary practices, or shall take any corporate action to authorize any of the foregoing; or

(i) an involuntary case or other proceeding shall be commenced against the Board seeking (i) liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a custodian; receiver or trustee or similar official of the System, or any substantial part thereof, and such proceeding or case shall not be dismissed or stayed within 90 days after the filing thereof; or

(j) any material provision of this Agreement shall at any time for any reason cease to be valid and binding on the Board, or shall be declared by any court having jurisdiction over the Board to be null and void or the validity or enforceability thereof shall be contested by the Board and the Agent, upon request of the Bank, has given 5 days' written notice thereof to the Board;

then, and in any such event, the Agent shall, if requested by Bank by notice to the Board, terminate the Bank Loan Commitment, if any (except as provided below), and the Bank Loan Commitment shall thereupon terminate to the extent hereinafter permitted; provided, however, that the Bank Loan Commitment shall not terminate or affect the obligations of Bank to make Advances under this Agreement upon the conditions set out in Section 3.02, to be evidenced by and noted on the Promissory Note in the aggregate amount equal to the Available Bank Loan Commitment in accordance with the terms of Article II hereof, to the extent but only to the extent necessary for the Board to make required payments of principal and interest on Project Notes that were issued and sold prior to the time a Notice of Default was received by the Paying Agent. Upon termination of Bank Loan Commitment under the preceding provisions of this Section 8.01, and to the extent permitted thereby, the Available Bank Loan Commitment shall thereupon terminate.

Failure to take action in regard to one or more Events of Default shall not constitute a waiver of the right to take action in regard to subsequent Events of Default.

Section 8.02. Suits at Law or in Equity and Mandamus. In case one or more Events of Default shall occur, then and in every such case the Holder of the Promissory Note shall be entitled to proceed to protect and enforce such Holder's rights by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Agreement, or in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right vested in the Holders by this Agreement or the Promissory Note or by law. The provisions of this Agreement shall be a contract with each and every Holder and the duties of the Board shall be enforceable by any Holder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Section 8.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised at any time or from time to time, and as often as may be necessary, by any Holder.

#### ARTICLE IX

##### THE AGENT

Section 9.01. Appointment and Authorization. Bank irrevocably appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the Promissory Note as are delegated to the Agent by the terms hereof or thereof, together with all such powers as are reasonably incidental thereto.

Section 9.02. Agent and Affiliates. The Agent may accept deposits from, lend money to, and generally engage in any kind of business with the Board as if it were not the Agent hereunder. Bank and the Agent expressly consent to Morgan Guaranty Trust Company of New York acting as Paying Agent.

Section 9.03. Action by Agent. The obligations of the Agent hereunder are only those expressly set forth herein. Without limiting the generality of the foregoing, the Agent shall not be required to take any action with respect to any Default, except as expressly provided in Section 2.14 or Article VIII.

Section 9.04. Consultation with Experts. The Agent may consult with legal counsel (who may be counsel for the Board), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 9.05. Liability of Agent. Neither the Agent nor any of its directors, officers, agents, or employees shall be liable for any action taken or not taken by it in connection herewith (i) with the specific consent or at the request of Bank or (ii) in the absence of its own gross negligence or willful misconduct. Neither the Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made by the Board in connection with this Agreement or the Promissory Note; (ii) the performance or observance of any of the covenants or agreements of the Board; (iii) the satisfaction of any condition specified in Article III, except receipt of items required to be delivered to the Agent; or (iv) the validity, effectiveness or genuineness of this Agreement, the Promissory Note or any other instrument or writing furnished in connection herewith. The Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, telex or similar writing) believed by it to be genuine or to be signed by the proper party or parties.

Section 9.06. Indemnification. Bank shall indemnify the Agent (to the extent not reimbursed by the Board) against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from the Agent's gross negligence or willful misconduct) that the Agent may suffer or incur in connection with this Agreement or any action taken or omitted by the Agent hereunder.

Section 9.07. Credit Decision. Bank acknowledges that it has, independently and without reliance upon the Agent, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Bank also acknowledges that it will, independently and without reliance upon the Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement.

## ARTICLE X

### MISCELLANEOUS

#### Section 10.01. Notices; Agent and Accounts.

(a) Except as otherwise provided herein, all notices, requests and other communications to any party hereunder shall be in writing (including bank wire, telex or similar writing) and shall be given to such party at its address or telex number set forth on the signature pages hereof or such other address or telex number as such party may hereafter specify for the purpose of giving notice. Each such notice, request or other communication

shall be effective (i) if given by telex, when such telex is transmitted to the telex number specified in this Section and the appropriate answerback is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered at the address specified in this Section; provided that notices to the Agent under Article II hereof shall not be effective until received.

(b) In the case of a Notice of Advance, notice may be transmitted to the Agent by telecopier at 512-\_\_\_\_-\_\_\_\_, Attention: Mr. John Roan, and confirmed by written notice, the delivery of which shall not, however, affect the validity of such telecopied notice which shall be effective when received.

Section 10.02. No Waivers. No failure or delay by the Agent or any Bank in exercising any right, power or privilege hereunder or under the Promissory Note or otherwise shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 10.03. Costs, Expenses and Taxes. The Board shall pay (i) all reasonable out-of-pocket expenses of the Agent (including fees and disbursements of special counsel to the Bank and the Agent) in connection with the preparation of this Agreement, any waiver or consent hereunder or any amendment hereof or any Default or alleged Default by the Board hereunder, and (ii) if an Event of Default occurs, all out-of-pocket expenses incurred by the Agent or Bank, in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom. In addition, the Board shall pay any and all stamp taxes and other taxes and fees payable or determined to be payable in connection with the execution and delivery of this Agreement and the Promissory Note.

Section 10.04. Amendments or Modifications. Any provision of this Agreement or the Promissory Note may be amended or modified if, but only if, such amendment or modification is in writing and is signed by the Board, Bank and Agent.

Section 10.05. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized shall be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof.

Section 10.06. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

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Section 10.07. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when the Agent shall have received counterparts hereof signed by all of the parties hereto. Complete sets of counterparts shall be lodged with the Board and the Agent.

Section 10.08. Texas Law; Venue. This Agreement shall be deemed to be a contract made under and shall be construed in accordance with and governed by the laws of the State of Texas. The venue for any legal action to enforce or interpret this Agreement shall be in Travis County, Texas.

Section 10.09. Successors and Assigns; Participations. This Agreement may not be assigned by Bank, other than by operation of law to a successor or merged institution, unless with the consent of the Board, provided that this shall not restrict Bank in the sale of participations. The Board recognizes that Bank contemplates entering into participation agreements with certain other participants whereby the several participants will participate with Bank in the Promissory Note and in a portion of each Advance made by Bank under the Promissory Note. Accordingly, the Board confirms that all of its representations, warranties, covenants, certifications and obligations under this Agreement and the Promissory Note, as well as all rights under the lien and pledge securing the payment of the Promissory Note and granted to Bank pursuant to the Resolution and Section 2.11 of this Agreement, are for the benefit of the participants as well as for the benefit of Bank.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Address: BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM  
201 West Seventh Street  
Austin, Texas 78701

Telex No. \_\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_

Address: MBANK DALLAS, NATIONAL ASSOCIATION  
1704 Main Street  
10th Floor Bank Building  
Dallas, Texas 75201

Telex No. \_\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Address:

MBANK AUSTIN, NATIONAL ASSOCIATION

MBank Tower  
2nd Floor  
6th and Colorado  
Austin, Texas 78701

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

Telex No. \_\_\_\_\_

EXHIBIT "A"

PROMISSORY NOTE

Board of Regents of the University of Texas  
System Revolving Credit Agreement Revolving Note

\$109,000,000

Austin, Texas

December \_\_, 1985

For value received, the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("Board"), an agency and political subdivision of the State of Texas, organized and existing under and by virtue of the laws of the State of Texas, promises to pay, solely from the special funds hereafter referred to, to the order of MBANK DALLAS, NATIONAL ASSOCIATION (the "Bank"), at the office of MBank Austin, National Association, Austin, Texas, as Agent, the aggregate unpaid principal amount of all Advances hereunder, not to exceed One Hundred Nine Million and No/100 Dollars (\$109,000,000) in principal amount at any one time outstanding, made by the Bank to the Board hereunder, in lawful money of the United States of America, in Federal or other immediately available funds, and to pay, solely from the special funds hereinafter referred to, interest at the rate set forth in the Credit Agreement (hereinafter referred to) on the actual unpaid principal amount hereof for each day outstanding from the date hereof until this Promissory Note is paid in full, in like money and funds at such office, quarterly on each the first day of each January, April, July, and October prior to the maturity hereof, commencing on the first such date after the date hereof, at such rates as are specified in such Credit Agreement. The principal amount of all Advances outstanding on the Term Loan Conversion Date, as defined in the Credit Agreement ("Principal Debt"), shall be and become due and payable in twenty-eight (28) successive quarterly installments, each to be in an amount equal to one-twenty-eighth (1/28th) of the Principal Debt, such installments commencing on the first day of January immediately following the Term Loan Conversion Date, and continuing thereafter on the first day of each April, July, October and January thereafter, through and including the Maturity Date (as defined in the Credit Agreement).

This Promissory Note is subject to prepayment, and amounts prepaid prior to the Term Loan Conversion Date may be reborrowed, all pursuant to the terms and under the conditions of the Credit Agreement (the "Credit Agreement"), dated as of December \_\_, 1985, among the Board, the Bank and MBank Austin, National Association, Austin, Texas, as Agent, the terms of which are hereby incorporated by reference into this Promissory Note. All terms used herein and

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not defined shall have the same meaning as in the Credit Agreement. Reference is made to the Credit Agreement for provisions as to the prepayment hereof and for reborrowing. Reference is also made to the Credit Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances. If the holder enforces this Promissory Note upon default, the Board shall reimburse the holder for reasonable costs and expenses incurred by the holder in collection, including attorney's fees and expenses as set out in Section 9.03 of the Credit Agreement. This Promissory Note shall be construed under and governed by laws of the State of Texas but Chapter 15, Texas Credit Code (Art. 5069-15.01, V.A.T.C.S.) shall not apply.

This Promissory Note, including the interest hereon, is payable solely from and secured by a lien upon and pledge of certain revenues and certain other available funds and moneys of the Board, all as set forth in the Credit Agreement and the Resolution; and this Promissory Note does not constitute a general obligation or indebtedness of the Board within the meaning of any constitutional, charter or statutory limitations or provisions (and the holder hereof shall never have the right to require or compel the levy of ad valorem taxes for the payment of the principal of and interest on this Promissory Note). Reference is made to the Credit Agreement and such Resolution for the provisions relating to the security of this Promissory Note and the duties and obligations of the Board.

Made and executed at Austin, Texas, on the day and year first above written.

BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM

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

Attest:

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

DAR76/C

EXHIBIT "B"

Notice of Advance

TO: MBank Austin, National Association  
as Agent under Credit Agreement,  
dated December \_\_, 1985 ("Agreement")  
between the Agent, the Board, and  
MBank Dallas, National Association

FROM: Board of Regents of the University  
of Texas System ("Board")

The Board, acting herein by the undersigned Authorized Representative, pursuant to Section 2.02 and related provisions of the Agreement, issues this notice for an Advance to be made under the Agreement as follows:

1. Date and Time Advance is to be made:

\_\_\_\_\_;

2. Principal Amount of Advance:

\_\_\_\_\_;

3. Maturity Date and Face Amounts of Project Notes to be refunded: \_\_\_\_\_;

4. Amount of interest on Project Notes to be refunded:

\_\_\_\_\_;

5. The Advance shall be available for the account of holders of the Project Notes at Morgan Guaranty Trust Company of New York, the Paying Agent, New York, New York.

In connection with this Notice of Advance, the Board certifies to the Agent and Bank that at the issuance of this Notice of Advance the Events of Bankruptcy specified in Section 3.02 of the Agreement have not occurred. Capitalized terms herein are used with the meaning given in the Agreement.

Date of this Notice  
of Advance: \_\_\_\_\_

BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT "C"

[Letterhead of James E. Crowson,  
Vice Chancellor and General Counsel]

December \_\_, 1985

MBank Dallas, National Association  
("Bank")  
Dallas, Texas

MBank Austin, National Association  
("Agent")  
Austin, Texas

Re: \$109,000,000 Credit Agreement (the "Agreement"), between The Board of Regents of the University of Texas System (the "Board"), the Bank and the Agent, dated December \_\_, 1985 ("Agreement")

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Gentlemen:

I am general counsel to the Board, and I have acted in such capacity in connection with the above Agreement among the Bank, the Agent, and the Board, which is the Credit Agreement provided for in the Resolution adopted by the Board on December \_\_, 1985 (the "Resolution"), and the issuance of a promissory note of the Board ("Promissory Note") under the Agreement and Resolution in an aggregate principal amount of up to \$109,000,000. This opinion is provided to the Agent and the Bank pursuant to Section 3.01(a)(v) of the Agreement. Terms defined in the Agreement and not otherwise defined herein shall have the meaning described to them in the Agreement.

In connection with my opinion, I have examined the following:

1. A certified copy of the Resolution, which Resolution authorizes, among other things, the following:
  - a. execution and delivery of the Agreement and the issuance of the Promissory Note thereunder;
  - b. execution and delivery of the Dealer Agreement, as defined in the Resolution;

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c. execution and delivery of the Issuing and Paying Agent Agreement; and

d. execution and delivery of the Notes;

2. An executed counterpart of the Agreement;
3. An executed counterpart of the Dealer Agreement;
4. An executed counterpart of the Issuing and Paying Agent Agreement;
5. An executed copy of the Promissory Note;

6. Article 717g, Vernon's Annotated Texas Civil Statutes, as amended, and Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code) (collectively, the "Acts"), and such other provisions of the Constitution and laws of the State of Texas and the United States of America as I believe necessary to enable me to render the opinions herein contained; and

7. Such other agreements, documents, certificates (including a No-Arbitrage Certificate), opinions, letters, and other papers, including all documents delivered or distributed at the closing of the Agreement, as I have deemed necessary or appropriate in rendering the opinions set forth below.

In my examination, I have assumed the authenticity of all documents and agreements submitted to me as originals, conformity to the originals of all documents and agreements submitted to me as certified or photostatic copies, the authenticity of the originals of such latter documents and agreements, and the accuracy of the statements contained in such certificates. I have also assumed that the Agreement constitutes a valid and binding agreement of said Bank, enforceable in accordance with its terms.

Based upon the foregoing, and subject to the qualifications described below, I am of the opinion, under applicable laws of the United States of America and the State of Texas in force and effect on the date hereof, that:

1. The Board is a duly organized and validly existing agency and political subdivision of the State of Texas with full power and authority to own and operate its System as currently operated and to issue the Notes to pay the costs in connection with the System, and to enter into and perform under the Agreement and to issue the Project Notes and the

Promissory Note in connection therewith. The Board has, at the date of the Closing and at the time of execution did have, full legal right, power and authority (a) to enter into the Agreement, the Dealer Agreement, and the Issuing and Paying Agent Agreement; (b) to adopt the Resolution; (c) to sell, issue and deliver the Project Notes; (d) to execute and deliver the Promissory Note; and (e) to carry out and consummate the transactions contemplated by the Resolution, the Agreement, the Dealer Agreement, and the Issuing and Paying Agent Agreement; and the Board has complied, at the date of the Closing in all material respects, with Texas Law, including the terms of the Acts, and with the obligations on its part contained in the Resolution, the Project Notes, the Agreement, the Promissory Note, the Dealer Agreement and the Issuing and Paying Agent Agreement.

2. By official action of the Board, the Board has duly adopted the Resolution, has duly authorized and approved the execution and delivery of, and the performance by the Board of the obligations on its part contained in the Notes, the Resolution, the Agreement, and the consummation by it of all other transactions contemplated by such instruments and has all necessary power and authority to conduct its business as presently conducted and to perform its obligations under the Agreement and the Notes.

3. Each of the Resolutions, the Agreement, and the Notes has been executed and delivered by duly authorized officers of the Board. The Resolution and (to the extent of the amounts advanced or paid to the Board thereunder) the Notes each constitute valid and binding obligations of the Board enforceable against the Board in accordance with their respective terms (limited in the case of the Notes to the amounts advanced thereunder or otherwise payable in accordance with the terms thereof), except as limited by bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws now or hereafter in effect relating to or affecting generally the enforcement of creditors' rights and remedies.

4. No authorization, consent or approval of any governmental authority, agency or bureau not already obtained is required in connection with the valid execution and delivery of the Resolution, the Notes, the Agreement, the Dealer Agreement, and the Issuing and Paying Agent Agreement by the Board or in connection with the performance by the Board of its obligations under such documents.

5. The Board is not in breach of or in default under any applicable constitutional provision, law or administrative regulation, or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Board is a party or to which the Board, or any of its property or assets of the Board is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default by the Board under any such instrument; the execution and delivery by the Board of the Notes, the Agreement, the Dealer Agreement and the Issuing and Paying Agent Agreement and the adoption of the Resolution, and compliance by the Board with the provisions of the Resolution, the Notes, the Agreement, the Dealer Agreement and the Issuing and Paying Agent Agreement, do not and will not conflict with or constitute, a breach of or default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Board is a party or to which the Board or any of its properties or assets is otherwise subject.

6. There is no action, suit, investigation, inquiry or proceeding (whether or not purportedly on behalf of the Board) pending, or to the best of my knowledge, threatened or could be reasonably asserted against the Board or any of its assets in any court, governmental agency, public board or body or before any arbitrator or before or by any governmental body, (i) affecting the corporate existence of the Board or the titles of the officers of the Board to their respective offices, or (ii) affecting or seeking to prohibit, restrain, or enjoin the sale, issuance or delivery of the Notes, or (iii) in any way contesting or affecting the validity or enforceability of the Notes, the Resolution, the Agreement, the Dealer Agreement or the Issuing and Paying Agent Agreement, or (iv) contesting the tax-exempt status of the interest on the Project Notes or the Promissory Note, as described in the Resolution, or (v) contesting any authority or proceedings for the issuance, sale or delivery of the Notes, the adoption of the Resolution or the execution and delivery of the Agreement, the Dealer Agreement, the Issuing and Paying Agent Agreement, or the performance of the Board's obligations thereunder, or (vi) contesting the powers of the Board or questioning or affecting the ability of the Board to operate and maintain the Fund, or (vii) which involves the possibility of any ruling, order, judgment or uninsured liability which may result in any material adverse change in the business, properties or assets or the condition, financial or otherwise, of the Fund, wherein an unfavorable deci-

MBank Dallas, National Association  
MBank Austin, National Association  
December \_\_, 1985  
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sion, ruling or finding would materially adversely affect the validity or enforceability of the Notes, the Resolution, the Agreement, the Dealer Agreement, or the Issuing and Paying Agent Agreement; the current routine litigation of the Board relating to the Fund does not entail any potential recovery or liability for a material amount which is not otherwise covered by the Board's insurance policies.

7. The Resolution and the Agreement duly and effectively grant a lien on and pledge of, as security for the Promissory Note, ratably with the Project Notes, (i) the proceeds from (a) the sale of Fund Priority Obligations issued for such purpose, and (b) the sale of Project Notes issued pursuant to the Resolution for such purposes, and (ii) the amounts from time to time on deposit in the Series A Note Payment Fund and the Special System Account, and (iii) the Interest of the University in the Available University Fund, said pledge of the Interest of the University in the Available University Fund being subordinate to the pledge thereof for payment of Fund Priority Obligations, and except as so provided the lien of such security interest and pledge is valid and binding in accordance with its terms without further action on the part of the Board and without any filing or recording with regard therein except in the records of the Board.

8. [Bank's rights of mandamus]

Yours very truly,

General Counsel

DAR76/F

EXHIBIT "D"

[Letterhead of Bond Counsel]

December \_\_, 1985

MBank Dallas, National Association  
("Bank")  
Dallas, Texas

MBank Austin, National Association  
("Agent")  
Austin, Texas

Re: \$109,000,000 Credit Agreement among Board of Regents of  
the University of Texas System (the "Board"), Bank and  
the Agent, Dated December \_\_, 1985 ("Agreement")

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Gentlemen:

We have acted as counsel to the Board in connection with the above Agreement among Bank, the Agent, and the Board, which is the Credit Agreement provided for in Section 2.16 of the Resolution of the Board, dated December 5, 1985 (the "Resolution"), and the issuance of a promissory note of the Board ("Promissory Note") under the Agreement and Resolution in an aggregate principal amount of up to \$109,000,000. This opinion is provided to the Agent and Bank pursuant to Section 3.01(a)(vi) of the Agreement. Terms defined in the Agreement and not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

In connection with our opinion, we have examined the following:

(1) Certified copies of the Resolution which authorizes, among other things, the following:

(a) execution and delivery of the Agreement and the issuance of the Promissory Note thereunder;

(b) execution and delivery of the Dealer Agreement, as defined in the Resolution;

(c) execution and delivery of the Issuing and Paying Agent Agreement; and

- (d) execution and delivery of the Project Notes;
- (2) an executed counterpart of the Agreement;
- (3) an executed counterpart of the Dealer Agreement;
- (4) an executed counterpart of the Issuing and Paying Agent Agreement;
- (5) executed copy of the Promissory Note;
- (6) Article 717g, Vernon's Annotated Texas Civil Statutes, as amended, Chapter 919, Acts of the 69th Legislature, Regular Session, 1985 (codified as Section 65.46, Texas Education Code) (collectively, the "Acts"), and such other provisions of the Constitution and laws of the State of Texas and the United States of America as I believe necessary to enable me to render the opinions herein contained;
- (7) opinion of James E. Crowson, Esq., general counsel to the Board, of even date herewith provided to you under Section 3.10(a)(v) of the Agreement; and
- (8) such other agreements, documents, certificates (including a No-Arbitrage Certificate), opinions, letters, and other papers, including all documents delivered or distributed at the closing of the Agreement, as we have deemed necessary or appropriate in rendering the opinion set forth below.

In our examination, we have assumed the authenticity of all documents, agreements and certificates submitted to us as originals, conformity to the originals of all documents, agreements and certificates submitted to us as certified or photostatic copies, the authenticity of the originals of such latter documents, agreements and certificates, and the accuracy of the statements contained in such certificates. We have also assumed, as to the Agreement, that such constitutes the valid and binding agreement of Bank, enforceable in accordance with its terms as to Bank.

Based upon the foregoing, and subject to the qualifications set out below, we are of the opinion, under applicable laws of the United States of America and the State of Texas in force and effect on the date hereof, that:

1. The Board is a governmental agency and political subdivision of the State of Texas and has the requisite power and authority under Texas law to issue the Promissory Note and to enter into and perform under the Agreement, to issue the Promissory Note, and to borrow, repay and reborrow under the Promissory Note in accordance therewith and in accordance with the Agreement.

2. The Board has duly adopted the Resolution, and has duly authorized and approved the execution and delivery of, and the performance by the Board of the obligations on its part contained in, the Promissory Note, the Resolution, and the Agreement, and the consummation by it of all other transactions contemplated by such instruments.

3. The Agreement, and the Promissory Note, has been executed and delivered by duly authorized officers of the Board. The Agreement and the Promissory Note each constitute valid and binding obligations of the Board, enforceable against the Board in accordance with their respective terms (such obligations being limited in the case of the Promissory Note to the amounts advanced and outstanding thereunder or otherwise payable in accordance with the terms thereof).

4. No authorization, consent, approval, permit, license or exemption of, or filing or registration with, any governmental department, commission, board, instrumentality, authority, agency or bureau not already obtained is required for the valid execution and delivery of the Resolution, the Agreement, and the Promissory Note by the Board or in connection with the performance by the Board of its obligations under such documents.

5. The Promissory Note, ratably with the Project Notes, are solely payable from and secured (i) the proceeds from (a) the sale of Fund Priority Obligations issued for such purpose, and (b) the sale of Project Notes, (ii) the amounts from time to time on deposit in the Series A Note Payment Fund and Special System Account until the amounts deposited therein are used for authorized purposes (as more fully set out in Section 3.02 of the Resolutions), provided that amounts on deposit in the Series A Note Payment Fund derived from and attributable to borrowings under the Agreement are pledged to, and shall be used to pay, solely amounts payable in respect of Project Notes, and (iii) the Interest of the University in the Available University Fund, said pledge of the Interest of the University in the Available University Fund being subordinate to the pledge thereof for payment of Fund Priority Obligations, and except as so provided the lien of such security interest and pledge is valid and binding in accordance with its terms without further action on the part of the Board and without any filing or recording with regard therein except in the records of the Board. In accordance with Section 4.10 of the Resolution, as limited by Sections 6.03 and 6.05 of the Agreement, the Resolution reserves the right and permits the issuance of Fund Priority Obligations while the Project Notes are outstanding and the issuance of additional Short Term Obligations payable from the same sources, or any portion thereof,

without any limitations as to principal amount but subject to any terms, conditions and limitations as may be applicable thereto.

6. Under existing statutes, regulations and court decisions existing on the date hereof, and relying on covenants contained in the Resolution and in the No-Arbitrage Certificate above mentioned, interest paid by the Board to Bank on borrowings under the Promissory Note is exempt from federal income taxation.

7. The lien on and pledge of the Collateral established by the Resolution and Agreement are a valid and binding lien on and pledge of such Collateral. No filing of financing statements under the Texas Uniform Commercial Code or recording of the Resolution or Agreement in any public office not already completed is required by law to perfect the lien on and pledge of Collateral received by the Board and pledged to secure the Promissory Note under the Resolution and Agreement.

8. [Bank's rights of mandamus]

Our opinions in paragraphs 3, 5 and 7 above are qualified and limited by bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws now or hereafter in effect relating to or affecting generally the enforcement of creditors' rights and remedies and by the limitations on creditors' remedies contained in the Act, and such opinions are subject to general principles of equity which may permit the exercise of judicial discretion, to the reasonable exercise in the future by the State of Texas and its governmental bodies of the police power inherent in the sovereignty of the State, and to the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America. Our opinions in paragraph 7 do not extend to the status of title of the Board or the Fund to properties pledged and encumbered.

Very truly yours,

DAR76/G

EXHIBIT "E"

[Opinion of Winstead, McGuire, Sechrest & Minick, P.C.]

\_\_\_\_\_, 1985

MBank Dallas, National Association ("Bank")  
1704 Main Street  
Dallas, Texas 75205

MBank Austin, National Association ("Agent")  
6th and Colorado  
Austin, Texas 78701

Re: \$109,000,000 Credit Agreement among Board of Regents of  
the University of Texas System (the "Board"), Bank and  
the Agent, Dated December \_\_, 1985 ("Agreement")

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Gentlemen:

We have acted as counsel to the Agent and to the Bank in connection with the Agreement among the Board, the Bank and the Agent, and the issuance of a promissory note of the Board (the "Promissory Note") in the principal amount of \$109,000,000. Terms defined in the Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Agreement. In connection therewith, we have examined the following:

- (1) the Agreement;
- (2) Opinion of James E. Crowson, Esq., general counsel to the Board, dated December \_\_, 1985 to the Bank and Agent;
- (3) Opinion of Messrs. McCall, Parkhurst & Horton and of Messrs. Vinson & Elkins, each dated \_\_\_\_\_, 1985 to the Bank and Agent;
- (4) the Promissory Note;
- (5) the Resolution;
- (6) the Certificate of the Secretary of the Board certifying the names and signatures of each Authorized Representative; and

DAR76/G

(7) such other agreements, documents, certificates, opinions, letters and other papers, as we have deemed necessary or appropriate in rendering the opinion set forth below.

Based upon the foregoing and while we have not independently considered the matters covered in the opinions referred to in clauses (2) and (3) above to the extent necessary to enable us to express ourselves the conclusions stated therein, we are of the opinion that:

1. The documents described in clauses (1) through (6) above appear to be in substantially acceptable legal form; and

2. The documents described in clauses (2) through (6) appear substantially responsive to the requirements of the Agreement.

This opinion is delivered to each addressee pursuant to Section 3.01(a)(vii) of the Agreement, and may be relied upon solely by such addressees.

Yours very truly,

WINSTEAD, MCGUIRE, SECHREST & MINICK, P.C.

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

DAR76/H

EXHIBIT "F"

[Winstead, McGuire, Sechrest & Minick, P.C. Letterhead]

\_\_\_\_\_, 1985

Board of Regents of  
The University of Texas System  
201 W. Seventh Street  
Austin, Texas 78701

Re: \$109,000,000 Credit Agreement, among Board of Regents of  
The University of Texas System (the "Board"), MBank  
Dallas, National Association ("Bank"), and MBank Austin,  
National Association ("Agent"), dated December \_\_, 1985  
(the "Agreement")

Gentlemen:

We have acted as special counsel to the Agent and to the Bank in connection with the Agreement among the Board, the Bank and the Agent, and the issuance of a promissory note of the Board (the "Promissory Note") in the principal amount of \$109,000,000. Terms defined in the Agreement not otherwise defined herein shall have the meaning ascribed to them in the Agreement. This opinion is provided to the Board pursuant to Section 3.01(b)(iii) of the Agreement.

In connection with this opinion, we have examined the following:

1. the Resolution;
2. the Agreement;
3. the Promissory Note;
4. the Articles of Association and Bylaws of the Bank, certificate of organization of the Bank from the Comptroller of the Currency of the United States of America, certificates as to corporate proceedings and resolutions of Bank authorizing the execution and delivery of, and performance under, the Agreement; and

5. such other instruments, certificates, documents and provisions of the laws of the United States of America as we have deemed relevant and necessary in order to enable us to render this opinion.

In our examination, we have assumed the authenticity of all documents and agreements submitted to us as originals, conformity to the originals of all documents and agreements submitted to us as certified or photostatic copies, the authenticity of the originals of such latter documents and agreements, and the accuracy of the statements contained in such certificates. We have also assumed that the Agreement and the Promissory Note constitute valid and binding agreements of the Board, enforceable in accordance with their respective terms as to the Board.

Based upon the foregoing, and subject to the qualifications described below, we are of the opinion that, under applicable laws of the United States of America in force and effect on the date hereof:

1. Bank is a national banking association, duly organized and validly existing under the laws of the United States of America. Bank has all necessary power and authority to conduct its business and perform its obligations under the Agreement.

2. The Agreement has been duly authorized, executed and delivered by the Bank and constitutes the valid and binding obligation of the Bank, enforceable against Bank in accordance with its terms, except (a) as limited by bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws now or hereafter in effect relating to, or affecting generally the enforcement of creditors' rights and remedies against, national banking associations, as the same may be applied in the event of the bankruptcy, insolvency, liquidation, reorganization or similar situation of Bank or a moratorium applicable to Bank, and (b) that no opinion is expressed as to the availability to the holders of the Project Notes issued pursuant to the Resolution, the Board, any trustee in bankruptcy or any other Person against Bank of any equitable remedies, including specific performance and injunctive relief.

3. No authorization, consent or approval of any governmental authority of the United States of America or any state or any political subdivision thereof or any agency, department, commission, board, bureau or court having jurisdiction over any of the Bank not already obtained is required in connection with the valid execution and delivery of the Agreement by Bank or in connection with the performance by each of the Bank of its respective obligations under the Promissory Note.

DAR76/H

With respect to the opinion stated in paragraph 2. above as to enforceability of the Agreement, we have assumed compliance by the Bank with its lending limits under applicable law.

This opinion is given as of the date hereof, and we undertake no, and hereby disclaim any, obligation to advise you of any change in any matters set forth herein. Further, this opinion is to be used solely for the benefit of the Board, their respective successors and assigns, and this opinion may not be relied upon in any manner nor used by any other person, other than Morgan Guaranty Trust Company of New York, as the Paying Agent appointed pursuant to the Resolution.

Very truly yours,

WINSTEAD, MCGUIRE, SECHREST & MINICK,  
A Professional Corporation

By: \_\_\_\_\_  
Darrel A. Rice

cc: Morgan Guaranty Trust  
Company of New York  
23 Wall Street  
P. O. Box 495  
New York, New York 10015

ATTACHMENT C

OFFICIAL NOTICE OF SALE

\$100,000,000  
BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM  
PERMANENT UNIVERSITY FUND  
VARIABLE RATE NOTES  
SERIES A

The Sale

Notes Offered for Sale at Competitive Bidding: The Board of Regents of The University of Texas System (the "Board") is offering for sale its \$100,000,000 Board of Regents of The University of Texas System Variable Rate Notes, Series A (the "Notes"). The Notes will be delivered initially to the successful bidder (the "Purchaser") as a single fully registered note (the "Initial Note"), without interest coupons, payable to the initial registered owner thereof, to be named by the successful bidder, exchangeable as set forth below. Upon written request by the Purchaser, delivered to the registrar not later than the close of business on the day the Purchaser's bid is accepted, the Initial Note will be exchanged by the registrar on the date of delivery for Notes registered in accordance with instructions contained in such request, in minimum denominations of \$100,000 or in greater amounts in any integral multiple of \$1,000, bearing interest for the initial interest period on the Notes in accordance with the Purchaser's bid, all in accordance with the resolution authorizing the Notes.

Address of Bids: Sealed bids, plainly marked "BID FOR VARIABLE RATE NOTES," should be addressed and delivered to the "Board of Regents of The University of Texas System, c/o Mr. Michael E. Patrick, Executive Vice Chancellor for Asset Management, The University of Texas System, 210 W. 6th Street, Austin, Texas 78701" prior to 12:00 p.m., C.S.T., on December 16, 1985. All bids must be submitted on the Official Bid Form, without alteration or interlineation.

Place and Time of Bid Opening and Award: Representatives of the Board will open and publicly read the bids for the purchase of the Notes in the office of the Executive Vice Chancellor for Asset Management, The University of Texas System, 210 W. 6th Street, Austin, Texas at 12:00 noon, C.S.T., on December 16, 1985, and will award the Notes (or reject all bids) by 12:15 p.m., C.S.T., on such date.

The Notes

Description: The Initial Note will be dated as of the date

of initial delivery of the Notes to the Purchaser. The Notes will bear interest at the rate of interest named by the Purchaser from the date of initial delivery of the Notes until December 20, 1985 (the "Mandatory Tender Date"). ON THE MANDATORY TENDER DATE, THE NOTES ARE SUBJECT TO MANDATORY TENDER FOR PURCHASE, WITHOUT RIGHT OF RETENTION BY THE REGISTERED OWNER THEREOF, AT A PURCHASE PRICE EQUAL TO THE PRINCIPAL AMOUNT THEREOF PLUS ACCRUED INTEREST FROM THE DATE OF INITIAL DELIVERY THEREOF. Thereafter, the Notes will bear interest at a variable rate, set in the manner described in the Official Statement for the Notes. Reference is hereby made to the Official Statement, which describes in greater detail the terms of the Notes, including their maturity and payment and the security therefor.

Remarketing Agent: Goldman, Sachs & Co. has been appointed by the Board to serve as remarketing agent for the Notes. Pursuant to its Remarketing Agreement with the Board, the Remarketing Agent is obligated to purchase all of the Notes on the Mandatory Tender Date.

Paying Agent/Registrar: Morgan Guaranty Trust Company, New York, New York, has been appointed by the Board to serve at the Board's discretion as paying agent and registrar for the Notes.

#### Conditions of the Sale

Types of Bids and Interest Rates: The Notes will be sold in one block on an "all or none" basis, and at a price of not less than par value. Bidders are invited to name the rate of interest to be borne by the Notes for the first interest period on the Notes, which shall be from the date of initial delivery thereof until the Mandatory Tender Date, provided that each bid must name only one rate of interest for all Notes and such interest rate must not exceed 15%.

Basis for Award: Subject to the right of the authorized representatives of the Board to reject any or all bids and to waive any irregularities, the Notes will be awarded to the bidder whose bid produces the lowest net effective interest cost on the Notes for the initial interest period. In the event that two or more bidders submit an identical lowest bid the Purchaser will be selected by lot from among all such bidders.

#### Delivery of the Notes and Accompanying Documents

Printed Notes and CUSIP Numbers: The Initial Note will be delivered to the Purchaser in typed or printed form. It is anticipated that CUSIP identification numbers will be printed on the Notes, but neither the failure to print such number on any of the Notes nor any error with respect thereto shall constitute

cause for a failure or refusal by the Purchaser to accept delivery of and pay for the Notes in accordance with the terms of this Official Notice of Sale and the Official Bid Form. All expenses in relation to the printing of CUSIP numbers on the Notes, including the CUSIP Service Bureau charge for the assignment of the numbers, shall be paid by the Board.

Delivery: Delivery will be accomplished by the issuance and delivery of the Initial Note, signed manually or in facsimile by the Chairman and the Executive Secretary of the Board, together with evidence of the approval of the Notes by the Attorney General of the State of Texas, and registration by the Comptroller of Public Accounts of the State of Texas. Delivery of the Notes will be at the corporate trust office of the registrar. Payment for the Notes must be made in immediately available funds for unconditional credit to the Board, or as otherwise directed by the Board. It is anticipated that delivery can be made on December 17, 1985, and it is understood and agreed that the Purchaser will accept delivery and make payment for the Notes by 12:00 Noon, E.S.T. on December 17, 1985, or thereafter on December 18, 1985, if the Notes are tendered for delivery on such date. If for any reason the Board is unable to make delivery on or before December 18, 1985, then both the Board and the Purchaser shall be relieved of any further obligation.

Conditions of Delivery: The obligation of the Purchaser to take up and pay for the Notes is subject to the Purchaser's receipt of (a) the joint legal opinion of McCall, Parkhurst & Horton, Dallas, Texas, and Vinson & Elkins, Houston and Austin, Texas, Co-Bond Counsel for the Board ("Co-Bond Counsel"), (b) the certification of the Official Statement, and (c) the no-litigation certificate, all as further described below.

Legal Opinions: The Notes are offered when, as, and if issued, subject to the unqualified legal opinion of the Attorney General of the State of Texas, and of McCall, Parkhurst & Horton and Vinson & Elkins (see "Legal Matters" in the Official Statement); the opinion of said firms will be printed on the Notes (excepting the Initial Notes).

Certification of Official Statement: The financial data and other information contained in the Official Statement have been obtained from the Board's records and other sources which are believed to be reliable. At the time of payment for and delivery of the Bonds, the Purchaser will be furnished a certificate, executed by the Executive Vice Chancellor for Asset Management, acting in his official capacity, to the effect that to the best of his knowledge and belief: (a) the Official Statement, dated December \_\_, 1985, and any addenda, supplement or amendment thereto, on the date of such Official Statement, on the date of the sale of the Notes and the acceptance of the best bid therefor and on the date of the delivery, did not and does not contain an

untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (b) there has been no material, adverse change in the financial condition of the Board from that reflected in the Board's unaudited and audited financial statements and other financial information contained in the Official Statement.

No-Litigation Certificate: The Chairman of the Board, acting in his official capacity, will execute and deliver to the Purchaser a certificate to the effect that no litigation of any nature has been filed or is then pending which would restrain or enjoin the issuance or delivery of the Notes or affect the provisions made for their payment or in any manner question the validity of said Notes.

Change in Tax Exempt Status: At any time before the Notes are tendered for delivery, the Purchaser may withdraw its bid if the interest received by private owners from notes of the same type and character shall be declared to be taxable income under federal income tax laws, either by ruling of the Internal Revenue Service or by a decision of any federal court, or shall be declared taxable or be required to be taken into account in computing any federal income taxes, by the terms of the federal income tax law enacted subsequent to the date of this Official Notice of Sale.

#### General

Remarketing Agent's Right to Bid: Goldman, Sachs & Co., the Remarketing Agent, reserves the right to bid on the Notes.

Blue Sky Laws: By submission of its bid, the Purchaser represents that the sale of the Notes in states other than Texas will be made only pursuant to exemptions from registration or, where necessary, the Purchaser will register the Notes in accordance with the securities law of the states in which the Notes are offered or sold. The Board agrees to cooperate with the Purchaser, at the Purchaser's written request and expense, in registering the Notes or obtaining an exemption from registration in any state where such action is necessary; provided, however, that the Board will not be required to execute a special or general consent to service of process or qualify to do business in connection with any such qualification in any jurisdiction.

Not an Offer to Sell: This Official Notice of Sale does not alone constitutes an offer to sell the Notes, but is merely notice of the sale of the Notes. The offer to sell the Notes is being made by means of the Official Notice of Sale, the Official Bid Form and the Official Statement. Prospective purchasers are

urged to examine carefully the Official Statement to determine the investment quality of the Notes.

Additional Copies of Notice, Bid Form and Statement: A limited number of additional copies of this Official Notice of Sale, the Official Bid Form and the Official Statement may be obtained from the Office of the Executive Vice Chancellor for Asset Management, The University of Texas System, 210 West 6th Street, Austin, Texas 78701 or Goldman, Sachs & Co., Municipal Finance Department, 85 Broad Street, New York, New York 10004.

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Executive Vice Chancellor for  
Asset Management  
The University of Texas System  
210 West 6th Street  
Austin, Texas 78701

December \_\_, 1985

OFFICIAL BID FORM

Chairman and Members of the Board  
of Regents of The University of  
Texas System

December 16, 1985

Gentlemen:

Reference is made to your Official Statement and Official Notice of Sale, dated December \_\_, 1985, of The University of Texas System Variable Rate Notes, Series A (the "Notes"), both of which constitute a part hereof.

For your legally issued Notes, as described in said Official Notice of Sale and Official Statement, we will pay you par, plus a cash premium of \$\_\_\_\_\_, for Notes bearing interest at the rate of \_\_\_\_\_% from the date of initial delivery of the Notes until December 20, 1985 (the "Mandatory Tender Date"). We understand that on the Mandatory Tender Date, the Notes are subject to mandatory tender for purchase, without right of retention by the registered owner, at a purchase price of par plus accrued interest from the date of initial delivery of the Notes.

The Initial Note shall be registered in the name of \_\_\_\_\_ . We will advise the Paying Agent/Registrar, on forms to be provided by the Paying Agent/Registrar, of our registration instructions by no later than the close of business on the date hereof.

We agree to accept delivery of and make payment for the Initial Note in immediately available funds at a place to be designated by an authorized representative of the Board no later than 12:00 Noon, E.S.T., on December 17, 1985, or thereafter on December 18, 1985, if the Initial Note is tendered for delivery on that date, pursuant to the terms set forth in the Official Notice of Sale.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Authorized Representative

ACCEPTED this 16th day of December, 1985, by the undersigned  
authorized representative of The Board of Regents of The Univer-  
sity of Texas System.

By \_\_\_\_\_  
Authorized Representative  
The University of Texas System

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT (this "Agreement"), is entered into as of December 1, 1985, by and between the Board of Regents of The University of Texas System (the "Board"), and Morgan Guaranty Trust Company of New York, New York, New York, (the "Bank").

RECITALS OF THE ISSUER

Pursuant to a resolution adopted by the Board on December 5, 1985 (the "Resolution"), the Board has duly provided for the issuance, from time to time, of its notes, entitled "Board of Regents of The University of Texas Systems Permanent University Fund Commercial Paper Notes, Series A" (the "Commercial Paper Notes") and "Board of Regents of The University of Texas System Permanent University Fund Variable Rate Notes, Series A" (the "Variable Rate Notes" and, together with the Commercial Paper Notes, the "Notes"); provided that the aggregate principal amount of the Notes at any one time outstanding pursuant to the Resolution may not exceed \$100,000,000;

Variable Rate Notes issued under the Resolution shall be in fully registered form, without coupons, and Commercial Paper Notes issued under the Resolution shall be in registered form, without coupons, provided that such Commercial Paper Notes may be registered to bearer;

All things necessary to make the Notes the valid obligations of the Board, in accordance with their terms, will be done upon the issuance and delivery thereof;

The Board and the Bank wish to provide the terms under which the Bank will act as Paying Agent to pay the principal and interest on the Notes and to pay the purchase price of tendered Notes, all in accordance with the terms thereof, and under which the Bank will act as Registrar for the Notes;

The Board and the Bank have duly authorized the execution and delivery of this Agreement; and all things necessary to make this Agreement the valid agreement of the parties, in accordance with its terms, have been done.

NOW, THEREFORE, it is mutually agreed as follows:

## ARTICLE ONE

### APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

#### Section 1.01. Appointment.

The Board hereby appoints the Bank to act as Paying Agent with respect to the Notes, to pay to the Holders (as defined in the Resolution) of the Notes the principal of and interest on all or any of the Notes including the purchase price of any Notes tendered for purchase by said Holders, all in accordance with the terms and provisions of this Agreement and Resolution.

The Board hereby appoints the Bank as Registrar with respect to the Notes, to authenticate the Notes and to register the transfer, exchange or assignment of Notes, all in accordance with the terms and provisions of this Agreement and the Resolution.

The Bank hereby accepts its appointment, and agrees to act as Paying Agent and Registrar, and to perform all obligations imposed upon it as Paying Agent and Registrar under the Resolution and this Agreement.

#### Section 1.02. Compensation, Payment of Legal Expenses.

As compensation for the Bank's services as Paying Agent and Registrar, the Board hereby agrees to pay the Bank its customary and reasonable fees in accordance with the fee schedule attached hereto as Exhibit A, or as otherwise agreed by the parties hereto. The Board also agrees to reimburse the Bank for the reasonable fees and expenses paid by the Bank for legal services rendered to it in connection with the discharge of its duties hereunder.

## ARTICLE TWO

### DEFINITIONS

#### Section 2.01. Definitions.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Bank" means the party identified as such on the first page of this Agreement.

"Bank Office" means the corporate trust office of the Bank as indicated on the signature page of the Bank hereon. The Bank will notify the Board in writing of any change in location of the Bank Office.

"Board" means the party identified as such on the first page of this Resolution.

"Commercial Paper Notes" has the meaning set forth in the recitals to this Agreement.

"Notes" has the meaning set forth in the recitals to this Agreement.

"Redemption Date" when used with respect to any Note to be redeemed means the date fixed for such redemption pursuant to the terms of the Resolution.

"Registration Books" means the books or records relating to the registration, payment and transfer or exchange of Notes maintained by the Bank, as Registrar, pursuant to this Agreement and the Resolutions.

"Variable Rate Note" has the meaning set forth in the recitals to this Agreement.

"Stated Maturity" when used with respect to any Note means the date specified in the Resolution as the date on which the principal of such Note is due and payable.

### ARTICLE THREE

#### PAYING AGENT

##### Section 3.01. Advances by the Paying Agent.

To the extent that the Remarketing Agent (as defined in the Resolution) has given notice (as provided in Section 4.01(e) of the Resolution) that it has remarketed Variable Rate Notes and that the full purchase price thereof required to be paid on the purchase date will be paid to the Paying Agent for deposit in the Series A Note Payment Fund (as defined in the Resolution), then the Paying Agent may, but shall not be obligated to, credit the Series A Note Payment Fund in the amount of such purchase price. To the extent the Paying Agent has so credited the Series A Note Payment Fund, it shall not be required to obtain funds from the Board in respect of such Variable Rate Notes on such date. If the Paying Agent makes any such credit to the Series A Note Payment Fund in immediately available funds, such credit shall represent an advance by it to the Board to be repaid from the purchase price of the remarketing or by the Board in the event that such purchase price is not received by the Paying Agent. It is intended that any such advance shall be for no longer than 24 hours. Interest on each unpaid advance shall be at a rate negotiated between the Paying Agent and the Board and shall begin to accrue on the day of the advance.

## ARTICLE FOUR

### REGISTRAR

#### Section 4.01. Unauthenticated Notes.

The Board shall provide an adequate inventory of unauthenticated Notes to facilitate transfers. The Bank covenants that it will maintain such unauthenticated Notes in safekeeping and will use reasonable care in maintaining such Notes in safekeeping, which shall be not less than the care it maintains for debt securities of other government entities or corporations for which it serves as registrar, or which it maintains for its own bonds.

#### Section 4.02. Form of Registration Books.

The Bank as Registrar will maintain the records of the Registration Book in accordance with the Bank's general practices and procedures in effect from time to time.

#### Section 4.03. Reports.

The Bank will provide the Board reports not less often than once each three months, which reports will describe in reasonable detail all transactions pertaining to the Notes and the Registration Books. The Board may also inspect and make copies of the information in the Registration Books at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the content of the Registration Books to any person other than to, or at the written request of, an authorized officer or employee of the Board, except upon receipt of a subpoena or court order. Upon receipt of a subpoena or court order, the Bank will notify the Board immediately so that the Board may contest the subpoena or court order.

#### Section 4.04. Cancelled Notes.

All Notes surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Bank, shall be promptly cancelled by it and, if surrendered to the Board, shall be delivered to the Bank and, if not already cancelled, shall be promptly cancelled by the Bank. The Board may at any time deliver to the Bank for cancellation any Notes previously authenticated and delivered which the Board may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Bank. All cancelled Notes held by the

Bank shall be destroyed and evidence of such destruction furnished to the Board.

## ARTICLE FIVE

### THE BANK

#### Section 5.01. Duties of Bank.

The Bank undertakes to perform the duties set forth herein and in accordance with the Resolution and agrees to use reasonable care in the performance thereof.

#### Section 5.02. Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank by the Board.

(b) The Bank shall not be liable to the Board for actions taken under this Agreement so long as it acts in good faith and exercises due diligence with regard to its duties hereunder.

(c) This Agreement is not intended to require the Bank to expend its own funds for performance of any of its duties hereunder.

(d) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys.

#### Section 5.03. Recitals of Board.

The recitals contained in the Resolution and the Notes shall be taken as the statements of the Board, and the Bank assumes no responsibility for their correctness.

#### Section 5.04. May Own Notes.

The Bank, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Paying Agent and Registrar for the Notes.

#### Section 5.05. Money Held by Bank.

Money held by the Bank hereunder shall be held in trust for the benefit of the Holders of the Notes.

The Bank shall be under no obligation to pay interest on any money received by it hereunder.

Any money deposited with the Bank for the payment of the principal or interest on or purchase price of any Note and remaining unclaimed for \_\_\_\_\_ years after the stated maturity of the Note will be paid by the Bank to the Board, upon receipt of a written request signed by an Authorized Representative (as defined in the Resolution) of the Board, and the Board and the Bank agree that the Holder of such Note shall thereafter look only to the Board for payment thereof, and that all liability of the Bank with respect to such moneys shall thereupon cease.

## ARTICLE SIX

### MISCELLANEOUS PROVISIONS

#### Section 6.01. Amendment.

This Agreement may be amended only by an agreement in writing signed by both of the parties hereof.

#### Section 6.02. Assignment.

This Agreement may not be assigned by either party without the prior written consent of the other.

#### Section 6.03. Notices.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted hereby to be given or furnished to the Board or the Bank shall be mailed or delivered to the Board or the Bank, respectively, at the addresses shown hereon, or such other address as may have been given by one party to the other by 15 days written notice.

#### Section 6.04. Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

#### Section 6.05. Successors and Assigns.

All covenants and agreements herein by the Board and the Bank shall bind their successors and assigns, whether so expressed or not.

#### Section 6.06. Severability.

If any provision of this Agreement shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

#### Section 6.07. Benefits of Agreement.

Nothing herein, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy or claim hereunder.

Section 6.08. Resolution Governs Conflicts.

This Agreement and the Resolution constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Resolution, the Resolution shall govern.

Section 6.09. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.10. Term and Termination.

This Agreement shall be effective from and after its date for a term ending on the Stated Maturity date or Redemption Date of the last Note to mature or be redeemed, whichever first occurs, and may be terminated by the Board at any time upon \_\_\_\_\_ (\_\_\_) days written notice to the Bank. In the event of early termination regardless of circumstances, the Bank shall deliver to the Board or its designee all books and records pertaining to the Bank's role as Paying Agent/Registrar with respect to the Bonds, including, but not limited to, the Registration Books.

Section 6.11. Governing Law.

This Agreement shall be construed in accordance with and shall be governed by the laws of the State of New York.

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

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

By \_\_\_\_\_  
Chairman

ATTEST: ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Executive Secretary

(SEAL)

MORGAN GUARANTY TRUST COMPANY OF  
NEW YORK

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

ATTEST: ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

(SEAL)

## REMARKETING AGREEMENT

Remarketing Agreement, dated as of December 1, 1985, among the Board of Regents of the University of Texas System (the "Issuer"), Morgan Guaranty Trust Company of New York, as Paying Agent/Registrar (the "Paying Agent/Registrar") under the Resolution, adopted on December 5, 1985 (the "Resolution"), relating to \$100,000,000 aggregate principal amount of the Issuer's Permanent University Fund Variable Rate Notes, Series A (the "Securities") and Goldman, Sachs & Co., as Remarketing Agent (the "Agent").

1. **Representations and Warranties.** The Issuer represents and warrants to the Agent that:

(i) The Securities have been duly authorized, executed, authenticated, issued and delivered and constitute valid and binding obligations of the Issuer in accordance with their terms and are entitled to the benefits of the Resolution.

(ii) The Credit Agreement dated as of December 1, 1985 relating to the Securities has been duly authorized, executed and delivered and constitutes a valid and binding obligation of MBank Dallas, N.A. (the "Bank") in accordance with its terms is in full force and effect and will be in full force and effect at the time of any remarketing of Securities hereunder.

(iii) The Securities have been rated \_\_\_\_\_ by Standard & Poor's Corporation and such ratings or higher ratings by such statistical rating organization will be in effect at the time of any remarketing of Securities hereunder.

(iv) The Issuer has furnished to the Agent for use in remarketing the Securities the Official Statement (the "Offering Document"), and the Offering Document is, and at the time of remarketing any Securities hereunder will be, accurate in all material respects and does not, and will not, omit to state a material fact necessary to make the statements therein not misleading.

(v) Since the date of the Issuer's most recent statement of financial condition, there has not occurred, and prior to any remarketing of Securities hereunder there will not have occurred, any material adverse change in the financial condition or general affairs of the Issuer.

2. **Certain Agreements of the Issuer.**

The Issuer agrees with the Agent that:

(i) The Issuer will immediately notify the Agent by telephone (which shall promptly be confirmed in writing) of: (A) any fact or occurrence as a result of which the Offering Document would be or become misleading or any representation or warranty of the Issuer would become false, (B) any material adverse change in the financial condition or general affairs of the Issuer or the Bank, (C) any reduction, or any suggestion by Standard & Poor's that it is considering a possible reduction, in the rating of the Securities below those set forth in Section 1[(a)](iii), (D) any adverse change, or threatened adverse change, in the Federal income tax treatment of holders of the Securities, (E) the need for an opinion of tax counsel as to the tax status of any of the Securities, (F) any substitution of a bank for the Bank under the Credit Agreement or replacement of the Paying Agent/Registrar under the Resolution, (G) any event of default under the Resolution or any event which, with notice or lapse of time or both, would constitute such an event of default and (H) any change in the dates for the redemption or purchase of the Securities;

(ii) The Issuer will, at its expense, furnish the Agent such number of copies of the Offering Document as the Agent may from time to time reasonably request. If any event occurs as a result of which the Offering Document, as then amended or supplemented, would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Issuer will promptly amend or supplement the Offering Document to correct such statement or supply such omitted fact; provided, however, that no such amendment or supplement will be made prior to allowing the Agent a reasonable opportunity to review it. The Issuer will furnish the Agent such number of copies of the Offering Document, as so amended, or such supplement as the Agent may reasonably request; and

(iii) The Issuer will furnish the Agent copies of all reports and financial statements relating to the financial affairs and condition of the Issuer promptly after they are made available to the public by the Issuer and such additional information concerning the operations and financial condition of the Issuer as the Agent may from time to time reasonably request.

### **3. Remarketing**

(a) The Issuer appoints the Agent as its exclusive agent for the remarketing of the Securities and, in reliance on the representations contained herein and subject to the terms hereof, the Agent agrees to use its best efforts to solicit offers to purchase, at a price of 100% of the principal amount thereof plus accrued interest, if any, the Securities which it has been advised by the Paying Agent/Registrar have been tendered by the holders thereof pursuant to the Resolution and to perform the other obligations of the Agent as set forth in the Resolution. In addition, in recognition of the market conditions expected to exit through the end of 1986, the Remarketing Agent agrees to purchase on December 20, 1986 those Securities which cannot be remarketed and to maintain such investment or so much as cannot be remarketed until January 3, 1986. Those Securities purchased by the Agent and not remarketed

shall have successive Flexible Rate Periods of one day's duration through January 2, 1986.

(b) In the event of (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange; (ii) a general moratorium on commercial banking activities in New York declared by either Federal or New York State authorities; (iii) the engagement by the United States in hostilities which have resulted in the declaration of a national emergency or war, if the effect of any such declaration in the Agent's judgment makes it impracticable or inadvisable to proceed with solicitation of offers to purchase the Securities; or (iv) the occurrence of any of the events contemplated by Section 2[(a)](i), whether the Agent learns thereof from the Issuer or otherwise, and so long as such situation continues to exist, the Agent shall have the right to suspend its efforts to solicit offers to purchase the Securities.

(c) As compensation for its services hereunder, the Issuer shall pay the Agent an initial fee of \_\_\_\_\_ together with ongoing compensation in the form of a fee of \_\_\_\_\_% per annum in respect of the aggregate principal amount of the Securities outstanding from time to time. Such fee shall be payable in arrears commencing January 1, 1986 and at the final maturity of the Securities or earlier termination of this Agreement. The Issuer also agrees to pay the reasonable out-of-pocket expenses of the Agent (including, without limitation, the fees and disbursements of its counsel and any costs incurred in connection with the preparation, reproduction and delivery of documents) incurred in connection with the performance of its obligations hereunder.

#### 4. The Agent.

(a) The Agent will be acting solely as the Issuer's agent in the re-sale of the Securities, and, other than as set forth herein, the Agent's responsibility is limited to the use of its best efforts to solicit offers to purchase the Securities.

(b) The Agent, in its individual capacity, either as principal or agent, may buy, sell, own, hold and deal in any of the Securities, and may join in any action which any holder of Securities may be entitled to take, with like effect as if it did not act in any capacity hereunder. The Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee or agent for any committee or body of holders of Securities or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

(c) The Agent shall incur no liability to the Issuer Company or any other person for its actions as Agent pursuant to the terms of this Agreement except for its willful misconduct or gross negligence. In setting the interest rate(s) on the Securities, the Agent shall not be liable for any error made in good faith.

5. **Intention of Parties.** It is the express intention of the parties hereto that no purchase, sale or transfer of any Securities, as herein provided, or the setting of interest rates in respect thereof, shall

constitute or be construed to be the extinguishment of any Security or the indebtedness represented thereby or the reissuance of any Security or the refunding of any indebtedness represented thereby.

**6. Amendments.**

(a) The Issuer agrees not to amend the Resolution insofar as it relates to this Agreement or the rights and duties of the Agent without the prior written consent of the Agent.

(b) This Agreement may not be amended except by a writing signed by each of the parties hereto.

**8. Term.** Unless previously terminated, this Agreement shall remain in full force and effect until payment in full of the Securities. The Issuer may terminate this Agreement at any time by giving at least five business days' prior written notice to the Agent and the Paying Agent/Registrar. The Agent may terminate this Agreement at any time by giving at least ten business days' prior written notice to the Issuer and the Paying Agent/Registrar. The representations, warranties and agreements of the Issuer set forth herein shall remain in full force and effect regardless of any investigation (or any statement as to the results thereof) made by or on behalf of the Agent and shall survive the termination or expiration of this Agreement. The Issuer shall promptly pay to the Agent the compensation, in accordance with Section 3(c), accrued through the effective date of such termination.

**9. Notices.** Unless otherwise provided herein, all notices, certificates, requests or other communications hereunder shall be deemed given when delivered in writing by hand or sent by facsimile transmission, tested telex or registered mail, postage prepaid, addressed as follows:

If to the Issuer:

Facsimile Transmission Number:

If to the Paying Agent/Registrar:

Facsimile Transmission Number:

If to the Agent:

Goldman, Sachs & Co.  
85 Broad Street, 26th Floor  
New York, New York 10004  
Attention: Municipal Note Desk  
Facsimile Transmission Number:

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which, or means by which, subsequent notices, certificates, requests or other communications shall be sent.

**10. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed as of the day and year first above written.

**BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM**

By \_\_\_\_\_  
(Name of Officer)

\_\_\_\_\_  
(Title)

**MORGAN GUARANTY TRUST  
COMPANY OF NEW YORK**

By \_\_\_\_\_  
(Name of Officer)

\_\_\_\_\_  
(Title)

**GOLDMAN, SACHS & CO.**

\_\_\_\_\_  
(Goldman, Sachs & Co.)

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*In the opinion of Co-Bond Counsel, interest on the Notes is exempt from federal income taxation under existing statutes, court decisions, regulations and published rulings.*

**\$100,000,000**  
**Board of Regents of**  
**The University of Texas System**

**Permanent University Fund Variable Rate Notes, Series A**

**Dated: Date of Issuance**

**Due: December 1, 2015**

The Notes will constitute valid and legally binding special obligations of the Board of Regents of The University of Texas System (the "Board"), secured by and payable from a lien on and pledge of the "Interest of The University" in the "Available University Fund" which lien and pledge is junior and subordinate to the lien and pledge of the "Fund Priority Obligations" heretofore issued and which may hereafter be issued, (see "Security for the Notes").

The Notes as initially issued will bear interest at Flexible Rates. The rate of interest on the Notes may be changed from time to time to Daily, Weekly, Monthly, Quarterly, Semiannual or Term Rates ("Variable Rates") or Flexible Rates upon notice as described herein and, under certain circumstances, the Notes may be converted to bear interest at a Fixed Rate until maturity. The interest rate to be borne by each Note while bearing interest at Variable Rates or Flexible Rates will be determined by Goldman, Sachs & Co. as Remarketing Agent.

Noteholders have the right to tender their Notes for purchase at the principal amount thereof, plus accrued interest, at the times and subject to the conditions described herein. Unless Noteholders elect to retain their Notes, Noteholders will be required to tender their Notes for purchase at the end of each Flexible Rate Period (as described herein) and upon conversion of the interest rate on the Notes from one interest rate mode to a different interest rate mode, except conversions between Daily and Weekly Rates. Subject to certain limitations, tendered Notes may be remarketed and remain outstanding.

The Notes will be issued in the denominations of \$100,000 and whole multiples thereof while bearing interest at Daily, Weekly, Monthly or Quarterly Rates; in denominations of \$1,000 and whole multiples thereof with a minimum denomination of \$100,000 while bearing interest at Flexible Rates; and in denominations of \$5,000 and whole multiples thereof while bearing interest at a Semiannual or Term Rate or at the Fixed Rate.

Morgan Guaranty Trust Company of New York, New York, New York, is Paying Agent/Registrar for the Notes. Principal or redemption price of and interest on the Notes will be paid in immediately available funds or clearing house funds, depending on the interest rate mode, the principal amount of Notes owned and the instructions of the registered owner, as described herein.

Goldman, Sachs & Co. is the Remarketing Agent for the Notes.

The Notes are subject to redemption prior to maturity as described herein.

**All Notes to be Priced 100%**

**Dated:** , 1985

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RGTS UNIV TX SYS BOWNE OF DALLAS (214) 651-1001

PRELIMINARY OFFICIAL STATEMENT DATED

, 1985

be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

The information contained in this Official Statement has been obtained from the Board and other sources which are deemed to be reliable. This Official Statement is submitted in connection with the sale of the securities referred to herein, and may not be reproduced or be used, in whole or in part, for any other purpose. The delivery of this Official Statement at any time does not imply that the information herein is correct as of any time subsequent to its date.

No dealer, salesman or any other person has been authorized by the Board or the Remarketing Agent to give any information or to make any representations other than as contained in this Official Statement in connection with the offering described herein and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer of any securities, other than those described on the cover page, or an offer to sell or a solicitation of an offer to buy in any jurisdiction in which it is unlawful to make such offer, solicitation or sale.

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Mr. Robert B. Baldwin, III, Vice Chairman.....	Austin	1989
Mr. Shannon H. Ratliff, Vice Chairman.....	Austin	1991
Mr. Jack S. Blanton.....	Houston	1991
Mrs. Janey Slaughter Briscoe.....	Uvalde	1987
Mrs. Beryl Buckley Milburn.....	Austin	1987
Mr. Tom B. Rhodes.....	Dallas	1987
Mr. Bill Roden.....	Midland	1991
Mr. Mario Yzaguirre.....	Brownsville	1989

Mr. Arthur H. Dilly, Executive Secretary

**Principal Administrative Officers and Staff**

Dr. Hans Mark.....	Chancellor
Dr. James P. Duncan.....	Executive Vice Chancellor for Academic Affairs
Dr. Charles B. Mullins.....	Executive Vice Chancellor for Health Affairs
Mr. Michael E. Patrick.....	Executive Vice Chancellor for Asset Management
Mr. Thomas G. Ricks.....	Manager of Debt Administration
Ms. Brenda Meglasson.....	Director, Asset Strategy and Planning
Mr. James L. Crowson.....	Vice Chancellor and General Counsel
Mr. Gerald Hill.....	Vice Chancellor for Governmental Relations
Mr. Thomas M. Keel.....	Executive Director of Finance and Administration
Mr. Joe E. Boyd, Jr.....	Special Counsel — Finance
Mr. Paul J. Youngdale, Jr.....	Director for Development
Mr. Joe Roddy.....	Director for Public Information
Mr. W. L. Lobb.....	Executive Director for Investment and Trusts
Mr. Frank Graydon.....	Budget Director
Mr. T. M. Grady.....	Comptroller
Mr. R. S. Kristoferson.....	Director of Facilities Planning and Construction
Mr. James C. Werchan.....	Director of Accounting

**Investment Advisory Committee**

Orson C. Clay, Galveston  
 Andrew Delaney, Houston  
 Harold W. Hartley, Houston

Dee S. Osborne, Houston  
 J. Donald Squibb, Jr., Dallas  
 John T. Trotter, Houston

**Co-Bond Counsel**

McCall, Parkhurst & Horton  
 Dallas, Texas

Vinson & Elkins  
 Houston and Austin, Texas

**\$100,000,000**  
**Board of Regents of**  
**The University of Texas System**  
**Permanent University Fund Variable Rate Notes, Series A**

**INTRODUCTORY STATEMENT**

This Official Statement, which includes the cover page and the Appendices hereto, provides certain information regarding the issuance by the Board of Regents of The University of Texas System (the "Board") of its Notes, entitled "Board of Regents of The University of Texas System Permanent University Fund Variable Rate Notes, Series A" (the "Notes"). Capitalized terms used in this Official Statement have the same meanings assigned to such terms in the resolution (the "Resolution") adopted by the Board authorizing issuance of the Notes.

The University of Texas System (the "System") consists of The University of Texas at Austin and thirteen other state-supported institutions currently included in the System by operation of State law and the Texas Constitution. For a general discussion of the System, see "APPENDIX A."

The Board is created by law and is the constitutionally recognized governing board of the System. As an agency of the State of Texas, its members are officers of the State and are appointed by the Governor with the advice and consent of the Texas Senate.

The Board has outstanding \$345,970,000 of Permanent University Fund Refunding Bonds, Series 1985 which together with any additional bonds and notes hereafter issued on a parity with such Series 1985 Bonds (collectively, the "First Lien Obligations") and the interest thereon are equally and ratably secured by and payable from a first lien on and pledge of the Interest of The University of Texas System in the Available University Fund. The Resolution provides that the Notes and the interest thereon are secured by a lien on and pledge of the Interest of the University of Texas System in the Available University Fund on a junior and subordinate basis to the First Lien Obligations and certain other obligations which may hereafter be issued (the First Lien Obligations and such other obligations collectively, the "Fund Priority Obligations"). See "Security for the Notes".

The Board will also enter into a Credit Agreement with MBank Dallas, National Association (the "Agreement"), pursuant to which MBank Dallas, National Association (the "Bank") will agree during the 10 year term of the Agreement to make advances provided certain conditions are met to refund amounts due on the Notes, which advances are to be evidenced by a note (the "Revolving Note") authorized by the Resolution to be issued on a parity with the Notes. See "The Agreement and Revolving Note".

There follow in this Official Statement brief descriptions and summaries of the Notes, the Agreement, the Revolving Note and the Resolution. Such descriptions and summaries do not purport to be complete and are subject to and qualified by reference to the provisions of the complete documents, copies of which are available at the offices of the Paying Agent/Registrar and Goldman, Sachs & Co.

**THE NOTES**

The Notes will be initially issued in the aggregate principal amount of \$100,000,000 and initially will bear interest at Flexible Rates. The Notes will mature on December 1, 2015, and are subject to redemption prior to maturity as set forth below. The principal or redemption price of the Notes is

payable at the corporate trust office of Morgan Guaranty Trust Company of New York, New York, New York, as Paying Agent/Registrar.

Prior to conversion of the interest rate on the Notes to a Fixed Rate, the Notes may bear interest at Flexible Rates or at a Variable Rate effective for periods ("Flexible Rate Periods" in the case of Flexible Rates and "Rate Periods" in the case of Variable Rates) selected or approved by an "Authorized Representative" of the Board. The rate of interest to be borne by the Notes during any particular Flexible Rate Period or Rate Period will be determined by the Remarketing Agent as described below under "Determination of Interest on the Notes Prior to Fixed Rate Conversion Date". The Notes may bear interest as follows:

**FLEXIBLE RATE MODE.** While the Notes bear interest at Flexible Rates, the interest rate for each particular Note will be determined by the Remarketing Agent in accordance with the Resolution and will remain in effect for the duration (not exceeding 180 days) of the Flexible Rate Period selected for that Note by the Remarketing Agent. While the Notes are in the Flexible Rate mode, Notes may have successive Flexible Rate Periods of any duration up to 180 days each and any Note may bear interest at a Flexible Rate and for a Flexible Rate Period different from any other Note.

**VARIABLE RATE MODES.** The Notes may bear interest at a Variable Rate computed on a Daily, Weekly, Monthly, Quarterly, Semiannual or Term basis.

**Daily Rate.** While the Notes bear interest at a Daily Rate, the interest rate established for the Notes will be effective from day to day until changed by the Remarketing Agent in accordance with the Resolution.

**Weekly Rate.** While the Notes bear interest at a Weekly Rate, the interest rate on the Notes will be determined weekly by the Remarketing Agent in accordance with the Resolution to be effective for a seven-day period commencing on Wednesday of the following week.

**Monthly Rate.** While the Notes bear interest at a Monthly Rate, the interest rate will be determined monthly by the Remarketing Agent in accordance with the Resolution to be effective for a one-month period.

**Quarterly Rate.** While the Notes bear interest at a Quarterly Rate, the interest rate will be determined quarterly by the Remarketing Agent in accordance with the Resolution to remain in effect for a three-month period.

**Semiannual Rate.** While the Notes bear interest at a Semiannual Rate, the interest rate will be determined semiannually by the Remarketing Agent in accordance with the Resolution to remain in effect for a six-month period.

**Term Rate.** While the Notes bear interest at a Term Rate, the interest rate will be determined by the Remarketing Agent to remain in effect for a term of one year or any whole multiple of one year selected by an Authorized Representative.

The interest rate mode selected by an Authorized Representative will remain in effect until changed by an Authorized Representative by notice to the Paying Agent/Registrar and the Remarketing Agent in accordance with the Resolution. Notice of changes in interest rate modes will be given as described below under "Rate Mode Change".

Interest on the Notes will be calculated on the basis of 365-day year, for the actual number of days elapsed while the Notes bear interest at Flexible Rates or at a Daily, Weekly, Monthly or Quarterly Rate. Interest will be calculated on the basis of a 360-day year of twelve thirty-day months while the Notes bear interest at a Semiannual, Term or Fixed Rate. Interest on a Note for a Flexible Rate Period will be paid in immediately available funds to the registered owner at the end of that Flexible Rate Period upon presentation and surrender of the Note. While the Notes bear interest at a Daily, Weekly, Monthly or Quarterly Rate, interest will be paid by check mailed to the registered owner or, at the written election of the registered owner delivered to the Paying Agent prior to the close of business on

the Business Day immediately preceding the interest payment date for which such election will be effective, in immediately available funds to the owner of record at the close of business on such Business Day (such immediately available funds to include wire transfer within the continental United States, federal funds check or deposit into the account of such registered owner if such account is maintained with the Paying Agent/Registrar). While the Notes bear interest at a Semiannual, Term or Fixed Rate, interest will be paid by check mailed to the owner of record at the close of business on the 15th day of the month preceding the interest payment date whether or not a Business Day or by such other method requested by and at the risk and expense of the registered owner.

Interest on the Notes will be paid on the dates indicated herein under "Summary of Certain Provisions of the Notes".

Notes which bear interest at Flexible Rates will be issued in the denomination of \$1,000 and whole multiples thereof, with a minimum denomination of \$100,000. Notes which bear interest at a Daily, Weekly, Monthly or Quarterly Rate will be issued in denominations of \$100,000 and whole multiples thereof. Notes which bear interest at a Semiannual, Term or Fixed Rate will be issued in the denomination of \$5,000 and whole multiples thereof. In the event of a change in interest rate mode so that a registered owner owns Notes in an unauthorized denomination, the principal amount of Notes in excess of the authorized denomination is subject to mandatory tender for purchase at the principal amount thereof plus accrued interest on the date of conversion to the new interest rate mode.

Notes may be exchanged or transferred at the corporate trust office of the Paying Agent/Registrar. For every exchange or transfer of a Note, the Paying Agent/Registrar shall make a charge sufficient to reimburse it for any tax, fee or governmental charge required to be paid with respect to such exchange or transfer.

If any Note is mutilated, lost, stolen or destroyed, the Resolution provides that the Board shall execute and the Paying Agent/Registrar shall authenticate a new Note. In the case of a lost, stolen or destroyed Note, the Board and the Paying Agent/Registrar may require satisfactory indemnification prior to authenticating a new Note. The Board and the Paying Agent/Registrar may charge reasonable fees and expenses in connection with replacing Notes mutilated, lost, stolen or destroyed.

Goldman, Sachs & Co. has been appointed to serve as Remarketing Agent (the "Remarketing Agent") for the Notes. The Remarketing Agent may be removed and a successor Remarketing Agent may be appointed in accordance with the Resolution and the Remarketing Agreement.

#### **Determination of Interest on the Notes Prior to Fixed Rate Conversion Date**

On the date of initial authentication and delivery of the Notes, the Notes shall bear interest at Flexible Rates. Thereafter, but prior to conversion of the interest rate on the Notes to a Fixed Rate, the interest rate mode for the Notes may be changed from time to time in the manner described below under "Rate Mode Change."

During each Rate Period, the rate of interest on the Notes shall be that rate which the Remarketing Agent determines, under prevailing market conditions on the date of such determination, would result in the market value of the Notes being 100% of the principal amount thereof. The Remarketing Agent will give the Authorized Representative telephonic notice of the establishment of the rate of interest.

While in the Flexible Rate mode, each Flexible Rate shall be determined by the Remarketing Agent in connection with the sale of the Note or Notes to which they relate by the offer and acceptance of purchase commitments for such Notes at a Flexible Rate or Rates and for such Flexible Rate Periods as it deems to be advisable in order to minimize the net interest cost on the Notes under prevailing market conditions and shall notify an Authorized Representative of the Flexible Rate Period and the Flexible Rate for each Variable Rate Note by providing telephonic notice of such period and rate to the Authorized Representative. If the Flexible Rate Period is approved by an Authorized

Representative (and it will be deemed to be approved if it is not rejected by an Authorized Representative within thirty minutes after such telephonic notice) it shall become effective on the first day of the next succeeding Flexible Rate Period. If the period is rejected by an Authorized Representative, the next succeeding Flexible Rate Period shall be of one days duration.

The determination by the Remarketing Agent of the Flexible Rates or Variable Rate to be borne by the Notes shall be conclusive and binding on the holders of the Notes, the Board, the Paying Agent/Registrar and the Bank. Failure by the Paying Agent/Registrar to give any notice, or any defect therein, shall not affect the interest rate borne by the Notes or the rights of the owners thereof. In the event that the Remarketing Agent is unable, or fails, to determine the Flexible Rates or the Variable Rate, the Flexible Rates or the Variable Rate shall remain those in effect for the then current Flexible Rate Period or Rate Period. In no event shall the interest rate borne by the Notes exceed 15% per annum.

#### Optional Tender

While the Notes bear interest at Variable Rates, the registered owners of the Notes may tender their Notes for purchase at the principal amount thereof plus accrued interest to the Paying Agent/Registrar, as summarized in the table under "Summary of Certain Provisions of the Notes".

Payment of the purchase price of Notes to be purchased upon optional tender as described herein will be made by the Paying Agent/Registrar in immediately available funds in the event the Notes bear interest at a Flexible, Daily, Weekly, Monthly or Quarterly Rate or in clearing house funds in the event the Notes bear interest at a Semiannual or Term Rate.

Interest on any Note which the registered owner thereof has elected to tender for purchase and which is not tendered on the tender date, but for which there has been irrevocably deposited with the Paying Agent/Registrar an amount sufficient to pay the purchase price thereof, shall cease to accrue on the tender date, and the registered owner of such Note shall not be entitled to any payment other than the purchase price for such Note, and such Note shall no longer be outstanding and entitled to the benefits of the Resolution, except for the payment of the purchase price of such Note from moneys held by the Paying Agent/Registrar for such payment. On the optional tender date the Paying Agent/Registrar shall authenticate and deliver substitute Notes in lieu of such untendered Notes.

#### Mandatory Tender

The Notes are required to be tendered for purchase, at a purchase price equal to the principal amount thereof plus accrued interest, to the Paying Agent/Registrar on the effective date of any change between interest rate modes except changes between the Daily and Weekly Rate Modes, subject, however, to the right of registered owners to elect to retain their Notes as described in the table under "Summary of Certain Provisions of the Notes." Any registered owner electing to retain Notes shall have no right to tender such Notes prior to the effective date of the change in interest rate mode and such election shall be irrevocable and binding upon the registered owner and all subsequent registered owners of such Notes. Additionally, each Note bearing interest at a particular Flexible Rate must be tendered by the registered owner for purchase at the expiration of the term of such Flexible Rate for that Note subject, however, to the right of the registered owner to elect to retain his investment in the Note by irrevocable telephonic or written notice delivered to the Remarketing Agent not later than 3:00 p.m. New York City time (or 12:45 p.m. New York City time on the expiration date in the event of Notes with a Flexible Rate Period of one day) on the day before the expiration of the then current term of such Flexible Rate for that Note; provided, however, that the registered owners shall not have the right to retain possession of their investment in the Notes at the end of the initial Flexible Rate Period for the originally issued Notes. In the event a registered owner of a Note bearing interest at a Flexible Rate desires to retain his investment, the registered owner must present his Note to the Paying Agent/Registrar in exchange for payment of principal and accrued interest in

immediately available funds and the Paying Agent/Registrar will authenticate and deliver a substitute Note for the term of the succeeding Flexible Rate Period in replacement of the old Note.

The Notes are required to be tendered for purchase, at the purchase price described above, to the Paying Agent/Registrar on the Fixed Rate Conversion Date. See "Conversion to a Fixed Rate." Any registered owner may elect to retain his Notes by delivering written notice thereof to the Paying Agent/Registrar not fewer than fifteen days prior to the Fixed Rate Conversion Date pursuant to the Resolution.

Any Note purchaser which is a registered investment company may waive its option to retain Notes subject to mandatory tender pursuant to the foregoing two paragraphs and may request mandatory purchase of its Notes on the next optional tender date by delivering an irrevocable notice to the Paying Agent/Registrar on or after the date it purchases Notes.

At all times prior to conversion to a Fixed Rate, the Notes shall be subject to mandatory purchase at the purchase price described above, upon the expiration or termination of the Agreement, subject to the right of the registered owner to retain his Variable Rate Note (i) on the last Business Day prior to the termination or expiration of the Agreement, provided that no such tender and purchase shall be required if the Agreement is renewed prior to the date of notice from the Paying Agent described below; or, (ii) on the last Business Day prior to the substitution of a new Agreement, for such Variable Rate Notes, provided that no such tender and purchase shall be required if prior to the date of notice the Paying Agent/Registrar shall have received confirmation from Standard & Poor's or Moody's or Fitch (or any of them) to the effect that the rating or ratings assigned by any of such agencies to the Variable Rate Notes will not be lowered as a result of the expiration or substitution.

The Paying Agent/Registrar shall give notice by mail to the registered owners of the Notes subject to mandatory tender as a result of termination or expiration of the Agreement not less than 30 days prior to the mandatory tender date. Any registered owner may elect to retain his Notes by delivering written notice thereof to the Paying Agent/Registrar not fewer than fifteen days prior to the Mandatory Tender Date pursuant to the Resolution as described under "Summary of Certain Provisions of the Notes".

Payment of the purchase price of Notes to be purchased upon mandatory tender as described herein will be made by the Paying Agent/Registrar in immediately available funds in the event the Notes bear interest at Flexible Rates or at a Daily, Weekly, Monthly or Quarterly Rate and in clearing house funds in the event the Notes bear interest at a Semiannual, Term or Fixed Rate.

On any conversion to a Daily, Weekly, Monthly or Quarterly Rate Period, any Note in a denomination which is not a whole multiple of \$100,000 is subject to mandatory tender for purchase on the applicable Conversion Date at a purchase price equal to the principal amount thereof; provided, however, that any registered owner may elect to retain any portion of its Notes which is in the denomination of \$100,000 or a whole multiple thereof. On any conversion to a Semiannual or Term Rate Period, any Note in a denomination which is not a whole multiple of \$5,000 is subject to mandatory tender for purchase on the applicable Conversion Date at a purchase price equal to the principal amount thereof; provided, that any registered owner may elect to retain any portion of its Notes which is in the denomination of \$5,000 or a whole multiple thereof. On any conversion to Flexible Rate Periods, any Variable Rate Note which is not in the denomination of \$100,000 or a whole multiple of \$1,000 above \$100,000 is subject to mandatory tender for purchase on the Flexible Rate Conversion Date at a purchase price equal to the principal amount thereof; provided, however, that any registered owner may elect to retain any portion of its Variable Rate Note which is in the denomination of \$100,000 or a whole multiple of \$1,000 above \$100,000.

Interest on any Note which the registered owner has not elected to continue to own after a mandatory tender date and which is not tendered on the mandatory tender date, but for which there has been irrevocably deposited with the Paying Agent/Registrar an amount sufficient to pay the purchase price thereof, shall cease to accrue on the mandatory tender date, and the registered owner

of such Note shall not be entitled to any payment other than the purchase price for such Note, and such Note shall no longer be outstanding and entitled to the benefits of the Resolution, except for the payment of the purchase price of such Note from moneys held by the Paying Agent/Registrar for such payment. On the mandatory tender date the Paying Agent/Registrar shall authenticate and deliver substitute Notes in lieu of such untendered Notes.

#### Rate Mode Change

While the Notes bear interest at Flexible Rates or a Variable Rate, the Paying Agent/Registrar shall give notice to the registered owners of all Notes of the conversion from one interest rate mode to another at the times described in the table under "Summary of Certain Provisions of the Notes." Each notice of a change between interest rate modes will be sent by first class mail to the registered owner's address as it appears on the registration books of the Paying Agent/Registrar and shall state: (i) the effective date of and the type of interest rate mode to which the change will be made; (ii) the dates by which the Remarketing Agent will determine the Flexible Rates or Variable Rate and the dates by which the registered owners will be notified thereof; (iii) if the Notes (including portions which will not be in authorized denominations) will be subject to optional or mandatory tender on the effective date of the change in the interest rate mode, the procedure for such mandatory tender, including the date and time any notices must be received; and (iv) the procedure (including form of notice) to be followed if the registered owner desires to retain his Notes.

Any conversion from a Flexible, Daily, Weekly, Monthly, Quarterly, or Semiannual Rate Period to a Term Rate Period; or from a Term Rate Period to another Term Rate Period; or from a Term Rate Period to a Flexible, Daily, Weekly, Monthly, Quarterly, or Semiannual Rate Period will be conditioned on delivery of an opinion of nationally recognized bond counsel to the effect that the conversion will not adversely affect the exemption of interest on the Notes from federal income taxation.

Conversion of interest rate modes may take place only on an interest payment date for the interest rate mode then in effect, except conversions between Daily and Weekly Rate modes may take place on Wednesdays. In the case of Notes in the Flexible Rate mode, the conversion date must also be the first Business Day of a month. Term Notes may be converted to a different interest rate mode only at the expiration of a Term Rate Period.

*Any registered owner of Notes who may be unable to take timely action on any notice should consider whether to make arrangements for another person to act in his or her stead.*

#### Written Notice of Rate

Registered owners will be notified by first-class mail of the Flexible Rates or Variable Rate applicable to the Notes at the times described in the table under "Summary of Certain Provisions of the Notes".

#### Summary of Certain Provisions of the Notes

While the Notes bear interest at Flexible Rates or a Daily, Weekly, Monthly, Quarterly, Semiannual or Term Rate, the dates on which interest will be paid (the "Interest Payment Dates"), the date each interest rate will be determined (the "Rate Determination Date"), the date each interest rate will become effective (the "Effective Date of Rate"), the period of time each interest rate will be in effect (the "Flexible Rate Period/Rate Period"), the requirements for notice to registered owners of interest rate adjustments (the "Written Notice of Rate"), the dates on which registered owners may tender their Notes for purchase to the Paying Agent/Registrar and the notice requirements therefor (the "Optional Tender Dates; Owner's Notice of Optional Tender"), the requirements for physical delivery of tendered Notes and payment provisions therefor ("Physical Delivery of and Payment for Notes Subject to Optional and Mandatory Tender"), the notice requirements in order to change from one interest rate mode to a different interest rate mode ("Written Notice of Rate Mode Change"), the

date on which Notes are subject to mandatory tender for purchase in the event of a change from one interest rate mode to a different interest rate mode or in the event of a change from one Flexible Rate Period to another Flexible Rate Period ("Mandatory Tender Date Upon Rate Mode Change or Upon Flexible Rate Period Change") and the provisions relating to each registered owner's right to elect to retain his Notes in the event the Notes are subject to mandatory tender as described above (the "Owner's Election to Retain Notes Upon Rate Mode Change When Converting to Designated Rate or Upon Flexible Rate Period Change") are shown in summary in the following table (all times shown are New York City time). A "Business Day" is defined in the Resolution to be any day (a) when banks are open for business in Dallas, Texas, and Austin, Texas and (b) when banks are not authorized to be closed in New York, New York. All references to time are in New York City time.

	Flexible Rates	Daily Rate	Weekly Rate
<b>Interest Payment Dates</b>	With Respect to any Note, the last day of Flexible Rate Period for that Note	First Business Day of each calendar month	First Business Day of each calendar month
<b>Rate Determination Date</b>	For each Note, prior to the first day of the Flexible Rate Period for that Note	On any Business Day between 1:00 p.m. and 4:00 p.m. immediately preceding Date of Rate.	Tuesday or next Business Day of week preceding Effective Date of Rate
<b>Effective Date of Rate; Flexible Rate Period/Rate Period</b>	For each Note, first day of Flexible Rate Period for that Note; for each Note, Flexible Rate effective for designated pricing term for that Note (not to exceed 180 days) ending on a Business Day	Next Business Day following each Rate Determination Date; Daily Rate effective for one Business Day and for each Business Day thereafter until reset by Remarketing Agent	Wednesday of week following each Rate Determination Date; Weekly Rate effective through Tuesday of next week
<b>Written Notice of Rate</b>	To owner upon purchase by confirmation mailed by Remarketing Agent	Paying Agent/Registrar to mail owner monthly confirmation statement within 7 Business Days after Interest Payment Date	Paying Agent/Registrar to mail owner monthly confirmation statement within 7 Business Days after Interest Payment Date
<b>Optional Tender Dates; Owner's Notice of Optional Tender</b>	None; None	Any Business Day; Telephonic notice by owner to Paying Agent/Registrar and Remarketing Agent on or prior to 11:00 a.m. on such Business Day	Any Business Day; Written notice by owner to Paying Agent/Registrar on or prior to 5:00 p.m. on any Business Day at least 7 days prior to optional tender date
<b>Physical Delivery of and Payment for Bonds Subject to Optional and Mandatory Tender</b>	To Paying Agent/Registrar by 3:00 p.m. on designated tender date for each Note, payment same day	To Paying Agent/Registrar by 1:00 p.m. on designated tender date; payment by 3:00 p.m. same day	To Paying Agent/Registrar by 1:00 p.m. on designated tender date, payment by 3:00 p.m. same day
<b>Written Notice of Rate Mode Change</b>	Paying Agent/Registrar to mail notice to owners at least 30 days prior to effective date of Rate Mode Change; no notice given if Flexible Rates continue	If change to Weekly Rate, Paying Agent/Registrar to mail owners notice at least 15 days prior to effective date of Rate Mode Change. If change to Flexible, Monthly or longer Rate, Paying Agent/Registrar to mail owners notice at least 30 days prior to effective date of Rate Mode Change	If change to Daily Rate, Paying Agent/Registrar to mail owners notice at least 15 days prior to effective date of Rate Mode Change. If change to Flexible, Monthly or longer Rate, Paying Agent/Registrar to mail owners notice at least 30 days prior to effective date of Rate Mode Change
<b>Mandatory Tender Date Upon Rate Mode Change or Upon Flexible Rate Period Change</b>	For each Note, last day of Flexible Rate Period for that Bond	Effective date of Rate Mode Change, except no mandatory tender on change to Weekly Rate	Effective date of Rate Mode Change, except no mandatory tender on change to Daily Rate
<b>Owner's Election to Retain Bonds Upon Rate Mode Change When Converting to Designated Rate or Upon Flexible Rate Period Change</b>	While in Flexible Rate Mode: Owner may elect to retain investment in a Note upon notice to Remarketing Agent not later than 3:00 p.m. on Business Day before Note is subject to mandatory tender. Change from Variable Rate: Upon written notice to Paying Agent/Registrar delivered at least 3 Business Days prior to Effective Date of Rate	Change from Weekly Rate: No prior election necessary for owner to retain Notes. Change from Monthly or longer Rate: Owner may elect to retain Notes upon written notice to Paying Agent/Registrar delivered on Business Day at least 15 days prior to Effective Date of Rate. Change from Flexible Rate: Owner may elect to retain Notes upon written notice to Paying Agent/Registrar delivered on Business Day at least 7 days prior to Effective Date of Rate	Change from Daily Rate: No prior election necessary for owner to retain Notes. Change from Monthly or longer Rate: Owner may elect to retain Notes upon written notice to Paying Agent/Registrar delivered on Business Day at least 15 days prior to Effective Date of Rate. Change from Flexible Rate: Owner may elect to retain Notes upon written notice to Paying Agent/Registrar delivered on Business Day at least 7 days prior to Effective Date of Rate

Monthly Rate	Quarterly Rate	Semiannual Rate	Term Rate
First Business Day of each calendar month	First Business Day of third calendar month after Effective Date of Rate and first Business Day of every third month thereafter	First Business Day of sixth calendar month after Effective Date of Rate and first Business Day of every sixth month thereafter	First Business Day of sixth calendar month after Effective Date of Rate and first Business Day of every sixth month thereafter
Monthly Rate determined by 12:00 p.m. on Business Day preceding Effective Date of Rate	Quarterly Rate determined by 12:00 p.m. on Business Day preceding Effective Date of Rate	Semiannual Rate determined by 12:00 p.m. on Business Day preceding Effective Date of Rate	Term Rate determined by 12:00 p.m. on Business Day preceding Effective Date of Rate
First Business Day of each calendar month; Monthly Rate effective until first Business Day of next calendar month	First Business Day of each Quarterly Rate Period; Quarterly Rate effective until first Business Day of third calendar month thereafter	First calendar day of each Semiannual Rate Period; Semiannual Rate effective until first day of sixth calendar month thereafter	First calendar day of each Term Rate Period; Term Rate effective until designated anniversary (one or more whole years) of Effective Date of Rate
Paying Agent/Registrar to mail owner notice of Monthly Rate within 7 Business Days after Rate Determination Date	Paying Agent/Registrar to mail owner notice of Quarterly Rate promptly after Rate Determination Dates	Paying Agent/Registrar to mail owner notice of Semiannual Rate promptly after Rate Determination Dates	Paying Agent/Registrar to mail owner notice of Term Rate promptly after Rate Determination Dates
Any Interest Payment Date; Written notice by owner to Paying Agent/Registrar on or prior to 5:00 p.m. on any Business Day at least 3 Business Days prior to optional tender date	Any Interest Payment Date; Written notice by owner to Paying Agent/Registrar on or prior to 5:00 p.m. on any Business Day at least 7 days prior to optional tender date	Any Interest Payment Date; Written notice by owner to Paying Agent/Registrar on or prior to 5:00 p.m. on any Business Day at least 7 days prior to optional tender date	First day of next Rate Period; Written notice by owner to Paying Agent/Registrar on or prior to 5:00 p.m. on any Business Day at least 7 days prior to optional tender date
To Paying Agent/Registrar by 1:00 p.m. on designated tender date; payment by 3:00 p.m. same day	To Paying Agent/Registrar by 1:00 p.m. on designated tender date; payment by 3:00 p.m. same day	To Paying Agent/Registrar by 1:00 p.m. on designated tender date; payment by 3:00 p.m. on designated tender date	To Paying Agent/Registrar by 1:00 p.m. on designated tender date; payment by 3:00 p.m. on designated tender date
Paying Agent/Registrar to mail notice to owners at least 30 days prior to effective date of Rate Mode Change	Paying Agent/Registrar to mail notice to owners at least 30 days prior to effective date of Rate Mode Change	Paying Agent/Registrar to mail notice to owners at least 30 days prior to effective date of Rate Mode Change	Paying Agent/Registrar to mail notice to owners at least 30 days prior to effective date of Rate Mode Change
Effective date of Rate Mode Change	Effective date of Rate Mode Change	Effective date of Rate Mode Change	Effective date of Rate Mode Change
Change from any mode: Owner may elect to retain Notes upon written notice delivered to Paying Agent/Registrar on Business Day at least 7 days prior to Effective Date of Rate	Change from any mode: Owner may elect to retain Notes upon written notice delivered to Paying Agent/Registrar on Business Day at least 13 days prior to Effective Date of Rate	Change from any mode: Owner may elect to retain Notes upon written notice delivered to Paying Agent/Registrar on Business Day at least 15 days prior to Effective Date of Rate	Change from any mode: Owner may elect to retain Notes upon written notice delivered to Paying Agent/Registrar on Business Day at least 15 days prior to Effective Date of Rate

### Conversion to a Fixed Rate

The Resolution provides that the Board has the right to convert the interest rate on the Notes to a Fixed Rate (i) on any date on which interest is payable on all Notes bearing interest at Flexible Rates, or (ii) on any date on which interest is payable while the Notes bear interest at a Daily, Weekly, Monthly, Quarterly, Semiannual or Term Rate. To exercise its option, the Authorized Representative must deliver to the Paying Agent/Registrar, the Remarketing Agent and the Bank, written notice at least 45 days prior to the interest payment date on which the Fixed Rate is to become effective (the "Fixed Rate Conversion Date"). In addition, the Board must deliver to the Paying Agent/Registrar prior to the Fixed Rate Conversion Date an opinion of nationally recognized bond counsel to the effect that the conversion to the Fixed Rate is authorized under the provisions of the Resolution and will not adversely affect the exemption of interest on the Notes from federal income taxation.

The Paying Agent/Registrar shall give notice by mail to all registered owners of the conversion to a Fixed Rate no less than 30 days prior to the Fixed Rate Conversion Date. Such notice shall specify the Fixed Rate Conversion Date, the dates by which the Authorized Representative will determine and the Paying Agent/Registrar will notify the registered owners of the Fixed Rate and shall state that the Notes shall be subject to mandatory tender for purchase on the Fixed Rate Conversion Date unless the registered owner elects to retain his Notes.

On or before 12:00 p.m. New York City time on the Business Day preceding the Fixed Rate Conversion Date, the Authorized Representative shall determine the Fixed Rate, and shall give notice thereof to the Paying Agent. The Paying Agent shall then give notice of such Fixed Rate by first class mail to the Remarketing Agent, the Bank and the registered owners of the Notes.

After the Fixed Rate Conversion Date, the registered owners of the Fixed Rate Notes shall have no right to tender their Notes for purchase.

### Remarketing and Purchase

In the event that notice is received of any optional tender, or if the Notes become subject to mandatory tender, the Remarketing Agent shall use its best efforts to sell such Notes at a price of 100% of the principal amount thereof plus accrued interest, if any, on the forthcoming optional or mandatory tender date.

Notes tendered for purchase shall be paid by the Paying Agent/Registrar first from moneys derived from the remarketing of such Notes by the Remarketing Agent, second moneys made available by the Board, third from advances made under the Agreement. If sufficient funds are not available for the purchase of all tendered Variable Rate Notes, no purchase shall be consummated.

### Optional Redemption

During any Flexible, Daily, Weekly, Monthly, Quarterly or Semiannual Rate Period, the Notes are subject to redemption by the Board, on any interest payment date, in whole or in part, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date. While the Notes bear interest at a Term Rate and after conversion to a Fixed Rate, the Notes are subject to redemption by the Board, in whole or in part, on the dates and at the redemption prices determined by an Authorized Representative.

## SECURITY FOR THE NOTES

### Pledge Under the Resolution

Pursuant to constitutional authority, the Resolution provides that the Notes and the interest thereon are equally and ratably secured by and payable from a lien on and pledge of the Interest of the University in the Available University Fund, subject and subordinate to the lien and pledge of the

Interest of the University in the Available University Fund to the Fund Priority Obligations heretofore or hereafter issued. Additionally, the Board in the Resolution has reserved the right to issue obligations with a superior, parity, or inferior lien and pledge of the Interest of the University in the Available University Fund subject to the constitutional limitation that the aggregate amount of bonds and notes payable from the Interest of the University in the Available University Fund cannot at the time of issuance exceed 20% of the cost value of investments and other assets of the Permanent University Fund, exclusive of real estate. See "Constitutional Debt Power, Debt Limitations." The Board currently has outstanding \$345,970,000 of Fund Priority Obligations.

#### **Covenant to Maintain a Credit Facility**

The Board has covenanted that at all times prior to the Fixed Rate Conversion Date it will maintain credit facilities with banks in amounts such that, assuming that all then outstanding Notes were to become due and payable immediately, the amount available for borrowing under the credit facilities would be sufficient at that time to pay the principal of all Notes and 214 days interest on the Notes calculated at 15%. No Note shall be issued prior to the Fixed Rate Conversion Date which if, after giving effect to the issuance thereof and, if applicable, the immediate application of the proceeds thereof to retire other Notes covered by the credit facility, the aggregate principal amount of all Notes covered by the credit facility would exceed the amount of the credit commitment under the credit facility. The availability for borrowing of such amounts under the credit facilities may be subject to reasonable conditions precedent, including but not limited to, bankruptcy of the Board.

To the extent Notes cannot be issued to renew or refund outstanding Notes, the Board in good faith shall endeavor to sell a sufficient principal amount of Fund Priority Obligations or Short Term Obligations or other obligations of the Board issued pursuant to the Constitutional Amendment in order to have funds available, together with other moneys available therefor, to pay the Notes and the interest thereon, or any renewals thereof, as the same shall become due, and other amounts due under the Agreement.

#### **Creation of Funds and Accounts**

The Resolution creates and establishes with the Paying Agent/Registrar a separate and special fund designated as the "Board of Regents of The University of Texas System Series A Note Payment Fund" (the "Series A Note Payment Fund"). All amounts required to be deposited by the Board pursuant to the Resolution shall be deposited to the Series A Note Payment Fund and shall be used to pay principal of, premium, if any, and interest on Notes at the respective interest payment, maturity, redemption or purchase dates of each issue of such Notes as provided herein, including the repayment of any amounts owed with respect to the Revolving Note in evidence of Advances under the Agreement; amounts remaining in the Series A Note Payment Fund not then necessary for the purposes thereof may be transferred to the Series A Note Construction Account upon request of an Authorized Representative.

Additionally, all Advances under the Agreement shall be deposited into the Series A Note Payment Fund and used to pay the principal of, premium, if any, and interest on the Notes.

The Notes represent obligations which are subordinate to the Fund Priority Obligations. The resolution authorizing the Fund Priority Obligations has established in the Treasury of the State of Texas a fund known as "Board of Regents of The University of Texas System Permanent University Fund Bonds Interest and Sinking Fund" (the "Interest and Sinking Fund"). The Fund Priority Obligations are payable from moneys required to be transferred to the Interest and Sinking Fund. After provision has been made for the payment of the principal of and interest on the Fund Priority Obligations, the balance of the Interest of the University of Texas System in the Available University Fund shall be made available to the Board to deposit into the Series A Note Payment Fund such amounts as are necessary to pay the interest on and/or the principal and premium, if any, of the Notes to the extent not paid from the proceeds of Notes, Short Term Obligations, Fund Priority Obligations,

or other obligations of the Board issued under the Constitutional Amendment, or from the proceeds of Advances under the Agreement. After provision has been made for the payment of the interest and premium on and/or principal of the Notes, the balance of the Interest of the University of Texas System in the Available University Fund each year shall be made available to the Board in the manner provided by law and by regulations of the Board to be used by the Board as it may lawfully direct.

To the end that money will be available (i) at the Paying Agent/Registrar in ample time to pay the principal of and interest and any premium on the Notes as such principal and interest and any premium respectively come due, and (ii) for the Board to pay any fees and expenses payable to the Bank or the Remarketing Agent, an Authorized Representative or such other designated officer or employee of the Board, shall perform the following duties:

(1) Concurrently with the issuance of the Notes — the Resolution establishes in the Treasury of the State of Texas the "Special System Account." If there is on account in the Special System Account from the Interest of the University in the Available University Fund, monies sufficient to pay the interest on and/or principal of the Notes as the same come due and mature or are required to be purchased, and to pay such fees and expenses of the Bank and the Remarketing Agent, an Authorized Representative or such other designated officer or employee shall transfer from such account to the Paying Agent/Registrar for deposit in the Series A Note Payment Fund moneys sufficient to pay such amounts, and thereafter shall direct the Comptroller of Public Accounts of the State of Texas to restore the Special System Account to an amount equal to the amount such official estimates will be necessary, from the Interest of the University of Texas System in the Available University Fund, to pay said interest and any premium on and/or principal of the Notes, including the purchase price thereof.

(2) If it is anticipated that there shall not be on account in the Series A Note Payment Fund, from the Interest of the University in the Available University Fund, monies sufficient to pay the interest on and/or principal of the Notes as the same are due, an Authorized Representative or such other designated officer or employee shall implement the procedures necessary to cause the Comptroller of Public Accounts to withdraw from the Interest and Sinking Fund the amount of such interest and/or principal and any premium which will become due on the scheduled payment date and deposit said amount in the Series A Note Payment Fund or, if such deposit cannot be made within the time required, to make an Advance in such amount.

#### Available University Fund

The Available University Fund consists of the dividends, interest and other income of the Permanent University Fund (less expenses attributable to the administration of the Permanent University Fund), including income attributable to the surface of Permanent University Fund land. See "Permanent University Fund." As such income is received, the Comptroller of Public Accounts of the State of Texas credits the receipts to the Available University Fund and the moneys are deposited by the State Treasurer among the other funds of the State of Texas.

Two-thirds of the amounts attributable to the Available University Fund, after deducting administrative expenses, are constitutionally appropriated to the System, to be used for constitutionally prescribed purposes, and is defined in and for all purposes of the Resolution as the "Interest of The University in the Available University Fund." The remaining one-third of the amounts attributable to the Available University Fund, after deducting such expenses, is constitutionally appropriated to The Texas A&M University System.

Moneys credited to the Available University Fund are administered by the State Treasurer and are, along with other funds of the State, invested in secured, interest bearing investments. Earnings on that portion of the Available University Fund appropriated to the System accrue to and become a part of the System's share of the Available University Fund.

**Income, Debt Service Requirements and Coverage**

Table I and Table II, below, contain statements of historical and projected earnings of the Permanent University Fund that were and will be deposited, if realized, to the Available University Fund, together with projected debt service coverage with respect to the Fund Priority Obligations outstanding and the Notes:

**TABLE I  
 PERMANENT UNIVERSITY FUND  
 HISTORICAL AND ESTIMATED ANNUAL INCOME(1)**

(000 Omitted)

<u>Fiscal Year Ending August 31</u>	<u>Total Available University Fund (after Administration Expenses) (2)</u>	<u>Two-Thirds Interest of the System in Available University Fund</u>	<u>Other Income (3)</u>	<u>Total Income Available to Pay Debt Service of the Bonds</u>
1980.....	\$ 85,068	\$ 56,712	\$4,076	\$ 60,788
1981.....	106,917	71,278	6,001	77,279
1982.....	143,089	95,392	6,003	101,425
1983.....	156,486	104,324	6,726	111,050
1984.....	171,437	114,291	6,244	120,535
1985.....	187,394	124,929	7,100	132,029
1986.....	200,500	133,800	6,000	139,800
1987.....	208,200	138,800	6,000	144,800
1988.....	220,500	147,000	6,000	153,000
1989.....	232,500	155,000	6,000	161,000
1990.....	244,500	163,000	6,000	169,000

- (1) The amounts stated in the years 1980 through 1984 are audited actual amounts. The 1985 amounts are the unaudited amounts reflected in the books of the System. The amounts stated in the years 1986 through 1990 represent estimates prepared under the direction of the Administration of the System based on investment forecasts and assumptions believed to be reasonable. However, no assurance can be or is given that the estimates will not materially differ from actual results in the future.
- (2) The expenses of administering the Permanent University Fund constitutes a first claim on the income therefrom and are deducted prior to dividing the Available University Fund between the System and The Texas A&M University System. During the last ten years, the expenses of administering the Permanent University Fund have averaged \$3,070,000 annually.
- (3) Through 1985, represents certain income from the Permanent University Fund which under early constitutional provisions is appropriated solely to the System, plus earnings on share of System in Available University Fund. From 1986 forward, represents estimated earnings on share of System in Available University Fund.

TABLE II

PROJECTED COVERAGE OF ESTIMATED DEBT SERVICE ON THE OUTSTANDING FUND PRIORITY OBLIGATIONS AND THE NOTES BONDS

Fiscal Year Ending August 31,	Total Income Available for Debt Service (1)	Outstanding Fund Priority Obligations			Annual Debt Service	Coverage (3)
		Principle Debt Service	Interest Debt Service	Estimated Debt Service on the Notes		
1986 .....	\$139,800,000	\$ 5,925,000	\$20,578,105	7,500,000	\$34,105,106	4.11x
1987 .....	144,800,000	12,625,000	28,626,898	7,500,000	48,751,898	2.97x
1988 .....	153,000,000	10,320,000	27,900,960	7,500,000	45,720,960	3.35x
1989 .....	161,000,000	8,895,000	27,255,960	7,500,000	43,650,960	3.69x
1990 .....	169,000,000	7,420,000	26,659,995	7,500,000	41,579,995	4.06x
1991 .....	169,000,000	7,920,000	26,140,595	7,500,000	41,560,595	4.07x
1992 .....	169,000,000	8,475,000	25,562,435	7,500,000	41,537,435	4.07x
1993 .....	169,000,000	9,095,000	24,918,335	7,500,000	41,513,335	4.07x
1994 .....	169,000,000	9,775,000	24,213,473	7,500,000	41,488,473	4.07x
1995 .....	169,000,000	10,520,000	23,441,248	7,500,000	41,461,248	4.08x
1996 .....	169,000,000	11,330,000	22,594,388	7,500,000	41,424,388	4.08x
1997 .....	169,000,000	12,220,000	21,665,328	7,500,000	41,385,328	4.08x
1998 .....	169,000,000	13,215,000	20,638,848	7,500,000	41,353,848	4.09x
1999 .....	169,000,000	14,315,000	19,508,965	7,500,000	41,323,965	4.09x
2000 .....	169,000,000	15,515,000	18,263,560	7,500,000	41,278,560	4.09x
2001 .....	169,000,000	24,815,000	16,898,240	7,500,000	49,213,240	3.43x
2002 .....	169,000,000	33,395,000	14,689,705	7,500,000	55,584,705	3.04x
2003 .....	169,000,000	36,325,000	11,717,550	7,500,000	55,542,550	3.04x
2004 .....	169,000,000	44,925,000	8,448,300	7,500,000	60,873,300	2.78x
2005 .....	169,000,000	48,945,000	4,405,050	7,500,000	60,850,050	2.78x

- (1) The total income available for debt service are estimates prepared under the direction of the Administration of the System based on investment forecast and assumptions believed to be reasonable estimates and with respect to fiscal years 1990 and thereafter are repeated. However, no assurance can be or is given that the estimates will not materially differ from actual results in the future.
- (2) For illustration purposes assumes issuance of \$100,000,000 of Notes at an average annual effective interest rate of 7.5%.
- (3) Represents Total Income Available for Debt Service divided by Total Debt Service.

Constitutional Debt Power, Debt Limitations

The discretion to direct the use of the Interest of The University of Texas System in the Available University Fund, after expenses, for constitutionally authorized purposes is vested in the Board. The discretion to direct the use of the one-third interest of The Texas A&M University System in the Available University Fund, after expenses, is vested in the Board of Regents of The Texas A&M University System.

Article VII, Section 18(b), the Texas Constitution, authorizes the Board to issue bonds and notes, payable from all or any part of its Interest in the Available University Fund for the purpose of (a) acquiring land with or without permanent improvements, (b) constructing and equipping buildings or other permanent improvements, (c) making major repairs and rehabilitations of buildings and other permanent improvements, (d) acquiring capital equipment, library books and library materials, and

(e) refunding bonds or notes issued under said section or prior law at or for System administration and the component institutions of the System. The pledge and security created and granted in the Resolution is accomplished pursuant to the Constitutional Provision.

The Constitutional Provision limits the aggregate amount of bonds and notes (which are payable from the Board's share of the Available University Fund) that may be issued by the Board to amounts not exceeding, at the time of issuance, 20% of the cost value of investments and other assets of the Permanent University Fund, exclusive of real estate. As of August 31, 1985, the cost value of the Permanent University Fund, exclusive of real estate, was \$2,316,874,000. Accordingly, as of this date, after the issuance of \$100,000,000 of Notes, the Board will be authorized to issue an additional \$17,404,800 of bonds or notes payable from its Interest in the Available University Fund. For the purpose of making these calculations, "cost value" and "book value" are treated as equivalent terms.

The Constitutional Provision grants similar authority to the Texas A&M University System to issue bonds and notes for the purposes of that system, except that (a) such bonds and notes may be made payable only from and secured only by that system's one-third interest in the Available University Fund, and (b) the aggregate amount of bonds and notes which may be issued by that system is limited to 10% of the cost value of the investments and assets of the Permanent University Fund, exclusive of real estate, at the time of issuance.

#### Future Financings

The Constitutional Provision provides that, except for cases of demonstrated need and upon a vote of two-thirds of each house of the Texas Legislature, and except in cases of fire or natural disaster, member institutions of the System may not receive any funds from the general revenues of the State for acquiring land, with or without improvements, for constructing or equipping buildings or other permanent improvements, or for major repairs or rehabilitations of buildings or other permanent improvements. Accordingly, the needs of the System for capital funds through the issuance of bonds or notes are on-going. While the Board has no present intention to issue any additional Fund Priority Obligations or Notes during the remainder of 1985 and early 1986, the Board reserves the right to do so.

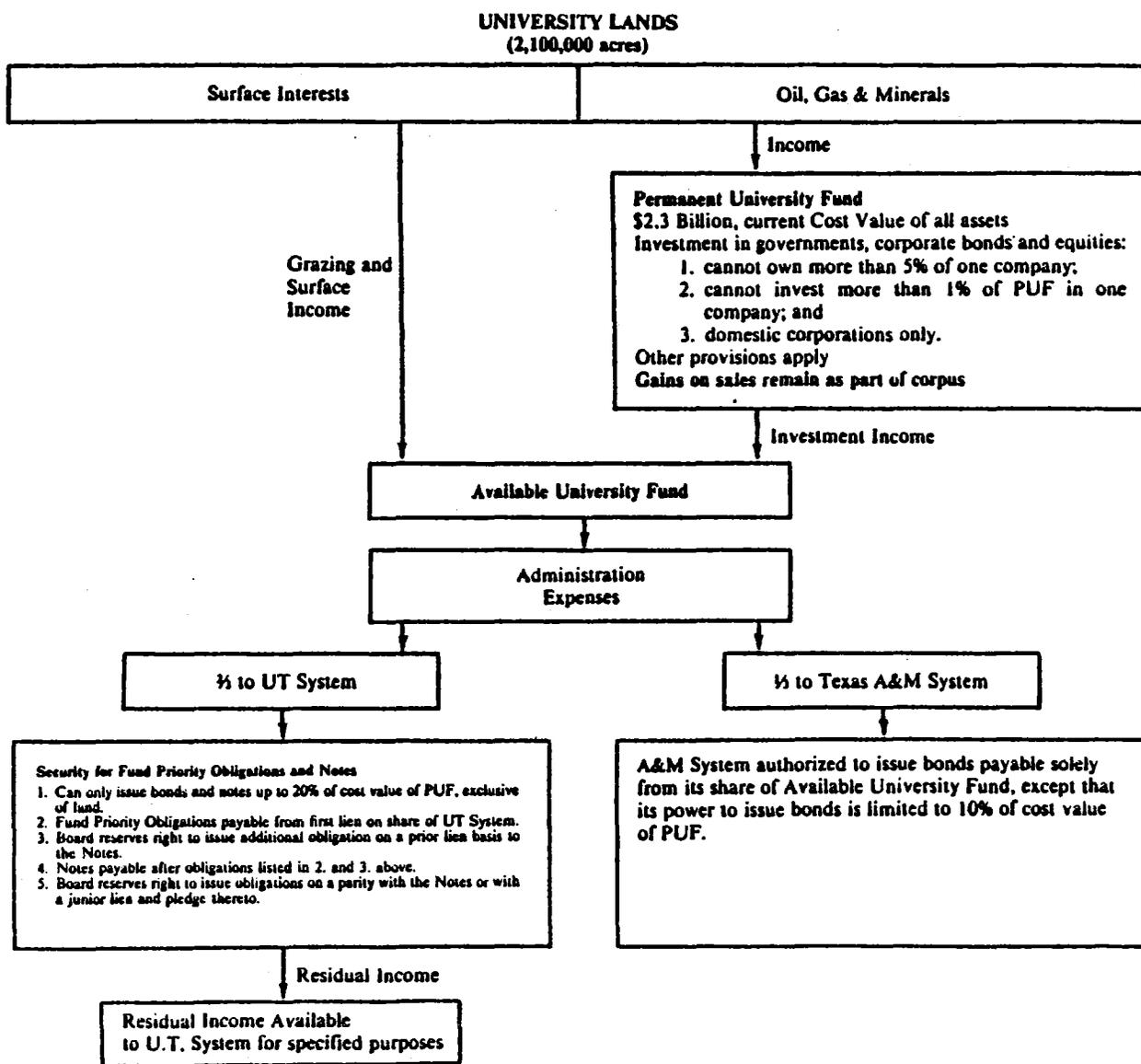
#### Residual Funds After Payment of Bonds

After the payment of annual debt service on the Fund Priority Obligations and after payment of the Notes and any other subordinate lien obligations, constitutional provisions appropriate the remaining amount attributable to the Interest of the University in the Available University Fund as follows: (a) first, the sum of \$6,000,000 annually, for ten years commencing November 1, 1984, to Prairie View A&M University, and (b) the balance to the Board for the support and maintenance of The University of Texas at Austin and for the administration of the System.

## PERMANENT UNIVERSITY FUND

### Introduction

The Permanent University Fund is a constitutional fund, created in the Texas Constitution of 1876. The assets and earnings of the Permanent University Fund are dedicated to the uses and purposes of The University of Texas System and The Texas A&M University System. See "Security for the Bonds — Available University Fund." A graphic summary and analysis of the relationship among the Permanent University Fund, the Available University Fund, the System and The Texas A&M University System follows. Said summary and analysis is qualified in its entirety by reference to the full text of this Official Statement and to the documents, laws and constitutional provisions referred to herein.



As interpreted by the Supreme Court and by the Attorney General of Texas, the Permanent University Fund must be forever kept intact, and the proceeds from oil, gas, sulphur and water

royalties, together with all gains on investments, all rentals on mineral leases, all lease bonuses and all amounts received from the sale of land must be added to the corpus of such Fund.

Table III contains a statement of the annual growth in the Permanent University Fund (additions from income and gains required to become a part of the corpus) through fiscal year 1985.

**TABLE III**  
**PERMANENT UNIVERSITY FUND**  
 (Annual Fund Growth — 000 omitted)

<u>Fiscal Year Ending August 31</u>	<u>Oil, Gas &amp; Sulphur Royalties</u>	<u>Mineral Lease Bonuses</u>	<u>Other Sources</u>	<u>Total Additions</u>
Prior to September 1, 1973 .....	\$ 391,834	\$226,445	\$ 51,076	\$ 669,355
1974.....	31,541	12,542	846	44,929
1975.....	58,512	8,266	710	67,488
1976.....	70,123	15,379	(12,676)	72,826
1977.....	76,598	13,862	1,012	91,472
1978.....	76,845	18,573	1,832	97,250
1979.....	76,637	10,818	3,043	90,498
1980.....	119,356	253	3,041	122,650
1981.....	160,285	98,282	4,316	262,883
1982.....	178,286	20,221	7,886	206,393
1983.....	154,702	742	21,431	176,875
1984.....	145,186	7,254	27,462	179,902
1985.....	135,422	244	98,687	234,353
<b>Totals .....</b>	<b>\$1,675,327</b>	<b>\$432,881</b>	<b>\$208,666</b>	<b>\$2,316,874</b>

**Assets**

In the early years of the Permanent University Fund, approximately 2,000,000 acres of land, located principally in nineteen West Texas Counties, were granted as the permanent initial endowment of the Permanent University Fund. No land has been sold and, as of this date, land holdings of the Permanent University Fund total approximately 2,100,000 acres.

Table IV lists, as of August 31, 1985, the distribution and book value of the assets of the Permanent University Fund, with land being carried at nominal value.

**TABLE IV**  
**ASSETS OF THE PERMANENT UNIVERSITY FUND**  
 (As of August 31, 1985)

	<u>Book Value</u>
Cash .....	\$ 15,902,215
Commercial Paper .....	232,186,514
U.S. Treasury and Agency Securities .....	718,626,851
FHA Real Estate Mortgages .....	5,007,273
Corporate Bonds .....	712,468,087
Common Stocks.....	624,422,639
Convertible Preferred Stock.....	2,501,625
Preferred Stock .....	5,759,500
Land(1) .....	10,027,384
<b>Total .....</b>	<b>\$2,326,902,088</b>

(1) Land value is reported on the basis of nominal value.

### Investment Responsibility

The responsibility for managing and investing the Permanent University Fund is constitutionally assigned to the Board. The Board currently employs seven investment counseling firms to provide professional guidance in optimizing investment performance while complying with legal limitations and policy guidelines. The Board for Lease of University Lands, composed of representatives of the System, The Texas A&M University System and the State Land Commissioner, is responsible for developing and approving oil, gas and other mineral leases.

The Board additionally appoints a six-member Investment Advisory Committee of citizen members whose particular qualifications and experience qualify them in the opinion of the Board to advise the Board and the Administration of the System with respect to investment policy, planning and performance evaluations.

The principal administrative officer responsible for the management of the Permanent University Fund is the Executive Vice Chancellor for Asset Management. He is supported by a staff of more than 100 employees, consisting of analysts, accountants, geologists and other support personnel. His duties and powers include the power to make and execute daily investment decisions consistent with legal limitations and policy guidelines.

The Texas Education Code additionally requires the Board to employ a well recognized performance measurement service to evaluate and analyze the investment results of the Permanent University Fund with other public and private funds having similar objectives.

### Eligible Investments and Standards

Under current provisions of the Texas Constitution, the Board is authorized to invest the Permanent University Fund in securities, bonds or other obligations issued, insured or guaranteed in any manner by the United States Government or any of its agencies, and in such bonds, debentures or obligations, and preferred and common stocks issued by corporations, associations or other institutions as the Board deems to be proper investments; provided, however, that no more than one percent of the Permanent University Fund may be invested in the securities of any one corporation, nor shall more than five percent of the voting stock of any one corporation be owned; provided, further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for five consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.

In addition to constitutional restrictions, Board rules provide that (a) corporate bonds and preferred stocks must be rated "Baa," "BBB," or higher, or if not rated, must in the opinion of the Board's investment staff be of at least equal quality to such ratings; and (b) commercial paper must be rated in the top two quality classes by Moody's Investors Service or Standard & Poor's Corporation.

The Resolution requires the Board to maintain and invest and keep invested the Permanent University Fund in a prudent manner and as required by law. In making each and all investments, the Texas Constitution requires the Board to exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

To the best knowledge and belief of the Board, the Board's investments, practices and policies are in full compliance with the requirements of the Texas Constitution and the Resolution.

In accordance with state law, the books, records and accounts of the Permanent University Fund and the Available University Fund, as well as the other books, records and accounts of the System, are conducted by the State Auditor, an officer of the State of Texas. Due to the number of state agencies and departments audited, significant delays in receiving audits are sometimes encountered.

## THE AGREEMENT AND REVOLVING NOTE

The Resolution authorizes the execution of a Credit Agreement (the "Agreement"), dated as of December 1, 1985, among the Board, MBank Dallas, N.A. (the "Bank") and MBank Austin, N.A. (the "Agent"), whereunder the Bank agrees to lend the Board from time to time amounts up to, but not to exceed the "Bank Loan Commitment", such amounts are referred to in the Agreement as "Advances". The Bank Loan Commitment initially shall be \$109,000,000.

Advances made under the Agreement shall be made in such amount as may be requested by an Authorized Representative to refund amounts due or to come due under one or more Notes, including any amounts payable as a result of the exercise of any tender for purchase provision contained in the Notes.

The obligation of the Bank to make any Advance, when so requested by an Authorized Representative, is subject to receipt by the Agent or a "Notice of Advance" as required by the Agreement and to the satisfaction of the following further conditions:

(a) At the time the Advance is made, the Board shall not have commenced a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, shall not have made a general assignment for the benefit of its creditors, shall not have declared a moratorium with respect to its debts, shall not have failed generally to pay its debts as they become due, and shall not have taken any action to authorize any of the foregoing; and

(b) At the time the Advance is made, no involuntary case or other proceeding shall have been commenced against the Board seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect and no trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property shall have been appointed.

In addition, the Bank shall have no obligation to make an Advance to the Board to pay the principal of or any interest on any Project Notes which were issued by the Board after receipt by the Paying Agent, the Dealer, and an Authorized Representative of a "Notice of Default" under the Agreement.

The Agreement sets forth the procedures by which the Bank shall transmit funds to the Paying Agent for the account of the holders of the Notes.

The obligation of the Board to repay the Bank the principal of, and all other amounts payable in respect of, the Advances shall be evidenced by a single revolving note (the "Revolving Note"), payable to the order of the Bank. Pursuant to the terms of the Resolution, the payment of the Revolving Note is secured by the Board in the same manner and on a parity with the Notes.

## ABSENCE OF LITIGATION

The Board is not a party to any litigation or other proceeding pending or, to its knowledge, threatened, in any court, agency or other administrative body (either state or federal) which, if decided adversely to the Board, would have a material adverse effect on the financial condition of the Board, the Permanent University Fund or the Interest of the University of Texas System in the Available University Fund, and no litigation of any nature has been filed, or to the Board's knowledge, threatened which seeks to restrain or enjoin the issuance or delivery of the Notes or which would affect the provisions made for their payment or security, or in any manner questioning the validity of the Notes.

## LEGAL MATTERS

Legal matters incident to the authorization, issuance and sale of the Notes are subject to the unqualified approval of the Attorney General of the State of Texas and of McCall, Parkhurst & Horton and Vinson & Elkins, Co-Bond Counsel to the Board, whose approving opinion will be printed on the Bonds. Co-Bond Counsel were not requested to participate, and did not take part, in the preparation of this Official Statement except as hereinafter noted, and such firms have not assumed any responsibility with respect thereto or undertaken to verify any of the information contained herein, except that, in their capacity as Co-Bond Counsel, such firms have reviewed the information relating to the Notes and the Resolution contained under the captions "THE NOTES," "SECURITY FOR THE NOTES" (except for information contained under the subheading "Income, Debt Service Requirements and Coverage," "Constitutional Debt Powers, Debt Limitations" and "Future Financings"), "TAX EXEMPTION" and "LEGAL INVESTMENTS IN TEXAS" in this Official Statement, and such firms are of the opinion that the information relating to the Notes and the Resolution contained under such captions is a fair and accurate summary of the information purported to be shown. The payment of legal fees to Co-Bond Counsel in connection with the issuance of the Notes is contingent on the sale and delivery of the Notes.

## TAX EXEMPTION

In the opinion of Co-Bond Counsel, interest on the Notes is exempt from all present federal income taxes under applicable statutes, published rulings, regulations and court decisions existing on the date of such opinion. The laws, regulations, court decisions and administrative regulations and published rulings upon which the conclusion stated in such opinion will be based are subject to change by the Congress, the Treasury Department and later judicial and administrative decisions.

## LEGAL INVESTMENTS IN TEXAS

The Notes are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking fund of cities, towns, villages, school districts, and other political subdivisions or public agencies of the State of Texas. The Notes are eligible to secure deposits of public funds of the State, its agencies and political subdivisions, and are legal security for those deposits to the extent of their market value. No review by the Board has been made of the laws in other states to determine whether the Notes are legal investments for various institutions in those states.

## RATING

Rating application has been made to Standard & Poor's Corporation ("Standard & Poor's") for a rating on the Notes. An explanation of the significance of such rating may be obtained from Standard & Poor's. The ratings reflect only the views of such organizations at the time such ratings were given, and the Board makes no representation as to the appropriateness of the rating. There is no assurance that such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating company, if in the judgment of such rating company, circumstances so warrant. Any such downward revision or withdrawal of the rating may have an adverse effect on the market price of the Notes.

#### OTHER MATTERS

The financial data and other information contained herein have been obtained from the Board's records, financial statements and other sources which are believed to be reliable. All of the summaries of the statutes and documents contained in this Official Statement are made subject to all of the provisions of such statutes and documents. The summaries do not purport to be complete statements of such provisions and reference is made to such documents for further information. Reference is made to original documents in all respects.

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Michael E. Patrick,  
*Executive Vice Chancellor for Asset  
Management, The University of Texas System*

APPENDIX A

THE UNIVERSITY OF TEXAS SYSTEM

History, Administration, Sources of Funding

The University of Texas System commenced in 1883 with the opening of The University of Texas at Austin. Today, the System is one of the largest educational organizations in the United States and through its component institutions provides instruction, research and public service throughout the State.

The Board consists of nine regents who serve without pay. Members are appointed to staggered six-year terms. Administration of the University conforms to that of leading American universities. The System is headquartered in Austin, Texas, and is supported by State appropriations, private gifts and endowments, Federal appropriations and grants, student tuitions and fees, its Interest in the Available University Fund, and miscellaneous sources. The percentage division of these fund sources for the fiscal year ended August 31, 1985 is as follows:

State Appropriations .....	50.4%
Federal Funds .....	10.2
Sales and Service of Hospitals .....	15.3
Private Gifts .....	5.2
Student Tuition and Fees .....	3.5
Sales and Services of Auxiliary Enterprises .....	5.9
Endowment Income (Including Allocations from Available University Fund).....	3.9
Sales and Service of Education Activities and Other .....	5.6
Total .....	<u>100.0%</u>

Institutional Enrollment

The preliminary 1985 fall student enrollments at the teaching institutions of the System are as shown below:

U.T. Arlington .....	23,112
U.T. Austin .....	47,833
U.T. Dallas .....	7,180
U.T. El Paso .....	14,119
U.T. Permian Basin .....	1,905
U.T. San Antonio .....	12,137
U.T. Tyler .....	3,676
U.T. Health Science Center at Dallas .....	1,433
U.T. Medical Branch at Galveston .....	1,640
U.T. Health Science Center at Houston.....	2,586
U.T. Health Science Center at San Antonio .....	2,208
Total .....	<u>117,829</u>

Discussion of General Academic Institutions

*The University of Texas at Arlington*, which has the fifth largest university enrollment in the State of Texas, is located in Arlington, between Dallas and Fort Worth. Serving both a resident and commuter student body, the institution offers 96 degree programs at the baccalaureate, master and doctoral levels. Degree programs are offered through the Colleges of Liberal Arts, Science, Engineering, and Business Administration; Graduate School of Social Work; Institute of Urban Studies, which is a statutory unit; School of Architecture and Environmental Design; School of Nursing; and Center for Professional Teacher Education.

*The University of Texas at Austin* is a major research university with many nationally ranked academic programs at the graduate level. Its library collections and research resources are ranked among

the finest in the world. The present site has expanded into more than 300 acres since classes began on the original 40 acres near downtown Austin. Additionally, University-owned property located in other areas of Austin includes the Balcones Research Center and the Brackenridge Tract, partially used for married student housing. The McDonald Observatory on Mount Locke in West Texas, the Marine Science Institute at Port Aransas and the Institute for Geophysics (Galveston) on the Gulf Coast operate as specialized research units of The University of Texas at Austin.

*The University of Texas at Dallas* was established in 1969 as an upper-level institution and offers curricula leading to more than 50 degrees at the baccalaureate, master and doctoral levels. This University is structured to meet the needs of the community college graduate through its undergraduate programs and, at the same time, maintain high quality graduate programs and continue to attract one of the state's largest budgets for sponsored research activities. Those activities are enhanced by a campus of more than 600 acres. A graduate level school of engineering was recently approved for the University. The Callier Center for Communication Disorders, an internationally recognized teaching, research and treatment organization, is located near downtown Dallas. Several prominent education related agencies also are located on the campus, including Southwestern Legal Foundation and the Association for Higher Education of North Texas.

*The University of Texas at El Paso* was established by the Legislature in 1913 as the Texas School of Mines and Metallurgy. It was renamed the College of Mines after becoming a branch of the System in 1919, changed to Texas Western College in 1949 and, since 1967, has been The University of Texas at El Paso. Both baccalaureate and graduate degrees are offered in more than 60 majors through six Colleges: Business Administration, Education, Engineering, Liberal Arts, Nursing and Allied Health Sciences, and Science, plus the Graduate School. The University is accredited through the doctoral level by the Southern Association of Colleges and Schools and offers a doctorate in Geological Sciences. The location on the Texas-Mexico border brings many students from Mexico to the campus.

*The University of Texas of the Permian Basin* in Odessa opened for classes in September 1973. As directed by the Texas Legislature in 1969, U.T. Permian Basin admits only upper-level students, and offers baccalaureate degrees in 27 fields and masters degrees in 15 fields. Innovative classroom and laboratory techniques are emphasized, especially self-paced instruction, experiential learning and open laboratory and art areas.

*The University of Texas at San Antonio* was authorized by the Texas Legislature in 1969. Graduate programs were initiated in leased facilities in June 1973; during the summer of 1975, the University moved to a 600-acre campus in northwest San Antonio. Junior and senior students were admitted in September 1975, and freshmen and sophomores were enrolled in the summer of 1976, when the first phase of campus construction was completed. The institution is a part of the Southwest Research Consortium.

*The University of Texas at Tyler* became a part of the System in 1979 by action of the Texas Legislature. Created in 1971 as Tyler State College, the institution became Texas Eastern University in 1976. The upper-division (junior and senior) and graduate institution is located in the heart of East Texas midway between Dallas and Shreveport. The four schools within the university organization are: Business Administration, Education and Psychology, Liberal Arts, and Sciences and Mathematics. Current degree programs include 48 bachelor degrees in 33 academic areas and 15 masters degrees in nine fields.

*The University of Texas Institute of Texan Cultures at San Antonio*, founded as a world's fair exhibit for HemisFair '68, has grown into a statewide resource and information center concerned with the people and history of Texas. Visitors numbered more than 300,000 last year. The Institute is the learning and communication center for the history, culture and folklore of Texas. The exhibit floor containing displays, artifacts, historic photographs and vignettes on Texas history has been expanded to a teaching laboratory with 165 trained volunteers and staff members providing living history demonstrations of folk customs and crafts. The production staff serves museums across the state with design, photography and exhibit fabrication.

## **Health Related Institutions**

*The University of Texas Health Science Center at Dallas* was established in the fall of 1972 as a component institution consisting of the existing Southwestern Medical School, the Graduate School of Biomedical Sciences and the School of Allied Health Sciences. Southwestern Medical School was founded as Southwestern Medical College in 1943 by the Southwestern Medical Foundation and was added to the System in 1949. More than \$68 million in buildings and facilities have been added in the last decade to enable the center to engage in significant programs of teaching, research and patient care. Southwestern Medical School now graduates over 200 physicians each year while the Graduate School of Biomedical Sciences and the School of Allied Health Sciences graduate a total of more than 180 health scientists and professionals.

*The University of Texas Medical Branch at Galveston* is the state's only multicategorical health referral center and serves as a major health resource and health referral center for much of the Southwest. The Medical Branch includes the oldest medical school in Texas, founded in 1891, and now has the 10th largest medical school in the United States. In addition, UTMB consists of the School of Nursing, School of Allied Health Sciences, Graduate School of Biomedical Sciences, Marine Biomedical Institute and Institute for the Medical Humanities. UTMB has undergone rapid expansion in the past two decades and now includes some of the most sophisticated health care facilities in the nation. The Medical Branch employs approximately 7,400 people, making it the largest single employer in Galveston County.

*The University of Texas Health Science Center at Houston*, the largest of the health science universities in the System, consists of eight components, six of which are schools — the Dental Branch (established in 1905 as the Texas Dental College); the Graduate School of Biomedical Sciences (1963); the School of Public Health in Texas (1967); the Medical School (1970); the School of Nursing (1972); and the School of Allied Health Sciences (1973). The Division of Continuing Education and the Speech and Hearing Institute complete the eight components. With its 668 full-time and 138 part-time faculty in eight teaching and research buildings, the Houston Health Science Center also is the largest institutional member of the Texas Medical Center.

*The University of Texas Health Science Center at San Antonio* was established in the fall of 1972. The operational units of the Health Science Center include schools of Medicine, Dentistry, Nursing, Allied Health Sciences and Graduate Biomedical Sciences. Expanding programs both in research and instruction have allowed the institution to maintain its role as the heart of the South Texas Medical Center. The Health Science Center has earned a reputation as a first class research institution and is actively involved in its role as an educator of health professionals.

*The University of Texas System Cancer Center* is the official State agency for the care of Texans with cancer, for training and research in cancer, and for activities related to prevention of that disease. With M. D. Anderson Hospital and Tumor Institute at Houston as its hub, the Cancer Center also includes a 110-bed Rehabilitation Center for recovering cancer patients, the Anderson Mayfair patient and family hotel and the 1,100-acre Science Park. Since the hospital opened in 1944, more than 165,000 persons with cancer have been treated there. At least 10,000 health professionals and scientists have received training at M. D. Anderson Hospital. Cancer Center researchers are involved in more than 525 scientific projects aimed at cancer control and prevention. The Science Park in Central Texas includes two divisions devoted to cancer research and veterinary resources.

*The University of Texas Health Center at Tyler* is the primary facility for patient care, education, and research in diseases of the chest. The institution became a part of the System on September 1, 1977, by action of the 65th Legislature. The Health Center's mission was expanded at that time to include its patient care facilities as a teaching hospital.

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**APPENDIX B**

**FINANCIAL INFORMATION REGARDING THE SYSTEM**

- (1) Condensed Statement of Assets and Net Worth**
- (2) Current Revenues, Expenditures and Mandatory Transfers**
- (3) Indebtedness Not Payable from Available University Fund**

## APPENDIX B(1)

**THE UNIVERSITY OF TEXAS SYSTEM**  
**CONDENSED STATEMENT OF ASSETS AND NET WORTH(1)**

	Fiscal Year Ended August 31,				
	1981	1982	1983	1984	1985(2)
<b>ASSETS:</b>					
<b>Current Funds:</b>					
General .....	\$ 148,292,519	\$ 156,153,972	\$ 227,027,921	\$ 247,981,349	\$ 268,600,000
Auxiliary Enterprises and Activities .....	41,086,421	49,707,283	54,386,358	69,045,826	75,000,000
Designated .....	170,250,925	217,800,724	268,112,875	258,443,462	279,900,000
Restricted .....	228,796,274	235,307,561	254,457,856	295,377,193	319,900,000
<b>Total Current Funds.....</b>	<b>588,426,139</b>	<b>658,969,540</b>	<b>803,985,010</b>	<b>870,847,830</b>	<b>943,400,000</b>
Loan Funds .....	38,590,766	40,602,759	44,900,251	49,506,865	54,500,000
<b>Endowment and Similar Funds:</b>					
State (Permanent University Fund) .....	1,529,378,125	1,735,771,704	1,912,646,657	2,092,548,880	2,326,900,000
Other than State .....	144,822,583	186,846,894	245,694,952	319,456,771	389,500,000
<b>Total Endowment and Similar Funds .....</b>	<b>1,674,200,708</b>	<b>1,922,618,598</b>	<b>2,158,341,609</b>	<b>2,412,005,651</b>	<b>2,716,400,000</b>
Annuity and Life Income Funds .....	4,015,977	4,270,404	4,386,988	4,226,482	4,600,000
Available University Fund .....	47,068,980	59,393,741	59,206,856	72,965,475	69,000,000
<b>Plant Funds:</b>					
Unexpended .....	270,703,051	278,900,348	267,487,890	297,931,609	326,200,000
Renewals and Replacements .....	6,734,106	8,516,618	7,120,412	7,709,931	8,300,000
Fund for Retirement of Indebtedness .....	89,173,578	93,410,709	95,856,259	110,710,094	111,900,000
Invested in Plant .....	1,951,020,466	2,125,924,201	2,294,183,734	2,507,801,796	2,746,000,000
<b>Total Plant Funds.....</b>	<b>2,317,631,201</b>	<b>2,506,751,876</b>	<b>2,664,648,295</b>	<b>2,924,153,430</b>	<b>3,192,400,000</b>
Agency Funds .....	29,503,453	35,083,786	37,333,713	44,697,696	50,800,000
<b>DEDUCT: Interfund Group Accounts .....</b>	<b>73,261,894</b>	<b>90,698,279</b>	<b>68,935,844</b>	<b>82,075,062</b>	<b>90,700,000</b>
<b>GRAND TOTAL ASSETS .....</b>	<b>4,626,175,330</b>	<b>5,136,992,425</b>	<b>5,703,866,878</b>	<b>6,296,328,367</b>	<b>6,940,400,000</b>
<b>Less: Total Liabilities (not including orders and contracts) .....</b>	<b>789,319,094</b>	<b>785,988,129</b>	<b>825,706,649</b>	<b>971,939,797</b>	<b>1,078,800,000</b>
<b>FUND BALANCES (i.e., Net Worth) .....</b>	<b>\$3,836,856,236</b>	<b>\$4,351,004,296</b>	<b>\$4,878,160,229</b>	<b>\$5,324,388,570</b>	<b>\$5,861,600,000</b>

(1) The University of Texas System uses the modified accrual method of accounting prescribed for Colleges and Universities as set forth in *Colleges and University Business Administration*, Revised Edition, 1974.

(2) Preliminary; unaudited.

## APPENDIX B(2)

**THE UNIVERSITY OF TEXAS SYSTEM**  
**CURRENT REVENUES, EXPENDITURES AND MANDATORY TRANSFERS(1)**

	Fiscal Year Ended August 31,				
	1981	1982	1983	1984	1985(2)
<b>CURRENT REVENUES:</b>					
Tuition and Fees .....	\$ 55,256,693	\$ 59,036,224	\$ 61,934,707	\$ 64,924,284	\$ 68,000,000
Federal Funds .....	185,711,999	180,387,675	179,785,974	188,382,504	196,300,000
State Appropriations .....	672,548,506	819,657,916	921,708,827	943,976,556	966,600,000
Private Gifts .....	56,685,641	68,289,677	80,689,465	90,114,683	99,500,000
Endowment Income (Includes Transfers from Available University Fund).....	28,870,244	40,625,397	52,391,655	68,204,235	75,800,000
Sales and Services of Auxiliary Enterprises.....	68,306,297	80,232,658	92,082,396	102,697,168	114,200,000
Sales and Services of Hospitals and Clinics: Professional Fees .....	198,496,158	248,670,301	278,501,338	285,632,549	293,100,000
Sales and Services of Educational Departments and Other Services .....	67,724,050	90,636,591	74,960,624	89,629,200	107,100,000
Total Current Revenues .....	<u>1,333,599,588</u>	<u>1,587,536,439</u>	<u>1,742,054,986</u>	<u>1,833,561,179</u>	<u>1,920,600,000</u>
<b>CURRENT EXPENDITURES AND MANDATORY TRANSFERS:</b>					
Educational and General.....	1,144,811,625	1,340,635,540	1,498,598,949	1,625,843,582	1,705,400,000
Auxiliary Enterprises .....	83,192,241	95,195,123	104,758,914	116,490,743	122,000,000
Mandatory Transfers .....	26,690,578	26,059,335	38,760,677	54,047,509	56,600,000
Total Current Expenditures and Mandatory Transfers .....	<u>1,254,694,444</u>	<u>1,461,889,998</u>	<u>1,642,118,540</u>	<u>1,796,381,834</u>	<u>1,884,000,000</u>
EXCESS REVENUES OVER EXPENDITURES AND MANDATORY TRANSFERS .....	<u>\$ 78,905,144</u>	<u>\$ 125,646,441</u>	<u>\$ 99,936,446</u>	<u>\$ 37,179,345</u>	<u>\$ 36,600,000</u>

(1) The University of Texas System uses the modified accrual method of accounting prescribed for Colleges and Universities as set forth in *Colleges and University Business Administration*, Revised Edition, 1974.

(2) Preliminary: unaudited.

## APPENDIX B(3)

**THE UNIVERSITY OF TEXAS SYSTEM**  
**INDEBTEDNESS NOT PAYABLE FROM AVAILABLE UNIVERSITY FUND**

	<u>Original Amount Issued</u>	<u>August 31, 1985 Outstanding</u>	<u>Maximum P&amp;I Requirements</u>	<u>I&amp;S and Reserve Funds August 31, 1985</u>
<b>The University of Texas System</b>				
General Tuition Revenue Bonds, Series 1971, 1972, 1972-A and 1978 .....	\$149,280,000	\$111,165,000	\$11,023,374	\$15,782,695
<b>The University of Texas at Austin</b>				
Dormitory Revenue Bonds, Series 1954 .....	3,402,000	1,295,000	155,850	525,228
Student Union Revenue Bonds, Series 1958-B .....	1,220,000	268,000	86,555	443,358
Housing System Revenue Bonds, Series 1967 .....	16,500,000	12,600,000	895,690	1,857,758
Building Revenue Bonds, Series 1974 and 1978(1) .....	59,310,000	47,705,000	4,221,548	12,912,972
Married Student Housing Revenue Bonds, Series 1971 and 1981 .....	8,850,000	8,195,000	943,463	1,135,168
Combined Fee Revenue Bonds, Series 1971, 1972, 1973 and 1978(2) .....	80,710,000	63,490,000	5,696,573	7,562,350
Building Revenue Bonds, Series 1969 and 1983 .....	54,000,000	48,435,000	5,024,595	8,611,384
Parking Facilities Revenue Bonds, Series 1984 .....	3,000,000	3,000,000	376,424	376,649
<b>The University of Texas at Arlington</b>				
Student Center Fee Revenue Bonds, Series 1960 .....	600,000	142,000	40,281	94,699
Gymnasium Fee Revenue Bonds, Series 1961 .....	650,000	184,000	42,315	99,914
Housing System Refunding Revenue Bonds, Series 1963 .....	1,806,000	746,000	203,350	136,761
Student Fee Revenue Bonds, Series 1964, 1966 and 1968 .....	6,285,000	3,260,000	351,450	465,267
Combined Fee Revenue Bonds, Series 1971-A, 1973, 1973-A, 1974, 1978 and 1985 .....	37,800,000	32,682,000	3,217,144	2,758,197
Apartment Revenue Bonds, Series 1978 .....	1,500,000	1,215,000	134,063	295,610
9% Apartment Revenue Bonds, Series 1985 .....	950,000	950,000	106,900	—
<b>The University of Texas at El Paso</b>				
Texas Western College Student Union Revenue Bonds, Series A&B of 1967 .....	3,158,000	2,233,000	195,045	304,142
Building Revenue Bonds, Series 1969 .....	8,500,000	6,995,000	567,480	1,048,436

	<u>Original Amount Issued</u>	<u>August 31, 1985 Outstanding</u>	<u>Maximum P&amp;I Requirements</u>	<u>I&amp;S and Reserve Funds August 31, 1985</u>
Combined Fee Revenue Bonds, Series 1970, 1971, 1973, 1974 and 1979 .....	21,000,000	17,935,000	1,558,870	2,322,767
The University of Texas at Dallas Combined Fee Revenue Bonds, Series 1978 .....	9,000,000	8,000,000	698,700	1,071,192
Utility Reserve Bonds, Series 1980 .....	10,125,000	8,770,000	1,011,905	1,169,485
The University of Texas at Tyler Texas Eastern University Combined Fee Revenue Bonds, Series 1976 .....	1,750,000	1,385,000	158,250	175,875
The University of Texas at San Antonio Combined Fee Revenue Bonds, Series 1980 and 1984 .....	16,500,000	15,755,000	1,803,190	1,664,265
Utility Revenue Bonds, Series 1980 .....	9,775,000	8,470,000	978,255	1,129,504
The University of Texas Health Science Center-Houston Housing System Revenue Bonds, Series 1981 .....	14,000,000	13,540,000	1,832,488	2,421,889
Galveston Medical Branch Endowment and Hospital Revenue Bonds, Series 1973 .....	34,500,000	25,875,000	2,726,825	16,827,874
M.D. Anderson Hospital and Tumor Institute at Houston Endowment and Hospital Revenue Bonds, Series 1972 and 1976 .....	18,500,000	12,995,000	1,571,270	24,922,540
Hospital Revenue Bonds, Subordinate Lien, Series 1976 .....	4,770,000	3,880,000	405,016	5,549,055

(1) \$4,915,000 Building Revenue Bonds, Series 1974-A are outstanding but have been advance refunded and are fully defeased.

(2) \$5,355,000 Combined Fee Revenue Bonds, Series 1974 are outstanding but have been advance refunded and are fully defeased.

TRUST AGREEMENT

STATE OF TEXAS  
COUNTY OF TRAVIS

KNOW ALL WHO COME  
BY THESE PRESENTS

This Trust Agreement is entered into by The University of Texas System (hereinafter sometimes referred to as "Trustor" or the "System") and Ann W. Richards, Treasurer of the State of Texas, (hereinafter sometimes referred to as the "Treasurer" or the "Trustee".)

ARTICLE I.

STATUTORY BASIS AND PURPOSE FOR THE TRUST

During the 69th Legislature, the System obtained express statutory authority to issue "variable rate notes." See, HB 1837, 69th Legislature. Necessary to the System's plans to begin to market said variable rate notes is a quick and efficient system for paying interest and principal on said notes as they become due and payable. Under existing law, the Treasury invests and safekeeps the Available University Fund. Also during the 69th Legislature, the Treasurer obtained express statutory authority to serve as Trustee of Funds outside the Treasury. See, SB 366, 69th Legislature, Section 3.051. It is the intention of the parties hereto to establish from monies contained in the Available University Fund a secure, collateralized, interest-bearing account outside the Treasury for the purpose of servicing the variable rate notes issued by the System. Said account will be entitled "The State Treasurer-The University of Texas System Special Account" (hereinafter sometimes referred to as "the Account.")

ARTICLE II.

CREATION OF THE TRUST

The System by these presents does appoint the Treasurer as Trustee for the purpose of investing and collateralizing funds in the Account.

**ARTICLE III.**

**POWERS AND DUTIES OF THE TRUSTEE**

- (a) The Treasurer, as Trustee, will contract with the Texas State Treasury ("Treasury") to manage System funds with the same degree of care and assuming the same duty to the System that is applicable to the management of funds inside the Treasury. The form of the contract between the Treasurer and the Treasury is attached hereto as Exhibit "A" and is expressly approved by the System.
  
- (b) The System desires that the funds in the account subject to this Trust be invested in the same manner and at the same rate as other State Treasury, interest-bearing money market accounts. In investing System funds, the Treasury shall have all the obligations, duties and powers set out in Section 2.011-2.015 and Sections 3.001-3.003 of SB 366, 69th Legislature and orders of the Texas State Depository Board from time to time in effect. These powers include but are not limited to approval of the form of any surety bond offered as collateral.
  
- (c) The Trustee shall not at any time be held liable for any action or default of herself, her agents, Treasury employees or of any other person in connection with the administration of the Trust Estate, unless caused by gross negligence or wilful misconduct.

**ARTICLE IV.**

**DEPOSITS AND WITHDRAWALS FROM THE ACCOUNT**

The System shall effect the transfer of funds into and out of the Account by employing the following procedures:

- (a) To make a deposit into the Account, the System will cause to be issued by the Comptroller of Public Accounts a warrant made payable to "Ann W. Richards, Trustee for the University of Texas System." The Treasurer shall immediately deposit said warrant into the Account.

- (b) The System shall provide to the Treasurer a resolution in the form attached hereto as Exhibit B indicating those individuals empowered to issue instructions concerning the Account.
- (c) The Treasurer shall provide a resolution to the System in the form attached as Exhibit C indicating those individuals empowered to receive and execute instructions concerning the Account.
- (d) To withdraw funds from the Account, an authorized System representative shall issue instructions not later than 1:00 p.m. on the day funds are to be transferred to an authorized Treasurer's representative that a sum certain be wired in immediately available funds to Morgan Guaranty Trust Company of New York/FTR Corporate Trust Department 999-99-739 reference The University of Texas System Variable Rate Notes \_\_\_\_\_ (Acct.No.). Said instructions may be oral, provided however, that a written confirmation signed by any two individuals authorized per Exhibit "B" be received by the Treasurer's representative within 24 hours of the oral instruction. The System hereby acknowledges that the Treasurer's representative may rely on the accuracy of the sum communicated by the System's representative. If the System delivers instructions to the Treasurer after 1 p.m., the Treasurer will use its best efforts to complete the transfer before the end of the business day. The System acknowledges that the securities wire system is in large part beyond the Treasurer's control. The System hereby releases the Treasurer from any wire related failures, delays or defaults unless the failures, delays or defaults are caused by the Treasurer's own gross negligence or willful misconduct.
- (e) Wire and other charges incurred to transport the funds will be billed to the System by the Banks currently used by the Treasurer for similar services. The Bank's current fee schedules will be provided to the System
- (f) At the end of each month, the Treasurer shall issue a report to the System indicating the balance remaining in the Account, the interest earned on the Account for that month, all deposits and all withdrawals.

All requests to transfer funds into or out of the Account shall be made by the System in accordance with the above referenced procedures.

ARTICLE V.

MISCELLANEOUS

- (a) The Trustee hereby waives all fees for services as Trustee, hereunder.
- (b) No bond shall be required of the Trustee; or if a bond is ever required by law no surety shall be required on such bond.
- (c) All written notices to the Treasurer concerning this Trust shall either be forwarded to the Treasurer by certified mail, return receipt requested, telecopy or delivered to Paul Williams, Associate Deputy Treasurer, P.O. Box 12608, Capitol Station, Austin, Texas 78711 (111 E. 17th Street, Austin, Texas 78702). All written notices to The University of Texas System concerning this trust shall either be forwarded to The University of Texas System by certified mail, return receipt requested, telecopy or delivered by hand to:

Thomas Ricks  
Manager - Debt Administration  
The University of Texas System  
210 W. 6th Street  
Austin, Texas 78701  
Telephone: (512) 499-4340  
Telecopy: (512) 499-4696

- (d) This Trust Agreement shall be governed by the laws of the State of Texas and is performable in Travis County, Texas.
- (e) If any part, clause, provision or condition of this trust is held to be void, invalid, or inoperative, such voidness, invalidity, or other inoperativeness shall not effect any other clause, provision or condition hereof; but the remained to this Trust Agreement shall be effective as though such clause, provision, or condition had not been contained therein.
- (f) As used in this Trust Agreement, the masculine, feminine or gender, and singular or plural number shall be deemed to include the others whenever the context so indicates.

In Witness Whereof, this Trust Agreement has been signed by the Trustor and the Trustee on this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

TRUSTOR  
THE UNIVERSITY OF TEXAS SYSTEM

TRUSTEE  
TEXAS STATE TREASURER

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

ANN W. RICHARDS \_\_\_\_\_

Its: \_\_\_\_\_

**CONTRACT BETWEEN  
THE TEXAS STATE TREASURER  
AND  
THE TEXAS STATE TREASURY**

This is an agreement by and between Ann W. Richards, Treasurer of the State of Texas, (hereinafter sometimes referred to as "Treasurer" or "Richards") and the Texas State Treasury (hereinafter sometimes referred to as "Treasury") and is as follows:

**WITNESSETH**

WHEREAS, contemporaneously with the execution of this contract, the Treasurer has signed a Trust Agreement with the University of Texas System agreeing to serve as Trustee of the State Treasurer-University of Texas System Special Account; and

WHEREAS, SB 366, 69th Legislature, Section 3.051 in pertinent part provides, "(b) the Treasurer functioning as the Trustee of funds or property outside the Treasury may contract with the Treasury to manage the funds or property in a manner similar to the management of funds in the Treasury"; and

WHEREAS, the Treasurer pursuant to Section 3.051 desires to contract with the Treasury to manage for her the "the State Treasurer-University of Texas Special Account"; and

WHEREAS, the University of Texas System has consented to this contract and all of its terms;

NOW THEREFORE, in consideration of the mutual promises and considerations herein contained (including obligations imposed upon the parties by statute) the parties hereto agree to as follows:

I.

The Treasury hereby agrees to manage for the Treasurer that one certain account known as the State Treasurer-University of Texas System-Special Account. The Treasury shall safekeep and invest said account in the manner provided by Sections 2.011-2.015 and Sections 3.001-3.003 of SB 366, 69th Legislature and the State Depository Board rules interpreting those statutes from time to time in effect.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

TEXAS STATE TREASURY

\_\_\_\_\_  
ANN W. RICHARDS  
Texas State Treasurer

By: \_\_\_\_\_  
MARY BETH ROGERS  
Deputy Treasurer

Consent Granted

The University of Texas System

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

Its: \_\_\_\_\_

RESOLUTION AUTHORIZING  
SPECIAL ACCOUNT WITHDRAWAL AGENTS

Pursuant to SB 366, 69th Legislature, Section 3.051 The University of Texas System and the Treasurer of the State of Texas have created "The State Treasurer-The University of Texas System Special Account" for the purpose of investing and collateralizing System Funds.

The University of Texas System, by and through its duly appointed Board of Regents does hereby certify that the following administrative officers of the University of Texas System, the Executive Vice Chancellor for Asset Management, Vice Chancellor and General Counsel, Director of Asset Strategy and Planning, Manager of Debt Administration, Manager-Endowment Real Estate, Controller, Director of Accounting and Operations Officer--Investments and Trusts have full authority and are empowered to execute all documents and instructions necessary or incidental to creating and maintaining the Special Account. Their true signatures appear below.

This authority shall remain in full force and effect until written notice revoking or modifying the same has been received by The University of Texas System.

IN WITNESS WHEREOF, the Regents have hereunto affixed the seal of The University of Texas System.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 1985.

THE UNIVERSITY OF TEXAS SYSTEM

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

The current holders of the above referenced positions have affixed their signature and titles hereto. Certificates of incumbency for each have been provided to the Treasurer.

\_\_\_\_\_  
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RESOLUTION AUTHORIZING  
SPECIAL ACCOUNT WITHDRAWAL AGENTS

Pursuant to SB 366, 69th Legislature, Section 3.051 the University of Texas System and the Treasurer of the State of Texas have created "The State Treasurer-University of Texas System Special Account" for the purpose of investing and collateralizing System Funds.

I do hereby certify that PAUL J. WILLIAMS, WINSOME JEAN, CAROLYN BOWMAN, JUANITA GONZALES AND TERRI CURRY have full authority and are empowered to execute all documents and instructions necessary or incidental to creating and maintaining the Special Account. Their true signatures appear below.

This authority shall remain in full force and effect until written notice revoking or modifying the same has been received by the University of Texas System.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Treasurer of the State of Texas.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 1985.

\_\_\_\_\_  
ANN W. RICHARDS, State Treasurer

\_\_\_\_\_  
PAUL J. WILLIAMS

\_\_\_\_\_  
WINSOME JEAN

\_\_\_\_\_  
CAROLYN BOWMAN

\_\_\_\_\_  
JUANITA GONZALES

\_\_\_\_\_  
TERRI CURRY

- d. Appoint Morgan Guaranty Trust Company, New York, New York, as Paying Agent/Registrar and Tender Agent
- e. Appoint the following positions in U. T. System Administration, or their successors in function, as Authorized Representatives pursuant to the terms of the Resolution and its exhibits:
  - (1) Executive Vice Chancellor for Asset Management
  - (2) Manager of Debt Administration
  - (3) Director of Asset Strategy and Planning
  - (4) Vice Chancellor and General Counsel
  - (5) Manager of Endowment Real Estate
- f. Establish an account for the payment of Bond Counsel, Dealer, Paying Agent/Registrar fees, and other miscellaneous costs

#### BACKGROUND INFORMATION

The Attachments referred to in the recommendation are in draft form pending final review by bond counsel, the Office of Asset Management, and the Office of General Counsel, and final documents will be mailed to the U. T. Board of Regents in advance of the meeting.

Financing eligible projects with variable rate bonds will enable the U. T. Board of Regents to borrow at short term rates substantially below those of fixed rate 20 year serial bonds. The financing program envisions bonds with a final maturity not to exceed 30 years and a lien subordinate to the Refunding Bonds and any Additional Parity Bonds. Interest rate options would include: a) flexible rates (from 1 to 270 days), b) variable rates computed on a daily, weekly, monthly, quarterly or semi-annual basis, and c) term rates from one to thirty years. The notes would be sold and remarketed through a remarketing agent and delivered and paid through a New York paying and tender agent.

It is anticipated that the Office of Asset Management, bond counsel, the Office of General Counsel, and the designated Dealer/Remarketing Agent will make necessary presentations at the meeting.

F. RECESS FOR MEETINGS OF THE STANDING COMMITTEES AND COMMITTEE REPORTS TO THE BOARD

The Standing Committees of the Board of Regents of The University of Texas System will meet as set forth below to consider recommendations on those matters on the agenda for each Committee listed in the Material Supporting the Agenda. At the conclusion of each Standing Committee meeting, the report of that committee will be formally presented to the Board for consideration and action.

Executive Committee: Chairman Hay  
Vice-Chairman Baldwin, Vice-Chairman Ratliff  
MSA Page Ex.C - 1

Finance and Audit Committee: Chairman Yzaguirre  
Vice-Chairman Roden, Regent Rhodes  
MSA Page F&A - 1

Academic Affairs Committee: Chairman Baldwin  
Vice-Chairman Milburn, Regent Briscoe  
MSA Page AAC - 1

Health Affairs Committee: Chairman Briscoe  
Vice-Chairman Yzaguirre, Regent Blanton  
MSA Page HAC - 1

Buildings and Grounds Committee: Chairman Rhodes  
Vice-Chairman Ratliff, Regent Hay  
MSA Page B&G - 1

Land and Investment Committee: Chairman Milburn  
Vice-Chairman Blanton, Regent Baldwin, Regent Roden  
MSA Page L&I - 1

G. RECONVENE

H. ITEMS FOR THE RECORD

1. U. T. Austin: Acceptance of Membership to the Development Board.--

At the October 1985 U. T. Board of Regents' meeting, Dr. Peter T. Flawn of Austin, Texas, was approved for membership on the U. T. Austin Development Board for a term to expire August 31, 1986. Dr. Flawn's acceptance of membership is herewith reported for the record.

2. U. T. Austin: Acceptance of Membership to the Marine Science Institute Advisory Council.--

At the October 1985 U. T. Board of Regents' meeting, Dr. Peter T. Flawn of Austin, Texas, was approved for membership on the U. T. Austin Marine Science Institute Advisory Council for a term to expire August 31, 1988. Dr. Flawn's acceptance of membership is herewith reported for the record.

- I. REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS
- J. REPORT OF SPECIAL COMMITTEES
- K. OTHER MATTERS
- L. SCHEDULED MEETINGS AND EVENTS

Board of Regents' Meetings

<u>Dates</u>	<u>Locations/Hosts</u>
February 13-14, 1986	U. T. Health Science Center - Houston
April 10-11, 1986	U. T. Medical Branch - Galveston
June 5-6, 1986	Austin
August 14-15, 1986	Austin
October 9-10, 1986	U. T. Health Science Center - Dallas
December 11-12, 1986	U. T. Health Science Center - San Antonio

Other Events

February 21, 1986	U. T. Austin: Dedication of Chemical and Petroleum Engineering Building
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Holidays

November 28, 1985	Thanksgiving Day
November 29, 1985	Thanksgiving Holiday
December 23, 1985	Christmas Holiday
December 24, 1985	Christmas Holiday
December 25, 1985	Christmas Day
December 26, 1985	Christmas Holiday
December 31, 1985	New Year's Holiday (afternoon)
January 1, 1986	New Year's Day
February 17, 1986	George Washington's Birthday
April 21, 1986	Texas Sesquicentennial Day
May 26, 1986	Memorial Day
July 4, 1986	Independence Day

M. RECESS TO EXECUTIVE SESSION

The Board will convene in Executive Session pursuant to Vernon's Texas Civil Statutes, Article 6252-17, Sections 2(e), (f) and (g), to consider those matters set out in the Material Supporting the Agenda.

If time permits, the Board will recess on Thursday afternoon to convene in Executive Session and continue that Executive Session beginning at 9:00 a.m. on Friday until the completion of business --- See Page B of R - 6, Item P.

If time will not permit the beginning of the Executive Session on Thursday, the Board will recess to begin its Executive Session at 9:00 a.m. on Friday and continue until the completion of business.

AGENDA FOR MEETING  
OF  
BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

Date: December 6, 1985

Time: 9:00 a.m.

Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

A.-M. (Pages B of R 1 - 5)

N. CONVENE OR RECONVENE IN EXECUTIVE SESSION

O. RECONVENE IN OPEN SESSION

P. CONSIDERATION OF ACTION ON ANY ITEMS DISCUSSED IN THE EXECUTIVE SESSION OF THE BOARD OF REGENTS PURSUANT TO V.T.C.S., ARTICLE 6252-17, SECTIONS 2(e), (f) and (g)

1. Pending and/or Contemplated Litigation - Section 2(e)

a. U. T. Health Science Center - Houston:  
Proposed Settlement of Medical Malpractice Litigation

b. U. T. Health Science Center - San Antonio: Proposed Settlement of Medical Malpractice Litigation

2. Land Acquisition, Purchase, Exchange, Lease or Value of Real Property and Negotiated Contracts for Prospective Gifts or Donations - Section 2(f)

a. U. T. Austin: Consideration of Negotiated Gift/Acquisition of Library Collection

b. U. T. Austin: Consideration of Negotiated Contract with Regard to Drainage Easement/Lease of Real Estate

c. U. T. Permian Basin: Consideration of Negotiated Contract for the Acquisition/Gift of Real Property

d. U. T. Health Science Center - Houston and U. T. Cancer Center: Consideration of a Negotiated Contract for Land Acquisition in the Vicinity of the Texas Medical Center, Houston, Texas

3. Personnel Matters [Section 2(g)] Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees

Q. OTHER BUSINESS

R. ADJOURNMENT

# 1986

January  
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# Executive Committee

EXECUTIVE COMMITTEE  
COMMITTEE CHAIRMAN HAY

Date: December 5, 1985  
Time: Following the 1:30 p.m. Session of the Board of Regents  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

Page  
Ex.C

1. U. T. System: Report Regarding Negotiations of an Option to Purchase Real Estate and a Secured Loan on Real Estate Being a Tract of Land Out of the D. J. Gilbert  $\frac{1}{2}$  League (Lot A of Dale Baker Addition) in Austin, Travis County, Texas (Exec. Com. Letter 86-2) 4
2. U. T. Arlington - E. H. Hereford University Center - Addition and Remodeling (Project No. 301-552): Recommended Award of Construction Contract to Cadenhead - Rangaire, Inc., Fort Worth, Texas, and Approval of Plaque Inscription (Exec. Com. Letter 86-3) 4
3. U. T. Austin: Proposed Acceptance of Gift of Land in Austin, Travis County, Texas, from Borden, Inc., Columbus, Ohio (Exec. Com. Letter 86-2) 8
4. U. T. Austin - Taylor Hall - Phase I Renovation (Project No. 102-537): Report of Errors in Bids and Request to Excuse Clegg/Austin, Austin, Texas, from Its Bids on Base Proposal "C" (Office Visitor Chairs) and Base Proposal "H" (Secretary Chairs); Recommended Award of Contracts for Furniture and Furnishings to Southwest Office Interiors, Inc., Austin, Texas; Rockford Business Interiors, Austin, Texas; Business Products & Services, Inc., El Paso, Texas; Disco Print Company, Houston, Texas; Evans-Monical, Inc., Houston, Texas; H. McCoy Inc., San Antonio, Texas; and Interior Environments, Austin, Texas, and Request for Authorization for the Chancellor to Sign the Contracts (Exec. Com. Letter 86-3) 8

5. U. T. Austin: Chemical and Petroleum Engineering Building (Project No. 102-452) - Report of Errors in Bids and Requests to Excuse Environ, Inc., Austin, Texas, from Its Bid on Base Proposal "H" (Petroleum Engineering Office Furniture), Southwest Office Interiors, Austin, Texas, from Its Bid on Base Proposal "H" (Petroleum Engineering Office Furniture), and Business Interiors, Arlington, Texas, from Its Bid on Base Proposal "I" (Steel Desks and Chairs); Recommended Award of Contracts for Furniture and Furnishings to Rockford Business Interiors, Austin, Texas; Southwest Office Interiors, Austin, Texas; Stewart Contract Interiors, Dallas, Texas; Environ, Inc., Austin, Texas; Labry Commercial Interiors, Inc., Austin, Texas; Lundia Division of MII, Inc., Jacksonville, Illinois; Kewaunee Scientific c/o P.A.C., Austin, Texas; American Desk Manufacturing Company - Taylor Division, Taylor, Texas; Business Interiors, Arlington, Texas; Pack-Mark Shipping Supplies, Inc., San Antonio, Texas; Interior Environments, Austin, Texas; and Sherrill Draperies, Inc., Austin, Texas, and Request for Authorization for the Chancellor to Sign the Contracts (Exec. Com. Letter 86-3) 12
6. U. T. Austin: Salary Increases Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4) 18
7. U. T. Health Science Center - Dallas: Salary Increases Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4) 19
8. U. T. Medical Branch - Galveston - Pharmacology Building Containment Laboratory (Project No. 601-543): Recommended Award of Construction Contract to Comex Corporation, General Contractors - Engineers, Deer Park, Texas (Exec. Com. Letter 86-4) 22
9. U. T. Medical Branch - Galveston: Salary Increases Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4) 23
10. U. T. Health Science Center - Houston: Salary Increase Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4) 25

11. U. T. Cancer Center (U.T. M. D. Anderson Hospital - Houston):  
Blanche Bender Fund - Recommendation for Oil and Gas Lease on Undivided Mineral Interest in Montgomery County, Texas, to Shell Oil Company, Conroe, Texas (Exec. Com. Letter 86-4) 25
  
12. U. T. Health Center - Tyler:  
Transfer of Funds Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4) 26

1. U. T. System: Report Regarding Negotiations of an Option to Purchase Real Estate and a Secured Loan on Real Estate Being a Tract of Land Out of the D. J. Gilbert ½ League (Lot A of Dale Baker Addition) in Austin, Travis County, Texas (Exec. Com. Letter 86-2).--

#### REPORT

Pursuant to authorization by the U. T. Board of Regents at the August 9, 1985 meeting, the Office of Asset Management and the Office of General Counsel have negotiated, with the concurrence of Regents Baldwin and Milburn, an option agreement to purchase real estate surrounded by the Brackenridge Tract, being a tract of land out of the D. J. Gilbert ½ League (Lot A of Dale Baker Addition) in Austin, Travis County, Texas, in accordance with the parameters set out by the U. T. Board of Regents. Under this option agreement, the U. T. System has the right during the next five years to purchase a commercial office building and 48,426 square feet of land for \$10 million; in the sixth and seventh year, for \$11 million; and through the end of the tenth year the U. T. System has first right of refusal to purchase the property. In consideration of this option, a \$7 million secured loan will be extended by the Common Trust Fund to the current owners. The loan is fully secured by the property, has a term of ten years, and carries an interest rate of 10% payable monthly. Terms and covenants of the loan are consistent with existing commercial mortgage loan practices.

2. U. T. Arlington - E. H. Hereford University Center - Addition and Remodeling (Project No. 301-552): Recommended Award of Construction Contract to Cadenhead - Rangaire, Inc., Fort Worth, Texas, and Approval of Plaque Inscription (Exec. Com. Letter 86-3).--

#### RECOMMENDATIONS

The Executive Committee concurs in the recommendation of President Nedderman and the Office of the Chancellor that the U. T. Board of Regents:

- a. Award a construction contract for the U. T. Arlington E. H. Hereford University Center - Addition and Remodeling to the lowest responsible bidder, Cadenhead - Rangaire, Inc., Fort Worth, Texas, for the base bid in the amount of \$9,000,000
- b. Approve the inscription set out on the following page for a plaque to be placed on the building. The inscription follows the standard pattern approved by the U. T. Board of Regents in June 1979.

E. H. HEREFORD UNIVERSITY CENTER  
ADDITION AND REMODELING  
1985

BOARD OF REGENTS

Jess Hay, Chairman	Hans Mark
Robert B. Baldwin III, Vice-Chairman	Chancellor, The
Shannon H. Ratliff, Vice-Chairman	University of Texas System
Jack S. Blanton	Wendell H. Nedderman
Janey Slaughter Briscoe	President, The University
(Mrs. Dolph)	of Texas at Arlington
Beryl Buckley Milburn	
Tom B. Rhodes	JPJ Architects, Inc.
Bill Roden	Project Architect
Mario Yzaguirre	Cadenhead - Rangaire, Inc.
	Contractor

BACKGROUND INFORMATION

In accordance with the authorization of the U. T. Board of Regents on June 13, 1985, bids for the E. H. Hereford University Center - Addition and Remodeling at U. T. Arlington were received and opened on October 1, 1985, as shown on Pages Ex.C 6 - 7.

The addition to the University Center will be approximately 65,000 square feet and will contain a completely new food service kitchen, a ballroom, and recreational facilities. The remodeling will encompass approximately 42,000 square feet and will completely revise the existing dining areas on the ground floor.

A construction contract award to the lowest responsible bidder, Cadenhead - Rangaire, Inc., Fort Worth, Texas, in the amount of \$9,000,000 for the base bid, can be made within the authorized total project budget of \$11,635,000.

The total project cost for the E. H. Hereford University Center - Addition and Remodeling is composed of the following cost elements:

Construction Cost	\$ 9,000,000
Fees and Administrative Expenses	888,603
Furniture and Equipment	593,000
Future Work	512,000
Miscellaneous Expenses	30,525
Project Contingency	<u>610,872</u>
Total Project Cost	\$11,635,000

A future separate bid for purchase and installation of bowling equipment will be advertised within approximately six months.

E. H. HEREFORD UNIVERSITY CENTER - ADDITION AND REMODELING  
 THE UNIVERSITY OF TEXAS AT ARLINGTON  
 Bids Received October 1, 1985  
 The University of Texas at Arlington

<u>CONTRACTOR</u>	<u>Cadenhead - Rangaire, Inc.</u> Fort Worth, TX	<u>Stolte Inc.</u> Dallas, TX	<u>Brookfield/Lowery, Inc.</u> Dallas, TX	<u>Walker Construction</u> Company Fort, Worth, TX
BASE BID	\$9,000,000	\$9,279,000	\$9,390,000	\$9,447,000
Alt. No. 1 - Foyer	245,000	285,000	143,000	124,000
Alt. No. 2 - Foyer Theater	1,385,000	1,445,000	1,620,000	1,268,000
Alt. No. 2A - Flyloft	62,000	115,000	75,000	100,000
Alt. No. 2B - Catwalk	24,000	25,000	10,000	10,000
Alt. No. 3 - Fire Protection System	108,000	120,000	107,000	105,000
Alt. No. 4 - Skylights	51,300	72,000	54,000	65,000

E. H. HEREFORD UNIVERSITY CENTER - ADDITION AND REMODELING  
 THE UNIVERSITY OF TEXAS AT ARLINGTON  
 (Construction Bids Continued)

<u>CONTRACTOR</u>	<u>Kugler-Morris General Contractors, Inc. Dallas, TX</u>	<u>Spaw-Glass Constructors, A Division of Spaw-Glass, Inc. Dallas, TX</u>	<u>Robert E. McKee, Inc. Dallas, TX</u>	<u>B-F-W Construction Co., Inc. Temple, TX</u>
BASE BID	\$9,510,000	\$9,520,000	\$9,699,000	\$10,240,000
Alt. No. 1 - Foyer	275,688	160,000	227,829	205,000
Alt. No. 2 - Foyer Theater	1,550,800	1,300,000	1,427,115	1,410,000
Alt. No. 2A - Flyloft	90,397	138,000	121,297	190,000
Alt. No. 2B - Catwalk	35,354	43,500	22,211	70,000
Alt. No. 3 - Fire Protection System	133,137	92,000	121,014	200,000
Alt. No. 4 - Skylights	101,203	47,200	82,734	80,000

EX.C - 7

3. U. T. Austin: Proposed Acceptance of Gift of Land in Austin, Travis County, Texas, from Borden, Inc., Columbus, Ohio (Exec. Com. Letter 86-2).--

#### RECOMMENDATION

The Executive Committee concurs in the recommendation of President Cunningham and the Office of the Chancellor that the U. T. Board of Regents accept a gift of land from Borden, Inc., Columbus, Ohio, of approximately 137,826 square feet located in the City of Austin, Travis County, Texas, for the use and benefit of The University of Texas at Austin and authorize the Executive Vice Chancellor for Asset Management to execute a ground lease on this property to Borden, Inc. upon approval of all documents by the Office of General Counsel.

#### BACKGROUND INFORMATION

The U. T. Board of Regents at its August 1985 meeting authorized the Executive Committee to accept a gift of land from Borden, Inc. within the parameters outlined in Executive session and upon approval of related documents by the Office of General Counsel and the Office of Asset Management. Those requirements have been met and Borden, Inc. transferred the property on September 20, 1985, to the U. T. Board of Regents. Borden, Inc. has requested a lease on the land conveyed for a period of at least three years until its new facilities are constructed. Borden, Inc. will pay the University \$205,000 per year and will pay all property taxes under the terms of the lease agreement.

4. U. T. Austin - Taylor Hall - Phase I Renovation (Project No. 102-537): Report of Errors in Bids and Request to Excuse Clegg/Austin, Austin, Texas, from Its Bids on Base Proposal "C" (Office Visitor Chairs) and Base Proposal "H" (Secretary Chairs); Recommended Award of Contracts for Furniture and Furnishings to Southwest Office Interiors, Inc., Austin, Texas; Rockford Business Interiors, Austin, Texas; Business Products & Services, Inc., El Paso, Texas; Disco Print Company, Houston, Texas; Evans-Monical, Inc., Houston, Texas; H. McCoy Inc., San Antonio, Texas; and Interior Environments, Austin, Texas, and Request for Authorization for the Chancellor to Sign the Contracts (Exec. Com. Letter 86-3).--

#### RECOMMENDATIONS

The Executive Committee concurs in the recommendation of President Cunningham and the Office of the Chancellor that the U. T. Board of Regents:

- a. Excuse Clegg/Austin, Austin, Texas, from its bids on Base Proposal "C" (Office Visitor Chairs) and Base Proposal "H" (Secretary Chairs), Taylor Hall - Phase I Renovation at U. T. Austin because of an error in both bids

b. Award contracts for furniture and furnishings for the Taylor Hall - Phase I Renovation at U. T. Austin to the following lowest responsible bidders:

Southwest Office Interiors, Inc.  
Austin, Texas

Base Proposal "A" (Steel Office Furniture)	\$ 64,069.00
Base Proposal "B" (Stacking Chairs)	8,282.00
Base Proposal "D" (Computer Tables)	37,149.00
Base Proposal "K" (Study Tables)	<u>9,098.00</u>

Total Contract Award to  
Southwest Office Interiors, Inc. \$118,598.00

Rockford Business Interiors, Inc.  
Austin, Texas

Base Proposal "C" (Office Visitor Chairs)	\$ 18,720.22
Base Proposal "G" (Wood Casework)	<u>9,079.12</u>

Total Contract Award to  
Rockford Business Interiors \$ 27,799.34

Business Products & Services, Inc.  
El Paso, Texas

Base Proposal "E" (Office Desks)	\$ 62,150.00
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Disco Print Company  
Houston, Texas

Base Proposal "F" (Bookcases)	\$ 26,787.00
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Evans-Monical, Inc.  
Houston, Texas

Base Proposal "H" (Secretary Chairs)	\$ 45,968.30
Base Proposal "J" (Conference Room Furniture)	<u>11,722.33</u>

Total Contract Award to  
Evans-Monical, Inc. \$ 57,690.63

H. McCoy, Inc.  
San Antonio, Texas

Base Proposal "I" (Laboratory Dividers)	\$ 40,495.54
--	--------------

Interior Environments  
Austin, Texas

Base Proposal "L" (Miscellaneous Furnishings)	\$ 18,383.99
GRAND TOTAL RECOMMENDED CONTRACT AWARDS	\$351,904.50

It is further recommended that the Chancellor be authorized to sign the contracts awarding these bids based on the results of the Executive Committee circularization.

#### BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in August 1984, bids were called for and were received, opened and tabulated on September 6, 1985, as shown on Pages Ex.C 11-12 for furniture and furnishings for Taylor Hall - Phase I Renovation at U. T. Austin. Funds for the contract awards are available in the Furnishings and Equipment Account.

With reference to Base Proposal "C" (Office Visitor Chairs), and Base Proposal "H" (Secretary Chairs), the apparent lowest bidder, Clegg/Austin, Austin, Texas, has alleged that an error was made in both of those bids. The alleged errors are related to cost quotations. On Base Proposal "C", an inadvertent misunderstanding of the cost quotation from the manufacturer's representative caused Clegg/Austin to use net costs as if they were list costs and to apply its standard discount from list, rather than using a standard markup for net costs. Therefore, on Base Proposal "C", a unit price of \$83.69 each was charged, instead of the unit price of \$125 each which should have been charged. On the 114 chairs listed in the proposal, the difference between the price quoted and the price which should have been quoted was \$8,090.66. On Base Proposal "H" a similar error was made on Item C-6 based on information provided by the same manufacturer's representative. On the 110 C-6 chairs in Base Proposal "H", the net unit cost was inadvertently further discounted, so that a unit cost of \$76.33 each was charged instead of the \$115 each which should have been charged. The loss on the 110 chairs would be \$4,253.70.

The Office of General Counsel has reviewed the two erroneous bids, agrees with the assessment stated above, and recommends that Clegg/Austin be excused from its erroneous bids.

With reference to Base Proposal "G" (Wood Casework) only one bid was received. A telephone canvass of the bidders revealed that four firms were too busy to bid; one firm could have bid on fabrication of the custom bookcases, but could not provide the finishing, so did not bid; one firm wanted to bid but could not arrange its performance bond in time. The bid received was less than the estimated cost of \$9,577. It is believed that rebidding would not improve results.

With respect to Base Proposal "J" (Conference Room Furniture) only one bid was received. A telephone canvass of the bidders revealed that four firms were too busy to bid this proposal; one firm wanted to bid but could not arrange the performance bond; another firm was not an established dealer and could not receive direct cost information from the furniture manufacturers, and did not believe it could bid competitively by securing costs from other dealers. The bid received was less than the estimated cost of \$12,450. It is believed that rebidding would not improve results.

Base Proposal "A", Steel Office Furniture

Southwest Office Interiors, Inc.	\$64,069.00
Environ, Inc.	65,642.99
Business Products & Services, Inc.	66,475.00
Labry Commercial Interiors, Inc.	67,446.13
Rockford Business Interiors	67,872.09

Base Proposal "B", Stacking Chairs

Southwest Office Interiors, Inc.	\$ 8,282.00
Disco Print Company	8,615.10

Base Proposal "C", Office Visitor Chairs

Clegg/Austin	\$ 9,880.66
Rockford Business Interiors	18,720.22
Evans-Monical, Inc.	18,836.50
Southwest Office Interiors, Inc.	19,150.00
Business Products & Services, Inc.	19,400.00
H. McCoy, Inc.	21,646.60
Labry Commercial Interiors, Inc.	22,490.20

Base Proposal "D", Computer Tables

Southwest Office Interiors, Inc.	\$37,149.00
H. McCoy, Inc.	43,460.94
Rockford Business Interiors	44,772.41
Evans-Monical, Inc.	44,932.20
Disco Print Company	44,996.47
Labry Commercial Interiors, Inc.	45,864.36

Base Proposal "E", Office Desks

Business Products & Services, Inc.	\$62,150.00
Rockford Business Interiors	63,557.24
Environ, Inc.	64,527.36
Southwest Office Interiors, Inc.	64,701.00
Labry Commercial Interiors, Inc.	73,819.63
Evans-Monical, Inc.	91,914.00

Base Proposal "F", Bookcases

Disco Print Company	\$26,787.00
Business Products & Services, Inc.	28,432.00
Rockford Business Interiors	28,487.30
Southwest Office Interiors, Inc.	28,747.00
Labry Commercial Interiors, Inc.	29,653.58
H. McCoy, Inc.	30,088.39
Evans-Monical, Inc.	31,611.10

Base Proposal "G", Wood Casework

Rockford Business Interiors	\$ 9,079.12
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Base Proposal "H", Secretary Chairs

Clegg/Austin	\$39,854.29
Evans-Monical, Inc.	45,968.30
Business Products & Services, Inc.	46,470.00
H. McCoy, Inc.	49,242.07
Labry Commercial Interiors, Inc.	50,939.74

Base Proposal "I", Laboratory Dividers

H. McCoy, Inc.	\$40,495.54
Labry Commercial Interiors, Inc.	40,727.00
Clegg/Austin	41,085.19
Evans-Monical, Inc.	41,444.46
Business Products & Services, Inc.	43,400.00

Base Proposal "J", Conference Room Furniture

Evans-Monical, Inc.	\$11,722.33
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Base Proposal "K", Study Tables

Southwest Office Interiors, Inc.	\$ 9,098.00
Rockford Business Interiors	9,178.94
Evans-Monical, Inc.	9,440.85
Business Products & Services, Inc.	10,874.00

Base Proposal "L", Miscellaneous Furnishings

Interior Environments	\$18,383.99
Rockford Business Interiors	18,405.63

5. U. T. Austin: Chemical and Petroleum Engineering Building (Project No. 102-452) - Report of Errors in Bids and Requests to Excuse Environ, Inc., Austin, Texas, from Its Bid on Base Proposal "H" (Petroleum Engineering Office Furniture), Southwest Office Interiors, Austin, Texas, from Its Bid on Base Proposal "H" (Petroleum Engineering Office Furniture), and Business Interiors, Arlington, Texas, from Its Bid on Base Proposal "I" (Steel Desks and Chairs); Recommended Award of Contracts for Furniture and Furnishings to Rockford Business Interiors, Austin, Texas; Southwest Office Interiors, Austin, Texas; Stewart Contract Interiors, Dallas, Texas; Environ, Inc., Austin, Texas; Labry Commercial Interiors, Inc., Austin, Texas; Lundia Division of MII, Inc., Jacksonville, Illinois; Kewaunee Scientific c/o P.A.C., Austin, Texas; American Desk Manufacturing Company - Taylor Division, Taylor, Texas; Business Interiors, Arlington, Texas; Pack-Mark Shipping Supplies, Inc., San Antonio, Texas; Interior Environments, Austin, Texas; and Sherrill Draperies, Inc., Austin, Texas, and Request for Authorization for the Chancellor to Sign the Contracts (Exec. Com. Letter 86-3).--

RECOMMENDATIONS

The Executive Committee concurs in the recommendation of President Cunningham and the Office of the Chancellor that the U. T. Board of Regents:

- a. Excuse Environ, Inc., Austin, Texas, from its bid on Base Proposal "H" (Petroleum Engineering Office Furniture), Chemical and Petroleum Engineering Building at U. T. Austin, because of an error in the bid
- b. Excuse Southwest Office Interiors, Austin, Texas, from its bid on Base Proposal "H" (Petroleum Engineering Office Furniture), Chemical and Petroleum Engineering Building, because of an error in the bid

- c. Excuse Business Interiors, Arlington, Texas, from its bid on Base Proposal "I" (Steel Desks and Chairs), Chemical and Petroleum Engineering Building, because of an error in the bid
- d. Award contracts for furniture and furnishings for the Chemical and Petroleum Engineering Building to the following lowest responsible bidders:

Rockford Business Interiors  
Austin, Texas

Base Proposal "A" (Bookcases)	\$ 55,868.17
Base Proposal "E" (Faculty Conference Room Furniture)	26,706.46
Base Proposal "H" (Petroleum Engineering Office Furniture)	38,547.00
Base Proposal "I" (Steel Desks and Chairs)	79,355.16
Base Proposal "K" (Conference Tables)	44,531.06
Base Proposal "S" (Benches)	<u>13,481.07</u>

Total Contract Award to  
Rockford Business Interiors \$258,488.92

Southwest Office Interiors  
Austin, Texas

Base Proposal "B" (Stacking Chairs)	\$ 10,755.00
Base Proposal "G" (Chemical Engineering Office Furniture)	126,146.00
Base Proposal "Q" (Reading Room Furniture)	<u>34,452.00</u>

Total Contract Award to  
Southwest Office Interiors \$171,353.00

Stewart Contract Interiors  
Dallas, Texas

Base Proposal "C" (Secretarial Chairs)	\$125,144.22
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Environ, Inc.  
Austin, Texas

Base Proposal "D" (Faculty Chairs)	\$ 44,500.84
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Labry Commercial Interiors, Inc.  
Austin, Texas

Base Proposal "F"  
(Visitor Seating) \$ 11,318.81

Base Proposal "L"  
(Files) 90,911.04

Total Contract Award to  
Labry Commercial Interiors, Inc. \$ 102,229.85

Lundia Division of MII, Inc.  
Jacksonville, Illinois

Base Proposal "J"  
(Compact Shelving) \$ 15,200.00

Kewaunee Scientific c/o P.A.C.  
Austin, Texas

Base Proposal "M"  
(Laboratory Benches) \$ 21,683.88

American Desk Manufacturing Company -  
Taylor Division, Taylor, Texas

Base Proposal "N"  
(Laboratory Work Stations) \$ 288,055.00

Business Interiors  
Arlington, Texas

Base Proposal "O"  
(Miscellaneous) \$ 159,148.37

Pack-Mark Shipping Supplies, Inc.  
San Antonio, Texas

Base Proposal "P"  
(Steel Storage Equipment) \$ 100,200.00

Interior Environments  
Austin, Texas

Base Proposal "R"  
(Waste Receptacles and  
Coat Hooks) \$ 12,456.93

Sherrill Draperies, Inc.  
Austin, Texas

Base Proposal "T"  
(Draperies) \$ 2,850.00

GRAND TOTAL RECOMMENDED CONTRACT AWARDS \$1,301,311.01

It is further recommended that the Chancellor be authorized to sign the contracts awarding these bids based on the results of the Executive Committee circularization.

## BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in June 1983, bids were called for and were received, opened and tabulated on August 29, 1985, as shown on Pages Ex.C 16-18 for furniture and furnishings for the Chemical and Petroleum Engineering Building at U. T. Austin. Funds for the contract awards are available in the Furnishings and Equipment Account.

With reference to Base Proposal "H" (Petroleum Engineering Office Furniture), the apparent lowest bidder, Environ, Inc., Austin, Texas, has alleged that a clerical error was made in its bid. In calculating the total amount of the bid for Proposal "H", seven out of nine types of items were entered into the memory of the calculator, whereas two out of the nine types of items were not entered into the memory. Therefore, when the total amount of the bid was recalled from the calculator memory, two subtotals of \$3,763.62 and \$974.70, were not included in the total. Had the total been correct, it would have been \$37,702.13. Thus, the amount of the bid for Proposal "H" as submitted at \$32,963.81 was short of the correct total \$37,702.13, by \$4,738.32.

With respect to Base Proposal "H" (Petroleum Engineering Office Furniture), the apparent second lowest bidder, Southwest Office Interiors, Austin, Texas, alleges that an error was made in its bid. Southwest Office Interiors received quotations from its supplier of office furniture, Xception Design Ltd., and included a standard markup to arrive at the bid price. However, Southwest failed to include the correct freight costs in its markup, resulting in erroneous bid prices on all 102 items in Base Proposal "H". The total of the extensions for all items was \$34,750 when it should have been \$38,750 had it correctly included the freight costs. Award to the next lowest bidder, Rockford Business Interiors, Austin, Texas, is recommended. The bid of Rockford for Base Proposal "H" (Petroleum Engineering Office Furniture) of \$38,547 compares favorably with the estimated cost of \$56,152, and with the other bids received.

With reference to Base Proposal "I" (Steel Desks and Chairs), the apparent lowest bidder, Business Interiors, Arlington, Texas, alleges that an error was made in its bid. This proposal included 62 work stations, each made up of a desk and standard attached shelf unit. However, Business Interiors failed to include the cost of the 62 shelf units, at a cost of \$11,160, which should have been included in Base Proposal "I", had the proposal been correct. Had the bid correctly included complete components for the 62 work stations, the total bid by Business Interiors for Base Proposal "I", would have been \$75,824.21. If Business Interiors were required to perform the contract at its bid price of \$64,664.21, for Base Proposal "I", it would experience a significant cash loss. Award to the next lowest bidder, Rockford Business Interiors, Austin, Texas, appears to be justified. The bid of Rockford Business Interiors for Base Proposal "I" (Steel Desks and Chairs) of \$79,355.16 compares favorably with the estimated cost of \$80,940.

The Office of General Counsel has reviewed the three erroneous bids, agrees in the assessment stated above, and recommends that all three firms be excused from their erroneous bids.

With reference to Base Proposal "F" (Visitor Seating), only one bid was received, although products from alternative manufacturers were approved for bidding purposes. A survey of dealers for alternate manufacturers revealed several reasons

why they did not submit bids. One company did not bid because it was unable to secure bonding by the bid opening date. Another company did not bid because it was unable to secure pricing from the manufacturer by the bid opening time. The bid submitted of \$11,318.81 was less than the estimated cost of \$11,955. It is believed that rebidding this package would not improve results.

With reference to Base Proposal "J" (Compact Shelving), only one bid was received, although products from alternative manufacturers were approved for bidding purposes. A representative of the alternate manufacturer returned the bid package with the explanation that he was too busy with other work to submit a bid. The bid submitted of \$15,200 was less than the estimated cost of \$18,036. It is believed that rebidding this package would not improve results.

With reference to Base Proposal "K" (Conference Tables), the lowest bid of \$2,116 was not a responsible bid, in that it was an incomplete bid. The bid on Base Proposal "K" by Lundia Division of MII, Inc., included only two of eleven items required by the specifications. The lowest responsible bid on Base Proposal "K" submitted by Rockford Business Interiors at \$44,531.06 was less than the estimated cost of \$46,000. It is believed that rebidding this package would not improve results.

With reference to Base Proposal "M" (Laboratory Benches), the lowest bid of \$21,683.88 was the only bid submitted on this package, although alternative manufacturers were approved for bidding purposes. A survey of the bidders revealed that one manufacturer was unwilling to bid on laboratory benches as specialized as those required for this laboratory. Another manufacturer could not provide the steel laboratory benches required by the specifications. The bid of \$21,683.88 was less than the estimated cost of \$31,000. It is believed that rebidding would not improve results.

With reference to Base Proposal "O" (Miscellaneous), the bid of \$159,148.37 was the only bid submitted on this package, although alternative manufacturers were approved for bidding purposes. A survey of the bidders revealed that several of them had difficulty in obtaining responses to requests for cost quotations from the manufacturers, and were unable to complete their bids for this package. The bid of \$159,148.37 was less than the estimated cost of \$161,000. It is believed that rebidding would not improve results.

Base Proposal "A", Bookcases

Rockford Business Interiors	\$ 55,868.17
Southwest Office Interiors	56,432.00
Disco Print Company	57,173.50
Labry Commercial Interiors, Inc.	58,562.52
Business Interiors	63,268.55
Lundia Division of MII, Inc.	93,155.00

Base Proposal "B", Stacking Chairs

Southwest Office Interiors	\$ 10,755.00
Disco Print Company	11,112.70

Base Proposal "C", Secretarial Chairs

Stewart Contract Interiors	\$125,144.22
Clegg/Austin	125,669.31
Labry Commercial Interiors, Inc.	129,737.60
Evans-Monical, Inc.	131,028.00

<u>Base Proposal "D", Faculty Chairs</u>	
Environ, Inc.	\$ 44,500.84
Rockford Business Interiors	45,785.21
Business Interiors	49,077.70
<u>Base Proposal "E", Faculty Conference Room Furniture</u>	
Rockford Business Interiors	\$ 26,706.46
Business Interiors	27,358.65
<u>Base Proposal "F", Visitor Seating</u>	
Labry Commercial Interiors, Inc.	\$ 11,318.81
<u>Base Proposal "G", Chemical Engineering Office Furniture</u>	
Southwest Office Interiors	\$126,146.00
Business Interiors	135,887.26
<u>Base Proposal "H", Petroleum Engineering Office Furniture</u>	
Environ, Inc.	\$ 32,963.81
Southwest Office Interiors	34,750.00
Rockford Business Interiors	38,547.00
Labry Commercial Interiors, Inc.	39,400.07
Evans-Monical, Inc.	40,013.00
Business Interiors	40,806.05
<u>Base Proposal "I", Steel Desks and Chairs</u>	
Business Interiors	\$ 64,664.21
Rockford Business Interiors	79,355.16
<u>Base Proposal "J", Compact Shelving</u>	
Lundia Division of MII, Inc.	\$ 15,200.00
<u>Base Proposal "K", Conference Tables</u>	
Lundia Division of MII, Inc.	\$ 2,116.00
Rockford Business Interiors	44,531.06
<u>Base Proposal "L", Files</u>	
Labry Commercial Interiors, Inc.	\$ 90,911.04
Southwest Office Interiors	90,943.00
Rockford Business Interiors	91,903.14
Business Interiors	140,824.95
<u>Base Proposal "M", Laboratory Benches</u>	
Kewaunee Scientific c/o P.A.C.	\$ 21,683.88
<u>Base Proposal "N", Laboratory Work Stations</u>	
American Desk Manufacturing Company - Taylor Division	\$288,055.00
Max Grigsby Company, Inc.	304,613.28
<u>Base Proposal "Q", Miscellaneous</u>	
Business Interiors	\$159,148.37

Base Proposal "P", Steel Storage Equipment

Pack-Mark Shipping Supplies, Inc.	\$100,200.00
Austin Material Handling	102,823.54

Base Proposal "O", Reading Room Furniture

Southwest Office Interiors	\$ 34,452.00
Rockford Business Interiors	34,487.73
Evans-Monical, Inc.	36,855.81

Base Proposal "R", Waste Receptacles  
and Coat Hooks

Interior Environments	\$ 12,456.93
Rockford Business Interiors	12,475.76

Base Proposal "S", Benches

Rockford Business Interiors	\$ 13,481.07
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Base Proposal "T", Draperies

Sherrill Draperies, Inc.	\$ 2,850.00
Dallas Drapery	4,425.00
Dismukes Blind & Drapery Company, Inc.	5,012.10

6. U. T. Austin: Salary Increases Requiring Advance Regental  
Approval Under Budget Rules and Procedures No. 2 (Exec.  
Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs in the recommendation of President Cunningham and the Office of the Chancellor that the U. T. Board of Regents approve the following salary increases at The University of Texas at Austin:

Measurement and Evaluation Center

Increase the annual rate of Assistant Director Barbara G. Dodd from \$27,756 to \$33,804 effective September 1, 1985.

Source of Funds:

State: \$ 33,804 Departmental Classified Salaries

(RBC #165)

McDonald Observatory

Increase the annual rate of Research Scientist Peter J. Shelus from \$45,500 to \$52,000 effective September 1, 1985.

Source of Funds:

Other: \$ 52,000 Federal Contracts

(RBC #222)

BACKGROUND INFORMATION

Dr. Barbara Dodd has consistently displayed excellent professional knowledge of the field of psychometrics, outstanding skill and judgment in working with faculty members and administrators on professional matters and excellent skill in supervising and directing the activities of staff members. She is dependable, conscientious, and willing to put in whatever amount of time and effort is required to meet her professional obligations.

Dr. Peter Shelus deserves much of the credit for the McDonald Lunar Laser Ranging Program which has contributed uniquely to our understanding of the lunar orbit, with implications on the validity of General Relativity, on the possible variation of Newton's Gravitational Constant, and on the structure of the lunar interior. He has provided a major amount of this data for the NASA Crustal Dynamics program, with implications on plate tectonics, earthquake prediction and polar motion.

Dr. Shelus' research has clearly brought him and U. T. Austin international stature in astronomy and geophysics. His success is perhaps also measured by the \$3 million in grants and contracts he presently directs.

7. U. T. Health Science Center - Dallas: Salary Increases Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs with the recommendation of President Sprague and the Office of the Chancellor that the U. T. Board of Regents approve the following salary increases at The University of Texas Health Science Center at Dallas:

Internal Medicine

Increase the total compensation of Assistant Professor Michael D. Winniford (Nontenure) from \$72,400 to \$80,400 effective October 1, 1985.

Source of Funds:

State:	\$43,800	Departmental Faculty Salaries
Other:	<u>18,000</u>	National Institutes of Health Grant
	\$61,800	Total Salary
Augmentation:	<u>18,600</u>	MSRDP Fund
	<u>\$80,400</u>	Total Compensation

(RBC #111)

Increase the total compensation of Associate Professor L. Hillis (Nontenure) from \$94,500 to \$104,500 effective October 1, 1985.

Source of Funds:

State:	\$ 58,500	Departmental Faculty Salaries
Other:	<u>36,000</u>	National Institutes of Health Grant
	\$ 94,500	Total Salary
Augmentation:	<u>10,000</u>	MSRDP Fund
	<u>\$104,500</u>	Total Compensation

(RBC #113)

Increase the total compensation of Assistant Professor Anne L. Taylor (Nontenure) from \$61,800 to \$73,800 effective October 1, 1985.

Source of Funds:

State:	\$18,200	Departmental Faculty Salaries
Other:	<u>43,600</u>	National Institutes of Health Grant
	\$61,800	Total Salary
Augmentation:	<u>12,000</u>	MSRDP Fund
	<u>\$73,800</u>	Total Compensation

(RBC #110)

Increase the total compensation of Research Assistant Professor George C. Haidet (Nontenure) from \$59,700 to \$69,700 effective October 1, 1985.

Source of Funds:

State:	\$30,000	Departmental Faculty Salaries
Other:	<u>29,700</u>	National Institutes of Health Grant
	\$59,700	Total Salary
Augmentation:	<u>10,000</u>	MSRDP Fund
	<u>\$69,700</u>	Total Compensation

(RBC #109)

Increase the total compensation of Professor Leonard L. Madison (Tenure) from \$99,400 to \$103,700 effective October 1, 1985.

Source of Funds:

State:	\$ 82,500	Departmental Faculty Salaries
Other:	<u>7,500</u>	MSRDP Grant
	\$ 90,000	Total Salary
Augmentation:	<u>13,700</u>	MSRDP Fund
	<u>\$103,700</u>	Total Compensation

(RBC #112)

Obstetrics and Gynecology

Increase the total compensation of Professor of Clinical Obstetrics and Gynecology and Director of House Officer Education Alvin Brekken (Nontenure) from \$94,000 to \$100,000 effective October 1, 1985.

Source of Funds:

State:	\$ 55,100	Departmental Faculty Salaries
Other:	10,800	Public Health Service
	14,100	Family Planning Operating Fund
	<u>\$ 80,000</u>	Total Salary
Augmentation:	20,000	MSRDP Fund
	<u>\$100,000</u>	Total Compensation

(RBC #106)

Increase the total compensation of Assistant Professor David S. Guzick (Nontenure) from \$76,700 to \$82,700 effective October 1, 1985.

Source of Funds:

State:	\$55,030	Departmental Faculty Salaries
Other:	7,670	Family Planning Operating Fund
	<u>\$62,700</u>	Total Salary
Augmentation:	20,000	MSRDP Fund
	<u>\$82,700</u>	Total Compensation

(RBC #107)

BACKGROUND INFORMATION

These recommended increases in total compensation are for seven faculty members who are undertaking increasing clinical activities effective October 1, 1985. These increases will be in the "augmentation" component of compensation, funded from MSRDP. The faculty members understand that continuation of this component is dependent on their maintaining their increased level of clinical activity, as well as on there being sufficient MSRDP funds to continue to cover the increases. In each case, the department chairman has documented that a substantive change in activities is being made.

In the cases of Drs. Winniford and Hillis, they have assumed considerable more responsibility in performing cardiac catheterization procedures and clinical electrophysiological procedures.

In the cases of Drs. Taylor and Haidet, their clinical referrals have increased significantly by means of seeing private patients in the Aston Center as well as extending their time in developing new programs in Doppler imaging and echocardiography.

In the case of Dr. Madison, he has assumed heavy clinical commitments in diabetic counseling, as well as metabolic consultations.

In the case of Dr. Brekken, he has assumed heavy clinical commitments in material-fetal medicine consultations both at St. Paul Hospital as well as the Aston Center.

In the case of Dr. Guzick, his clinical referrals have increased significantly with the opening of the invitro fertilization clinic at the Aston Center.

8. U. T. Medical Branch - Galveston - Pharmacology Building Containment Laboratory (Project No. 601-543): Recommended Award of Construction Contract to Comex Corporation, General Contractors - Engineers, Deer Park, Texas (Exec. Com. Letter 86-4).--

#### RECOMMENDATION

The Executive Committee concurs with the recommendation of President Levin and the Office of the Chancellor that the U. T. Board of Regents award a construction contract for the Pharmacology Building Containment Laboratory at the U. T. Medical Branch - Galveston to the lowest responsible bidder, Comex Corporation, General Contractors - Engineers, Deer Park, Texas, for the base bid in the amount of \$686,200.

#### BACKGROUND INFORMATION

In accordance with the authorization of the U. T. Board of Regents in August 1985, bids for the Pharmacology Building Containment Laboratory at the U. T. Medical Branch - Galveston were received and opened on October 17, 1985, as shown below:

<u>Bidder</u>	<u>Base Bid</u>
Comex Corporation Deer Park, TX	\$686,200
Schultz & Lembo, Inc. Houston, TX	699,000
W. J. Hessert Construction Company, Inc., Houston, TX	700,000
Robert E. McKee, Inc. Houston, TX	719,000
A-1 Constructors, Inc. Houston, TX	725,000
John Gray Company, Inc. Galveston, TX	755,893
MSI of Houston, Inc. Houston, TX	789,597
Manhattan Construction Company Houston, TX	869,000

The construction involves shell space located on the third floor of the Pharmacology Building and when completed will fill a critical need for a properly designed containment laboratory for research projects involving toxic materials.

A construction contract award in the amount of \$686,200 can be made to the lowest responsible bidder, Comex Corporation, Deer Park, Texas, within the funds previously appropriated for this project.

9. U. T. Medical Branch - Galveston: Salary Increases Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs with the recommendation of President Levin and the Office of the Chancellor that the U. T. Board of Regents approve the following salary increases at The University of Texas Medical Branch at Galveston:

Internal Medicine - Pathology

Increase the total compensation of Associate Professor Ethel V. Patten (Tenure) from \$68,000 to \$75,000 effective October 1, 1985.

Source of Funds:

State:	\$23,000	Departmental Faculty Salaries
Other:	<u>40,000</u>	Department of Health and Human Services Grant
	\$63,000	Total Salary
Augmentation:	<u>12,000</u>	MSRDP Fund
	<u>\$75,000</u>	Total Compensation

(RBC #22)

Microbiology

Increase the total salary of Assistant Professor Clifford W. Houston (Nontenure) from \$38,432 to \$44,632 effective November 1, 1985.

Source of Funds:

State:	\$38,867	Departmental Faculty Salaries
Other:	<u>5,765</u>	Department of Health and Human Services Grant
	<u>\$44,632</u>	Total Salary

(RBC #26)

Increase the total salary of Associate Professor Gary R. Klimpel (Nontenure) from \$42,293 to \$47,435 effective November 1, 1985.

Source of Funds:

State:	\$41,091	Departmental Faculty Salaries
Other:	<u>6,344</u>	Department of Health and Human Services Grant
	<u>\$47,435</u>	Total Salary

(RBC #28)

Ophthalmology

Increase the total compensation of Assistant Professor Joel A. Schulman (Nontenure) from \$87,000 to \$95,000 effective October 1, 1985.

Source of Funds:

State:	<u>\$66,750</u>	Departmental Faculty Salaries
	\$66,750	Total Salary
Augmentation:	28,250	MSRDP Fund
	<u>\$95,000</u>	Total Compensation

(RBC #21)

BACKGROUND INFORMATION

Dr. Ethel Patten is Director of the Blood Bank where she has created a high level of competence in this vital medical function. In addition, Dr. Patten is an effective teacher in the Division of Hematology-Oncology. Dr. Patten also publishes widely, most recently in the April issue of "Texas Medicine." Recently, Dr. Patten was awarded a National Heart, Lung, and Blood Institute "Transfusion Medicine Academic Award." This award, which is for five years, includes salary supplements for Dr. Patten and another faculty member. Dr. Patten contributes greatly to the mission of the Department of Internal Medicine and provides excellent direction for the Blood Bank.

Dr. Clifford Houston publishes many high quality studies on the role of toxins during bacterial infections and is also an expert in the area of immunological testing for antigens and antibodies using the ELISA technique. He is an excellent and committed teacher of medical and graduate students. As a minority faculty member, he not only sets an excellent example for all students in the area of scholarship and teaching, but he serves unstintingly on minority action committees both within the U. T. System and for the federal government.

Dr. Gary Klimpel is a recognized world expert in the area of bone marrow function and the role of immunity and leukocytes during the defense against viral infections. He is an excellent teacher of medical and graduate students in Microbiology and Immunology courses. He writes review articles and has contributed a major chapter to a widely distributed textbook on medical microbiology. Dr. Klimpel functions as principal advisor to graduate students and enthusiastically provides his time in service responsibilities.

During the last year Dr. Joel Schulman has proved to be a highly productive faculty member. His clinical expertise is necessary to the continued success of the operations of the Department of Ophthalmology. He assists with the patient care load and performs innovative surgery. In addition to his clinical work, Dr. Schulman has recently coauthored a book entitled Principles of Vitreous Microsurgery.

10. U. T. Health Science Center - Houston: Salary Increase Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs with the recommendation of President Bulger and the Office of the Chancellor that the U. T. Board of Regents approve the following salary increase at The University of Texas Health Science Center at Houston:

Surgery - General

Increase the total compensation of Professor and Chairman Frank G. Moody (Tenure) from \$172,500 to \$181,200 effective September 1, 1985.

Source of Funds:

State:	\$ 90,600	Departmental Faculty Salaries
	\$ 90,600	Total Salary
Augmentation:	90,600	MSRDP Funds
	<u>\$181,200</u>	Total Compensation

(RBC #140)

BACKGROUND INFORMATION

This action corrects an error made in the 1985-86 budget. Dr. Moody's 1984-85 total compensation was \$171,000.

11. U. T. Cancer Center (U.T. M. D. Anderson Hospital - Houston): Blanche Bender Fund - Recommendation for Oil and Gas Lease on Undivided Mineral Interest in Montgomery County, Texas, to Shell Oil Company, Conroe, Texas (Exec. Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs with the recommendation of President LeMaistre and the Office of the Chancellor that the U. T. Board of Regents authorize an oil and gas lease covering an undivided 1/4 interest in 367 acres (University's 91.75 net acres) out of the Montgomery County School Land Survey, Ab. 351, Montgomery County, Texas (Blanche Bender Fund - The University of Texas System Cancer Center - U.T. M. D. Anderson Hospital - Houston), to Shell Oil Company, Conroe, Texas. The proposed lease provides for a 1/4 royalty, \$200 per acre bonus, a \$25 per acre annual rental and a three-year term.

BACKGROUND INFORMATION

This mineral interest is among several producing and nonproducing properties conveyed by Mrs. Blanche Bender to the U. T. Board of Regents by deed dated February 25, 1950. All minerals were reserved during the life of Mrs. Bender for her benefit, and upon her death in 1974, the U. T. Cancer Center became entitled to this undivided 1/4 mineral interest.

Shell Oil Company has leased the remaining 3/4 mineral interest from Bender heirs and others at the above consideration which, according to a survey by the Lands Analyst in the Office of General Counsel, equals or exceeds bonuses and royalties paid for leases in this area. Shell has requested action on their proposal at an early date in order to begin title work and preparations for drilling as soon as possible.

12. U. T. Health Center - Tyler: Transfer of Funds Requiring Advance Regental Approval Under Budget Rules and Procedures No. 2 (Exec. Com. Letter 86-4).--

RECOMMENDATION

The Executive Committee concurs with the recommendation of Director Hurst and the Office of the Chancellor that the U. T. Board of Regents approve the following transfer of funds at The University of Texas Health Center at Tyler:

Educational and General Funds

Amount of Transfer - \$700,000

From: Unappropriated Balance (via Estimated Income) -  
1984-85

To: Hospital Equipment

(RBC #136)

BACKGROUND INFORMATION

The University of Texas Health Center at Tyler exceeded Estimated Educational and General Income by \$700,000 during the 1984-85 fiscal year. This amount is within the 20% restriction allowed in the appropriations bill. It is recommended that this amount be budgeted to provide funds for new and/or replacement of hospital equipment.

# Finance and Audit Com.

FINANCE AND AUDIT COMMITTEE  
COMMITTEE CHAIRMAN YZAGUIRRE

Date: December 5, 1985  
Time: Following the meeting of the Executive Committee  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

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1. U. T. System: Docket No. 25 of the Office of the Chancellor.--

RECOMMENDATION

It is recommended that Docket No. 25 of the Office of the Chancellor be approved.

It is requested that the Committee confirm that authority to execute contracts, documents, or instruments approved therein has been delegated to the officer or official executing same.

2. U. T. System: Proposed Amendment to the Policy for Filing Financial Disclosure Statements for Implementation of Section 86 of Article V of the General Appropriations Act.--

RECOMMENDATION

The Office of the Chancellor recommends that the policy adopted at the August 1985 meeting of the U. T. Board of Regents for implementing the filing of financial disclosure statements required by Section 86 of Article V of the General Appropriations Act for 1986-87 be amended as follows:

- "a. The financial disclosure statement form promulgated by the Secretary of State for purposes of compliance with Section 4 of Article 6252-9b, Vernon's Civil Statutes, shall be utilized by The University of Texas System personnel who are required to file statements in compliance with Section 86 of Article V of the General Appropriations Act for 1986-87.
- "b. The financial disclosure statement shall be submitted to the U. T. Board of Regents for review and approval through the dockets of the component institutions and the U. T. System and upon approval by the Board shall be filed as a part of the records of the Office of the Board of Regents.
- "c. Initial financial disclosure statements shall be submitted for review and approval of the Board at its meeting on October 10-11, 1985, and thereafter shall be submitted annually at the meeting of the Board immediately preceding the beginning of the fiscal year on September 1. Persons who are appointed to positions requiring the filing of such statement shall submit same to the Board for review and approval at the first meeting of the Board following their appointment.
- "d. Only those persons who are required to file financial disclosure statements with the Secretary of State pursuant to Section 3 of Article 6252-9b, Vernon's Civil Statutes, are required to file statements pursuant to Section 86 of Article V of the General Appropriations Act for 1986-87.

"[d.--Persons-appointed-to-the-following-positions-shall file-the-required-financial-disclosure-statement.]"

[U.-T.-System

- (1) Chancellor
- (2) Executive-Vice-Chancellor-for-Academic Affairs
- (3) Executive-Vice-Chancellor-for-Health Affairs
- (4) Executive-Vice-Chancellor-for-Asset Management
- (5) Vice-Chancellor-and-General-Counsel
- (6) Executive-Director-for-Finance-and Administration
- (7) Director,-Business-and-Administrative Services
- (8) Comptroller
- (9) Director,-Facilities,-Planning-and Construction
- (10) Executive-Director-for-Investments and-Trusts

Component-Institutions

- (11) Chief-Administrative-Officer
- (12) Chief-Business-Officer
- (13) Business-Manager
- (14) Purchasing-Agent]

"[e.- The-Chancellor-and-Chief-Administrative-Officers-of the-academic-component-institutions-of-the-U.-T.- System-may-file-copies-of-the-financial-statements that-they-currently-are-required-to-file-with-the Secretary-of-State-pursuant-to-Section-3-of-Article 6252-9b,-Vernon's-Civil-Statutes.]"

BACKGROUND INFORMATION

At the August 1985 meeting of the U. T. Board of Regents, a policy was adopted for implementing the requirement contained in Section 86 of Article V of the General Appropriations Act for 1986-87 that certain officers and employees of state agencies file financial disclosure statements with the governing body of the agency.

Attorney General Jim Mattox has ruled in Opinion No. JM-343 that Section 86 of Article V cannot broaden the scope of Section 3 of Article 6252-9b, Vernon's Civil Statutes, which lists the persons who must file financial disclosure statements under that statute. The result of this ruling by the Attorney General is that only persons required to file financial disclosure statements with the Secretary of State under Section 3 of Article 6252-9b must file financial disclosure statements with the governing body of their agency pursuant to Section 86 of Article V of the General Appropriations Act for 1986-87. Therefore, it is appropriate to amend the policy adopted by the U. T. Board of Regents as recommended above.

3. U. T. System: Proposed Amendments to Resolution Adopted by the U. T. Board of Regents in January 1971, Establishing Qualifications for Commissioned Law Enforcement Personnel.--

#### RECOMMENDATION

The Office of the Chancellor recommends that the educational requirements for commissioned personnel, as defined by Paragraph 3 of a Resolution adopted by the U. T. Board of Regents at its January 1971 meeting be amended as follows:

3. [~~Changes in educational requirements so as to conform to the policy adopted by the Texas Department of Public Safety (effective September 17, 1971).~~
- a. ~~--- Effective February 17, 1971, applicant must have at least 15 semester hours from an accredited college.~~
  - b. ~~--- Effective September 17, 1972, applicant must have at least 30 semester hours from an accredited college.~~
  - c. ~~--- Effective September 17, 1973, applicant must have a minimum of 45 semester hours from an accredited college.~~
  - d. ~~--- Effective September 17, 1974, applicant must have a minimum of 60 semester hours of college credit.~~
  - e.] Effective January 1, 1986 [September 17, 1975], an applicant for admission to the U. T. System Police Academy must have a minimum of sixty (60) semester college hours. The applicant may fulfill this college requirement by substituting two years of continuous employment as a police guard by a component institution within the U. T. System.

[~~In exceptional cases, these requirements may be waived provided that the deficiency is removed within two years from the date of the commissioning as policemen.~~]

#### BACKGROUND INFORMATION

The current educational requirements for applicants to the U. T. System Police Academy were established to comply with policies adopted by the Texas Department of Public Safety in 1971. The proposed amendments would establish a career path for persons currently employed by component institutions as guards, would promote stability in employment, and broaden the current applicant pool for the Police Academy.

These amendments have been reviewed and approved by the Councils of Academic and Health Institutions.

4. U. T. System Administration and U. T. Austin: Recommendation to Amend List of Individuals Authorized to Negotiate, Execute and Administer Classified Government Contracts (Managerial Group).--

#### RECOMMENDATION

The Office of the Chancellor recommends that the U. T. Board of Regents amend the list of officers known as the Managerial Group cleared for access to classified government contracts pursuant to the Security Agreement of the U. T. System by deleting Mr. Robert L. Anderson, Financial Associate, and Dr. Peter T. Flawn, President, U. T. Austin, and adding Dr. William H. Cunningham, President, U. T. Austin, to the Managerial Group. Additionally, Dr. Gerhard J. Fonken's title should be changed from Vice-President for Academic Affairs and Research to Executive Vice-President and Provost.

#### BACKGROUND INFORMATION

This amendment updates the roster of administrative officials authorized access to classified material and to negotiate, execute and administer classified government contracts pursuant to the Security Agreement of the U. T. System with the United States Department of Defense adopted by the U. T. Board of Regents on April 11, 1985. Designation of individuals in the Managerial Group is by virtue of position, thereby necessitating this amendment with Mr. Anderson's and Dr. Flawn's retirement, Dr. Cunningham's appointment as President, and Dr. Fonken's appointment as Executive Vice-President and Provost.

Academic Affairs Com.

ACADEMIC AFFAIRS COMMITTEE  
COMMITTEE CHAIRMAN BALDWIN

Date: December 5, 1985  
Time: Following the meeting of the Finance and Audit Committee  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

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1. U. T. System: Report for the Record - U. T. Component Mission (Role and Scope) Statements.--

REPORT

The following items related to Coordinating Board policies on institutional Mission (Role and Scope) requirements are submitted for the record:

- a. Tables of Programs for U. T. System general academic component institutions are slated for final adoption on second consideration by the Coordinating Board at its January 1986 meeting and tables of programs for U. T. System health components are slated for initial consideration at this same meeting. The U. T. Component Institution Tables of Programs as set forth on the following pages are equivalent to those adopted by the U. T. Board of Regents in June 1984 and do not require additional Board approval at this time. Differences between these and the earlier adopted version result only from 1) format changes adopted by the Coordinating Board after U. T. Board of Regents' approval of U. T. System component institution role and scope tables (including changes in the order and specificity of discipline categories and alteration of coding symbols) and 2) reference in Coordinating Board tables to programs planned for the future by special footnote only rather than by numerical or alphabetical code as originally included in U. T. Board of Regents' approved tables.
- b. Mission Description Statements are to be submitted as part of the Coordinating Board adoption of Mission (Role and Scope) Statements. These statements, which follow respective institutional tables of programs, are essentially descriptive of the institution and its approved Role and Scope Table and do not require U. T. Board of Regents' approval. All U. T. System mission description statements follow a commonly agreed upon format with the exception of the one for U. T. Austin which is patterned after the mission statement adopted by the U. T. Austin Centennial Commission.

The Coordinating Board procedures for approval of Mission (Role and Scope) Statements also provide the opportunity, at the institution's option, for the presentation of Historical Statements and additional background information. Any such optional submissions will be consistent with narrative statements in institutional catalogues which have received prior approval as appropriate. Thus, such materials are not included in this report for the record. Any such inclusions will be on file in the Office of Academic Affairs or the Office of Health Affairs.

INSTITUTION: The University of Texas-Arlington

DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

	Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture (01, 02, & 03)					
Arch & Environ Design (04)		1	1		
Area & Ethnic Studies (05)		2 <sub>A</sub>	2 <sub>A</sub>		
Business (06, 07, & 08)		1	1	3 <sub>B</sub>	
Communications (09 & 10)		1	2	*	
Computer and Information Scis (11)		2	1	1	
Education (13)		1	*		
Engineering (14)		1	1	1	
Engineering Related Techs (15)					
Foreign Languages (16)		3 <sub>C</sub>	3 <sub>C</sub>	*	
Allied Health (17)		3 <sub>D</sub>	2 <sub>E</sub>		
Health Sciences (18)		3 <sub>F</sub>	3 <sub>F</sub>	*	
Home Economics (19 & 20)					
Law (22)		3 <sub>G</sub>			
Letters (23)		1	1	*	
Liberal/General Studies (24)		1	2		
Library & Archival Sciences (25)					
Life Sciences (26)		1	1	*	
Mathematics (27)		1	1	1	
Multi/Interdisc Studies (30)		2 <sub>H</sub>	3 <sub>H</sub>	3 <sub>I</sub>	
Parks & Recreation (31)					
Philosophy (38)		1	2		
Physical Sciences (40 & 41)		1	1	1	
Psychology (42)		1	1	3 <sub>J</sub>	
Protective Services (43)		1	1		
Public Affairs (44)		1	1	3 <sub>K</sub>	
Social Sciences (45)		1	1	*	
Trade & Indust (46, 47, 48, & 49)					
Visual & Performing Arts (50)		1	*		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS-ARLINGTON

Table of Programs: Footnotes

- A: Limited to programs which consist primarily of courses drawn from other, previously approved programs
- B: Business and Management, General
- C: Russian, German, French, and Spanish
- D: Medical Technology
- E: Exercise Physiology
- F: Nursing
- G: Paralegal Studies
- H: Combinations of previously approved programs
- I: Combinations of previously approved programs and Humanities with emphases in Language, Literature, and Cultural Perspectives, offered jointly with UT-Dallas
- J: General Experimental Psychology only
- K: Urban Affairs and Social Work
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas at Arlington

The University of Texas at Arlington is the most comprehensive general academic component of The University of Texas System in North Texas. As a component institution of The University of Texas System, the University is committed to pursue high standards of achievement in instruction, student performance, research and scholarly accomplishment.

U. T. Arlington is dedicated to the pursuit of truth for the benefit of all mankind. Within an environment of academic freedom, students learn from faculty scholars who have in-depth expertise in the arts, the sciences, and in the professions of engineering, business administration, architecture, nursing, social work, and teacher education. The faculty engage in research and creative activity, both to develop and maintain their own scholarly expertise and to extend human knowledge. The results of that research and creative work are made available to students in the classroom and to the general public through publication and public service activities.

At the core of the University curriculum are the arts and the sciences, those academic disciplines common to nearly all colleges and universities in the United States. Courses are offered in these disciplines to support a general liberal education at the baccalaureate level. In addition, degree programs through the master's level are offered in many discipline categories.

As a state-supported public institution, U. T. Arlington is open to all citizens of the State who meet the academic standards for admission. In addition, some students from outside the State are admitted. However, the majority of the students come from the geographic area commonly described as the Dallas-Fort Worth metropolitan area. Degree programs and course offerings beyond those in the Arts and Sciences core are selected primarily to meet the needs and desires of the citizens of this region.

While the general region has no specific boundaries, it is useful to describe it in terms of the Dallas-Fort Worth consolidated metropolitan statistical area which in 1970 had a population of 2.3 million and grew to 3.0 million in 1980. The area continues to grow and was estimated to have a 1984 population of 3.35 million. Thus, U. T. Arlington is located in the heart of a dynamic metropolitan area which is an international center for business and commerce, high technology industry, the fine and performing arts, transportation, health care, research, and government.

To support the social, cultural, and economic development of this region, the University believes that it is desirable to offer programs, in addition to those at the baccalaureate and master's levels, in the Arts and Sciences core which are particularly appropriate for an institution in the center of one of the largest and fastest growing metropolitan areas in the country. Future aspirations include doctoral programs in selected disciplines within the Arts and Sciences\*; programs through the doctoral level in the urban related profession of business, social work, engineering, nursing\*, and urban administration; and programs through the master's level in architecture, teacher education\*, and the visual and performing arts.\*

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\*The Board of Regents of The University of Texas System recognizes that degree programs in these areas are appropriate to consider in future planning even though not included in the role and scope table approved by the Coordinating Board. The U. T. Board of Regents also recognizes that approval of new programs which lie outside the role and scope currently approved by the Coordinating Board cannot be implemented without prior approval of both the program and a change in role and scope.

continued - The University of Texas at Arlington

Many of the people who are served by The University of Texas at Arlington must schedule their involvement with the University around a variety of personal and professional activities. A significant number attend the University as part-time students, and some are employed full time. For many, the University provides the most convenient access to higher education because of their other commitments within the region. This access is particularly important to those who seek graduate degrees within their professions. It is also important to their employers. Consequently, the University continually strives to identify and respond to these special regional needs. Special scheduling and some special services are needed to make the resources of the University most useful to this segment of the community.

All of the faculty are expected to be engaged in some form of research and scholarly activity. Many are engaged in sponsored research. This research not only strengthens the scholarly base of the instructional program but also serves the direct needs of the sponsors. Of particular note is special research in the physical and biological sciences, mathematics, engineering, experimental psychology, social work, urban affairs, the humanities and linguistics.

The mission of The University of Texas at Arlington as stated above is consistent with its role and scope as specified by the Texas Legislature, which in 1971 said:

"The Board is authorized to maintain, operate and administer The University of Texas at Arlington as a general academic institution of higher education offering a standard four-year undergraduate program. The Board shall have the authority to prescribe courses leading to such customary degrees as are offered at leading American universities and to award such degrees. It is the intent of the legislature that such shall include baccalaureate, master's and doctoral degrees and their equivalents  
...."

THE UNIVERSITY OF TEXAS AT AUSTIN

		Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture	(01, 02, & 03)					
Arch & Environ Design	(04)		1	1	2	
Area & Ethnic Studies	(05)		1	1	1	
Business	(06, 07, & 08)		1	1	1	
Communications	(09 & 10)		1	1	1	
Computer and Information Scis	(11)		1	1	1	
Education	(13)		1	1	1	
Engineering	(14)		1	1	1	
Engineering Related Techs	(15)					
Foreign Languages	(16)		1	1	1	
Allied Health	(17)		3 <sub>A</sub>			
Health Sciences	(18)		3 <sub>B</sub>	3 <sub>C</sub>	3 <sub>C</sub>	3 <sub>D</sub>
Home Economics	(19 & 20)		1	1	2	
Law	(22)			1		1
Letters	(23)		1	1	1	
Liberal/General Studies	(24)		1	2	2	
Library & Archival Sciences	(25)		2	1	1	
Life Sciences	(26)		1	1	1	
Mathematics	(27)		1	1	1	
Multi/Interdisc Studies	(30)		1	1	2	
Parks & Recreation	(31)					
Philosophy	(38)		1	1	1	
Physical Sciences	(40 & 41) *		1	1	1	
Psychology	(42)		1	1	1	
Protective Services	(43)					
Public Affairs	(44)		1	1	1	
Social Sciences	(45)		1	1	1	
Trade & Indust	(46, 47, 48, & 49)					
Visual & Performing Arts	(50)		1	1	1	

\*: Music - Church Music (Bacc. program only) CIP Code 39.0501.00

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

THE UNIVERSITY OF TEXAS AT AUSTIN

6/7/84

TABLE OF PROGRAMS: FOOTNOTES

- A: Medical Technology only
- B: Pharmacy and Nursing only
- C: Pharmacy, Nursing, Communication-Education of the Deaf, and  
Communication-Audiology only
- D: Pharmacy only

## The University of Texas at Austin

The University of Texas at Austin is a general academic component of The University of Texas System. As a component institution of The University of Texas System, the University is committed to pursue high standards of achievement in instruction, student performance, research, and scholarly accomplishment.

### The Mission of The University of Texas at Austin is:

- To promote the development of the human resources of Texas and the Nation to their highest potential of intellectual achievement and personal growth;
- To provide excellent teaching for the education of qualified and promising undergraduates and graduates of diverse social, economic, and ethnic background;
- To conduct research designed to develop and to extend human knowledge;
- To advance the arts and to preserve culture;
- To cultivate in the minds of the students the ethical and moral values that are the basis of a humane social order;
- To maintain intellectual freedom, to protect it from those who seek to shackle independent thought, and to guard against unquestioning conformity to established intellectual doctrine;
- To provide superior libraries that will serve as centers of scholarly research and as learning resources for students, faculty members, and the people of Texas;
- To render service to the public through museums, exhibitions, performing arts, and other cultural activities; through applied research; through dissemination of information; and through athletic activities;
- To provide continuing and advanced education for professional development and intellectual enrichment; and
- To serve as the leader of higher education in Texas and to develop further a superior system of higher education, as well as to sustain and strengthen the quality of primary and secondary school education throughout the State.

In order to accomplish its mission, the University should produce self-reliant graduates who are able to provide leadership and who do not simply react to events. The University should not only equip its graduates with skills but should also educate them to adapt to, and cope with, the accelerated process of change that will occur in business, professional, and social institutions in the future.

The University should expose all students to a broad spectrum of the liberal arts, so that they may be educated beyond vocational requirements and thus be prepared to be responsible citizens of our increasingly complex world.

continued - The University of Texas at Austin

The University should keep itself free from dogmatic conformity and doctrinal control brought to bear by any segment of society government. It should continue to dedicate itself to the ideals of learning and scholarship and must constructively involve itself with the significant and frequently controversial issues that beset our present and will trouble our future. The University should be a catalyst for uniting the world of learning with the world of affairs and should seek out every opportunity to emphasize humane values and to enhance the intellectual and cultural life of the State and of the Nation.

The University should acquire and retain a faculty of the highest scholarly distinction and teaching competence. It shall be a cosmopolitan body with wide-ranging interests and broad academic vision, whose members teach basic, as well as advanced, courses and make scholarly contributions to their respective fields and are mindful of public service.

The University should attract and hold a highly qualified and diverse student body. The University should provide the opportunity for students to develop their talents and for each student to develop his or her potential to the maximum.

The University should continue to foster a scholarly environment that promotes the creative processes which advance knowledge and understanding.

The University should excel in basic and applied research.

The University should continue to encourage and justify -- by tangible as well as intangible achievements and by the demonstration of its fiscal responsibility -- the financial support it receives from both public and private funds.

The University should pursue its mission internationally as well as within the State and Nation in its continuing quest for excellence. It should seek to become a great world university in addition to seeking preeminence in the State and the Nation.

In fulfilling its mission, the scope of The University's degree programs extends throughout the full range and level of academic disciplines as indicated in the Coordinating Board approved Table of Programs.

INSTITUTION: The University of Texas at Dallas

DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

	Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture (01, 02, & 03)					
Arch & Environ Design (04)					
Area & Ethnic Studies (05)		3 <sub>A</sub>			
Business (06, 07, & 08)		1	1	1	
Communications (09 & 10)		*	*		
Computer and Information Scis (11)		1	1	1	
Education (13)		3 <sub>B</sub>	3 <sub>B</sub>	*	
Engineering (14)		*	*	*	
Engineering Related Techs (15)					
Foreign Languages (16)		3 <sub>C</sub>	2 <sub>D</sub>		
Allied Health (17)		2 <sub>E</sub>			
Health Sciences (18)		3 <sub>F</sub>	3 <sub>F</sub>	3 <sub>F</sub>	
Home Economics (19 & 20)					
Law (22)					
Letters (23)		1	2	*	
Liberal/General Studies (24)		1	2		
Library & Archival Sciences (25)					
Life Sciences (26)		1	1	1	
Mathematics (27)		1	1	1	
Multi/Interdisc Studies (30)		2 <sub>G</sub>	3 <sub>H</sub>	3 <sub>I</sub>	
Parks & Recreation (31)					
Philosophy (38)		1	2		
Physical Sciences (40 & 41)		1	1	1	
Psychology (42)		1	2	*	
Protective Services (43)					
Public Affairs (44)		3 <sub>J</sub>	3 <sub>K</sub>	3 <sub>K</sub>	
Social Sciences (45)		1	2	*	
Trade & Indust (46, 47, 48, & 49)					
Visual & Performing Arts (50)		1	*		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS AT DALLAS

Table of Programs: Footnotes

- A: American and Asian Studies
- B: Special Education
- C: French, Spanish, German, and Russian
- D: French and Spanish
- E: Programs for the diagnosis and remediation of handicapped children related to the Callier Center
- F: Communication Disorders and Language Pathology and Audiology. The doctorate is offered jointly with UTHSC-Dallas.
- G: Combinations of previously approved programs
- H: Science Education, Environmental Science, Humanities, and Human Development
- I: Environmental Science, Human Development & Communication Sciences, and a joint program with The University of Texas at Arlington in Humanities
- J: Public Administration
- K: Political Economy
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas at Dallas

The University of Texas at Dallas, defined by state law as a "general academic institution" of The University of Texas System, is committed to pursue high standards of achievement in instruction, student performance, research, and scholarship.

U. T. Dallas is dedicated to the pursuit of truth for the benefit of all mankind. It believes the purpose of any university is the advancement of knowledge and the education of its students and recognizes that the quality of a university is measured by how well it accomplishes these purposes. To those ends, U. T. Dallas is committed to excellence in the conduct of research and instruction. In addition, the University's destiny is inextricably linked with the fortune of the Dallas metropolitan area. The University believes a partnership with the knowledge-based businesses and industries of this area will enhance the University's opportunity to become the first-class institution it aspires to be.

The principal mission of The University of Texas at Dallas is to be responsive to the educational and research needs of the nation as exemplified by the technologically-sophisticated and managerially-intensive economy of the Dallas metropolitan area. A unique portion of the mission of U. T. Dallas, which is met through the Callier Center of Communication Disorders, is the provision of clinical services, educational services, cultural and social activities, and the conduct of research to serve the needs of those with communication disorders.

U. T. Dallas inherited from the Southwest Center for Advanced Studies a distinguished and well recognized program of research which has been maintained and expanded. Since becoming a state institution, U. T. Dallas has ranked among the top academic institutions in Texas in sponsored research per full-time-faculty equivalent, consistently outranking most older and more traditional Texas state universities. The nature of this research has focused on scientific and technological disciplines and has ranged from the instrumentation of outer space exploration to problems in the neurosciences.

While U. T. Dallas draws students from throughout the world, more than 80 percent of the student body come from the North Dallas region and surrounding area, an area with approximately two million people. A majority of the students are employed, many of them full time, and over 75 percent of the students attend evening classes. As the only public institution of higher education located in the Dallas metropolitan area, U. T. Dallas is committed to providing undergraduate and graduate educational opportunities at times that are convenient to its place-bound constituents.

To support the social, cultural, and economic development of the Dallas region, U. T. Dallas has defined its principal mission, designed its programs, and assembled its faculty with an aim toward the conduct of graduate education and research to meet the needs of business, industry, and government, as well as to continue to enhance its national academic reputation by the placement of some of its doctoral graduates at major universities.

A distinguishing feature of U. T. Dallas is its academic organization and programmatic structure. The academic structure reflects programmatic function rather than disciplinary departmentalization. The schools have been constituted to serve as budgetary and management centers for all academic activities: graduate and undergraduate programs, undergraduate colleges and research centers. The academic organization at U. T. Dallas supports the programmatic requirements of graduate research and instruction in many nontraditional fields of study,

including industrial chemistry, applied mathematics, environmental sciences, communication sciences and disorders, political economy, and international management. In addition, U. T. Dallas conducts its programs in teacher education in a comparatively unorthodox, but successful, manner. Students seeking teacher certification are required to meet the same requirements of their discipline as are non-teacher education students. U. T. Dallas has no separate department or school of teacher education.

U. T. Dallas is the only upper-division doctoral granting institution in the nation. At the core of the U. T. Dallas curriculum, as shown in Section I, Table of Programs, are the arts and the sciences, those academic disciplines common to most colleges and universities in the United States. Degree programs are offered in these disciplines to support a general liberal education, within an interdisciplinary context, at the baccalaureate level. Master's level courses and degree programs also are offered in many of these disciplines, and offerings at the doctoral level exist or are considered appropriate by the U. T. Board of Regents for future planning in six of the nine Arts and Sciences discipline areas.

Degree programs and course offerings beyond those in the Arts and Sciences core reflect the specific needs of employers and citizens in the Dallas region and the distinctive character of U. T. Dallas as a graduate research institution. U. T. Dallas currently offers baccalaureate and master's level programs and courses in eight other disciplines (Business Administration, Education, Health Sciences, Public Affairs, Communication, Computer and Information Sciences, Multi/Interdisciplinary and Liberal/General Studies). In addition, baccalaureate level programs in Area/Ethnic Studies are authorized. Recently, the Coordinating Board gave its approval for U. T. Dallas to offer baccalaureate and master's level programs in Engineering. Doctoral level work in seven of these ten disciplines is either offered at the present time or considered appropriate by the U. T. Board of Regents in planning to meet future needs of the Dallas region.

The Table of Programs approved by the U. T. Board of Regents recognizes degree programs in some discipline categories for future planning purposes and generally does not restrict the University's efforts within a broad discipline category and level even though the table currently approved by the Coordinating Board is restricted by footnote. The U. T. Board of Regents does recognize that approval of new programs which lie outside the currently approved role and scope cannot be implemented without prior approval of both the program and a change in the role and scope.

INSTITUTION: The University of Texas at El Paso

DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

	Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture (01, 02, & 03)					
Arch & Environ Design (04)					
Area & Ethnic Studies (05)		3A	2A		
Business (06, 07, & 08)		1	1		
Communications (09 & 10)		1			
Computer and Information Scis (11)		1	1		
Education (13)		1	1	*	
Engineering (14)		1	1	*	
Engineering Related Techs (15)					
Foreign Languages (16)		3B	3B		
Allied Health (17)		3C			
Health Sciences (18)		3D	3E		
Home Economics (19 & 20)					
Law (22)					
Letters (23)		1	1		
Liberal/General Studies (24)		2	2		
Library & Archival Sciences (25)					
Life Sciences (26)		1	1		
Mathematics (27)		1	1		
Multi/Interdisc Studies (30)		2F	3F		
Parks & Recreation (31)					
Philosophy (38)		1	2		
Physical Sciences (40 & 41)		1	1	3G	
Psychology (42)		1	1	*	
Protective Services (43)		1			
Public Affairs (44)		3H	3I		
Social Sciences (45)		1	1		
Trade & Indust (46, 47, 48, & 49)					
Visual & Performing Arts (50)		1	1		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS AT EL PASO

Table of Programs: Footnotes

- A: American (05.0102), Latin American (05.0107), and Hispanic-American (05.0203) Studies
- B: French, German, and Spanish
- C: Speech, Hearing, and Language Disorders, Medical Technology
- D: Nursing, Health Care Administration
- E: Speech Pathology and Audiology, Nursing
- F: Combinations of previously approved programs
- G: Geological Sciences
- H: Social Work
- I: Public Administration
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas at El Paso

The University of Texas at El Paso is a general academic component of The University of Texas System. Established in 1913 as the Texas State School of Mines and Metallurgy, it became a part of The University of Texas System in 1919. Subsequently, it grew both in enrollment and programs until, in 1967, it adopted its current name to reflect the breadth and level of its academic programs. As a component institution of The University of Texas System, the University is committed to pursue high standards of achievement in instruction, student performance, research, and scholarly accomplishment.

U. T. El Paso is dedicated to the pursuit of truth for the benefit of all mankind. Within an environment of academic freedom, students learn from faculty scholars who have demonstrated expertise in the arts and the sciences, as well as in the professions of business, education, engineering, allied health, and nursing. The faculty engage in research and creative activity, both to develop and maintain their own scholarship and to extend human knowledge. The results of that research and creativity are made available to students in the classroom and the laboratory, and to the general public through publication and public service activities.

At the core of the University curriculum are the arts and the sciences, those academic disciplines common to nearly all colleges and universities in the United States. Courses are offered in these disciplines to support a general liberal education at the baccalaureate level. In addition, the University offers degree programs through the master's level in many discipline categories.

As a state-supported public institution, the University is open to all citizens of the State and elsewhere who meet the academic standards for admission. While U. T. El Paso admits some students from outside the State, the majority come from the immediate geographic area in which the University is located. Degree programs and course offerings beyond those in the Arts and Sciences core are selected primarily to meet the needs and desires of the residents of this region.

Although the region of immediate service has no specific boundaries, it is most often considered to consist of the far West Texas or upper Rio Grande planning region, a section of the State which grew by 45 percent between 1970 and 1980 to a population of 1.6 million. The social, political, and economic concerns of the upper Rio Grande planning region are very closely linked to the interests of Southeastern New Mexico and Ciudad Juarez, Mexico, a city of approximately one million people.

Because it is the only state-supported comprehensive university in far West Texas, U. T. El Paso believes that it bears a special responsibility to serve the higher education needs of the region from the baccalaureate to the doctoral level. Located on both an interstate and an international border, its constituencies reflect many cultural backgrounds which offer unique opportunities for instruction, research, and service in all fields -- especially in business, education, engineering, allied health, and nursing. The University fulfills its service responsibilities by offering facilities for general community use, presenting cultural (including music, art, and drama) and athletic events, encouraging appropriate consulting engagements for the faculty and providing continuing education opportunities in a wide range of studies.

continued - The University of Texas at El Paso

To support the social, cultural, and economic development of this region, the Coordinating Board has authorized the University to offer degrees through the doctoral level in physical sciences (limited to geological sciences); through the master's level in business, education, engineering, allied health, and nursing; in addition to those at the baccalaureate and master's level in Arts and Sciences.

In addition, the U. T. Board of Regents has recognized that several degree programs not included in the role and scope table approved by the Coordinating Board are appropriate for consideration in U. T. El Paso's future planning. These programs include offerings in psychology, engineering, chemistry, and education. The U. T. Board of Regents recognizes that programs outside the role and scope approved by the Coordinating Board cannot be implemented without prior approval of both the program and a change in role and scope.

Many of the students who are served by The University of Texas at El Paso must work full time; consequently, they pursue their educational programs on a part-time basis. For many, the University provides the only access to higher education at either the undergraduate or graduate level. This access is particularly important to place-bound individuals who seek graduate degrees to enhance careers which they have already established and believe they cannot afford to abandon. The University is also important to their employers and most other enterprises in the area because it provides the only source of continuing professional development, research, and cultural enrichment.

As the region's primary source of higher education opportunity, The University of Texas at El Paso strives to identify and respond to its special needs. It offers class schedules and instructional services which make the resources of the University most useful to the area and available in courses offered at hours which are convenient to employment schedules. It also encourages research which is germane to the region, e.g., in manufacturing engineering, geology, and bilingual education, as well as that which has an impact nationally and internationally.

While all of the faculty are engaged in research and scholarly activity, many conduct sponsored research which is funded by both federal and state agencies, as well as private foundations and industry. Such engagements strengthen the scholarly base of the instructional program and serve the direct needs of the sponsors as well. Of particular note are the special research strengths in geology, psychology, biology, chemistry, education, business and economics, engineering, and border studies.

INSTITUTION: The University of Texas-Permian Basin      DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

	Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture (01, 02, & 03)					
Arch & Environ Design (04)					
Area & Ethnic Studies (05)					
Business (06, 07, & 08)		1	3 <sub>A</sub>		
Communications (09 & 10)		3 <sub>B</sub>			
Computer and Information Scis (11)		1	*		
Education (13)		1	1		
Engineering (14)		3 <sub>C</sub>	3 <sub>C</sub>		
Engineering Related Techs (15)		*			
Foreign Languages (16)		3 <sub>D</sub>			
Allied Health (17)					
Health Sciences (18)					
Home Economics (19 & 20)					
Law (22)					
Letters (23)		1	3 <sub>E</sub>		
Liberal/General Studies (24)		2			
Library & Archival Sciences (25)					
Life Sciences (26)		1	3 <sub>F</sub>		
Mathematics (27)		1	*		
Multi/Interdisc Studies (30)		3 <sub>G</sub>	3 <sub>H</sub>		
Parks & Recreation (31)					
Philosophy (38)					
Physical Sciences (40 & 41)		3 <sub>I</sub>	3 <sub>J</sub>		
Psychology (42)		1	*		
Protective Services (43)		1			
Public Affairs (44)					
Social Sciences (45)		1	3 <sub>K</sub>		
Trade & Indust (46, 47, 48, & 49)					
Visual & Performing Arts (50)		3 <sub>L</sub>	*		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS-PERMIAN BASIN

Table of Programs: Footnotes

- A: Business Management, General
- B: Mass Communications (Journalism)
- C: Control Engineering
- D: Spanish
- E: English, General
- F: Biology, General
- G: Humanities and combinations of previously approved programs
- H: Behavioral Science and combinations of previously approved programs
- I: Chemistry and Geological Sciences
- J: Geological Sciences
- K: History
- L: Art and Music
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas of the Permian Basin

The University of Texas of the Permian Basin is an upper-level general academic component of The University of Texas System. As a component institution of The University of Texas System, the University is committed to pursue high standards of achievement in instruction, student performance, research, and scholarly accomplishment.

U. T. Permian Basin is dedicated to the pursuit of truth for the benefit of all mankind. Within an environment of academic freedom, students learn from faculty scholars who have in-depth expertise in the arts, the sciences, and the professions of business, engineering, and teacher education. The faculty engage in research and creative activity, both to develop and maintain their own scholarly expertise and to extend human knowledge. The results of that research and creative work are made available to students in the classroom and to the general public through publications and public service activities.

At the core of the University curriculum are the arts and the sciences, those academic disciplines common to nearly all colleges and universities in the United States. Courses are offered in these disciplines to support a general liberal education at the baccalaureate level. In addition, degree programs through the master's level are offered in many discipline categories.

As a state-supported public institution, the University is open to all citizens of the State who meet the academic standards for admission. Although some students from outside the State are admitted, the majority of the students come from the geographic area in which the institution is located. Degree programs and course offerings beyond those in the Arts and Sciences core are selected primarily to meet the needs and desires of the citizens of this region.

While the region has no specific boundaries, it is useful to think of it in terms of the seven-county region surrounding the Odessa/Midland area, a region which grew by 16 percent between 1970 and 1980 to a population of approximately 300,000. The Permian Basin, with its enormous petroleum industry, puts special demands on the University's curriculum, as well as its research and service efforts.

To support the social, cultural and economic development of this region, the University believes it is desirable to offer programs through the master's level in business, education, and some aspects of engineering in addition to those at the baccalaureate and master's level Arts and Sciences core.

Many of the people who are served by The University of Texas of the Permian Basin must schedule their involvement with the University around a variety of personal and professional activities. They attend the University as part-time students, and some are employed full time. For many, U. T. Permian Basin provides the only access to higher education because of their other commitments within the region. This access is particularly important to those who seek graduate degrees within their professions. It is also important to their employers. Consequently, the University continually strives to identify and respond to those special regional needs. Special scheduling and some special services are needed to make the resources of the University most useful to this segment of the community.

While all of the faculty engage in research and scholarly activity, many are engaged in sponsored research. This research not only strengthens the scholarly base of the instructional program but also serves the direct needs of the sponsors. Of particular note is the special research strength in energy and energy-related business.

The U. T. Board of Regents recognizes that some degree programs are appropriate to consider in future planning, even though not included in the role and scope table approved by the Coordinating Board. Additionally, the table of programs approved by the U. T. Board of Regents generally does not restrict the University's efforts within a broad discipline category and level, even though the role and scope approved by the Coordinating Board is restricted by footnote. The U. T. Board of Regents also recognizes that approval of new programs which lie outside the approved role and scope cannot be implemented without prior approval of both the program and a change in the role and scope.

INSTITUTION: The University of Texas-San Antonio

DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

		Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture	(01, 02, & 03)					
Arch & Environ Design	(04)		3 <sub>A</sub>	*		
Area & Ethnic Studies	(05)		3 <sub>B</sub>	3 <sub>B</sub>		
Business	(06, 07, & 08)		1	1		
Communications	(09 & 10)		2 <sub>C</sub>			
Computer and Information Scis	(11)		1	1	*	
Education	(13)		1	1	*	
Engineering	(14)		3 <sub>D</sub>	3 <sub>E</sub>	*	
Engineering Related Techs	(15)					
Foreign Languages	(16)		3 <sub>F</sub>	3 <sub>G</sub>		
Allied Health	(17)		3 <sub>H</sub>			
Health Sciences	(18)					
Home Economics	(19 & 20)					
Law	(22)					
Letters	(23)		1	1		
Liberal/General Studies	(24)		2	2		
Library & Archival Sciences	(25)					
Life Sciences	(26)		1	1	*	
Mathematics	(27)		1	1		
Multi/Interdisc Studies	(30)		3 <sub>I</sub>	3 <sub>I</sub>		
Parks & Recreation	(31)					
Philosophy	(38)		2	*		
Physical Sciences	(40 & 41)		1	3 <sub>J</sub>		
Psychology	(42)		1	2		
Protective Services	(43)		1			
Public Affairs	(44)		2 <sub>K</sub>	3 <sub>K</sub>		
Social Sciences	(45)		1	1	*	
Trade & Indust	(46, 47, 48, & 49)					
Visual & Performing Arts	(50)		1	3 <sub>L</sub>		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS-SAN ANTONIO

Table of Programs: Footnotes

- A: Architecture and Interior Design
- B: American and Hispanic American Studies
- C: Mass Communication
- D: Civil, Electrical, Mechanical, and Computer Engineering
- E: Computer Science Systems Design
- F: French, German, Spanish, and Russian
- G: French, German, and Spanish
- H: Medical Technology and joint programs with UTHSC-SA in Occupational and Physical Therapy
- I: Combinations of previously approved programs
- J: Chemistry and Geology
- K: Public Administration
- L: Art and Music
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas at San Antonio

The University of Texas at San Antonio is a general academic component of The University of Texas System. As a component institution of The University of Texas System, the University is committed to pursue high standards of achievement in instruction, student performance, research and scholarly accomplishment.

The University of Texas at San Antonio is dedicated to the pursuit of truth for the benefit of all mankind. Within an environment of academic freedom, students learn from faculty scholars who are knowledgeable in the arts, the sciences, and the professions of engineering, business, architecture, public administration and education. The faculty engage in research and creative activity, both to develop and maintain their own scholarly expertise and to extend human knowledge. The results of that research and creative work are made available to students in the classroom and to the general public through publication and public service activities.

At the core of the University curriculum are the arts and the sciences, those academic disciplines common to nearly all colleges and universities in the United States. Courses are offered in these disciplines to support a general liberal education at the baccalaureate level. In addition, degree programs, through the master's level, are offered in many of these disciplines.

As a state-supported public institution, the University is open to all citizens of the State who meet the academic standards for admission. In addition, some students from outside the State are admitted. However, the majority of the students come from the geographic area in which the institution is located. Degree programs and course offerings beyond those in the Arts and Sciences core are selected primarily to meet the needs and desires of the citizens of this region.

While the region has no specific boundaries, it is useful to think of it in terms of the 46-county South Texas region, a region which grew by 26 percent between 1970 and 1980 to a population of approximately 2.6 million.

The potential for continued economic and technological development of San Antonio and the South Texas region is dependent in large measure on selected program development at U. T. San Antonio. In addition to the development of engineering programs at the University, U. T. San Antonio has focused its science and technology programs to support San Antonio's development as a major biotechnology center, as well as a center for the testing and instrumentation of aerospace and defense systems.

To support the social, cultural and economic development of this region, the University believes it is desirable to offer programs in the following discipline categories in addition to those at the baccalaureate and master's level in the Arts and Science core:

continued - The University of Texas at San Antonio

1. Through the doctoral level: programs in life sciences\*, engineering\*, computer sciences\*, education\*, and social sciences\*;
2. Through the master's level: programs in architecture\*, business, and public administration;
3. Through the baccalaureate level only: programs in mass communications, criminal justice (protective services), and allied health sciences (in cooperation with the U. T. Health Science Center - San Antonio).

The University plans initially to develop with other institutions cooperative or joint degrees at the doctoral level in life sciences, education, and computer sciences. As U. T. San Antonio develops the capacity to meet the regional need for graduate engineering education, the U. T. Austin graduate engineering program in San Antonio will be phased out.

U. T. San Antonio is the only public university serving this metropolitan population of over a million people. While there are several small private universities located in San Antonio, their academic program offerings are limited and they appeal to a different student population than does U. T. San Antonio.

Many of the people who are served by The University of Texas at San Antonio must schedule their involvement with the University around a variety of personal and professional activities. They attend the University as part-time students, and some are employed full time. For many, the University provides the only access to higher education because of their other commitments in the region. This access is particularly important to those who seek graduate degrees within their professions. It is also important to their employers. Consequently, the University continually strives to identify and respond to those special regional needs. Special scheduling and some special services are needed to make the resources of the University most useful to this segment of the community.

While all of the faculty engage in research and scholarly activity, many are engaged in sponsored research. This research not only strengthens the scholarly base of the instructional program but also serves the direct needs of the sponsors and the region.

The University of Texas at San Antonio, a comprehensive public metropolitan university, was created by the 61st Legislature on June 5, 1969 to offer bachelor's, master's, and doctoral degrees "as are customarily offered at leading American universities." The 61st Legislature further charged that the University should establish "such other rules and regulations as may be necessary for the conduct of the university as one of the first class...."

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\*The Board of Regents of The University of Texas System recognizes that degree programs in these areas are appropriate to consider in future planning even though not included in the role and scope table approved by the Coordinating Board. The U. T. Board of Regents also recognizes that approval of new programs which lie outside the role and scope approved by the Coordinating Board cannot be implemented without prior approval of both the program and a change in role and scope.

INSTITUTION: The University of Texas-Tyler

DATE: July 1985

PUBLIC SENIOR COLLEGES AND UNIVERSITIES  
TABLE OF PROGRAMS

		Asso. Cert.	Bacc.	Mast.	Doct.	Special Prof.
Agriculture	(01, 02, & 03)					
Arch & Environ Design	(04)					
Area & Ethnic Studies	(05)					
Business	(06, 07, & 08)		1	1		
Communications	(09 & 10)		3 <sub>A</sub>			
Computer and Information Scis	(11)		1	1		
Education	(13)		1	1	*	
Engineering	(14)					
Engineering Related Techs	(15)		3 <sub>B</sub>	3 <sub>B</sub>		
Foreign Languages	(16)		3 <sub>C</sub>	*		
Allied Health	(17)		3 <sub>D</sub>	3 <sub>E</sub>		
Health Sciences	(18)		3 <sub>F</sub>	2 <sub>F</sub>		
Home Economics	(19 & 20)					
Law	(22)					
Letters	(23)		1	3 <sub>G</sub>		
Liberal/General Studies	(24)		1	2		
Library & Archival Sciences	(25)					
Life Sciences	(26)		1	*		
Mathematics	(27)		1	*		
Multi/Interdisc Studies	(30)		3 <sub>H</sub>	3 <sub>I</sub>		
** Parks & Recreation	(31)					
Philosophy	(38)		2	*		
Physical Sciences	(40 & 41)		3 <sub>J</sub>	*		
Psychology	(42)		1	1		
Protective Services	(43)		1			
Public Affairs	(44)			3 <sub>K</sub>		
Social Sciences	(45)		1	3 <sub>L</sub>		
Trade & Indust	(46, 47, 48, & 49)					
Visual & Performing Arts	(50)		3 <sub>M</sub>	*		

Explanation of Codes:

- 1 Entire category in role and scope; some programs currently exist
- 2 Entire category in role and scope, unless limited by footnote; no programs currently exist
- 3 Only part of the category in role and scope, as defined by footnote

July 1985

THE UNIVERSITY OF TEXAS-TYLER

Table of Programs: Footnotes

- A: Mass Communication
- B: Industrial Safety, Industrial Technology, and General Engineering Technology
- C: Spanish and French
- D: Medical Technology and Respiratory Therapy
- E: Clinical Exercise Physiology
- F: Nursing and Health Professions, General only
- G: English, General
- H: BAAS and combinations of previously approved programs
- I: General Interdisciplinary Studies and combinations of previously approved programs
- \*\*: Kinesiology (36.0108), Baccalaureate and Master's
- J: Chemistry
- K: Public Planning and Administration
- L: History
- M: Art and Music
- \*: The institution's governing board has recognized that some degree programs in this discipline category are appropriate to consider in future planning at the institutional level. If a program proposal is submitted under this category, the Coordinating Board must approve both the proposal and a Role and Scope change.

## The University of Texas at Tyler

The University of Texas at Tyler is an upper-level general academic component of The University of Texas System in East Texas. As a component institution of The University of Texas System, the University is committed to the pursuit of high standards in instruction, student performance, research, and other scholarly accomplishments.

U. T. Tyler is dedicated to the pursuit of truth for the benefit of all mankind. Within an environment of academic freedom, students learn from faculty scholars who have expertise in the arts, the sciences, and the professions of public affairs, education, business, health sciences, allied health science, and technology. The faculty engage in research and creative activity, both to develop and maintain their own scholarly expertise and to extend human knowledge. The results of that research and other creative efforts are made available to students in the classroom and to the general public through publication and public service activities.

At the core of the University curriculum are the arts and the sciences, those academic disciplines common to nearly all universities in the United States. Courses are offered in these disciplines to support a general liberal education at the baccalaureate level, and in many disciplines, at the master's degree level.

As a state-supported institution, U. T. Tyler is open to all citizens of the State who meet the academic standards for admission. Also, qualified students from outside the State and throughout the world are admitted. Degree programs and course offerings beyond those in the Arts and Sciences core are selected primarily to meet the needs and desires of the citizens of this region.

While this area has no specific boundaries, it is useful to think of it in terms of the East Texas Planning Region, a region which grew by 30 percent between 1970 and 1980 to a population of 500,000. U. T. Tyler is ideally located to serve the Tyler-Longview-Marshall corridor of the East Texas region. Between 1980 and 1983 this was one of the three most rapidly expanding areas of the State. The rapid growth has created new employment opportunities in manufacturing, retail and wholesale trade, government, service industries, construction, energy and education. The area served by U. T. Tyler has become the center of a broad and expanding health care and health service delivery industry. U. T. Tyler responds to the needs of these constituencies and is prepared to address the growth-related conditions predicted for the remainder of this century.

To support the social, cultural and economic development of this region, the University believes that it is desirable to offer programs through the doctoral level in education\*, through the master's level in business, computer and informational sciences, education, technologies, allied health sciences, interdisciplinary studies, public affairs, and health sciences\*, in addition to those at the baccalaureate and master's level in the Arts and Science core\*.

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\*The Board of Regents of The University of Texas System recognizes that degree programs in these areas are appropriate to consider in future planning even though not included in the role and scope table approved by the Coordinating Board. The U. T. Board of Regents also recognizes that approval of new programs which lie outside the role and scope currently approved by the Coordinating Board cannot be implemented without prior approval of both the program and a change in role and scope.

continued - The University of Texas at Tyler

Many of the persons who attend U. T. Tyler are part-time students who are employed full time; consequently, they must schedule their classes around personal and professional responsibilities. Because of their place-bound needs, U. T. Tyler provides their only access to higher education. The quality of education and the quality of life generally, as well as professional growth, are specific objectives of the University, which often requires unique scheduling and special services to meet the comprehensive needs of the greater community.

While all faculty engage in research and scholarly activity, many are engaged in sponsored research. This research strengthens the scholarly base of the instructional program and serves the direct needs of the sponsors. Of particular note are the special research strengths in psychology, education, life sciences, technologies, social sciences, and business.

The University of Texas at Tyler is committed to academic excellence and the pursuit of knowledge. The institution was established by the Legislature as an upper-division institution statutorily dedicated to offering programs leading to baccalaureate and graduate degrees. At the time the institution was established, the area which it was intended to serve was just beginning to grow. The remarkable growth of the past decade, and that which is predicted for the remainder of the century, will continue to have impact upon constituency demands and expectations of U. T. Tyler.



## The University of Texas Health Science Center at Dallas

The University of Texas Health Science Center at Dallas is a component institution of The University of Texas System and is committed to pursuing high standards of achievement in instruction, research, and clinical activities. Since its inception in 1943, the U. T. Health Science Center - Dallas has evolved as one of the leading biomedical institutions of the country and its programs are designed and implemented with the intent to sustain this progress in the future.

As an academic health science center, the central mission of the institution is to educate health professionals whose lifelong career objectives will be to provide the best possible care, apply the most modern treatment modalities, and continue to seek information fundamental to the treatment and prevention of disease. Within an environment of interdisciplinary activity and academic freedom at the U. T. Health Science Center - Dallas, students receive training from faculty scholars who have in-depth expertise in the many specialities of health care and the biomedical sciences. Faculty members also engage in research and patient care so that they can generate new knowledge in the fight against disease and maintain their clinical skills while serving the residents of Texas to the utmost of their ability. Research findings are made directly available to students and indirectly to the general public as practicing professionals adopt the latest treatment modalities. The focus of the faculty, students, and administration at The University of Texas Health Science Center at Dallas will remain on the creation of new knowledge, the highest ethical standards, the scientific basis of medical practice, and concern and compassion for all people. Every aspect of the University's operation will be conducted in as cost-effective a manner as possible.

The institution consists of The Southwestern Medical School, The Southwestern Graduate School of Biomedical Sciences, and The School of Allied Health Sciences and offers degrees and programs limited to health related fields.

HEALTH SCIENCE CENTERS'  
TABLE OF PROGRAMS

Texas CIP Category	CIP#	Cert.	Bacc.	Mast.	Doct.	Special Prof.
<b>MAJOR PROGRAM AREAS</b>						
ALLIED HEALTH	(17)	1	1	2		
<b>HEALTH SCIENCES (18)</b>						
Audiology & Speech Pathology	(18.01)					
Basic Clinical Health Sciences	(18.02)			1	1	
Dentistry	(18.04)					
Epidemiology	(18.06)					
Health Services Administration	(18.07)		1			
Medicine	(18.10)			1	1	1
Nursing	(18.11)		1	1	2	
Optometry	(18.12)					
Osteopathic Medicine	(18.13)					
Pharmacy	(18.14)					
Podiatry	(18.15)					
Veterinary Medicine	(18.24)					
Public Health	(18.9999.02)					
<b>LIFE SCIENCES (26)</b>						
Biochemistry & Biophysics	(26.02)			2	2	
Cell & Molecular Biology	(26.04)			2	2	
Microbiology	(26.05)			2	2	
Misc. Specplzed. Life Sciences	(26.06)			2	1	
Zoology	(26.07)			1	1	
<b>SUPPORTING PROGRAMS</b>			3 <sup>a</sup>	3 <sup>b</sup>		

<sup>a</sup> Health Care Sci.-Health Education (13.1399.03)  
<sup>b</sup> Medical Science Research (30.0101.00)

## The University of Texas Medical Branch at Galveston

The goal of The University of Texas Medical Branch at Galveston is to attain overall excellence through the effective coordinating of the primary missions of its composite groups. These missions are scholarly teaching, innovative scientific investigation, and state-of-the-art patient care. The University of Texas Medical Branch at Galveston is a component of The University of Texas System, and as such, its mission is consistent with that of its parent system.

U. T. Medical Branch - Galveston provides leadership in the development of effective educational programs that can serve as models for other academic health science centers. U. T. Medical Branch - Galveston, in cooperation with other academic health science centers, educates an appropriate number of physicians, nurses, and allied health professionals to provide health care for the citizens of Texas. It also educates biomedical scientists capable of conducting independent research in academic, industrial, and government research centers. U. T. Medical Branch - Galveston selects students who are ethical, enthusiastic, sensitive to the needs of others, and motivated to learn independently; who have diverse and global interests, inquiring minds, and a desire to understand and solve complex problems. These students should come from diverse social, economic, and ethnic backgrounds and should include representatives from racial minorities and from both sexes. U. T. Medical Branch - Galveston educates physicians, biomedical scientists, nurses, and allied health professionals who it hopes will strive to realize their highest potential. Graduates of U. T. Medical Branch - Galveston will possess essential knowledge and skills, be devoted to patient care, and be committed to lifelong scholarship and learning. They will possess the self-awareness necessary to maintain their own physical and mental health, and be able to draw upon the humanities disciplines in practicing their professions.

U. T. Medical Branch - Galveston's intent is to develop programs that discover new scientific knowledge, both for the sake of knowledge and for its practical benefits to society, and to disseminate this new knowledge. The investigative efforts should be high quality programs which will clearly establish U. T. Medical Branch - Galveston as one of the outstanding academic health science centers in the nation, with a leadership role in the discovery of new scientific knowledge.

U. T. Medical Branch - Galveston takes a leadership role in the discovery of new approaches to treatment, applies this new knowledge to the treatment of patients and intends to have excellent patient-care programs in each of its clinical departments. U. T. Medical Branch - Galveston hopes to create an environment in which the value of caring for all human beings is important. This attitude places highest priority on the well-being of people, including the employees, students, and faculty of U. T. Medical Branch - Galveston, as well as its patients.

U. T. Medical Branch - Galveston exists as part of several larger communities: the scientific community, the community of institutions of higher learning, the community of Galveston, and the community beyond the city. To serve society for the common good, U. T. Medical Branch - Galveston will seek and disseminate new scientific knowledge, educate students and practicing health professionals, provide individual patient care, and help inform the citizens at large in matters that affect their health and well-being.

The institution consists of the School of Medicine, the Graduate School of Biomedical Sciences, the School of Nursing, the School of Allied Health Sciences, the Marine Biomedical Institute, the Institute for Medical Humanities, and the U. T. Medical Branch - Galveston hospitals. U. T. Medical Branch - Galveston offers degrees and programs with subjects limited to health related fields.

HEALTH SCIENCE CENTERS'  
TABLE OF PROGRAMS

Texas CIP Category	CIP#	Cert.	Bacc.	Mast.	Doct.	Special Prof.
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MAJOR PROGRAM AREAS

ALLIED HEALTH	(17)	1	1	2		
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HEALTH SCIENCES (18)

Audiology & Speech						
Pathology	(18.01)			1		
Basic Clinical						
Health Sciences	(18.02)			1	1	
Dentistry	(18.04)	1		1		1
Epidemiology	(18.06)			1	1	
Health Services						
Administration	(18.07)		2			
Medicine	(18.10)			1	2	1
Nursing	(18.11)	1	1	1	2	
Optometry	(18.12)					
Osteopathic						
Medicine	(18.13)					
Pharmacy	(18.14)					
Podiatry	(18.15)					
Veterinary						
Medicine	(18.24)					
Public						
Health	(18.9999.02)			1		1

LIFE SCIENCES (26)

Biochemistry & Biophysics	(26.02)			1	1	
Cell & Molecular Biology	(26.04)			1	1	
Microbiology	(26.05)			1	1	
Misc. Specized.						
Life Sciences	(26.06)			1	1	
Zoology	(26.07)			1	1	

SUPPORTING PROGRAMS	3 <sup>a</sup>	3 <sup>b</sup>	3 <sup>c</sup>	3 <sup>d</sup>
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- <sup>a</sup> Biomedical Communications (13.1399.03)
- <sup>b</sup> Nutrition & Dietetics (19.0503.00)
- <sup>c</sup> Community Health Sci.-Environmental Sci. (30.0101.05)
- <sup>d</sup> Community Health Sci.-Environmental Sci. (30.0101.05),  
Community Health Sci.-Behavioral Sci. (30.0401.20)

## The University of Texas Health Science Center at Houston

The University of Texas Health Science Center at Houston is a component of The University of Texas System and, as such, is committed to the pursuit of high standards of achievement in instruction, student performance, clinical service, research, and scholarly accomplishment.

As an academic health science center, the institution is one in which undergraduate, graduate and postgraduate students are educated broadly in the sciences of health and disease and are prepared for health-related careers in the provision of human services, and in teaching and research. Within an environment of academic freedom, students learn from faculty scholars who have in-depth expertise in the various specialities of health care and the biomedical sciences. Such faculty, with the assistance of their students and trainees, engage in research both to extend human knowledge related to health and to develop and maintain their own scholarly and professional expertise.

Together, faculty and students engage in patient care as an essential part of the teaching and learning experience. They provide exemplary health services to directly benefit the individual recipient and to serve as models which other providers will emulate. The clinical aspects of research are also conducted in conjunction with patient care.

The U. T. Health Science Center - Houston considers itself a member of a larger learning community and works to contribute to and draw from the intellectual pursuit of the other institutions within the Texas Medical Center, and within the greater Houston area. Also, to benefit this local community and the entire State of Texas, the institution offers a program of continuing education to assist practicing health professionals in utilizing the latest findings of research from the worldwide community of scholars in clinical and biomedical fields. As a result of participation in these professional enhancement programs, practitioners adopt new modalities for the treatment and prevention of disease.

The institution consists of the following units which are listed by date of establishment:

1. Dental Branch (est. 1905; joined U. T. 1943)
2. Division of Continuing Education (1948)
3. Graduate School of Biomedical Sciences (1963)
4. School of Public Health (1967)
5. Medical School (1970)
6. Speech and Hearing Institute (est. 1951; joined U. T. 1971)
7. School of Nursing (1972)
8. School of Allied Sciences (1973)

The six schools included in the above list of eight units offer degrees and programs with subjects limited to health related fields.

INSTITUTION

UTHSC-SAN ANTONIO

DATE 11/4/85

HEALTH SCIENCE CENTERS'  
TABLE OF PROGRAMS

Texas CIP Category	CIP#	Cert.	Bacc.	Mast.	Doct.	Special Prof.
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MAJOR PROGRAM AREAS

ALLIED HEALTH	(17)	1	1	2		
---------------	------	---	---	---	--	--

HEALTH SCIENCES (18)

Audiology & Speech						
Pathology	(18.01)					
Basic Clinical						
Health Sciences	(18.02)			1	1	
Dentistry	(18.04)	1		1		1
Epidemiology	(18.06)					
Health Services						
Administration	(18.07)		2			
Medicine	(18.10)			2	2	1
Nursing	(18.11)		1	1	2	
Optometry	(18.12)					
Osteopathic						
Medicine	(18.13)					
Pharmacy	(18.14)					1
Podiatry	(18.15)					
Veterinary						
Medicine	(18.24)					
Public						
Health	(18.9999.02)					

LIFE SCIENCES (26)

Biochemistry &						
Biophysics	(26.02)			2	2	
Cell & Molecular						
Biology	(26.04)			2	2	
Microbiology	(26.05)			2	2	
Misc. Specplzed.						
Life Sciences	(26.06)			2	2	
Zoology	(26.07)			2	2	

SUPPORTING PROGRAMS

The University of Texas Health Science Center at San Antonio

The University of Texas Health Science Center at San Antonio is a component of The University of Texas System and, as such, is committed to pursue the highest standards of achievement in instruction, student performance, research and scholarly accomplishment, patient care, and service.

The mission of The University of Texas Health Science Center at San Antonio includes teaching, research, patient care, and service. Through the undergraduate, graduate, and postgraduate programs, the faculty is committed to the education of health professionals whose lifelong career objectives will be to provide the best possible health care in the most cost effective way, to apply the most modern treatment modalities, and to continue to seek information fundamental to the treatment and prevention of disease. The U. T. Health Science Center - San Antonio has established itself as a major research institution and through its biomedical research program, the faculty play a major role for the state, nation, and world in the discovery of new knowledge and the search for answers to society's health care needs.

The University of Texas Health Science Center at San Antonio is an integral part of the South Texas Medical Center and an important component of the health care delivery system of San Antonio, South Texas, and, indeed, the State of Texas. Recognizing that the U. T. Health Science Center - San Antonio plays major economic and education roles in the community, it can serve as a catalyst for stimulating biomedical industry in this community by having available the human and physical resources which facilitate the development of biotechnology. As a source of leadership in health care, the institution has a responsibility to provide programs and expertise for the ongoing education of the professional and lay communities.

The institution consists of the School of Allied Health Sciences, the Graduate School of Biomedical Sciences, the Dental School, the Medical School, and the School of Nursing and offers degrees and programs with subject matter limited to health related fields. The Medical Technology, Physical Therapy, and Occupational Therapy programs are offered jointly with The University of Texas at San Antonio. A Doctor of Pharmacy degree program is offered jointly with The University of Texas at Austin. In addition, a component of the School of Public Health of The University of Texas Health Science Center at Houston is housed on this campus.

2. U. T. Austin: Request for Permission for Individual to Serve on the Joint Special Committee on Cogeneration [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation that approval be given to Lieutenant Governor William P. Hobby's appointment of Dr. William L. Fisher, Director of the Bureau of Economic Geology and Chairman of the Department of Geological Sciences at U. T. Austin, to the Joint Special Committee on Cogeneration in Texas.

It is further recommended that the U. T. Board of Regents find that: (1) the holding of this office by Dr. Fisher is of benefit to the State of Texas, and (2) there is no conflict between Dr. Fisher's position at U. T. Austin and his membership on this committee.

#### BACKGROUND INFORMATION

The Joint Special Committee was established by the State Legislature to investigate the role of cogeneration and small power production in Texas. Nineteen individuals serve on the committee which will be working with the Public Utility Commission of Texas. The committee's members serve without remuneration.

This recommendation is in accordance with approval requirements for positions of honor, trust, or profit provided in Article 6252-9a of Vernon's Texas Civil Statutes, and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

3. U. T. Austin: Proposed Appointment to the G. B. Dealey Regents Professorship in Communication in the College of Communication Effective September 1, 1986.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation that Dr. Kathleen Jamieson, Professor and Head of the graduate program in Political Communication, University of Maryland, be appointed as the initial holder of the G. B. Dealey Regents Professorship in Communication in the College of Communication at U. T. Austin effective September 1, 1986.

#### BACKGROUND INFORMATION

Dr. Jamieson will join the U. T. Austin faculty as Professor and Chairman of the Department of Speech Communication effective September 1, 1986. She is nationally recognized as an

outstanding research professor in the area of political communication and has frequently been invited to lecture or serve as a visiting professor at numerous institutions. She has authored or coauthored three books and more than 30 scholarly articles. Dr. Jamieson is an active teacher as well as researcher, and has received several teaching awards, including the Distinguished Scholar Teacher Award, University of Maryland.

The G. B. Dealey Regents Professorship in Communication was established by the U. T. Board of Regents in August 1984.

4. U. T. Austin: Proposed Appointment to the Robert B. Trull Chair in Engineering, College of Engineering, for the Period February 1, 1986 Through March 15, 1986.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation that Dr. Morris E. Fine, currently the Walter P. Murphy Professor of Materials Science and Engineering and Associate Dean of Graduate Studies and Research at Northwestern University, be appointed as a Visiting Professor under the Robert B. Trull Chair in Engineering in the College of Engineering at U. T. Austin for the period February 1, 1986 through March 15, 1986.

#### BACKGROUND INFORMATION

Dr. Fine, a faculty member at Northwestern University since 1954, is internationally regarded as the best metallurgist in the United States. He has previously held one-month appointments as a Visiting Professor at U. T. Austin under the Dula D. Cockrell Centennial Chair in Engineering (Spring 1983) and the Robert B. Trull Chair in Engineering (Spring 1984 and 1985). He was elected a member of the National Academy of Engineering in 1973 and is a Fellow of the American Society for Metals, the American Physical Society, the American Ceramic Society, and the Metallurgical Society of the American Institute of Mining, Metallurgical and Petroleum Engineers. He has authored approximately 150 technical publications and one book on the structure and properties of metals and ceramics.

The Robert B. Trull Chair in Engineering was established by the U. T. Board of Regents in August 1981.

5. U. T. Austin: Proposed Appointments to Endowed Academic Positions in the College of Engineering Effective as Indicated (No Publicity).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to approve the appointments on Page AAC - 42 to endowed academic positions in the College of Engineering at U. T. Austin.

- a. Dr. Irwin H. Sandberg, Mathematics and Statistics Research Center, AT&T Bell Laboratories, Murray Hill, New Jersey, to the First Cockrell Family Regents Chair in Engineering effective January 16, 1986
- b. Dr. John B. Goodenough, Professor and Head of the Inorganic Chemistry Laboratory, Oxford, England, to the Virginia H. Cockrell Centennial Chair in Engineering effective September 1, 1986.

#### BACKGROUND INFORMATION

Dr. Sandberg is internationally recognized as one of the most outstanding system theorists in the United States for his pioneering contributions to communications, electronic circuits, nonlinear feedback systems, and network theory. He is a member of the National Academy of Engineering and a Fellow of the Institute of Electrical and Electronics Engineers (IEEE). He has received an IEEE Centennial Medal and the AT&T Bell Laboratories Distinguished Technical Staff Award. Dr. Sandberg holds nine patents and is the author or coauthor of more than 100 scholarly publications.

The First Cockrell Family Regents Chair in Engineering was established by the U. T. Board of Regents in February 1985.

Dr. Goodenough is internationally recognized for his contributions to materials science and engineering, especially in theoretical and experimental research in magnetic materials and ionic conducting ceramics. His numerous awards include election to the National Academy of Engineering, receipt of the Chemical Society Solid State Chemistry Prize, and Docteur Honoris Causa, University of Bordeaux. Dr. Goodenough has authored or coauthored three scholarly books, twenty-six chapters or proceedings, and over 175 refereed journal articles. He serves on the Executive Editorial Board of the Journal of Applied Electrochemistry and is Associate Editor of five other scholarly journals. Dr. Goodenough has been an advisor to the U. S. National Materials Advisory Board; Institut Laue Langevin, Grenoble, France; and CNRS Magnetism Laboratory, Bellevue, France.

The Virginia H. Cockrell Centennial Chair in Engineering was established by the U. T. Board of Regents in February 1983.

NO PUBLICITY

6. U. T. Austin: Recommendation to Name a Room in the New Chemical and Petroleum Engineering Building (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to name Room 3.132 in the new Chemical and Petroleum Engineering Building at U. T. Austin the Amoco Foundation Numerical Reservoir Simulation Laboratory, in accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings.

#### BACKGROUND INFORMATION

At its meeting in December 1981, the U. T. Board of Regents approved the naming of facilities other than buildings as part of a special private fund development campaign for the College of Engineering, in accordance with Part One, Chapter VII, Section 2, Subsection 2.44 of the Regents' Rules and Regulations.

The naming of Room 3.132 is to recognize a gift and pledge from Amoco Foundation, Inc. to support a numerical reservoir simulation laboratory in the Department of Petroleum Engineering. The funds are to be used to acquire and maintain equipment, and for activities or facilities necessary for the research and teaching functions of the laboratory.

7. U. T. Austin: Recommended Concurrence in Acquisition of Special Research Collection and Requested Authorization for Institutional Representatives to Negotiate Purchase Agreement (No Publicity).--

#### RECOMMENDATION

The Office of the Chancellor endorses President Cunningham's request for concurrence in U. T. Austin's plans to acquire, by purchase and gift, the Natchez Trace Collection from Dr. Lucius B. Dabney, Jr. and Inez C. Dabney of Vicksburg, Mississippi. Authorization is further requested for appropriate institutional representatives to sign the necessary agreements after review by the Office of General Counsel and the Office of Academic Affairs.

Mr. Dabney is prepared, subject to execution of a satisfactory sales agreement, to transfer a portion of this special collection in five distinguishable units to U. T. Austin for \$900,000. The purchase price is payable in five installments (one for each unit) consisting of \$300,000 initially and \$150,000 per year over the next four years. The remainder of the collection is to be transferred to U. T. Austin as a gift.

## BACKGROUND INFORMATION

The Natchez Trace Collection is a unique collection of archives, correspondence, ledgers, records, deeds, company and plantation files, and related materials on Southern history, primarily from the 18th and 19th centuries.

An independent appraisal places the value of this uncatalogued collection at over \$3,000,000 and campus experts on libraries and special collections estimate that the collection's value far exceeds the proposed purchase price and support its acquisition as being of almost incalculable value to historians and social scientists and a most beneficial addition to U. T. Austin's special collections.

U. T. Austin proposes to use endowment income, unallocated library resources, and special equipment funds already available to the institution for the initial installment. Special equipment funds will be included in subsequent years' budgets to meet the remaining four installments.

### NO PUBLICITY

8. U. T. Austin: Request to Approve Private Fund Development Campaign for the College of Pharmacy (Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.44) and to Concur in an Agreement to Establish a Scholarship Fund for the College of Pharmacy.--

## RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation for approval of a private fund development campaign on behalf of the College of Pharmacy at U. T. Austin pursuant to the Regents' Rules and Regulations, Part One, Chapter VII, Section 2, Subsection 2.44. The object of this campaign is to raise funds to meet a challenge grant program from the Plough Foundation of Memphis, Tennessee, to provide scholarships for pharmacy students.

It is further requested that the U. T. Board of Regents concur in principle for U. T. Austin to enter into an agreement (conditions outlined below) with the Plough Foundation, Memphis, Tennessee, to establish a permanent scholarship fund for the College of Pharmacy. After review by the Office of General Counsel, the final form of the agreement will be submitted in an appropriate manner to the U. T. Board of Regents for the record. A summary of the proposed conditions for the Plough Pharmacy Scholarship Program follows:

- a. The scholarship endowment is to be funded over an eleven year period with the Pharmaceutical Foundation of the College of Pharmacy (an internal foundation under Part One, Chapter VII, Section 4, Regents' Rules and Regulations) and the Plough Foundation providing \$50,000 each in the first year, and \$45,000 in each of the ten succeeding years, for a total of \$1,000,000.

- b. The combined funds are to be managed by a bank of the Plough Foundation's choice in Memphis, Shelby County, Tennessee, having capital in excess of \$10 million.
- c. Each year one-half of the earnings from the fund are to be used for scholarships and one-half, less bank fees, returned to principal.
- d. Beginning with the 16th year, the sum of the contributions of the Pharmaceutical Foundation of the College of Pharmacy to the scholarship endowment will begin to be paid to U. T. Austin, \$50,000 the first year and \$45,000 yearly for the next ten years. The amount contributed to the program by the Pharmaceutical Foundation of the College of Pharmacy will be paid to U. T. Austin by the 26th year of the fund. The sums paid to U. T. Austin under this agreement will be deposited in the Common Trust Fund as an additional endowment for the College of Pharmacy with the use of the income to be recommended by U. T. Austin at a later date.

Based on Foundation projections, the principal remaining in the fund at this point is estimated to be approximately \$2.5 million, yielding approximately \$150,000 annually in scholarship funds. (Note: These are optimistic projections assuming a 12% return. In any case, the proposed fund will provide significant additional scholarship assistance to College of Pharmacy students at U. T. Austin.)

- e. At the 27th year, the even distribution between scholarships and return to principal will end and the entire earnings will be used for scholarships.

#### BACKGROUND INFORMATION

The Plough Foundation was created in 1972 by Abe Plough, founder of Plough, Inc., a large pharmaceutical company originally located in Memphis, Tennessee. The Plough Foundation is prepared to offer to U. T. Austin a challenge, as outlined, upon U. T. Board of Regents' concurrence.

The Pharmaceutical Foundation Advisory Council has thoroughly discussed the program and recommends the College of Pharmacy initiate the fund raising effort for potential participation in the program.

9. U. T. Austin: Recommendation for Conditional Renewal of Memorial Stadium Option Seat Plan on an Annual Basis Effective with the 1986 Season and Approval of Increases in Minimum Donations for Respective Options.--

RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to convert the Memorial Stadium Option Seat Plan to an annual renewal plan for current option holders provided they a) continue to make specified annual contributions and b) purchase season tickets. It is also requested that U. T. Austin be authorized to phase out the existing option plan as current holders relinquish their options and assign seating priorities according to the amount and continuity of giving through the Annual Giving Scholarship Program.

It is further recommended that option donations effective with the 1986 season be set as follows:

	<u>1982-85</u> <u>Option Cost</u> (annualized)	<u>Proposed</u> <u>Option Cost</u>
Option A	\$200	\$250
Option B	\$100	\$125
Option C	\$ 50	\$ 60
Option D	\$ 30	\$ 30

As with the current option plan, it is proposed that options be transferable only to a spouse and that donations accrue to Longhorn Scholarship Fund, a quasi endowment fund, the income being used primarily for scholarships for student athletes. Principal from this fund, in whole or part, may be used at the President's discretion, subject to other approvals as appropriate, to support programs and facilities development directly related to intercollegiate athletic programs and for use in matching gifts made by donors to intercollegiate athletics.

BACKGROUND INFORMATION

The option seat plan for football games in Memorial Stadium was instituted in 1969 to assist in the cost of constructing the new upper deck. Under the plan, donors making set contributions were guaranteed priority seating at home games for a period of ten years (later extended to twelve because of construction delays). In addition, option seat holders purchased tickets for those seats at regular prices, although they were not required to purchase them every year in order to retain their priority.

The plan was renewed effective with the 1982 football season, with increased contribution levels and the term of the option reduced to four years to make it possible to respond more effectively to fluctuations in the economy.

The plan has served U. T. Austin and its athletic program well. However, it is the recommendation of the Director of Intercollegiate Athletics for Men and The Council on Intercollegiate Athletics for Men that we move toward a new financial support plan beginning with the 1986 season. It is believed that the

gradual phasing of the option plan into the annual giving program will reduce current inequities and, at the same time, develop a stronger financial base for intercollegiate athletics on our campus.

10. U. T. Dallas: Request to Replace Eight Current Degree Programs in the School of Arts and Humanities with Four Interdisciplinary Degrees and to Submit the Proposed Programs to the Coordinating Board for Approval (Catalog Change).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Rutford's request for authorization to establish four new interdisciplinary degree programs (see summaries on Page AAC - 48) in the School of Arts and Humanities at U. T. Dallas to replace the current more traditional disciplinary undergraduate degree programs as follows:

<u>Current Bachelor of Arts Degree Programs</u>	<u>Proposed Bachelor of Arts Degree Programs</u>
English	Literary Studies
French	Historical Studies
Spanish Language and Literature	Art and Performance
Asian Studies	Arts and Humanities
Classics	
History	
Philosophy	
Music	
Theatre	
Visual Arts	

#### JUSTIFICATION

A rigorous review of the entire undergraduate curriculum in the School of Arts and Humanities led to this proposed substitution. The faculty feels strongly that this approach is more appropriate for this upper-level institution and that it will provide the best possible undergraduate education in the arts and humanities at U. T. Dallas, given the number of faculty, the material resources, and the nature of the student body. Students who so desire will still be able to acquire similar degrees of specialization within the proposed new degree options as are now available in the U. T. Dallas School of Arts and Humanities.

These proposed programs are a direct replacement for the listed existing programs and consequently are within the presently approved role and scope. Upon Regental approval, a proposal for these degree programs will be submitted to the Coordinating Board. Upon Regental and Coordinating Board approval, the next appropriate catalog published at U. T. Dallas will be amended to reflect this action.

## Proposed Arts and Humanities Degree Program Summary

### Bachelor of Arts in Literary Studies:

The proposed degree program provides students with a thorough grounding in literary methods and conventions and a broad acquaintance with literatures of different periods and cultures. It combines courses in criticism and interpretation, in creative writing and translation, and in linguistics and languages. This program would replace the existing Bachelor of Arts degrees in English, French, and Spanish Language and Literature.

### Bachelor of Arts in Historical Studies:

The proposed degree program provides mastering of significant methods of inquiry and pursuit of a wide range of important historical and philosophical issues. Students design distinctive degree programs by selecting among courses in historical and philosophical method and approach, traditional historical surveys, and specific historical and philosophical topics. Students are encouraged to focus their studies in this program on a particular time or place, a significant theme, topic, or problem, or an approach to learning such as Historical Studies and Literature, Historical Studies and the Arts, Historical Studies of Ideas, Historical Studies of Science and Technology, and Historical Studies and the Social Sciences. This program would replace the existing Bachelor of Arts degrees in Asian Studies, Classics, History, and Philosophy.

### Bachelor of Arts in Art and Performance:

The proposed degree program joins the study of the history, theory, and nature of the arts with intensive practice of one or more of the arts through a combination of ensembles, studio and performance workshops, classes, and seminars. The aim of the program is to establish an interdisciplinary context for study in which the making of a work of art or the evolution of a performance is considered together with the history of the medium. Emphasis is on the doing, but the doing will be understood to have a history and a context. Art is a combination of problem-solving and discovery and one of the central objectives of the program is for the student to discover just how subtle these problems can be -- subjectively, at the personal level; conceptually, at the formal level; socially and economically, at the professional level. This program would replace the existing Bachelor of Arts degrees in Music, Theatre, and Visual Arts.

### Bachelor of Arts in Arts and Humanities:

The proposed degree program makes students familiar with the relationships among the liberal disciplines which comprise literary and historical studies and the visual and performing arts. The model for this interdisciplinary major is the act of translation, broadly conceived to include visual, musical, and technical languages as well as literary texts.

11. U. T. El Paso: Recommendation for Approval to Increase the Student Services Fee (Required) Effective with the Spring Semester 1986 (Catalog Change).--

RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendation that the U. T. Board of Regents approve an increase in the Student Services Fee (Required) at U. T. El Paso from \$5.25 per semester credit hour, with a maximum of \$63.00, to \$6.50 per semester credit hour, with a maximum of \$78.00 for any one semester, to be effective with the Spring Semester 1986.

BACKGROUND INFORMATION

The Student Services Fee Advisory Committee of U. T. El Paso has endorsed an increase in the Student Services Fee. This proposed fee increase is necessary to provide funding to support the current level of activities financed from this revenue source.

If this recommendation is approved, the Minute order will reflect that the next catalog published will conform to this action.

12. U. T. El Paso: Proposed Memoranda of Agreement with a) The Center for Research on the Northern Border of Mexico, b) The Autonomous University of Ciudad Juarez, and c) The National Institute of Investigations of Biotic Resources and Request for Authorization to Execute Agreements.--

RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendations that the U. T. Board of Regents approve the three memoranda of agreement set out on Pages AAC 51 - 58 by and between U. T. El Paso and the following Mexican facilities:

- a. The Center for Research on the Northern Border of Mexico (CEFNOEX)
- b. The Autonomous University of Ciudad Juarez
- c. The National Institute of Investigations of Biotic Resources (INIREB)

It is further requested that the Executive Vice Chancellor for Academic Affairs be authorized to execute, on behalf of the U. T. Board of Regents, these or substantially equivalent agreements after their execution by the facility representative and by President Monroe with the understanding that any and all specific agreements arising from these general agreements are to be submitted for prior administrative review and subsequent approval as required by the Regents' Rules and Regulations.

## BACKGROUND INFORMATION

These general agreements are designed to promote academic and research cooperation between U. T. El Paso and the named Mexican facilities. The goals of the agreements are as follows:

- a. The Center for Research on the Northern Border of Mexico (CEFNOEMEX)

This agreement is oriented toward research on social, cultural, economic, and political realities of Northern Mexico.

- b. The Autonomous University of Ciudad Juarez

This agreement is directed to cooperation in fields of mutual interest including the humanities, engineering, the physical, biological sciences and administration.

- c. The National Institute of Investigations of Biotic Resources (INIREB)

This agreement emphasizes research on the utilization of biological resources through the application of science and technology.

## MEMORANDUM OF AGREEMENT

This General Agreement of Academic and Scientific Cooperation made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the Board of Regents of The University of Texas System on behalf of The University of Texas at El Paso ("University") and the Center for Research on the Northern Border of Mexico ("CEFNOEMEX"),

### WITNESSETH:

WHEREAS, the University declares that it is a component institution of The University of Texas System governed by the laws and constitution of The State of Texas, and the Rules and Regulations of the Board of Regents, whose objectives include education, research and service; and

WHEREAS, the University intends to establish cooperative action and complementary academic action with the CEFNOEMEX under the terms and conditions established in the clauses of the Agreement; and

WHEREAS, CEFNOEMEX declares that it is a legally constituted, decentralized organization of the State of Tamaulepas, County, Mexico, with its own property, created by decree, as published in the DIARIO Oficial De La Federacion on the 2nd of July, 1982, whose purpose is the promotion and completion of studies oriented toward the promotion of knowledge and the rational utilization of the knowledge and greater understanding of the social, cultural, economic and political reality of the country through research; and

WHEREAS, CEFNOEMEX is interested in cooperation with the University through research projects and student support under the terms and conditions established within the clauses of this Agreement; and

WHEREAS, University and CEFNOEMEX declare on this date, they have decided to formalize their agreement toward scientific and academic cooperation and therefore set down the following clauses for that purpose,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

#### Section 1. Future Specific Agreements

Pursuant to this general Agreement, the parties agree that they may establish specific agreements of collaboration among one or several units of the University and one or several programs of the CEFNOEMEX, and if approved by both institutions, and the Board of Regents of The University of Texas System, they will be designated as specific agreements of collaboration.

#### Section 2. Contents of Specific Agreements

Specific future agreements will describe the activities to be developed in detail. They will explain the financial responsibility of each institution, work schedules, participating personnel, required budgets as well as all documents and data necessary to precisely determine the reasons, goals and extent of each agreement.

Section 3. Personnel Matters

The parties agree that the management and attachment of personnel of each institution who may be assigned to complete tasks in relationship with any of the specific agreements for collaboration described in Section 1 will not be the object of any change in status, be it academic, work related or of any kind, due to that person's endeavor to complete his or her assigned task.

Section 4. Employment Matters

The University specifically accepts that in the case of its students who are undertaking thesis work at the CEFNOMEX, in no case does the latter acquire hiring or work related responsibilities at the end of the student's term of study.

Section 5. Intellectual Property

With respect to copyrights and industrial property derived from research completed under this agreement, both parties agree that each specific agreement will determine property rights in regards to the same which in the case of the University will conform to the applicable provisions of said rules.

Section 6. Use of CEFNOMEX Facilities

CEFNOEX accepts, through this Agreement, that the researchers or students who are commissioned by the University and who wish to do so may make use of the Research Offices CEFNOEX has in the cities of Tijuana, Baja California, Mexicali, Baja California, Cd. Juarez, Chihuahua, Nuevo Laredo, Tamaulipas and Matamoros, Tamaulipas, the library, its current awareness information service and its data banks, when they observe the rules which govern each of these by merely identifying themselves with a valid University ID card and with a memorandum from the research project principal investigator or teacher.

Section 7. Use of University Facilities

The University accepts that CEFNOEX research staff or students may make use of the libraries and use data banks when they observe the rules that govern each of these by merely identifying themselves with a valid CEFNOEX ID card and by taking to the Office of Research an application duly signed by a department head of CEFNOEX or coordinator of the research office to which he is commissioned.

Section 8. University Coordination

The University assigns the Office of Research to coordinate the actions derived from the present agreement.

Section 9. CEFNOEX Coordination

The CEFNOEX assigns the Assistant Director for Formacion Y Capacitacion to coordinate the actions derived from this agreement.

Section 10. Modification of General Agreement

This Agreement may be modified by the parties' mutual written consent and at the request of either of them.

Section 11. Effective Date

This Agreement will become effective on the day of signing by both parties and will remain in effect for one year from that date and thereafter shall continue in effect from year to year unless and until one of the parties notifies the other of its intentions to terminate in writing and with six month's advance notice.

EXECUTION

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
in duplicate originals.

ATTEST:

Center for Research on the  
Northern Border of Mexico  
("CEFNOEMEX")

\_\_\_\_\_

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

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

The Board of Regents of  
The University of Texas  
System on behalf of The  
University of Texas at  
El Paso

Recommended for Approval:

\_\_\_\_\_  
Haskell Monroe  
President

FORM APPROVED:

CONTENT APPROVED:

\_\_\_\_\_  
Office of General Counsel  
The University of Texas  
System

\_\_\_\_\_  
James P. Duncan  
Executive Vice Chancellor  
for Academic Affairs

## MEMORANDUM OF AGREEMENT

The Board of Regents of The University of Texas System on behalf of The University of Texas at El Paso, a component institution of The University of Texas System, an agency of the State of Texas, United States of America, and The Autonomous University of Ciudad Juarez, Mexico, enter into the following agreement on the date of execution of this MEMORANDUM OF AGREEMENT, as indicated below:

WHEREAS the two educational institutions are culturally and geographically linked and both institutions are concerned with social, humanistic, scientific, and technical research, and

WHEREAS the academic resources of these institutions represent opportunities for cooperative and complementary exchange in a spirit of international cooperation,

IT IS MUTUALLY AGREED AS FOLLOWS:

### Section 1. Goals

It is to the mutual benefit of each institution that an effort toward the realization of these opportunities be initiated, and therefore that the following general goals be established

- (a) cooperation in fields of mutual interest which include, but are not limited to the humanities, the physical and biological sciences, engineering, and administration;
- (b) exchange of faculty and researchers for defined periods of time;
- (c) team teaching of seminars, professional development or teaching methods courses, and specialized technical training courses;
- (d) exchange of faculty, administrators, and students specific development programs;
- (e) sharing of cultural, athletic and social experiences;
- (f) exchange of pedagogical equipment and materials;
- (g) reciprocal awarding of scholarships;
- (h) exchange of statistical, technical, and educational data;
- (i) cooperation in research related to problems common to both institutions and the border (i.e., socio-economic, ecological, technical); and
- (j) other programs that would be mutually beneficial.

### Section 2. Planning

Both institutions agree:

- (a) to assign to an administrative entity of each respective University the responsibility for the biennial renewal of this agreement or the negotiation of changes or additional agreements on the development of projects in specific areas of mutual interest, as appropriate and feasible; and
- (b) to plan ways to make available, to the extent possible, resources of the respective institutions for projects under the specific terms of future agreements.

Section 3. Future Agreements

- (a) Future agreements concerning any program agreed to by the two parties shall provide details concerning the specific commitments being made by each party and shall not become effective until they have been put in writing and executed by the duly authorized representatives of the two parties, and approved in writing by the Office of the Chancellor of The University of Texas System.
- (b) Such agreements may be cancelled by either party by giving written notice to the other of its intention to terminate the program.

EXECUTION

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
in duplicate originals.

ATTEST:

Autonomous University of  
Ciudad Juarez

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

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

The Board of Regents of  
The University of Texas  
System on behalf of The  
University of Texas at  
El Paso

Recommended for Approval:

\_\_\_\_\_  
Haskell Monroe  
President

FORM APPROVED:

CONTENT APPROVED:

\_\_\_\_\_  
Office of General Counsel  
The University of Texas  
System

\_\_\_\_\_  
James P. Duncan  
Executive Vice Chancellor  
for Academic Affairs

## MEMORANDUM OF AGREEMENT

This General Agreement of Academic and Scientific cooperation made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the Board of Regents of The University of Texas System on behalf of The University of Texas at El Paso ("University") and the National Institute of Investigations of Biotic Resources ("INIREB"),

### WITNESSETH:

WHEREAS, the University declares that it is a component institution of The University of Texas System, governed by the laws and constitution of the State of Texas, whose objectives include education, research, and service; and

WHEREAS, the University intends to establish cooperative action and complementary academic action with INIREB under the terms and conditions established in the clauses of the Agreement; and

WHEREAS, INIREB declares that it is a legally constituted, decentralized organization of the State with its own property, created by decree on February 28, 1979, as published in the DIARIO OFICIAL DE LA FEDERACION on the 2nd of March, 1979, whose purpose is the promotion and completion of studies oriented toward the promotion of knowledge and the rational utilization of the biological resources of the country through the application of science and technology; and

WHEREAS, INIREB is interested in cooperation with the University through research projects and student support under the terms and conditions established within the clauses of this Agreement; and

WHEREAS both institutions declare that on this date, they have decided to formalize their agreement toward scientific and academic cooperation and therefore set down the following clauses for that purpose,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

#### Section 1. Future Specific Agreements

Pursuant to this general Agreement, the parties agree that they will establish future specific agreements of collaboration among one or several units of the University and one or several programs of the INIREB, and if approved by both institutions, and the Board of Regents of The University of Texas System, they may be designated as specific agreements of collaboration.

#### Section 2. Contents of Specific Agreements

Specific future agreements will describe the activities to be developed in detail. They will explain the financial responsibility of each institution, work schedules, participating personnel, required budgets as well as all documents and data necessary to precisely determine the reasons, goals and extent of each agreement.

Section 3. Personnel Matters

The parties agree that the management and attachment of personnel of each institution who may be assigned to complete tasks in relationship with any of the Specific Agreements for Collaboration described in Section 1 will not be the object of any change in status, be it academic, work related or of any kind, due to that person's endeavor to complete his or her assigned task.

Section 4. Employment Matters

The University specifically accepts that in the case of its students who are undertaking thesis work at the INIREB, in no case does the latter acquire hiring or work related responsibilities at the end of the student's term of study.

Section 5. Intellectual Property

With respect to copyrights and industrial property derived from research completed under this Agreement, both parties agree that each specific agreement will determine property rights in regards to the same.

Section 6. Use of Facilities

INIREB accepts, through this Agreement, that the students, researchers or pupils of the University who wish to make use of its library, botanical gardens and herbarium may do so, if and when they observe the rules which govern each of these, by merely identifying themselves with a valid University identification card.

Section 7. University Coordination

The University assigns the Office of Research to coordinate the actions derived from the present Agreement.

Section 8. INIREB Coordination

INIREB assigns the Assistant Director for Formacion y Capacitacion to coordinate the actions derived from this Agreement.

Section 9. Modification of General Agreement

This Agreement may be modified by the parties' mutual written consent and at the request of either of them.

Section 10. Effective Date

This Agreement will become effective on the day of signing by both parties and will remain in effect for one year from that date and thereafter shall continue in effect from year to year unless and until one of the parties notifies the other of its intention to terminate in writing and with six month's advance notice.

EXECUTION

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_,  
in duplicate originals.

ATTEST:

The National Institute of  
Investigations of Biotic  
Resources ("INIREB")

\_\_\_\_\_

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

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

The Board of Regents of  
The University of Texas  
System on behalf of The  
University of Texas at  
El Paso

Recommended for Approval:

\_\_\_\_\_  
Haskell Monroe  
President

FORM APPROVED:

CONTENT APPROVED:

\_\_\_\_\_  
Office of General Counsel  
The University of Texas  
System

\_\_\_\_\_  
James P. Duncan  
Executive Vice Chancellor  
for Academic Affairs

13. U. T. Tyler: Development Board - Proposed Nominee Thereto  
(NO PUBLICITY UNTIL ACCEPTANCE IS RECEIVED).--

RECOMMENDATION

The Office of the Chancellor concurs with President Hamm's recommendation for approval of the nomination of Mr. Frank M. Burke, Jr., Chairman, Chief Executive Officer, and Managing General Partner of the Burke Mayborn Company, Ltd., Dallas, Texas, to the Development Board at U. T. Tyler for a three-year term to expire in 1988.

BACKGROUND INFORMATION

This development board was established and initial nominees were approved at the December 1980 U. T. Board of Regents' meeting. The nomination of Mr. Burke is to an unfilled vacancy.

In accordance with usual procedures, no publicity will be given to this nomination until an acceptance is received and reported for the record at a subsequent meeting of the U. T. Board of Regents.

14. U. T. Tyler: Recommendation for Approval to Enter Into a Management Contract With a Non-Profit Corporation for the Provision of Student Housing.--

EXPLANATION

The U. T. Tyler Foundation, Inc., on October 28, 1985, made an offer to purchase the University Place Apartments, Phases I, II and III, and two nearby undeveloped lots from the present owner, E.T.S.L. Development Company. The apartment facilities are located directly across Varsity Drive from the campus, and consist of 38 buildings containing 484 units, an office/clubhouse building, two swimming pools, three laundries, a central circulating hot water system, and 1,000 parking spaces. University Place Apartments were constructed in 1984-85 and are currently 86.7% occupied.

Should the Foundation acquire ownership of the apartments, it is the intention of the Foundation to enter into a management contract, whereby U. T. Tyler would be responsible for operation and management of the apartments as housing for students and employees of U. T. Tyler and other area educational institutions. U. T. Tyler would pay to the Foundation the net proceeds from operation of the apartments, which should be sufficient to cover the Foundation's payments on the note executed to finance the purchase of the apartments. The management contract will also contain an option for U. T. Tyler to purchase the land and apartments (subject to approval by the Coordinating Board, Texas College and University System) at any time at a purchase price not to exceed the then current indebtedness of the Foundation on the property, plus any costs of sale.

If the Foundation's offer to purchase the apartments is accepted, officers of U. T. Tyler and U. T. System Administration will complete negotiations with the Foundation concerning the management contract and will develop a final draft of the contract. If a firm recommendation on this project can be formulated in a timely manner, the recommendation, along with accompanying documents and background information, will be mailed to the U. T. Board of Regents at the earliest possible date.

# Health Affairs Committee

HEALTH AFFAIRS COMMITTEE  
COMMITTEE CHAIRMAN BRISCOE

Date: December 5, 1985  
Time: Following the meeting of the Academic Affairs Committee  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

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10. U. T. Health Science Center - Houston: Recommendation for Approval of the Harris County Psychiatric Center Leases, Sublease, and Operating Agreement, Agreement Concerning Employment, and Admission, Discharge, and Transfer Policy Statement Between the U. T. Board of Regents and the Texas Board of Mental Health and Mental Retardation, the Commissioners' Court of Harris County, and the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County, Texas 26
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1. U. T. Health Science Center - Dallas: Proposed Appointment to the Robert L. Moore Chair in Pediatrics Effective December 5, 1985.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Sprague to appoint Charles M. Ginsburg, M.D., to the Robert L. Moore Chair in Pediatrics at the U. T. Health Science Center - Dallas effective December 5, 1985. This appointment is contingent upon approval of the redesignation of the Robert L. Moore Professorship in Pediatrics to the Robert L. Moore Chair in Pediatrics as proposed in Item 26, Page L&I - 37.

#### BACKGROUND INFORMATION

Charles M. Ginsburg, M.D., was appointed to the Robert L. Moore Professorship in Pediatrics at the April 1985 meeting of the U. T. Board of Regents. Dr. Ginsburg's enthusiasm for research and teaching of pediatrics demonstrates his outstanding clinical scholarship and deep concern for the welfare of children. The distinguished career of Dr. Ginsburg in the academic arena and in patient care justify his holding the Robert L. Moore Chair in Pediatrics.

2. U. T. Health Science Center - Dallas: Proposed Patent License Agreement with Coulter Corporation, a Delaware Corporation, the Hialeah, Florida Division.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Sprague's recommendation for granting an exclusive, royalty-bearing biomaterials patent license to Coulter Corporation, a Delaware Corporation, the Hialeah, Florida Division. The license agreement is set forth on Pages HAC 5-18 .

#### BACKGROUND INFORMATION

This patent license agreement is for specific tangible biomaterials, i.e., monoclonal antibodies, physically supplied and licensed for a fee to a commercial organization which will sell their derivatives. Four of the antibodies are specific to Deoxynucleotidyl Transferase and one is specific to Neuroblastoma.

The costs of patent procurement and governmental approvals is to be borne by Coulter. Appropriate limitations on warranties and other restrictions on U. T. System liability are contained therein.

There is no provision for royalty payments to be made directly to the inventor. Accordingly, the inventor will receive distributions as provided by the Regents' Rules and Regulations respecting patents.

A twenty-five thousand dollar payment is to be made within ten days after execution of the license and is to be credited against subsequent royalties. Royalties will be paid on a variable scale depending on the nature of patent coverage and the particular year of sale and are required even if no patents are issued. A summary of the royalty provisions is set forth as follows:

#### SUMMARY OF ROYALTIES

##### 1. Products Covered by U. S. Patent Rights

Coulter will pay royalties of four percent (4%) of net selling price for any antibody products made and commercially used or sold by Coulter in the United States, covered by a U. S. patent application or a valid U. S. patent for the life of said patent.

##### 2. Products Covered by Foreign Patent Rights

For products made, commercially used or sold outside the United States and covered by a foreign patent application or patent, Coulter will pay as royalty an amount in dollars according to the following percent of net selling price schedule:

- a) 1st year of sale of antibody - 0
- b) 2nd year of sale of antibody - one percent (1%)
- c) 3rd year of sale of antibody - two percent (2%)
- d) 4th year of sale of antibody - three percent (3%)
- e) 5th year of sale of antibody - four percent (4%)
- f) Subsequent years of patent - four percent (4%)

##### 3. Products Not Covered by Patent Rights

If there are no patent applications covering a product, Coulter will pay as royalty for any product it makes, commercially uses or sells whether in the United States or outside, the amount of two percent (2%) of net selling price for each product it sells for a period of five (5) years from the date of the first sale of such product in a given country.

## ACREEMENT

### 1. PARTIES:

1.1 The Board of Regents of the University of Texas System, referred to hereinafter as "BOARD", for and on behalf of the University of Texas Health Science Center at Dallas, having an office at 5323 Harry Hines Boulevard, Dallas, Texas 75235, referred to hereinafter as "UNIVERSITY".

1.2 Coulter Immunology Division of Coulter Corporation, a Delaware corporation, with offices at 440 West 20th Street, Hialeah, Florida 33010, referred to hereinafter as "CID".

1.3 The University of Texas System is the state agency established by Texas statute which governs UNIVERSITY and its operation. BOARD is its governing body.

### 2. CONSIDERATION:

2.1 This Agreement is entered into between the aforementioned parties for and in consideration of the undertakings herein expressed, the sufficiency and adequacy of which are hereby acknowledged.

### 3. SUBJECT MATTER OF AGREEMENT:

3.1 The present Agreement relates to five (5) monoclonal antibodies. As used herein, "MCA" shall mean: five (5) monoclonal antibodies, four (4) of which are specific to Terminal Deoxynucleotidyl Transferase ("Tdt"), and one of which is specific to Neuroblastoma. (MCA are more specifically identified on Attachment A, entitled Clone List).

3.2 R. Graham Smith, M.D. ("SMITH") is employed by UNIVERSITY as Associate Professor of Internal Medicine and is the inventor and developer of MCA. SMITH will provide MCA to CID on behalf of UNIVERSITY.

4. REPRESENTATIONS:

4.1 UNIVERSITY represents that to the best of its knowledge, MCA will not infringe patents owned by third parties. However, CID acknowledges that UNIVERSITY has not carried out any patent searches. In the event that any such infringement is alleged by third parties, CID agrees to notify UNIVERSITY promptly. CID and UNIVERSITY agree to investigate the situation fully and to collaborate in taking appropriate action, including meeting with the third party in a settlement conference. Any settlement reached with the third party must be agreeable to CID and UNIVERSITY. However, neither party will unreasonably or arbitrarily withhold approval of a settlement agreement. If CID is required to make payments to a third party for infringement of the third parties' patents, such payments will be deducted from royalty payments due UNIVERSITY under paragraphs 7.2 - 7.4, except that in no event shall the royalty payments due UNIVERSITY under paragraph 7.2 - 7.4 fall below one percent (1%) of the NET SELLING PRICE, as defined herein, for any PRODUCT, as defined herein, made, commercially used or sold by CID.

4.2 UNIVERSITY represents that to the best of its knowledge, there is no statutory bar to the filing of patent applications on MCA in the United States or foreign countries.

5. GRANT AND EXCHANGE OF INFORMATION:

5.1 BOARD hereby grants to CID the exclusive license and right to make, have made, use and sell PRODUCTS, throughout the United States, its territories and possessions, and in all countries foreign to the United States, and subject to the rights

retained by UNIVERSITY for the limited purposes expressed in paragraph 8 of this Agreement. "PRODUCT" or "PRODUCTS" shall mean a monoclonal antibody immunological substance or substances developed from the MCA provided by UNIVERSITY to CID.

5.2 At a time agreed upon by both parties, UNIVERSITY, through SMITH, will disclose and furnish to CID, MCA described in paragraph 3.1. If a fifth monoclonal antibody to Terminal Deoxynucleotidyl Transferase is recovered by SMITH from frozen clones, it will be furnished to CID and shall be covered under this Agreement in all respects as if it had been one of MCA from the effective date of this Agreement.

5.3 With respect to MCA disclosed or furnished by UNIVERSITY to CID under paragraph 5, CID agrees to keep the MCA confidential during the term of this Agreement and for three (3) years thereafter. This obligation shall terminate or not be enforceable as to any particular aspect of MCA (but remains enforceable as to any other aspect) under the following conditions:

- a. the UNIVERSITY discloses any aspect of MCA by publication, information dissemination or otherwise through SMITH or any other person associated with or employed by UNIVERSITY.
- b. any aspect of MCA was known to CID before disclosure and CID can prove the same to be true.
- c. any aspect of MCA was known publicly before disclosure thereof to CID.
- d. any aspect of MCA is disclosed to CID by a third party under no obligation of confidentiality to UNIVERSITY.

- e. any aspect of MCA becomes known publicly through no fault of CID.

CID agrees to have each of its employees who come into contact with MCA on a need-to-know basis agree to keep MCA confidential on the same terms as apply to CID.

6. INDEMNIFICATION AND HOLD HARMLESS:

6.1 The MCA furnished CID under this Agreement comprises the basic research results intended to enable CID to introduce commercially feasible immunological PRODUCTS. UNIVERSITY AND BOARD MAKE NO REPRESENTATIONS, EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AND ASSUME NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE USE, SALE OR OTHER DISPOSITION BY CID, OR BY THIRD PARTIES ACQUIRING THROUGH CID, OF THE PRODUCTS. CID agrees to defend, indemnify and hold harmless UNIVERSITY and BOARD their officers, agents, and employees, from and against all liabilities, demands, damages, costs, expenses or losses, (other than that attributable in whole or in part to BOARD's or UNIVERSITY's fault or negligence or the fault or negligence of UNIVERSITY's employees) arising out of the use, sale or other disposition by CID or by third parties acquiring through CID, of any PRODUCTS marketed by CID under this Agreement, and, if requested, to defend UNIVERSITY and BOARD, their officers, agents and employees against any and all claims arising out of such use, sale or other disposition.

7. PAYMENTS:

7.1 CID will pay UNIVERSITY twenty-five thousand dollars (\$25,000) within ten (10) days after UNIVERSITY executes this Agreement. Such amount will be credited against royalties to become due. No portion of the twenty-five thousand dollars (\$25,000) shall be refundable should no royalties become due under paragraph 7.2, 7.3, or 7.4.

7.2 CID will pay BOARD as royalty in U.S. currency an amount equal to four percent (4%) of the NET SELLING PRICE as herein defined for any PRODUCT made and commercially used or sold by CID in the United States, its territories and possessions, covered by a pending United States patent application pursuant to paragraph 8.2 including, any valid U.S. patent which is granted pursuant to the said patent application, and any division, or continuation thereof. This royalty payment shall be for the life of the U.S. patent or patents granted which cover such a PRODUCT.

7.3 In the event a United States patent is not applied for covering a CID PRODUCT, and patents are not applied for in a foreign government or treaty organization covering a CID PRODUCT, CID will pay as royalty for a PRODUCT it makes, commercially uses or sells in the United States or outside the United States, the amount of two percent (2%) of NET SELLING PRICE for each PRODUCT it sells for a period of five (5) years from the date of first sale of such PRODUCT in a given country.

7.4 CID will pay BOARD as royalty an amount in United States currency equal to the following:

- |                                |   |                    |
|--------------------------------|---|--------------------|
| a) 1st year of Sale of PRODUCT | - | 0                  |
| b) 2nd year of Sale of PRODUCT | - | one percent (1%)   |
| c) 3rd year of Sale of PRODUCT | - | two percent (2%)   |
| d) 4th year of Sale of PRODUCT | - | three percent (3%) |
| e) 5th year of Sale of PRODUCT | - | four percent (4%)  |
| f) Subsequent years of patent  | - | four percent (4%)  |

of the NET SELLING PRICE for any PRODUCT made, commercially used or sold by CID outside the United States and which is covered by a pending patent application filed with a foreign government or treaty organization pursuant to paragraph 8.2 or which is covered by a valid patent claim issued by a foreign government or treaty organization which has been filed pursuant to paragraph 8.2.

This payment obligation shall be for the life of each issued foreign patent applicable to such a sale.

7.5 "NET SELLING PRICE" as used herein shall mean CID's invoice price for any PRODUCT, less quantity and cash discounts thereon actually allowed and less sales, use, or other similar taxes and any transportation or delivery charges borne by CID. No royalties shall be due on any PRODUCTS which are not accepted by the customer and when royalties shall have been paid on such PRODUCTS, they shall be credited against future royalties to be paid hereunder.

7.6 For the purposes of computing and paying the royalties referred to in paragraph 7.2, 7.3 and 7.4 of this Agreement, the year shall be divided into three parts beginning September 1, January 1, and May 1, of each year, hereinafter referred to as "PAYMENT PERIOD". Within thirty (30) days after the end of each PAYMENT PERIOD, reports shall be made by CID to UNIVERSITY setting forth the number of PRODUCTS which have been sold during the preceding PAYMENT PERIOD, and also showing the NET SELLING PRICE of such PRODUCTS. CID's remittance for the full amount of royalties due for such PAYMENT PERIOD shall accompany such reports. CID agrees to make and keep full and accurate books and records showing all sales of PRODUCTS under this grant of TECHNOLOGY in sufficient detail to enable royalties paid and payable under such grant to be verified. CID further agrees that UNIVERSITY shall be permitted to inspect such books and records from time to time during reasonable business hours, as to any data which is material to the computation of royalties, by an approved firm of certified accountants, to the extent necessary to verify the royalty reports and payments provided by this Agreement. All information derived from CID's books and records shall be kept confidential and not disclosed except pursuant to a protective order of a Court. Such books and records for any

royalty reports which have aged in excess of three (3) years from the date of a royalty report need not be disclosed by CID.

8. INTELLECTUAL PROPERTY AND TECHNOLOGY:

8.1 MCA provided to CID under this Agreement shall belong to UNIVERSITY and BOARD. CID shall have the right to pursue any patent applications on MCA, both domestic and foreign, to protect its interest as a licensee and shall file all documents at its own expense in a timely manner, giving the credit to UNIVERSITY and its inventor as is required to comply with statutory prerequisites. CID shall provide UNIVERSITY with the original Assignment documents (both domestic and foreign), showing assignment of the invention to BOARD by the inventor, if the original is returned to CID by the respective patent offices. If no original is returned, a copy will be provided to UNIVERSITY by CID. UNIVERSITY reserves the right to file said patent applications if CID chooses not to file. CID agrees to promptly notify UNIVERSITY if it chooses not to file patent applications on MCA. Attorneys for UNIVERSITY will be allowed, at UNIVERSITY's expense, to review and comment upon all documents filed by CID pertaining to such patent applications, SMITH shall supply all information in his possession pertaining to MCA which may be necessary for the preparation of such patent applications. SMITH shall cooperate in reviewing drafts of the applications to facilitate filing. If at any time during this Agreement, for any reason, CID decides not to maintain any patent applications or Letters Patent, in the United States or foreign countries, CID will notify UNIVERSITY so that UNIVERSITY may do so. Such notice shall be given promptly so that UNIVERSITY will have adequate time to pay such maintenance fees. All patents shall be assigned to BOARD.

8.2 If patents are issued covering MCA, CID agrees to mark all PRODUCTS sold or otherwise disposed of by it under this Agreement with the word "patent" and the number of the licensed patent.

8.3 CID shall notify UNIVERSITY of any infringement of patent rights under this Agreement. CID shall have the right, at its sole expense, to commence litigation against such an infringer and to join BOARD as a party plaintiff. From the date of commencement of such litigation, royalty payments to BOARD attributable to its patent rights shall be suspended, but this Agreement will not otherwise be affected on that account. Royalty payments will again become payable if the infringement is brought to an end or ceases, from the date of the ending or cessation.

8.4 CID shall not be obligated to maintain more than one (1) lawsuit at any given time in the United States or in any country in which patent rights are granted and which represents a major market area of PRODUCTS embodying MCA.

8.5 CID shall prosecute such litigation it commences in a diligent manner and UNIVERSITY will cooperate fully with CID in such prosecution at its own expense. Subject to approval of BOARD CID shall have the right to settle such litigation upon terms it concludes are reasonable and justified in view of the prevailing conditions and facts developed in the course of such litigation. If BOARD refuses to settle upon terms negotiated by CID, BOARD shall assume complete control of the litigation thereafter and CID shall not be obligated to pay royalties until the infringement is discontinued.

8.6 CID shall proceed diligently to complete its experimentation utilizing TECHNOLOGY for the purpose of marketing PRODUCTS in accordance with current U.S. Food & Drug Administration regulations. UNIVERSITY shall supply adequate quantities of MCA to CID for such experimentation. CID shall provide advance notice to SMITH regarding its need for MCA to be furnished hereunder at a reasonable time prior to CID's planned use of MCA. No additional compensation will be paid by CID for such quantities of MCA.

8.7 Nothing herein shall be construed as preventing UNIVERSITY and BOARD from utilizing any of MCA for any traditional purposes of research and teaching. Nor shall any constraints be inferred to prevent UNIVERSITY or SMITH from publishing its research. UNIVERSITY agrees to be reasonably cooperative with respect to timing and content of such publications so as to not unduly prejudice CID's competitive position at an early stage. UNIVERSITY and BOARD agree that in the event MCA supplied to CID, for which no patent is pending or granted is supplied to a non-customer third party, even inadvertently, or becomes possessed by a non-customer third party so that products equivalent to PRODUCTS of CID are marketed, CID shall not be obligated to pay royalties for its PRODUCTS.

9. REASONABLE EFFORTS:

9.1 CID agrees to use reasonable efforts to introduce MCA into the commercial market as soon as practicable, consistent with sound and reasonable business practices and judgment. Should CID not be commercially distributing MCA satisfactorily on the fourth anniversary of this Agreement, BOARD may terminate the Agreement upon ninety (90) days written notice. Upon such termination or any of those set forth in paragraph 10 hereof, BOARD shall then be free to pursue marketing through another firm. The meaning of "satisfactorily" shall be construed in the light of market conditions, quality of MCA supplied, competition and acceptance of MCA, and reasonable obstacles beyond its control faced by CID.

10. TERMINATION:

10.1 If one party shall at any time commit a material breach of any covenant or agreement herein contained, and shall fail to remedy any such breach within sixty (60) days after written notice

thereof by the other party, such other party may at its option, and in addition to any other remedies that it may be entitled to, terminate this Agreement by notice in writing to such effect. Termination shall not affect BOARD'S right to collect payments accruing prior to termination.

10.2 In the event of termination of this Agreement, CID shall have the right to sell thereafter (1) completed PRODUCTS then on hand; (2) those then being processed; and (3) those with respect to which a firm commitment has been made at the time of termination by reason of the existence of a written agreement. All such sales or other dispositions shall be subject to reporting and royalty payments exactly as if termination had not occurred.

10.3 Upon termination, CID shall be obligated to return to UNIVERSITY the MCA furnished to CID under this Agreement, and to continue to honor the commitment in paragraph 5.3 not to disclose such MCA to third parties.

10.4 In the event that CID should at any time become bankrupt or be placed in receivership, BOARD may elect to terminate this Agreement and revoke all rights granted herein, by serving written notice to that effect on CID at any time after such bankruptcy or receivership.

## 11. EXPIRATION:

11.1 Unless sooner terminated as provided herein, this Agreement shall continue for as long as CID continues to make, commercially use, or sell PRODUCTS for which royalties are to be assessed. CID shall give BOARD sixty (60) days written notice of its intent to terminate the making, selling or commercial use of PRODUCTS. Should UNIVERSITY discover that CID is not making, selling or commercially using PRODUCTS but CID has failed to give such

notice, BOARD may terminate this Agreement by giving sixty (60) days written notice.

12. ASSIGNMENT:

12.1 This Agreement shall be transferable by CID in a transfer of all of the assets of the business to which MCA pertains, but shall not otherwise be transferable without prior written consent of BOARD which shall not be unreasonably withheld.

12.2 This Agreement shall be binding and inure to the benefit of the successors and assigns of BOARD.

13. LAW APPLICABLE:

13.1 This Agreement shall be construed under the laws of the United States and of the State of Texas.

14. MISCELLANEOUS:

14.1 Notice under this Agreement may be given to CID by notifying Coulter Immunology Division of Coulter Corporation, 440 West 20th St., Hialeah, Florida 33010. Notice may be given to UNIVERSITY in accordance with this Agreement by notifying President, The University of Texas Health Science Center at Dallas, 5323 Harry Hines Boulevard, Dallas, Texas 75235 with a copy to General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701.

15. EXECUTION AND EFFECTIVE DATE:

15.1 This Agreement is executed in multiple originals, and shall be effective when signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

ATTEST:

Wallace Coulter  
Chairman of the Board

COULTER IMMUNOLOGY DIVISION,  
COULTER CORPORATION

By: Harold W. Kuehl  
General Manager

Date: November 7, 1985

FORM APPROVED:

By: David A. Roth  
for Tied Name: David A. Roth  
General Counsel, The University  
of Texas System

CONTENT APPROVED:

Charles C. Sprague  
Charles C. Sprague, M.D.  
President, The University of  
Texas Health Science Center  
at Dallas

Charles B. Mullins, M.D.  
Charles Mullins, M.D.  
Executive Vice-Chancellor  
for Health Affairs  
The University of Texas System

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Typed Name: Hans Mark  
Title: Chancellor

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement was approved by the Board of Regents of The University of Texas System on the \_\_\_\_\_ day of \_\_\_\_\_, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

\_\_\_\_\_  
Executive Secretary, Board of Regents  
The University of Texas System

CLONE LIST

<u>Antigen</u>	<u>Number</u>	<u>Laboratory Designation</u>	<u>Isotype</u>	<u>Brightness</u>
Tdt	Tdt-1	2-6A6.09	IgG <sub>1</sub>	1
Tdt	Tdt-2	2-1-17B4.11	IgG <sub>1</sub>	2
Tdt	Tdt-3	2-13C3.03	IgG <sub>1</sub>	3
Tdt	Tdt-4	1-11C2.31-19	IgG <sub>1</sub>	4
Neuroblastoma		HSAN1-2	IgG <sub>1</sub>	-

3. U. T. Medical Branch - Galveston (U. T. Allied Health Sciences School - Galveston): Request for Approval to Change the Name of the Department of Medical Record Administration to the Department of Health Information Management and to Submit the Proposed Change to the Coordinating Board for Appropriate Approval (Catalog Change).--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Levin that approval be given to change the name of the Department of Medical Record Administration to the Department of Health Information Management at the U. T. Medical Branch - Galveston. If approved by the U. T. Board of Regents, this proposal will be forwarded to the Coordinating Board, Texas College and University System, for approval as an administrative change.

#### BACKGROUND INFORMATION

Computerized information systems are revolutionizing the management of medical records. The U. T. Allied Health Sciences School - Galveston seeks to be at the forefront of these innovations. The requested name change will better reflect the Department's current and future orientation.

Dr. Levin has certified that no additional funds will be required to implement this change.

Upon Regental and Coordinating Board approval, the next appropriate catalog published will be amended to reflect this action.

4. U. T. Medical Branch - Galveston: Proposed Appointment of Ashbel Smith Professor Effective December 5, 1985.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Levin to appoint William D. Willis, Jr., M.D., Ph.D., Professor with tenure, Departments of Anatomy and Human Biological Chemistry and Genetics, and Director of the Marine Biomedical Institute at the U. T. Medical Branch - Galveston, as an Ashbel Smith Professor effective December 5, 1985.

#### BACKGROUND INFORMATION

William D. Willis, Jr., M.D., Ph.D., has achieved an international reputation as an investigator of pain control. He is currently serving as President of the Society for Neuroscience and has recently been President of the American Pain Society.

His numerous research awards include the Alexander von Humboldt Senior U. S. Scientist Award and the prestigious Jacob K. Javits Award. As an educator, Dr. Willis has received the Distinguished Teaching Award from the Graduate Student Organization and the Dean of Medicine's Teacher of the Year Award. Appointment to an Ashbel Smith Professorship is in recognition of Dr. Willis' many accomplishments.

5. U. T. Medical Branch - Galveston: Proposed Change of Titles from Ashbel Smith Professor to Ashbel Smith Professor Emeritus Effective December 5, 1985.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Levin to change the titles of Robert N. Cooley, M.D., Donald Duncan, Ph.D., Raymond L. Gregory, M.D., Ph.D., and Edgar J. Poth, M.D., Ph.D., from Ashbel Smith Professor to Ashbel Smith Professor Emeritus at the U. T. Medical Branch - Galveston effective December 5, 1985.

#### BACKGROUND INFORMATION

Robert N. Cooley, M.D., was appointed as an Ashbel Smith Professor in 1977. He retired from his full-time position in 1981 and continues to participate in departmental activities in the Chest Radiology Division on a part-time basis.

Donald Duncan, Ph.D., was appointed as an Ashbel Smith Professor in 1968. He retired from full-time duties in 1973 and continues his association as a part-time faculty member.

Raymond L. Gregory, M.D., Ph.D., was appointed as an Ashbel Smith Professor in 1966. He retired from full-time service in 1968 and has continued on a part-time basis as a member of the house staff.

Edgar J. Poth, M.D., Ph.D., was appointed as an Ashbel Smith Professor in 1964. He retired from full-time duties in 1969, and continues his association as a part-time faculty member.

The title of Ashbel Smith Professor Emeritus is in honor of Drs. Cooley, Duncan, Gregory, and Poth's outstanding achievements and distinguished careers at U. T. Medical Branch - Galveston.

The title of Ashbel Smith Professor was approved by the U. T. Board of Regents at the October 1964 meeting.

6. U. T. Medical Branch - Galveston: Proposed Affiliation Agreement with William Beaumont Army Medical Center, El Paso, Texas.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Levin that approval be given to the nonstandard affiliation agreement set out on Pages HAC 22 - 24 between the U. T. Board of Regents, for and on behalf of the U. T. Medical Branch - Galveston, and William Beaumont Army Medical Center, El Paso, Texas.

#### BACKGROUND INFORMATION

Physical therapy trainees from U. T. Medical Branch - Galveston are required to obtain clinical learning experience in a medical facility, and the William Beaumont Army Medical Center provides this type of facility for training of physical therapists.

This agreement has been reviewed and approved by the Office of General Counsel.

Department of the Army  
William Beaumont Army Medical Center  
El Paso, Texas 79920

MEMORANDUM OF AGREEMENT

I. BACKGROUND

1. The Board of Regents of The University of Texas Medical Branch at Galveston have established an approved professional program of special training in preparation for physical therapists. The program requires clinical facilities where the physical therapy students can obtain the clinical learning experience required in the curriculum.
2. The US Army medical facility, William Beaumont Army Medical Center, has the needed clinical facilities for physical therapy trainees from The University of Texas Medical Branch at Galveston to obtain part of the clinical learning experience required. It is to the benefit of The University of Texas Medical Branch at Galveston for physical therapy trainees to use the clinical facilities of the US Army medical facility, William Beaumont Army Medical Center, to obtain part of the clinical learning experience required.
3. The US Army medical facility, William Beaumont Army Medical Center, and the Department of the Army will benefit from making clinical facilities available to physical therapy trainees from The University of Texas Medical Branch at Galveston. The Army will obtain the trainees' clinical learning experience while contributing to the educational preparation of a future supply of physical therapists.
4. The trainees, during clinical training at the Army medical facility, will be under the jurisdiction of facility officials for training purposes and will follow facility rules.
5. The affiliation is controlled by and subject to title 5, US Code, section 5351-6, 8144 and 8331-2.

II. UNDERSTANDING

1. The US Army medical facility will --
  - a. Make available the clinical and related facilities needed for the clinical learning experience in physical therapy by students enrolled in the basic physical therapy program at The University of Texas Medical Branch at Galveston and who are designated by The University of Texas Medical Branch at Galveston for such learning experience under the supervision of The University of Texas Medical Branch at Galveston.
  - b. Arrange a clinical learning experience schedule that will not conflict with those of the educational institution.
  - c. Designate an AMSC officer to coordinate the trainee's clinical learning experience in the Physical Therapy Section. This will involve planning with faculty or staff members for the assignment of the trainees to specific clinical experiences, including their attendance at selected conferences, clinics, courses, and programs conducted under the direction of the facility.

d. Provide, whenever possible, in connection with the trainees' clinical learning experience, reasonable classroom, conference room, office and storage space for participating trainee and their faculty or staff supervisors, if assigned, and if feasible, dressing and locker room space.

e. Permit, on reasonable request, the inspection of clinical and related facilities by agencies charged with the responsibility for accreditation of The University of Texas Medical Branch at Galveston.

2. The University of Texas Medical Branch at Galveston will --

a. Provide the Commanding Officer of the facility with the names of the trainees to be assigned, the dates and hours they will be assigned, and the clinical service to which they will be assigned, by the beginning of each training period.

b. Where indicated and upon mutual agreement, provide faculty or staff members to assume the responsibility for instruction and supervision of the trainees' clinical learning experience.

c. Have the faculty or staff member, if any, coordinate with designated AMSC officer, the assignment that will be assumed by the trainees while participating in their clinical learning experience, and their attendance at selected conferences, clinics, courses and programs conducted under the direction of the facility.

d. Provide and maintain the personal records and reports necessary for conducting the trainees' clinical learning experience.

e. Enforce rules and regulations governing trainees that are mutually agreed on by the non-Federal institution and the facility.

f. Be responsible for health examinations and such other medical examinations and protective measures as the facility and non-Federal institution mutually find to be necessary.

g. Prohibit the publications by the trainees and faculty or staff members of any material relative to their clinical learning experience that has not been reviewed by the Army medical facility in order to assure that no classified information is inadvertently published, that infringement of patients' right to privacy is avoided and that accuracy with respect to military procedures is complete. Any article written by these trainees which has been based on information acquired through their clinical learning experience must clearly reflect that DA does not endorse the article, even where a review has been made prior to publication. This is accomplished by requiring a disclaimer paragraph to appear with each such article written: "The opinions and conclusions presented herein are those of the author and do not necessarily represent the views of the Army medical facility, the Department of the Army, or any other governmental agency."

III. TRAINING

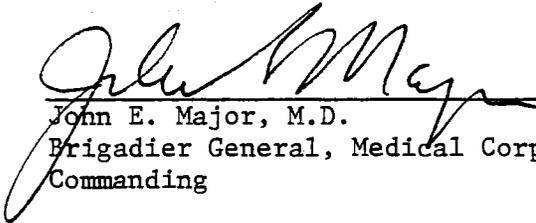
The training term shall be from 1 July through 30 June of each year. This agreement may be terminated by either institution or the individual trainee by written notification to all concerned. Except under unusual conditions, such information will be submitted prior to the beginning of a particular training period.

Date \_\_\_\_\_

ATTEST:

FACILITY

\_\_\_\_\_

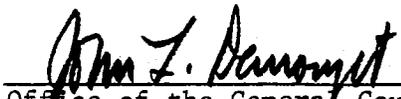
  
John E. Major, M.D.  
Brigadier General, Medical Corps  
Commanding

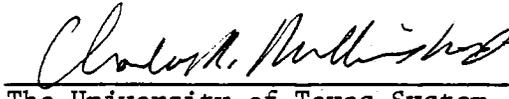
UNIVERSITY

  
William C. Levin, M.D.  
President  
The University of Texas Medical Branch  
at Galveston

FORM APPROVED:

CONTENT APPROVED:

  
Office of the General Counsel  
The University of Texas System

  
The University of Texas System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement was approved by the Board of Regents of The University of Texas System on the \_\_\_\_\_ day of \_\_\_\_\_, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

\_\_\_\_\_  
Executive Secretary, Board of Regents  
The University of Texas System

7. U. T. Health Science Center - Houston (U. T. Nursing School - Houston): Proposed Appointment to the Isla Carroll Turner Professorship in Gerontology Effective January 1, 1986.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Bulger to appoint Linda Kaeser, Ph.D., as the initial holder of the Isla Carroll Turner Professorship in Gerontology at the U. T. Health Science Center - Houston effective January 1, 1986.

BACKGROUND INFORMATION

Linda Kaeser, Ph.D., has accepted the position of Associate Dean for Research at the U. T. Nursing School - Houston effective January 1, 1986. Dr. Kaeser received her Ph.D. degree from Cornell University, Ithaca, New York, in 1981. She has been on leave of absence since 1984 from Oregon Health Sciences University, School of Nursing, where she is a tenured Associate Professor in the Community Health Care Systems Department. She is currently a member of the faculty and coordinator of Gerontology Programs, College of Nursing, University of Illinois at Chicago. Dr. Kaeser's current research relates to quality of life in nursing homes.

The Isla Carroll Turner Professorship in Gerontology was established at the October 1982 meeting of the U. T. Board of Regents.

8. U. T. Health Science Center - Houston: Recommendation to Approve Naming the Library in the Department of Obstetrics, Gynecology and Reproductive Sciences as the Griff T. Ross, M.D., Ph.D., Memorial Library (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Bulger to approve the naming of the library in the Department of Obstetrics, Gynecology and Reproductive Sciences at the U. T. Health Science Center - Houston as the Griff T. Ross, M.D., Ph.D., Memorial Library. This recommendation is in accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings.

BACKGROUND INFORMATION

Griff T. Ross, M.D., Ph.D., a native Texan, died July 1, 1985, after a distinguished career as an internationally recognized

endocrinologist and educator. In 1981, Dr. Ross joined the U. T. Health Science Center - Houston as Associate Dean of Clinical Affairs and Professor of Medicine, and at the time of his death was Professor and Director of the Division of Reproductive Sciences in the Department of Obstetrics, Gynecology and Reproductive Sciences. At the June 1984 meeting of the U. T. Board of Regents, Dr. Ross was honored for his outstanding contributions to science, medicine and education by the establishment of the Griff T. Ross Professorship in Humanities and Technology in Health Care. Dr. Ross is listed among the 1,000 scientists whose published works have been most frequently cited by other scientists. It is most appropriate that this library be dedicated to Dr. Ross.

9. U. T. Health Science Center - Houston: Development Board - Proposed Nominee Thereto (NO PUBLICITY UNTIL ACCEPTANCE IS RECEIVED).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Bulger's recommendation for approval of the nomination of Mr. Robert R. Combs, President of Med Center Bank, Houston, Texas, to the Development Board at U. T. Health Science Center - Houston for a three-year term to expire in 1988.

#### BACKGROUND INFORMATION

This development board was established and initial nominees were approved at the December 1977 U. T. Board of Regents' meeting. The nomination of Mr. Combs is to an unfilled vacancy.

In accordance with usual procedures, no publicity will be given to this nomination until an acceptance is received and reported for the record at a subsequent meeting of the U. T. Board of Regents.

10. U. T. Health Science Center - Houston: Recommendation for Approval of the Harris County Psychiatric Center Leases, Sublease, and Operating Agreement, Agreement Concerning Employment, and Admission, Discharge, and Transfer Policy Statement Between the U. T. Board of Regents and the Texas Board of Mental Health and Mental Retardation, the Commissioners' Court of Harris County, and the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County, Texas.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Bulger that the U. T. Board of Regents:

- a. Authorize the Chairman of the U. T. Board of Regents to execute an instrument substantially

equivalent to the document set forth on Pages HAC 29-60 entitled "Harris County Psychiatric Center Leases, Sublease, and Operating Agreement" by and between the Texas Board of Mental Health and Mental Retardation, the Commissioners' Court of Harris County, the Board of Trustees of the Mental Health and Mental Retardation Authority on behalf of the Mental Health and Mental Retardation Authority of Harris County, Texas, and the U. T. Board of Regents on behalf of U. T. Health Science Center - Houston;

- b. Authorize President Bulger to execute an instrument substantially equivalent to the document set forth on Pages HAC 61-63 entitled "Agreement Concerning Employment" between the Texas Board of Mental Health and Mental Retardation on behalf of the Texas Department of Mental Health and Mental Retardation, the Commissioners' Court of Harris County on behalf of Harris County, Texas, the Board of Trustees of the Mental Health and Mental Retardation Authority on behalf of the Authority, and the U. T. Board of Regents on behalf of U. T. Health Science Center - Houston;
- c. Approve the document set forth on Pages HAC 64-69, entitled "Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement" by and between the Texas Board of Mental Health and Mental Retardation on behalf of the Texas Department of Mental Health and Mental Retardation, the Commissioners' Court of Harris County on behalf of Harris County, the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County on behalf of the Authority, and the U. T. Board of Regents on behalf of U. T. Health Science Center - Houston, or an instrument substantially equivalent that is agreed to in writing by the Executive Vice Chancellor for Health Affairs;

#### BACKGROUND INFORMATION

The documents for approval are summarized below:

- (a) Harris County Psychiatric Center Leases, Sublease, and Operating Agreement

Pursuant to the provisions of Senate Bill 1295, 69th Texas Legislature, the Harris County Psychiatric Center Leases, Sublease, and Operating Agreement provides for the U. T. Board of Regents to lease from the Texas Department of Mental Health and Mental Retardation (TDMHMR) their half of the new Harris County Psychiatric Center scheduled for completion in August 1986. The Agreement also provides for the U. T. System Board of Regents to sublease Harris County's half of the facility which has been leased to the Mental Health and Mental Retardation Authority of Harris County. The Agreement provides for funding of the Psychiatric Center jointly by TDMHMR and Harris County. Funding by TDMHMR will be for 85% of the operations and 15% will be provided by the County. In addition, the County

and MHMRA will operate within the facility certain County judicial and civil commitment functions. The costs and operations of these functions will be provided solely by the County. The Agreement provides that the U. T. Board of Regents will be the governing authority of the hospital and that the day-to-day operations of the Psychiatric Center will be delegated to the U. T. Health Science Center - Houston.

The mission of the hospital is specified in S.B. 1295 and provides for the care of mentally ill persons and with the special mission of the U. T. Health Science Center - Houston for research into the cause and cures of mentally ill persons and education of professionals in the care of the mentally ill. The Agreement provides that the hospital shall be operated in accordance with applicable laws and in accordance with the rules of the Joint Commission on Accreditation of Hospitals (JCAH). The Agreement further provides that the Director of the Center will be the Chairman of the Department of Psychiatry, U. T. Health Science Center - Houston or a person nominated by the Chairman, recommended by the President, and approved by the U. T. Board of Regents.

#### (b) Agreement Concerning Employment

The Agreement Concerning Employment provides that priority be given to former employees of Texas Research Institute of Mental Sciences (TRIMS), which was the organization of TDMHMR transferred to the U. T. Health Science Center - Houston, and the current employees of MHMRA in staffing of the new Psychiatric Center. The Agreement provides that those employees who are qualified and where funds are available will be provided a letter of intent of employment by the Center. Any persons hired by the U. T. Health Science Center - Houston for employment in this Center shall be subject to all personnel policies approved for U. T. System personnel.

#### (c) Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement

The Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement provides specific procedures for admitting, discharging, and transferring patients at the Harris County Psychiatric Center. This document specifies that the occupancy rate will be maintained at the highest level possible and that the goal is to serve Harris County residents who are indigent. This document provides for the services to be provided for acute care patients as well as intermediate care patients who are admitted voluntarily or involuntarily. This document further provides for education and research within the Center. The policy provides that no person shall be denied admission to available psychiatric services on the basis of race, color, ethnicity, religion, creed, sex, sexual orientation, age, national origin, physical handicap, or other basis protected by law, or ability to pay. Patients must apply for admission through the MHMRA screening and referral service of the hospital. Specific requirements for voluntary and involuntary admission are delineated within this document. The Director of the Center or attending physicians are responsible for patient discharge and this document specifies procedures for discharge and transfer to other State facilities. The procedures for amending this document requires TDMHMR, the County, and MHMRA to agree prior to recommending the change to the U. T. Board of Regents.

HARRIS COUNTY PSYCHIATRIC CENTER

LEASES, SUBLEASE,

AND

OPERATING

AGREEMENT

Lessors: TEXAS DEPARTMENT OF COUNTY OF HARRIS,  
MENTAL HEALTH AND TEXAS  
MENTAL RETARDATION

Sublessor: MENTAL HEALTH AND MENTAL RETARDATION  
AUTHORITY OF HARRIS COUNTY

Lessee/  
Sublessee: THE BOARD OF REGENTS OF  
THE UNIVERSITY OF TEXAS SYSTEM

Governing  
Board and  
Hospital  
Operator: THE BOARD OF REGENTS OF  
THE UNIVERSITY OF TEXAS SYSTEM

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Exhibit B:	Floorplans of the Harris County Psychiatric Center
Exhibit C:	Lease between Harris County and MHMRA
Exhibit D:	Contract between Harris County and MHMRA
Exhibit E:	Legal description of the Leased Premises
Exhibit F:	Legal description of the Subleased Premises
Exhibit G:	Rider to General Appropriations Act, 67th Legislature
Exhibit H:	Rider to General Appropriations Act, 69th Legislature
Exhibit I:	Selected Statutes
Exhibit J:	Harris County Psychiatric Center Admission, Transfer, and Discharge Policy Statement
Exhibit K:	Supplemental Agreements
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Leases, Sublease, and Operating Agreement

THESE LEASES, SUBLEASE, AND OPERATING AGREEMENT are made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_, by and between the Texas Board of Mental Health and Mental Retardation on behalf of the Texas Department of Mental Health and Mental Retardation (TDMHMR), the Commissioners Court of Harris County on behalf of Harris County, the Board of Trustees of the Mental Health and Mental Retardation Authority on behalf of the Mental Health and Mental Retardation Authority of Harris County, Texas (MHMRA), and the Board of Regents (the Board of Regents) of The University of Texas System (UTS) on behalf of The University of Texas Health Science Center at Houston (UT Health Science Center).

RECITALS

WHEREAS, pursuant to appropriations bill riders in H.B. 656 of the 67th Legislature and S.B. 179 of the 68th Legislature, TDMHMR was appropriated funds to construct a 125-bed, health-care facility, originally designated as the "Houston Psychiatric Hospital"; and

WHEREAS, the County subsequently agreed to fund the construction of an additional, contiguous and functionally integrated health-care facility premises to support another 125 beds plus needed space for a psychiatric commitment center as a successor facility to the Harris County Psychiatric Hospital; and

WHEREAS, TDMHMR, the County, and MHMRA obtained a Certificate of Need from the Texas Health Facilities Commission to construct and operate the 250-bed health-care facility and

WHEREAS, the County has leased its facility premises, including 125 beds, to MHMRA, but consents to MHMRA's subleasing of this facility premises, including the 125 beds, to the Board of Regents; and

WHEREAS, pursuant to S.B. 1295, the 69th Legislature has provided: (a) that the facility shall be named the "Harris County Psychiatric Center" (hospital); (b) that TDMHMR shall enter into a lease and operating agreement with the Board of Regents for TDMHMR's 125 beds; and (c) that the County and/or MHMRA may enter into a lease and/or sublease operating agreement with the Board of Regents for the County's and/or MHMRA's facility premises for the Board of Regents to operate their 125 beds; and

WHEREAS, under an appropriations rider in House Bill 20, 69th Legislature, Regular Session, the Legislature has further instructed TDMHMR and the Board of Regents concerning the operations of the hospital; and

WHEREAS, TDMHMR, the County, and MHMRA may enter into an agreement whereby TDMHMR will fund the operation of 88 of the 125 County/MHMRA beds; and

WHEREAS, the County and MHMRA will fund the remaining 37 of the 125 County/MHMRA beds; and

WHEREAS, the County and MHMRA desire the Board of Regents to operate their 125 beds; and

WHEREAS, TDMHMR, the County, MHMRA, and the Board of Regents desire to enter into a single instrument containing leases, sublease, and operating agreement with respect to the hospital; and

WHEREAS, the County and MHMRA desire to retain space, to be known as the Harris County Psychiatric Commitment Center, for certain judicial and civil commitment functions within the premises; and

WHEREAS, under the provisions of S.B. 1295, the Texas Legislature has statutorily established and authorized the Harris County Psychiatric Center to be a hospital operated by

the Board of Regents as a university hospital with 250 psychiatric beds; and

WHEREAS, the hospital will not be subject to licensing under the provisions of the Texas Mental Health code because it will not be a state mental hospital nor a private mental hospital as those terms are defined by the Code (Art. 5547-4); and

WHEREAS, the hospital will not be subject to licensing under the provisions of the Texas Hospital Licensing Law because it will be a facility operated by the Board of Regents, an agency of the State of Texas, and thus be exempted by statute (Art. 4437f) from licensing by the State Board of Health and the Health Department,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

Part I. EXHIBITS AND DEFINITIONS

Sec. 1. Exhibits

Attached to this instrument and made a part hereof for all purposes are the following Exhibits:

- EXHIBIT A: S.B. 1295, 69th Legislature;
- EXHIBIT B: Floorplans of the Harris County Psychiatric Center
- EXHIBIT C: Lease between Harris County and MHMRA;
- EXHIBIT D: Contract between Harris County and MHMRA;
- EXHIBIT E: Legal description of the Leased Premises;
- EXHIBIT F: Legal description of the Subleased Premises;
- EXHIBIT G: Rider to H.B. 656, 67th Legislature;
- EXHIBIT H: Rider to H.B. 20, 69th Legislature;
- EXHIBIT I: Selected Statutes;
- EXHIBIT J: Harris County Psychiatric Center Admission, Transfer, and Discharge Policy Statement;
- EXHIBIT K: Supplemental Agreements; and
- EXHIBIT L: Authorized Representatives.

Sec. 2. Definitions

The following definitions apply throughout these Leases, Sublease, and Operating Agreement, unless expressly indicated otherwise or unless the context clearly indicates another meaning:

"Authorized representatives" means those persons authorized in writing by the Texas Board of MHMR, the County, MHMRA, and the Board of Regents, to take such actions as are necessary under these Leases, Sublease, and Operating Agreement; and means those persons currently authorized as listed in Exhibit L, and subsequently authorized persons named by TDMHMR, the County, MHMRA, and the Board of Regents by giving notice thereof pursuant to Section 53, below.

"Beds" mean hospital inpatient beds, including the 125 inpatient beds contained within the TDMHMR premises of the Harris County Psychiatric Center and the 125 inpatient beds contained within the Harris County premises of the Harris County Psychiatric Center.

"Board of Trustees" means the Board of Trustees of MHMRA or its authorized representatives.

"Board of Regents" means the Board of Regents of The University of Texas System or its authorized representatives.

"Commissioners Court" means the Commissioners Court of Harris County, Texas, the elected governing body of Harris County, Texas, authorized to contract for Harris County, or authorized representatives of the Court.

"County" means Harris County, Texas, a body politic and corporate of the State of Texas and the owner of the Harris County premises of the Harris County Psychiatric Center.

"County-supported beds" mean those numbers of beds, but no less than 37 inpatient beds, for which Harris County has appropriated, does appropriate, or is expected to appropriate funds.

"County-supported facilities" mean all the land, buildings, improvements, and facilities of the Harris County Psychiatric Center, including beds and patient care, office, and support areas contained within the premises of the Harris County Psychiatric Center for which Harris County has appropriated, does appropriate, or is expected to appropriate funds.

"Effective Date" means the date upon which the hospital is opened for admission of patients.

"Facilities services" mean those services not directly associated with providing patient care services and include:

- grounds maintenance
- housekeeping
- physical plant
- security
- utilities

"Harris County premises" mean those portions of the Harris County Psychiatric Center for which Harris County holds the fee estate, as legally described in Exhibit F.

"Harris County Psychiatric Center" means the land, buildings and improvements located at 3000 M.A.S., Houston, Harris County, Texas, including the hospital containing 250 inpatient beds, combining the adjacent Harris County premises and TDMHMR premises.

"Hospital" means the Harris County Psychiatric Center operated pursuant to law and the terms and conditions of these Leases, Sublease, and Operating Agreement, with floorplans as found at Exhibit B, and incorporated herein as if fully and completely described.

"Leases, Sublease, and Operating Agreement" means this single instrument, as may be amended, whereby: (a) the Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR leases the Leased Premises to the Board of Regents of The University of Texas System; (b) the Commissioners Court on behalf of Harris County consents to the sublease of the Subleased Premises from the Board of Trustees of MHMRA on

behalf of MHMRA to the Board of Regents; (c) the Board of Trustees of MHMRA on behalf of MHMRA subleases the Subleased Premises to the Board of Regents; (d) the Commissioners Court on behalf of Harris County, at the termination of the County/MHMRA lease, subsequently leases Subleased Premises to the Board of Regents; (e) the Board of Regents delegates to UTS and UT Health Science Center the authority to operate the Leased Premises and Subleased Premises as a single, 250-bed inpatient psychiatric university hospital under the terms of this instrument; and (f) the Commissioners Court on behalf of Harris County and the Board of Trustees of MHMRA on behalf of MHMRA retain responsibility for the Psychiatric Commitment Center Contained within the hospital.

"Leased Premises" means that portion of the Harris County Psychiatric Center for which TDMHMR holds the fee estate, a legal description of which is found at Exhibit E, and incorporated herein as if recited verbatim.

"Lessor" means: (a) the Texas Board of Mental Health and Mental Retardation in the lease between TDMHMR and the Board of Regents of The University of Texas System; and (b) the Commissioners Court of Harris County in the lease between the County and the Board of Regents of The University of Texas System.

"MHMRA" means the Mental Health and Mental Retardation Authority of Harris County or authorized representatives of the Authority.

"Psychiatric Commitment Center" means the area contained within the Harris County premises for patient processing of voluntary admissions and involuntary civil commitments, including the court area contained within the Subleased Premises, the spatial configurations of which are found at Exhibit B.

"State-supported facilities" mean all the land, buildings, improvements, and facilities of the Harris County Psychiatric Center, including beds and patient care, office, and support areas of the Harris County Psychiatric Center for which the Legislature has appropriated, does appropriate, or is expected to appropriate state funds.

"Subleased Premises" means the Harris County premises, a legal description of which is found at Exhibit G and incorporated herein as if recited verbatim; except for that portion of the Harris County premises retained by Harris County and/or MHMRA for the Psychiatric Commitment Center.

"Sublessor" means the Board of Trustees of MHRMA in the sublease between the Board of Trustees and the Board of Regents.

"Telecommunications" means telephones, equipment, cables, services, and automated information systems.

"TDMHMR" means the Texas Department of Mental Health and Mental Retardation or its authorized representatives.

"TDMHMR premises" mean those portions of the Harris County Psychiatric Center for which TDMHMR holds the fee estate, as legally described in Exhibit E.

"Texas Board MHMR" means the Texas Board of Mental Health and Mental Retardation, the governing board of TDMHMR, or its authorized representatives.

"University hospital beds" mean all and any bed within the Harris County Psychiatric Center that is maintained and operated by UT System, consistent with Article 4437f, Section 2(b), V.A.C.S.

"UT Health Science Center" means The University of Texas Health Science Center at Houston, a component institution of The University of Texas System.

"UTS" means the Office of the Chancellor and System Administration of The University of Texas System.

## Part II. LEASES AND SUBLEASE PROVISIONS

### Sec. 3. Demise of Leased Premises

Pursuant to S.B. 1295, the Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, owner of the Leased Premises, acting as Lessor herein, in consideration of the rents, covenants, agreements and conditions herein set forth, which the Board of Regents on behalf of UT Health Science Center, hereby agrees shall be paid, kept and performed, does hereby lease, let, demise, and rent exclusively unto the Board of Regents, and the Board of Regents does hereby rent and lease from Lessor, the Leased Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Lease;

SUBJECT, HOWEVER, among other matters, to the rights of access provided for in Section 6;

TO HAVE AND TO HOLD the Leased Premises subject to the matters as aforesaid, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Lease, exclusively unto the Board of Regents, its successors and assigns, beginning on the Effective Date of this Lease and continuing through August 31, 1987. The Lease shall be automatically renewed on the first day of September 1987 and shall continue until it is automatically renewed on the first day of September of each succeeding odd-numbered year unless earlier terminated as provided in Section 55 hereof. Notwithstanding anything contained in these Leases, Sublease, and Operating Agreement to the contrary, this Lease shall be consistent with the provisions of S.B. 1295 as are in effect at any and all times after the Effective Date and shall be based upon and subject to the covenants, agreements, terms, provisions and limitations hereinafter set forth, all of which Lessee covenants and agrees to perform and observe.

### Sec. 4. Demise of Subleased Premises

Pursuant to S.B. 1295, the Board of Trustees of MHMRA, acting as Sublessor of the Subleased Premises herein, in consideration of the rents, covenants, agreements and conditions herein set forth, which the Board of Regents hereby agrees shall be paid, kept and performed, does sublease, sublet, demise, and rent exclusively unto the Board of Regents, and the Board of Regents does hereby rent, and sublease from Sublessor, and the Commissioners Court of Harris County as lessor of the Subleased Premises hereby gives its written consent to this Sublease, together with all and singular the rights, privileges and appurtenances

thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Sublease;

SUBJECT, HOWEVER, among other matters, to the rights of access provided for in Section 6;

TO HAVE AND TO HOLD the Subleased Premises subject to the matters as aforesaid, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Sublease, exclusively unto the Board of Regents, its successors and assigns, for a term commencing on the Effective Date of this Sublease and, unless sooner terminated pursuant to the provisions hereof, continuing for the period of the Lease, and any extensions thereof, between the County and MHMRA, a copy of which is attached hereto as Exhibit C, and upon and subject to the covenants, agreements, terms, provisions and limitations hereinafter set forth, all of which the Board of Regents covenants and agrees to perform and observe.

Sec. 5. Subsequent Demise of Subleased Premises

Pursuant to S.B. 1295, the Commissioners Court on behalf of Harris County, Texas, owner of the Subleased Premises, in consideration of the rents, covenants, agreements and conditions herein set forth, which the Board of Regents hereby agrees shall be paid, kept and performed, does hereby promise to lease, let, demise, and rent exclusively unto the Board of Regents, and the Board of Regents does hereby promise to rent and lease from Harris County, Texas, the Subleased Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Lease;

SUBJECT, HOWEVER, among other matters, to the Easement provided for in Section 6;

TO HAVE AND TO HOLD the Subleased Premises subject to the matters as aforesaid, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging or hereinafter provided for under the terms of this Lease, exclusively unto the Board of Regents, its successors and assigns, beginning on the termination of the Lease between Harris County and the Mental Health and Mental Retardation Authority of Harris County, a copy of which is attached hereto as Exhibit C, and continuing in accordance with the provisions of Section 3 hereto. This Lease shall be consistent with the provisions of S.B. 1295 as are in effect at any and all times thereafter and shall be based upon and subject to the covenants, agreements, terms, provisions and limitations hereinafter set forth, all of which Lessee covenants and agrees to perform and observe.

Sec. 6. Access to Leased and Subleased Premises

The Texas Board MHMR on behalf of TDMHMR, the Commissioners Court on behalf of Harris County, and the Board of Trustees of MHMRA on behalf of MHMRA, hereby retain in their respective ownership interests the right to have access to their respective premises by way of driveways, walkways, and corridors of the Leased or Subleased premises; and the County retains the right to have access to the Psychiatric Commitment Center contained within the boundaries of the Subleased Premises by way of driveway, walkways and corridors of the Leased or Subleased premises.

Sec. 7. Conditions

The Lease between TDMHMR and the Board of Regents is conditioned upon the acceptance of the Leased Premises from the construction contractor by TDMHMR and the Board of Regents.

The Sublease between MHMRA and the Board of Regents is conditioned upon the acceptance of the Subleased Premises from the construction contractor by the County, MHMRA, and the Board of Regents.

The subsequent Lease between the County and the Board of Regents of the Subleased Premises is conditioned upon the full release by MHMRA of the County of all obligations and responsibilities under the Lease between Harris County and MHMRA as evidenced by a written release.

Sec. 8. Compliance with Law

The Board of Regents covenants that during the Terms of these Leases, Sublease, and Operating Agreement, it will cause compliance, at its sole cost and expense, with all federal and state laws which may be applicable to the Leased Premises, the Subleased Premises, the buildings, improvements and building equipment to be situated on the Leased Premises and the Subleased Premises, the use or manner of use of the Leased Premises and the Subleased Premises or the carrying on of business on the Leased Premises and Subleased Premises.

Sec. 9. Right to Contest Law

The Board of Regents or its authorized representatives shall have the right, and TDMHMR, the County, and MHMRA agree to cooperate to the extent fully reasonable, including if necessary the joining in suit, or the requesting of official opinions of the Texas Attorney General's Office, after written notice to them to contest by appropriate legal proceedings the validity or urge an interpretation of any law, ordinance, rule, regulation or requirement of the nature referred to in Section 8 above and to postpone compliance with the same, provided such contest or request for opinion shall be promptly and diligently prosecuted. TDMHMR, the County, or MHMRA, at their expense, shall also have the right, but not the obligation, to contest any such law, ordinance, rule, regulation or requirement.

Part III. HOSPITAL CONSTRUCTION AND EQUIPMENT

Sec. 10. Construction

- (a) TDMHMR and the County shall pay all construction costs incurred in the construction of the hospital. Notwithstanding anything which may be contained in this Agreement to the contrary, the County shall only be liable for construction costs to the extent such costs are or will be certified available by the County Auditor of Harris County, Texas.
- (b) As part of the construction of the hospital, TDMHMR and the County shall install on the Leased Premises and Subleased Premises any required storm and sanitary sewers, gas, water, telecommunications equipment and cables, and electrical lines and other necessary equipment, facilities, and support

systems to operate a fully accredited psychiatric hospital.

- (c) The hospital and all improvements related thereto which are constructed or otherwise made by the Board of Regents or its authorized representatives to the Leased Premises or Subleased Premises, including alterations permitted under Section 13 below, and subject to the provisions of Sections 11 and 12 below, shall be leased or subleased by the Board of Regents from the date of installation and throughout the Terms of these Leases and Sublease. Permanent fixtures and equipment such as heating and air conditioning equipment, lighting, plumbing fixtures and mechanical components of the structure which cannot be removed from the hospital without materially damaging such improvement shall remain the property of TDMHMR and the County.

Sec. 11. Cost and Expense of Improvements

TDMHMR and the County may, subject to the availability of funds, provide for the construction of improvements at any time on the Leased Premises and Subleased Premises. UT Health Science Center, through the Board of Regents or its authorized representatives, may make improvements on the leased and subleased premises at its own expense and subject to written approval of TDMHMR and the County.

Sec. 12. Fixtures and Equipment

- (a) Any and all newly acquired hospital fixtures and hospital equipment shall be owned by TDMHMR and the County and the entire cost and expense of said fixtures and equipment shall be borne and paid for by them.
- (b) Any and all previously acquired fixtures and equipment, signs, furniture and other personal property furnished by the Board of Regents or its authorized representatives shall be and remain the property of the Board of Regents and may be removed from the Leased Premises and the Subleased Premises by the Board of Regents or its authorized representatives at its cost at any time prior to or upon the termination of this Lease and Sublease; provided, however, the Board of Regents shall be liable for any material damage or injury to the Leased Premises or Subleased Premises occasioned by such removal.
- (c) The Board of Regents agrees that it shall maintain an inventory of all hospital fixtures and hospital equipment, signs, furniture and other personal property, despite the ownership of such property, and at termination of the Agreement, all hospital fixtures and hospital equipment, signs, furniture and other personal property shall be returned to the parties pursuant to a prior mutually acceptable, written agreement, including provision for the return of property to the party that can demonstrate the acquisition of it.

Sec. 13. Alterations

The Board of Regents or its authorized representatives shall have the right at any time and from time to time after completion of the construction, during the Terms hereof, subject to the prior written approval of TDMHMR, the County, and MHMRA, provided funds are available, to make any and all necessary or desirable changes and alterations in or to the Leased Premises or Subleased Premises or improvements there-to. All such permitted changes and alterations shall be immediately considered a part of the hospital, the Leased Premises, and the Subleased Premises. The Board of Regents covenants and agrees that all work done in connection with any alteration shall be done in a good and workmanlike manner and in compliance with all applicable federal, state, and local rules and regulations.

Sec. 14. Covenants Run with Land

All of the covenants, agreements, conditions and restrictions set forth in these Leases, Sublease, and Operating Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and their successors and assigns.

Sec. 15. Right of Inspection

TDMHMR, the County, and MHMRA shall have full right and authority to enter in and upon the Leased Premises, the Subleased Premises, and any building or improvements to be constructed by the Board of Regents thereon, at any and all reasonable times during normal business hours during the Terms of these Leases and Sublease upon reasonable notice to the Board of Regents and without interference with the use or business of the Board of Regents for the purpose of inspecting the same, without the interference or hindrance by the Board of Regents or by agents or representatives.

Part IV. RENTS, ASSIGNMENTS, SUBLETTING

Sec. 16. Rent

The Board of Regents of The University of Texas System, pursuant to S.B. 1295, shall pay one dollar (\$1.00) per year to TDMHMR for the Lease; to MHMRA for the Sublease; and to the County for the subsequent Lease.

Sec. 17. Subletting and Assignments

- (a) Subject to the prior written approval of TDMHMR, the County, and MHMRA, the Board of Regents shall have the right to sublet all or any portion of the Leased Premises, the Subleased Premises or the improvements constructed thereon by the Board of Regents for activities consistent with or related to the construction and operation of the hospital; provided however that when prior written approval is required the Board of Regents may consider this written agreement to provide sufficient approval if no written response to its request for approval is forthcoming within 60 days after receipt of the request by TDMHMR, the County, or MHMRA. Any sublease or assignment shall be subject and

subordinate to these Leases and Sublease. Any net excess of revenues over expenses under any such sublease shall be applied to the expenses incurred by the hospital in the manner specified and as shall be provided in the written approval.

- (b) No prior written consent shall be required for the assignment, subletting or transfer of these Leases and Sublease in the event that such assignment, subletting or transfer occurs in connection with a reorganization of The University of Texas System or component institutions by a mere change in identity, form or place of organization.

#### Part V. MISSION; USE OF PREMISES

##### Sec. 18. Mission

- (a) The Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, the Commissioner's Court on behalf of Harris County, the Board of Trustees of MHMRA on behalf of MHMRA, and the Board of Regents recognize and agree that the Harris County Psychiatric Center has been established with the mission of caring for mentally ill persons of Harris County and with the uniquely special and additional missions of The University of Texas Health Science Center at Houston conducting research into the causes and cures of mental illness and the education of professionals in the care of the mentally ill, all in accordance with the legislative intent of S.B. 1295. The Harris County Psychiatric Center shall be operated pursuant to the provisions of law, including S.B. 1295 (Exhibit A), and any amendments thereto; any riders to General Appropriations Acts of the Legislature, including those found at Exhibits G and H; the Rules and Regulations of the Board of Regents of The University of Texas System; and the Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement, and any amendments thereto, as set forth in Exhibit J.
- (b) Consistent with the aforesaid missions, one significant goal of the Harris County Psychiatric Center is to decrease the numbers of necessary short-term admissions of persons from Harris County to TDMHMR's Austin State Hospital. In order to achieve this goal, a plan of operation shall be established to:
  - (1) divert potential voluntary admissions to the Austin State Hospital, except when those admissions are through specific arrangement with the superintendent of the Austin State Hospital;
  - (2) provide services to court-committed clients within the limits of planned bed allocations; and
  - (3) deliver short-term, crisis stabilization services to both voluntary and involuntary clients, recognizing that Austin State Hospital will continue to be the appropriate placement for clients requiring longer term inpatient services.

Sec. 19. Use of Premises

The Board of Regents of The University of Texas System shall cause the Leased Premises and the Subleased Premises to be used consistent with the mission for the operation of this psychiatric hospital and continue such use for the Terms of these Leases and Sublease. The Board of Regents covenants that the Leased Premises and the Subleased Premises shall be used and maintained throughout the Terms of these Leases, Sublease, and Operating Agreement as an inpatient hospital facility for the screening, diagnosis, and treatment of persons requiring short-term psychiatric care, and for research and education in the care and cure of mentally ill persons. The Board of Regents further covenants not to abandon the hospital; not to use the building for any purpose other than as stated herein; and cause all hospital beds contained within the Harris County Psychiatric Center to be operated as teaching and psychiatric university hospital beds.

Part VI. ORGANIZATION OF HOSPITAL

Sec. 20. Governance

The Board of Regents of The University of Texas System shall be the governing body of the hospital and shall be responsible for operation of the hospital and development of all policies with respect to the hospital in addition to those set out in Exhibit J. The Board of Regents shall establish general operating policies and cause UTS and the UT Health Science Center to carry them out. The Board of Regents shall be accountable and responsible for all medical, professional, and ethical affairs of the hospital.

In order to provide the Board of Regents with an informed basis for reviewing the performance of UT Health Science Center hereunder, the President of UT Health Science Center shall prepare and deliver to UTS from time to time the reports and financial statements required by this Agreement.

Sec. 21. Delegation of Management of Hospital

The Board of Regents delegates to UT Health Science Center the general authority to manage the day-to-day operations of the hospital and to perform functions consistent with the role of manager of the hospital.

Sec. 22. Management Objective

The parties agree that it is the objective of UT Health Science Center as manager of the hospital, in carrying out its obligations and responsibilities under this agreement, to manage the operations of the hospital in such manner as to support and fulfill the mission and the designated uses of the hospital as set forth in Part V above, to the extent that funds are made available as provided in Section 25, below, pursuant to S.B. 1295.

Sec. 23. Patients

- (a) All patients of the hospital shall be available to the education programs of UT Health Science Center; provided, however, that patients shall be available

for research programs only after their consent has been obtained under applicable law.

- (b) In accordance with the policies set out in Exhibit J and with the provisions of the Texas Mental Health Code, and other selected statutes as set out in Exhibit I, UT Health Science Center through the Director of the hospital shall retain final decision-making authority over the admission of patients and the assignment of beds, patient management, transfer, and discharge.

Sec. 24. Responsibilities of Parties

- (a) For purposes of these Leases, Sublease, and Operating Agreement, TDMHMR:
  - (1) shall seek legislative appropriations: for the state-supported operations of the hospital; for any further construction at the hospital; for equipment, both fixed and movable; for utilities, including data processing and telecommunications; for maintenance, repairs, renovations, and additions; and for any damage or destruction;
  - (2) shall transfer as local funds to UT Health Science Center any appropriations to TDMHMR for the hospital as currently provided and in accordance with General Appropriations Acts.
- (b) For purposes of these Leases, Sublease, and Operating Agreement, the County or MHMRA, as provided for in written agreements between them:
  - (1) shall initially locate and operate the Harris County Psychiatric Commitment Center on the premises of the hospital;
  - (2) shall be responsible for the Harris County Psychiatric Commitment Center, both in terms of operation and in terms of funding;
  - (3) shall pay UT Health Science Center for:
    - (i) 15% of those start-up costs incurred in fiscal year 1985-1986 associated with the phase-in of the hospital, which costs shall include, but shall not be limited to, the telephone system, hospital information system, enhancements to the security system, television system and microwave dish system, and personnel; these start-up costs shall be in five equal, annual payments beginning in fiscal year 1986-1987;
    - (ii) an amount of money, for fiscal year 1986-1987 and every fiscal year thereafter, to be negotiated before each such fiscal year by the County, MHMRA, and the UT Health Science Center, which shall approximate fifteen percent (15%) of the budgeted operating expenses of the hospital as prepared by the UT Health Science Center for each such fiscal year; with payments being made in quarterly installments with the first installment

due on September 1 of each fiscal year; and with fifteen percent (15%) of all revenues received by the hospital for services provided by the hospital under this Agreement being credited against the annual budget for the hospital;

(iii) those facilities services, associated with the Psychiatric Commitment Center which UT Health Science Center will provide, an amount of money in addition to that provided in (ii), above (but in no way resulting in paying twice for the same services) equal to the result of multiplying the total budget for these services by the proportion of the square footage associated with the Psychiatric Center to the total hospital square footage; (at the end of the fiscal year, review of actual expenditures will be made and adjustments reflected in the next year's budget) and will pay the UT Health Science Center for any telecommunications and duplicating services and materials provided to the Psychiatric Commitment Center an amount of money equal to the actual documented costs of such services and materials;

(4) shall continue to locate and operate the Harris County Psychiatric Commitment Center upon the premises of the hospital so long as the operation is considered feasible in the judgment of TDMHMR, the County, MHMRA, and UT Health Science Center;

(5) shall obtain funding: for the county-supported facilities of the hospital through county appropriations, which may include funds made available by MHMRA or from gifts and grants; for any further construction at the hospital; for equipment, both fixed and movable; for utilities, including data processing and telecommunications; for maintenance, repairs, renovations, and additions; for any damage or destruction; and for hospital operations, which latter funding shall support the numbers of beds identified as county-supported beds, exclusive of any additional cost of operating the Harris County Psychiatric Commitment Center, which costs shall remain the responsibility of the County and MHMRA; and

(6) shall transfer any monies due or funds appropriated to UT Health Science Center on a quarterly basis.

(c) Notwithstanding any provision of Section 24(b), above, to the contrary, the funding required to be paid for the County supported facilities of the hospital shall be subject to and conditioned upon appropriations being made from time to time by the County in which such funds may be lawfully used for the purposes of the hospital; and the County and MHMRA hereby recognize and agree that, should funds not be sufficiently appropriated by the County, the operation of the County supported facilities by the Board of Regents may be decreased to the level of

operation which any such appropriations can support.

- (d) For purposes of these Leases, Sublease, and Operating Agreement, UTS and UT Health Science Center, consistent with the Rules and Regulations of the Board of Regents:
- (1) shall continue to maintain and operate the UT Health Science Center as an accredited, nonsectarian educational institution;
  - (2) shall manage and operate the hospital through a Director who shall be appointed by the Board of Regents as provided for, below, at Section 26.
  - (3) shall prepare budgets for the hospital's operation;
  - (4) shall assign to the hospital, to the extent that funds are made available by TDMHMR, the County, and MHMRA, a sufficient number of qualified physicians, who are members of UT Health Science Center faculty and who shall constitute the Organized Staff, to provide, direct and supervise medical services to all patients of the hospital;
  - (5) shall review credentials and annually appoint the hospital's Organized Staff;
  - (6) shall approve and enforce the Bylaws of the Organized Staff;
  - (7) shall assign to the hospital an appropriate number of residents in training to participate in patient care under the direction of the Organized Staff;
  - (8) shall cause the hospital to be operated in accordance with the standards for accreditation of the Joint Commission on Accreditation of Hospitals, to seek accreditation by JCAH, and to maintain accreditation once it is obtained;
  - (9) shall keep and maintain the hospital, to the extent that funds are made available, in good condition and repair, consistent with ordinary wear and tear;
  - (10) shall seek, obtain, and keep in force any necessary permits for the operation of the hospital consistent with its mission and designated uses; and not suffer any avoidable revocations thereof;
  - (11) shall use the hospital to provide the maintenance and day-to-day operations of a university, inpatient, public mental health facility;
  - (12) shall seek, obtain, and keep in force any available certifications to enable the hospital to receive any available Medicare and Medicaid reimbursements; and not suffer any avoidable revocations thereof;

- (13) (i) shall purchase and maintain, to the extent permitted under law, insurance policies, including malpractice insurance, or other professional liability insurance to protect the hospital and extend, to the extent permitted by law, coverage of available self-insurance programs;
- (ii) may purchase and maintain in effect a policy or policies of insurance covering the hospital and the contents, in an amount not less than ninety percent (90%) of the insurable value of the Building, providing protection against perils included within the standard Texas form of fire and extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief, and such other risks as the County and TDMHMR may from time to time determine and with any such deductibles as the County and TDMHMR may from time to time determine. UT Health Science Center shall furnish to TDMHMR and the County certificates of insurance evidencing such coverage. The County and MHMRA shall be notified of any changes in the policy or cancellation during the term of this lease.
- (iii) may purchase any other policies of insurance which UT Health Science Center may deem appropriate or necessary to fully protect the interests of the parties hereto;
- (14) shall control and be responsible for the physical security of patients, employees, independent contractors, subcontractors, volunteers, invitees, and visitors within the hospital, to the extent, and for so long as, funds are made available for same;
- (15) shall cause all financial transactions and performance programs to be appropriately audited;
- (16) shall cause the admission, discharge, and transfer policies as found in Exhibit J to be established, enforced, and as necessary amended;
- (17) shall cause appropriate patient data to be made available to TDMHMR, the County, and MHMRA, including but not limited to diagnosis, treatment, and lengths of stay; and to cause such data to be retained for a period of five years or such the period of time as mutually agreed upon by the parties or as required by law, whichever is longer, to the extent that funds and space are available for such retention;
- (18) shall cause a priority of patient treatment policy to be established;
- (19) shall apply one standard of care and level of service throughout the hospital;

- (20) shall join with TDMHMR, the County, and MHMRA in examining and evaluating the services provided under the Agreement, in conducting periodic on-site surveys, and in auditing or inspecting the hospital's financial and service records relating to said services at any time so long as such audit or inspection is on a planned and scheduled basis; and
- (21) shall seek, obtain, and keep in force any certifications or licenses required by law in order to provide services to the committed and voluntary patients of the hospital, including services to children, adolescents, and adults for mental, alcohol or drug abuse disorders.

#### Part VII. HOSPITAL OPERATIONS

##### Sec. 25. Standard of Performance

UT Health Science Center shall perform all of the duties herein required of it, in such a manner as to assure that the operations of the hospital support and fulfill its mission.

##### Sec. 26. Director

The Board of Regents shall appoint the Director of the hospital upon the recommendation of the President of UT Health Science Center. The Director of the hospital shall be the chairman of the UT Health Science Center's Department of Psychiatry or a person nominated by the Chairman and recommended by the President. Such appointment shall continue unless and until the Board of Regents withdraws its approval.

##### Sec. 27. Cooperation of Parties

The Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, the Commissioners Court on behalf of Harris County, the Board of Trustees of MHMRA on behalf of MHMRA, and the Board of Regents on behalf of UTS and UT Health Science Center at Houston recognize their mutual interdependence in carrying out the terms of these Leases, Sublease, and Operating Agreement and agree that there shall be consultation and good faith cooperation among all persons representing each entity.

##### Sec. 28. Consultation

Appropriate consultation and support departments (i.e., facilities, equipment and non-physician personnel) for the hospital may be obtained through contracts for services.

##### Sec. 29. Joint Employment

Nothing contained in these Leases, Sublease, and Operating Agreement shall prohibit additional agreements providing for the joint employment of physicians and other personnel and for the pro rata apportionment of their salaries.

Sec. 30. Employee Relations

To the extent, and for so long as funds are made available, the Board of Regents authorizes UT Health Science Center to recruit, employ, train, promote, assign and set rates of compensation, suspend or terminate employees in accordance with the Rules and Regulations of the Board of Regents, all as necessary for the fulfillment its obligations under these Leases, Sublease, and Operating Agreement for the proper operation and maintenance of the hospital. All such employees shall be employees of and shall be carried on the payroll of UT Health Science Center and shall not be employees of TDMHMR, the County, or MHMRA. UT Health Science Center may enter into agreements with TDMHMR and MHMRA supplemental to these Leases, Sublease, and Operating Agreements with respect to considerations of employment of present or former employees of TDMHMR and MHMRA, such as those described in Exhibit K.

Part VIII. SERVICES AND FUNCTIONS

Sec. 31. Administrative Services

UT Health Science Center may provide the hospital directly or by contracts for services, administrative services required for operation of the hospital.

Sec. 32. Planning

Planning shall be consistent with the Rules and Regulations of the Board of Regents of The University of Texas System and the Bylaws of the Organized Staff.

Sec. 33. Quality Assurance Program

Upon the recommendation of the President of The University of Texas Health Science Center at Houston, and upon the request of the Executive Vice Chancellor for Health Affairs of UTS, the Director shall develop, in consultation with TDMHMR, the County, and MHMRA, and assist in the implementation of a Quality Assurance Program. Implementation services shall include preparation of forms and other documentation, training of quality assurance personnel and the holding of orientation sessions for members of the Organized Staff.

Sec. 34. Preparation of Appropriation Requests and Budget Documents

UT Health Science Center shall prepare all annual budget requests in accordance with the requirements of the parties to these Leases, Sublease, and Operating Agreement.

Sec. 35. Rates

The Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, the Commissioners Court on behalf of Harris County, the Board of Trustees of MHMRA on behalf of MHMRA and the Board of Regents recognize the importance of maintaining room and other rates which enable the hospital to pay those of its obligations not covered by appropriations, while at the same time contain the cost of health care. It shall be the primary intent of this Agreement that services

be rendered without regard to the ability of a person to pay. UT Health Science Center shall develop and effect a system to ascertain the ability to pay and other financial circumstances of all persons to whom the hospital provides services in accordance with the Harris County Psychiatric Center Admission, Transfer and Discharge Policy Statement. If it is determined that the person receiving the services has no property or income out of which the hospital should be reimbursed and those persons legally responsible for the support of the person receiving the services have no property or income out of which the hospital should be reimbursed, the hospital shall provide the services free of cost. Otherwise, a reasonable fee for services, not to exceed the cost thereof, shall be charged to the person receiving the services or against the persons legally responsible for the person's support based upon their combined ability to pay. TDMHMR, the County, MHMRA, and UT Health Science Center shall develop mutually agreeable sliding scales for fees for services based upon the patient's and other responsible person's combined ability to pay. The sliding scale fee structure shall be recommended to UTS who shall then recommend the structure to the Board of Regents for approval. The sliding scale fee shall take into account the financial obligations of the hospital, the level of rates at other hospitals, the importance of providing quality health care at a reasonable cost and the financial abilities of its patients.

#### Part IX. ANCILLARY AGREEMENTS

##### Sec. 36. Ancillary Agreements

UT Health Science Center shall, in the name of and for the account of the Board of Regents of The University of Texas System, negotiate and enter into such term agreements as it may deem necessary or advisable, for the furnishing of utilities, services, concessions, and supplies for the maintenance and operation of the hospital, in accordance with the Rules and Regulations of the Board of Regents.

#### Part X. UTILITIES AND PHYSICAL PLANT

##### Sec. 37. Utilities

UT Health Science Center shall obtain utility and sewer services required for use of the Leased Premises and the Subleased Premises. UT Health Science Center shall pay or cause to be paid all charges for gas, electricity, water, sewer service, telecommunications, and other utilities obtained for the Leased Premises and the Subleased Premises during the Terms of these Leases and Sublease and all sewer use charges or similar charges or assessments for utilities levied against the Leased Premises and the Subleased Premises during the Terms of these Leases and Sublease.

##### Sec. 38. Repairs and Maintenance

The Board of Regents covenants, throughout the Terms hereof, to take good care of all improvements constructed upon the Leased Premises and Subleased Premises and, subject to the provisions of these Leases and Sublease, elsewhere set forth, to keep the same in good working order and condition, excepting reasonable wear and tear, and to make all necessary repairs thereto, interior and exterior, structural and nonstructural. UT Health Science Center shall keep and

maintain all portions of the improvements upon the Leased Premises and Subleased Premises and all sidewalks, passageways and driveways within the Leased Premises and Subleased Premises in a clean and orderly condition.

Sec. 39. Mechanics' Liens

The Board of Regents shall not suffer or permit any mechanics' or materialmen's liens to be enforced against the Leased Premises or Subleased Premises or against the fee estates of TDMHMR or the County as to the Leased Premises or the Subleased Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to the UT Health Science Center on behalf of the hospital or anyone holding the Leased Premises or Subleased Premises, or any part thereof, through or under Lease or Sublease. If any such mechanics' or materialmen's liens shall at any time be filed against the Leased Premises or the Subleased Premises, the Board of Regents shall, within ninety (90) days after notice to the Board of Regents of the filing thereof, cause the same to be discharged of record or make provisions acceptable to TDMHMR, the County, and MHMRA for the discharge of such lien; provided, however, that the Board of Regents shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings.

Sec. 40. Damage and Destruction

- (a) If, at any time during the Terms of these Leases and Sublease, the Leased Premises or the Subleased Premises or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Board of Regents shall, to the extent only that funds are made available by the Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, the Commissioners Court on behalf of Harris County, and the Board of Trustees of MHMRA on behalf of MHMRA, repair, alter, restore, replace or rebuild the same to such extent and in such manner as the parties may deem appropriate.
- (b) Notwithstanding the provisions of (a) above, the Board of Regents shall have the right to terminate these Leases or Sublease if at any time during the Terms of these Leases and Sublease any improvements on the Leased Premises or the Subleased Premises (including property of the Board of Regents) shall be damaged or destroyed by fire or any other casualty whatsoever to the extent that it would not be in the best interest of TDMHMR, the County, MHMRA, and the Board of Regents to repair such damage.

Part XI. ACCREDITATION,  
GOVERNMENTAL REGULATIONS

Sec. 41. Joint Commission on Accreditation of Hospitals

UT Health Science Center shall assure that the administrative practices and procedures of the hospital meet the standards of the Joint Commission on Accreditation of Hospitals ("JCAH"), and shall encourage and assist the

Organized Staff to ensure that medical practices and procedures meet such standards.

Sec. 42. Confidentiality of Records

UT Health Science Center shall protect the confidentiality of its records and those of the hospital, and shall comply with all applicable federal, state and local laws and regulations relating to the records including maintaining sufficient records to demonstrate compliance with the standards of the JCAH.

Sec. 43. Federal Government Access

To the extent required by Section 1861(v)(1)(I) of the Federal Social Security Act:

- (a) Until the expiration of four (4) years after the furnishing of services pursuant to this Lease, Sublease, and Operating Agreement, UT Health Science Center shall make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, these Leases, Sublease, and Operating Agreement, any books, documents and records of UT Health Science Center that are necessary to certify the nature and extent of the costs claimed to Medicare and Medicaid programs with respect to the services provided under this agreement.
- (b) If UT Health Science Center carries out any of the duties of these Leases, Sublease, and Operating Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, with a related organization, until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, UT Health Science Center shall cause the related organization to make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such related organization that are necessary to verify the nature and extent of the costs claimed to Medicare and Medicaid programs with respect to the services provided under these Leases, Sublease, and Operating Agreement.

Part XII. LIABILITY

Sec. 44. Non-Assumption of Liabilities

The Board of Regents shall not by entering into and performing these Leases, Sublease, and Operating Agreement, or by UT Health Science Center managing the hospital, assume or become liable for any of the obligations, liabilities or debts of TDMHMR, the County, or MHMRA, its employees, doctors, residents, agents, or servants; nor shall TDMHMR, the County or MHMRA assume or become liable for any of the obligations, liabilities or debts of the Board of Regents or the UT Health Science Center, its employees, doctors, residents, agents, or servants.

Part XIII. MISCELLANEOUS PROVISIONS

Sec. 45. Public Improvements

The Board of Regents agrees, from time to time, to:

- (a) join in any application for all necessary governmental permits and authorizations in connection with construction of the hospital;
- (b) join in the conveyance of any nonexclusive easement to be conveyed for which no consideration is given;
- (c) join in the creation, modification, realignment or release of any such nonexclusive easement; and
- (d) join in any other instrument reasonably necessary to accomplish the foregoing.

Sec. 46. Force Majeure

The time within which either party hereto shall be required to perform any act under these Leases, Sublease, and Operating Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, Acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of either party hereto; provided, however, that written notice of such force majeure be given within a reasonable time period to all parties hereto.

Sec. 47. Quiet Possession

The Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, the Commissioners Court on behalf of Harris County, and the Board of Trustees of MHMRA on behalf of MHMRA covenant to the Board of Regents that if the Board of Regents shall discharge the covenants, agreements and obligations herein set forth to be performed, the Board of Regents shall have and enjoy, during the Terms hereof the quiet and undisturbed possession of the Leased Premises and the Subleased Premises.

Sec. 48. Waivers

No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless executed by such party or by a duly authorized officer or a duly authorized agent of the particular party. No waiver or waivers of any breach or default or any breaches or defaults by either party of any term, condition or liability of or a performance by the other party of any duty or obligation hereunder, including without limitation the acceptance by TDMHMR, the County, or MHMRA or payment by the Board of Regents of any rentals at any time or in any manner other than as herein provided, shall be deemed a waiver thereof or of any waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver or waivers of subsequent breaches or defaults of any kind, character or description under any circumstances.

The acceptance by TDMHMR, the County, or MHMRA of any performance, rental, additional rent or other sum or sums of money or other charges herein reserved to be paid or provided to be done by the Board of Regents from any person, firm, or corporation other than the Board of Regents shall not discharge the Board of Regents or any others liable with the Board of Regents except to the extent of the performance any payment so accepted by TDMHMR, the County, or MHMRA from liability to pay the rental, additional rent or other sum or sums of money and other charges herein provided to be paid by the Board of Regents or from liability to perform any of the terms, covenants, conditions and agreements herein set forth.

Sec. 49. Applicable Law

These Leases, Sublease, and Operating Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

Sec. 50. Partial Invalidity

If any term, provision, condition or covenant of these Leases, Sublease, and Operating Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of these Leases, Sublease, and Operating Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of these Leases, Sublease, and Operating Agreement shall be valid and enforceable to the fullest extent permitted by law.

Sec. 51. Construction of Agreement

These Leases, Sublease, and Operating Agreement shall be construed consistent with Senate Bill 1295; the rider to the General Appropriations Act, 67th Legislature, as set forth in Exhibit G; the rider to the General Appropriations Act, 69th Legislature, as set forth in Exhibit H; the Rules and Regulations of the Board of Regents of The University of Texas System; and the Handbook of Operating Procedures of The University of Texas Health Science Center at Houston; the Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement; and all Supplemental Agreements attached hereto.

Sec. 52. No Partnership or Joint Venture

No partnership or joint venture is intended or created by this Lease, Sublease, and Operating Agreement. It is expressly agreed and understood by and between the parties hereto that the work performed hereunder by UT Health Science Center shall be done and performed pursuant to S.B. 1295 and this Agreement, under the sole supervision, management, direction and control of UT Health Science Center in accordance with the provisions set out herein; TDMHMR, the County, and MHMRA shall look to the Board of Regents for results only and TDMHMR, the County, and MHMRA shall have no right at any time to direct or supervise the Board of Regents, UT Health Science Center, its servants or employees in the performance of its work hereunder.

Sec. 53. Notices

Any Notice, communication, request, reply or advice, or duplicate thereof (hereinafter severally and collectively, for convenience, called "Notice") in this Lease, Sublease, and Operating Agreement provided or permitted to be given, made or accepted by the parties to any other party must be in writing, and may, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party, or if the party or parties to be notified be incorporated, to an officer of such party, or by prepaid telegram when appropriately addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Lease, Sublease, and Operating Agreement, from and after the expiration of five (5) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Texas Board of Mental Health and Mental Retardation on behalf of TDMHMR, addressed to:

Board of Texas Department Mental Health  
and Mental Retardation  
909 West 45th Street  
Austin, Texas 78756  
Attention: Dr. Gary Miller, Commissioner

with a copy to:

MHMR Legal Services  
909 West 45th Street  
Austin, Texas 78756  
Attention: Mr. W. Kent Johnson

If to the Commissioners Court on behalf of Harris County, addressed to:

with a copy to:

If to the Board of Trustees of MHMRA on behalf of MHMRA, addressed to:

with a copy to:

If to The Board of Regents of The University of Texas System, addressed to:

The Board of Regents of The University  
of Texas System  
c/o The University of Texas System  
Office of the Board of Regents  
201 West Seventh Street  
Austin, Texas 78701  
Attention: Executive Secretary  
Arthur H. Dilly

with copies to:

The University of Texas Health  
Science Center at Houston  
P.O. Box 20036  
Houston, Texas 77225  
Attention: President  
Dr. Roger J. Bulger

Office of General Counsel  
The University of Texas System  
Attention: John L. Darrouzet, Attorney  
201 West Seventh Street  
Austin, Texas 78701

However, the parties hereto and their respective heirs, successors, legal representatives and assigns shall have the right from time to time and at any time to change their respective addresses and shall have the right to specify as their respective addresses and other addresses within the United States of America by at least fifteen (15) days' written notice to the other party; provided, however, if at any one time more than one person or party owns an interest in the Leased Premises or Subleased Premises, nevertheless such persons or parties may not designate more than five places or addresses to receive notice pursuant to the terms hereof. Each party shall have the right to change such party's address for purposes of notice, by giving written notice to the other party in the manner herein set forth.

#### Sec. 54. Amendments

These Leases, Sublease, and Operating Agreement may be amended only by written instrument executed by authorized representatives of the parties hereto.

### Part XIV. TERMS

#### Sec. 55. Terms; Termination

- (a) The Lease and Operating Agreement between the Texas Board of Mental Health and Mental Retardation and the Board of Regents of The University of Texas System shall be for the term set out in Section 3, above.
- (b) The Sublease between the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County and the Board of Regents of The University of Texas System shall be for the term set out in Section 4, above.
- (c) The Operating Agreement between the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County and the Board of Regents of The University of Texas System shall be

for the combined terms set out in Sections 4 and 5, above.

- (d) The Lease between the Commissioners Court of Harris County and the Board of Regents of The University of Texas System shall be for the term set out in Section 5, above.
- (e) The Operating Agreement between the Commissioners Court of Harris County and the Board of Regents of The University of Texas System shall be for the combined terms set out in Sections 4 and 5, above.
- (f) Subject to the provisions of S.B. 1295, and any amendments thereto, the Leases, Sublease, and Operating Agreement may be terminated to the extent permitted by law if any of the terms, conditions, provisions, or covenants of the Leases, Sublease, and Operating Agreement are not complied with; provided, however, that prior to such termination, written notice of intent to terminate under this subsection must be given to the other parties prior to July 1 of any even-numbered year; and provided further, that such termination shall not become effective any sooner than the August 31 following the previous July's notice, unless otherwise provided by law; notice of termination may be withdrawn.

EXECUTED as of the day and year first above written.

Texas Department of  
Mental Health and Mental  
Retardation

Form Approved:

Content Approved:

\_\_\_\_\_  
W. Kent Johnson  
Director of Legal Services

\_\_\_\_\_  
Dr. Gary Miller  
Commissioner

Attest:

Approved:

\_\_\_\_\_  
Barbara Miller  
Secretary  
MHMR Board

\_\_\_\_\_  
R. Coke Mills  
Chairman  
Texas Board MHMR

County of Harris, Texas

Attest:

Approved:

\_\_\_\_\_  
Name:  
Harris County Clerk

\_\_\_\_\_  
John Lindsay  
Harris County Judge

Form Approved:

\_\_\_\_\_  
Harris County Attorney's  
Office

Mental Health and Mental  
Retardation Authority of  
Harris County

Form Approved:

Content Approved:

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Bruce Jocz  
Attorney for MHMRA

---

Eugene Williams  
Executive Director

Attest:

---

Name:  
Secretary  
MHMRA Board of Trustees

---

Name:  
Chairman  
MHMRA Board of Trustees

The Board of Regents of  
The University of Texas  
System

Recommended for Approval:

---

Dr. Roger J. Bulger  
President  
The University of Texas  
Health Science Center at  
Houston

Form Approved:

---

Office of General Counsel  
The University of Texas  
System

Content Approved:

---

Dr. Charles B. Mullins  
Executive Vice Chancellor  
for Health Affairs

Attest:

---

Arthur H. Dilly  
Executive Secretary to the  
Board of Regents

Approved:

---

Jess Hay  
Chairman  
The Board of Regents

Exhibit K

Agreement Concerning  
Employment

Texas Department of Mental  
Health and Mental Retardation

County of Harris, Texas

Mental Health and Mental  
Retardation Authority of  
Harris County

The Board of Regents of  
The University of Texas  
System

November 1985

## Agreement Concerning Employment

This Agreement Concerning Employment is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 1985, between the Texas Board of Mental Health and Mental Retardation on behalf of the Texas Department of Mental Health and Mental Retardation (TDMHMR), the Commissioners' Court of Harris County on behalf of Harris County, Texas (the County), the Board of Trustees of the Mental Health and Mental Retardation Authority on behalf of the Authority (MHMRA), and the Board of Regents of The University of Texas System on behalf of The University of Texas Health Science Center at Houston (UTHSCH).

1. TDMHMR, the County and MHMRA agree that present and former employees of the Texas Research Institute of Mental Sciences (TRIMS), which is a part of TDMHMR now in dissolution, and present employees of MHMRA may be hired by UTHSCH as employees of the Harris County Psychiatric Center on a priority consideration basis.
2. By "priority consideration", TDMHMR, the County, MHMRA, and UTHSCH agree to mean the consideration UTHSCH will give to the present or former TRIMS employees and present MHMRA employees who apply for employment with UTHSCH at the Harris County Psychiatric Center during the period of time beginning October 1, 1985, and ending December 31, 1985, whereby for a given position for which a present or former TRIMS employee or present MHMRA employee applies, UTHSCH agrees to choose such employee over any other applicant not currently employed by UTHSCH, when taken as a whole the qualifications of all applicants are otherwise equally valued.
3. TDMHMR, the County, and MHMRA agree that UTHSCH may proceed to interview persons for employment at the Harris County Psychiatric Center and, with the goal of providing a smooth transition, may issue letters of intent to persons UTHSCH would subsequently hire, subject to such conditions as the following:
  - (a) the individual's expression of intent to accept a subsequent final offer;
  - (b) the final approval of the Leases, Sublease, and Operating Agreement of the Harris County Psychiatric Center by the parties to this Agreement;

(c) the availability of funds to employ the individual;  
and

(d) the individual's continued favorable employment in  
his or her current position.

4. All parties to this Agreement understand and acknowledge  
that any person hired by UTHSCH shall be subject to all  
personnel policies of UTHSCH including its 90-day  
probationary period.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

TDMHMR

Harris County, Texas

\_\_\_\_\_  
Dr. Gary Miller  
Commissioner

\_\_\_\_\_  
John Lindsay  
Harris County Judge

MHMRA

UTHSCH

\_\_\_\_\_  
Eugene Williams  
Executive Director

\_\_\_\_\_  
Dr. Roger Bulger  
President

Harris County Psychiatric Center  
Admission, Discharge, and Transfer  
Policy Statement

The Texas Board of Mental Health and Mental Retardation on behalf of the Texas Department of Mental Health and Mental Retardation (TDMHMR), the Commissioners' Court of Harris County on behalf of Harris County, the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County on behalf of the Authority (MHMRA), and the Board of Regents of The University of Texas System on behalf of The University of Texas Health Science Center at Houston, adopt the following policy statement with respect to the admission, discharge, or transfer of patients at the Harris County Psychiatric Center:

Sec. 1. Harris County Psychiatric Center

- (a) The Harris County Psychiatric Center, a 250-bed short-term, psychiatric hospital operated by The University of Texas Health Science Center at Houston shall offer a broad range of psychiatric services primarily to Harris County residents who are children, adolescents, or adults.
- (b) This publicly-funded hospital, will be accredited by JCAH; will be Medicare and Medicaid approved; and will comply with all applicable federal, state, and local laws pertaining to the treatment of mental health, alcohol, and substance abuse disorders.
- (c) The hospital will not have an emergency room.
- (d) The occupancy rate of the hospital will be maintained at the highest levels possible and it shall be the goal of the hospital to serve approximately 3000 persons or more per year, with special emphasis to be given to Harris County residents who are indigent.
- (e) Patient rights specified by statutory law shall be observed at the hospital.

Sec. 2. Services and Bed Allocations

- (a) Mental health, alcohol, and substance abuse services will be provided in acute and intermediate care beds.
- (b) The hospital will provide screening, referral, diagnosis and evaluation, individual needs assessment, and assistance to courts in commitment proceedings.
- (c) Persons with severe medical problems or emergent physical medical problems will not be offered services. Appropriate assistance to such persons will be provided.
- (d) Voluntary and involuntary patients will receive acute care in 125 of the 250 beds of the hospital.
- (e) Acute care, meaning an average length of stay of 14-21 days, will include: suicide prevention, crisis intervention, detoxification, and processing of applications for involuntary commitment.
- (f) Intermediate care, meaning an average length of stay of 30-45 days for adults, 60 days for children and adolescents, will be offered to voluntary and involuntary patients in 125 of the 250 beds of the hospital.

Sec. 3. Education and Research

- (a) The University of Texas Health Science Center at Houston will, in addition to providing patient care at the hospital, use the facilities for education and research programs involving hospital patients.
- (b) All patients shall be available for teaching and research purposes; however, patient participation in research projects will be only on a consensual basis after approval of the project by The University of Texas Health Science Center at Houston's Committee for Protection of Human Subjects.

Sec. 4. Admissions

- (a) Any person may apply for admission to the hospital on a voluntary basis to the chief of the MHMRA screening and referral service. All applications

for involuntary commitment or court-ordered admissions shall be screened and coordinated by the chief of the MHMRA screening and referral service or the designee of the chief.

- (b) No person shall be denied admission to available psychiatric services on the basis only of his or her race, color, ethnicity, religion, creed, sex, sexual orientation, age, national origin, physical handicap, or other basis protected by law, or ability to pay; and mentally ill persons who are assaultive or aggressive, those with a history of violence, and those with a mixed diagnosis of both mental retardation and mental illness will not be denied admission on that basis.
- (c) Persons who apply for admission to the hospital shall submit information requested to the chief of the MHMRA screening and referral service of the hospital or the designee of the chief.
- (d) The chief of MHMRA's screening and referral service or the designee of the chief of the hospital shall recommend the admission to the hospital only those persons:
  - (1) who have had 3 or more admissions to a TDMHMR or MHMRA mental health facility; or
  - (2) who have serious vocational, social and personal skill deficits of a chronic nature; or
  - (3) who are experiencing acute episodes of a major mental illness requiring crisis stabilization; or
  - (4) who suffer from a major mental illness and whose presence in the community is jeopardized by weakening or dissolution of their family or social support systems; or
  - (5) who have been selected for participation in approved research in the area of mental illness by the hospital's Director.
- (e) The chief of MHMRA's screening and referral service shall maintain a waiting list of persons who are recommended for admission pursuant to Section 4(d), above.

- (f) All other factors being equal and to the extent possible, persons who are first on the waiting list will be first to be recommended for admission.
- (g) Whenever the chief of the screening and referral process of the hospital determines that a person should be admitted to the hospital, the chief shall refer the person to the Director of the hospital or the designee of the Director, with a recommendation.
- (h) As part of the recommendation, the chief will indicate a tentative bed assignment for the person recommended for admission and a current analysis of available bed assignments for the entire hospital.
- (i) The Director, or designee of the Director, in making a decision with respect to admission will consider the recommendation of the chief.
- (j) The Director or designee of the Director shall make the final decision on admission and bed assignment.
- (k) To the extent that beds are available, the Director of the Hospital or designee shall admit persons to the hospital who are the subject of a court order.
- (l) The Director of the hospital may admit persons without prior screening or referral by the chief or designee of the chief up to an amount of approximately 10% of the beds in the hospital at any point in time.
- (m) When a patient is deemed ineligible by the chief or the Director for admission, the reason for refusal shall be documented and alternatives for treatment discussed with the proposed patient and family if indicated.
- (n) If more than 3% per month of the persons who are recommended for admission by the chief of the MHMRA screening and referral service are refused admittance, the chief and the Director shall confer to reaffirm admission policies.

Sec. 5. Discharge

- (a) The Director of the hospital or the attending physician shall make the final decision on a patient's discharge.

- (b) Upon discharge, aftercare planning for patients of the hospital will be provided to each on an individual basis.
- (c) The hospital will integrate extensively with the network of community clinics operated by MHMRA, The University of Texas Health Science Center at Houston, and others. This integration shall include case management services.
- (d) To enable continuity of care to occur, it shall be the goal of the hospital to furnish a discharge summary on patients referred to MHMRA within 10 days of discharge. An operating policy to achieve this goal shall be established.

Sec. 6. Transfer

Patients needing care for longer periods of time than provided by acute or intermediate care will be transferred in coordination with MHMRA to the Austin State Hospital or to other TDMHMR facilities, or other appropriate facilities.

Sec. 7. Continuity of Care

Whenever appropriate, MHMRA shall provide continuity of care services to transferred and discharged patients from the hospital.

Sec. 8. Assistance to Harris County Courts

MHMRA staff will coordinate and provide all Harris County Court interactions required of the hospital including:

- (a) testimony in court;
- (b) recommendations for least restrictive treatment alternatives; and
- (c) coordination with related Harris County agencies.

Sec. 9. Amendment of Policy Statement

- (a) The Harris County Psychiatric Center Admission, Discharge, and Transfer Policy Statement may be amended in writing at any time.

- (b) The recommendation of the Director or the chief of the MHMRA screening and referral service with respect to any proposed amendment shall be considered.
- (c) Any proposed amendment shall be considered by the authorized representatives of the Texas Board of Mental Health and Mental Retardation, the Commissioners' Court of Harris County, the Board of Trustees of the Mental Health and Mental Retardation Authority of Harris County, and the Board of Regents of The University of Texas System.
- (d) The authorized representatives may adopt, modify, or refuse to accept any proposed amendment.
- (e) Any amendment to this Policy Statement shall not be effective until finally approved by each of the Boards and the Commissioners' Court.

11. U. T. Health Science Center - San Antonio: Proposed Appointment to the Meadows/San Antonio Area Foundation (Semp Russ) Research Professorship in Child Psychiatry Effective December 5, 1985.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President Howe to appoint Graham A. Rogeness, M.D., as the initial holder of the Meadows/San Antonio Area Foundation (Semp Russ) Research Professorship in Child Psychiatry at the U. T. Health Science Center - San Antonio effective December 5, 1985.

BACKGROUND INFORMATION

In 1975, Graham A. Rogeness, M.D., became a member of the Department of Psychiatry at the U. T. Health Science Center - San Antonio and is currently a tenured Associate Professor. Dr. Rogeness is known as an outstanding scholar, clinician, and teacher of medical students and residents. His research led to the original discovery that there appears to be a biological marker in children with certain types of behavioral disorders. Dr. Rogeness is certified by the American Board of Psychiatry and Neurology in Adult and Child Psychiatry, and is a member of professional organizations relating to child psychiatry.

The U. T. Board of Regents designated the Meadows/San Antonio Area Foundation (Semp Russ) Research Professorship in Child Psychiatry at the August 1985 meeting.

12. U. T. Cancer Center: Proposed Appointment to the John G. and Marie Stella Kenedy Foundation Chair Effective January 1, 1986.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President LeMaistre to appoint Lester J. Peters, M.D., as the initial holder of the John G. and Marie Stella Kenedy Foundation Chair at the U. T. Cancer Center effective January 1, 1986.

BACKGROUND INFORMATION

Lester J. Peters, M.D., is currently Head of the Division of Radiotherapy, Chairman of the Department of Clinical Radiotherapy, Radiotherapist and tenured Professor of Radiotherapy at the U. T. Cancer Center. Dr. Peters received his medical degree in 1966 from the University of Queensland Medical School, Brisbane, Australia. Dr. Peters is a member of the American

College of Radiology and is recognized internationally as a researcher in clinical and laboratory investigation of radiotherapy. He is involved in the activities of the National Cancer Institute and is a member of all the major professional organizations relevant to radiation research and therapy.

The John G. and Marie Stella Kenedy Foundation Chair was established at the June 1983 meeting of the U. T. Board of Regents.

13. U. T. Cancer Center: Proposed Appointment to the Olga Keith and Harry Carothers Wiess Chair in Diagnostic Radiology Effective January 1, 1986.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation by President LeMaistre to appoint Gerald D. Dodd, Jr., M.D., as the initial holder of the Olga Keith and Harry Carothers Wiess Chair in Diagnostic Radiology at the U. T. Cancer Center effective January 1, 1986.

#### BACKGROUND INFORMATION

Gerald D. Dodd, Jr., M.D., is Head of the Division of Diagnostic Imaging, Chairman of the Department of Diagnostic Radiology, Radiologist and tenured Professor of Radiology at the U. T. Cancer Center. Dr. Dodd received his medical degree in 1974 from Jefferson Medical College, Philadelphia, Pennsylvania. He is certified by the American Board of Radiology, a member of numerous prestigious organizations, societies and editorial boards, and active on many professional committees at the local state, national, and international levels. Dr. Dodd is considered to be a leader in the field of diagnostic radiology.

The Olga Keith and Harry Carothers Wiess Chair in Diagnostic Radiology was established at the December 1983 meeting of the U. T. Board of Regents.

## **Buildings and Grounds Committee**

BUILDINGS AND GROUNDS COMMITTEE  
COMMITTEE CHAIRMAN RHODES

Date: December 5, 1985  
Time: Following the meeting of the Health Affairs Committee  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

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2. U. T. Arlington: Proposed Agreement with Ames-Teague Joint Venture, Dallas, Texas, Involving a Ground Lease and Construction of a Parking Facility to be Operated by U. T. Arlington	5
3. U. T. Austin - Expansion of Physical Plant Facilities, Phase I (Project No. 102-454): Request for Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor	6
4. U. T. Austin - Residence Halls - Emergency Lighting System: Request for Approval of Preliminary Plans and for Authorization to Prepare Final Plans; Submission to Coordinating Board and Subject to Approval, Authorization to Advertise for Bids and for Executive Committee to Award Contracts, and Additional Appropriation Therefor	7
5. U. T. Austin - Scott House - Sweetbrush - Renovation and Additions (Project No. 102-582): Request for Approval of Final Plans for Additions; Approval of Increased Project Cost; Authorization to Advertise for Bids; Executive Committee to Award Contract; and Additional Appropriation Therefor	8
6. U. T. Dallas - Multipurpose and Engineering Start-Up Facility: Request for Project Authorization; Appointment of Project Architect to Prepare Preliminary Plans; and Appropriation Therefor	9
7. U. T. Dallas: Recommendation for Approval to Enter Into a Ground Lease With a Private Entity for the Provision of Student Housing	10
8. U. T. El Paso - Physical Plant Facilities (Project No. 201-563): Request for Authorization to Advertise for Bids and for Executive Committee to Award Contracts and Additional Appropriation Therefor	11

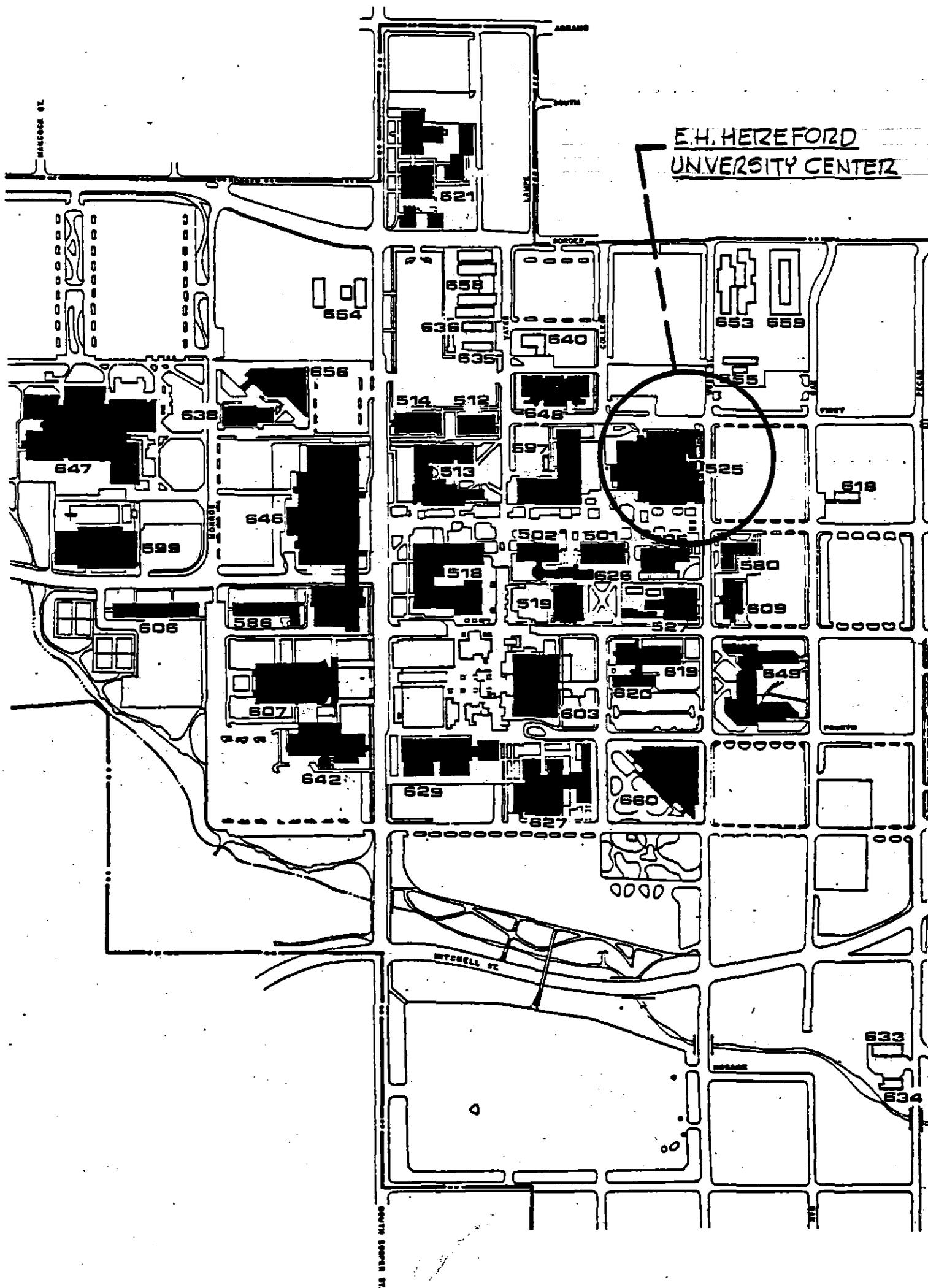
9. U. T. El Paso: Recommendation for Approval of a Ground Lease to the City of El Paso to Provide a Site for a Sesquicentennial Monument 12
10. U. T. Permian Basin: Request for Authorization to Purchase Computer Equipment and Appropriation Therefor 19
11. U. T. Permian Basin - Mesa Building Reroofing, Phase I: Request for Project Authorization; Preparation of Final Plans and Specifications; Advertisement for Bids; Award of Contract; and Appropriation Therefor 20
12. U. T. San Antonio: Recommendation for Approval to Enter Into a Ground Lease with a Private Entity for the Provision of Student Housing 20
13. U. T. Tyler - Space Completion and Renovation: Request for Project Authorization; Appointment of Project Architect to Prepare Final Plans; Submission to Coordinating Board; and Appropriation Therefor 21
14. U. T. Health Science Center - Dallas: Appropriation of Permanent University Fund Bond Proceeds for the Fiscal Year 1986 Equipment Allocation for Regental Professors Michael Brown and Joseph Goldstein 22
15. U. T. Health Science Center - Dallas - Parking Garage No. 3 - Two-Level Addition: Request for Approval of Final Plans; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor 23
16. U. T. Health Science Center - San Antonio - Basic Science Building Fifth Level Completion: Request for Project Authorization; Appointment of Project Architect for Preliminary Plans; and Appropriation Therefor 24
17. U. T. Health Science Center - San Antonio - Expansion of Clinical Science Teaching Space: Request for Project Authorization; Appointment of Project Architect to Prepare Preliminary Plans; and Appropriation Therefor 25
18. U. T. Cancer Center - Modification and Renovation of M. D. Anderson Hospital (Project No. 703-589): Approval of Final Plans for Phase I; Submission to Coordinating Board; and Authorization to Advertise for Bids and for Executive Committee to Award Contracts 26
19. U. T. Health Center - Tyler - Ambulatory Care Facilities: Request for Project Analysis; Appointment of Consulting Architect; and Appropriation Therefor 27

20. U. T. Health Center - Tyler - Medical Resident Housing - (Project No. 801-601): Presentation of Preliminary Plans; Request to Submit to Coordinating Board; Request for Completion of Final Plans; and Additional Appropriation Therefor

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# U. T. ARLINGTON

CENTRAL CAMPUS AREA  
(BUILDING INDEX ON BACK)



1. U. T. Arlington - E. H. Hereford University Center - Addition and Remodeling (Project No. 301-552): Recommendation to Increase the Total Project Cost, Award Alternate Bid and Additional Appropriation Therefor.--

### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Nedderman that the U. T. Board of Regents:

- a. Approve an increase in the total project cost for E. H. Hereford University Center - Addition and Remodeling project at U. T. Arlington in the amount of \$665,000 to provide a theater that was bid as Alternate No. 2 resulting in a revised total project cost of \$12,300,000
- b. Authorize the Office of Facilities Planning and Construction to issue a change order to the construction contract with Cadenhead - Rangaire, Inc., Fort Worth, Texas, adding Alternate Bid No. 2 in the amount of \$1,385,000 to the construction contract
- c. Appropriate \$665,000 from Interest on U. T. Arlington Combined Fee Revenue Bond Proceeds for total project funding. Previous appropriations have been \$1,000,000 from the same source, \$10,000,000 from U. T. Arlington Combined Fee Revenue Bond Proceeds, \$500,000 from Student Union Use Fee Revenues and \$135,000 from Interest on Local Funds

This item requires the concurrence of the Academic Affairs and Finance and Audit Committees.

### BACKGROUND INFORMATION

Through actions of Executive Committee Letter 86-3 (Item 2, Page Ex.C - 4), the U. T. Board of Regents has awarded a construction contract for the E. H. Hereford University Center - Addition and Remodeling to the lowest responsible bidder, Cadenhead - Rangaire, Inc., Fort Worth, Texas, for the Base Bid in the amount of \$9,000,000.

When the bids for the project were received, seven alternate bid items were included, although none were initially recommended for award.

After considerable review of the favorable bids, it is believed to be in the best interest of the University to complete the project by including the 9,615 gross square foot theater portion identified as Alternate Bid No. 2.

This project was initially authorized by the U. T. Board of Regents in December 1983, at an estimated total project cost of \$12,300,000. At that time, background information indicated the intention to provide plans which would include a base proposal plus a theatre alternative should funds be available.

In October 1984, preliminary plans for the project were approved by the U. T. Board of Regents at an estimated project cost of \$12,300,000.

Also in October 1984, the total estimated project cost of \$12,300,000 was approved by the Coordinating Board.

In June 1985, final plans were approved by the U. T. Board of Regents at a revised total project cost of \$11,635,000. At that time, it was the opinion of U. T. Arlington Administration that this was all that could be appropriated for the base bid award, and that they would reevaluate their position on alternate bid items after bids were received.

The additional appropriation needed to award the theater in Alternate No. 2 can be made from the interest on the proceeds of the \$10,000,000 bond issue from cash funds which will be distributed over the period of the project.

2. U. T. Arlington: Proposed Agreement with Ames-Teague Joint Venture, Dallas, Texas, Involving a Ground Lease and Construction of a Parking Facility to be Operated by U. T. Arlington.--

#### EXPLANATION

Administrative officers of U. T. Arlington have held discussions with representatives of Ames-Teague Joint Venture, Dallas, Texas, concerning joint development of a parking garage for students and faculty. Ames-Teague has submitted a proposal document outlining the general concept of the project and has submitted a draft ground lease for preliminary discussion purposes. The proposal would involve a ground lease of a designated portion of the U. T. Arlington campus from the U. T. Board of Regents to Ames-Teague, who would then finance and construct a multi-level parking facility of 360 spaces. Actual operation and maintenance of the garage would be handled by U. T. Arlington, who would receive an annual rental, plus a variable percentage participation in the profits from the parking fees.

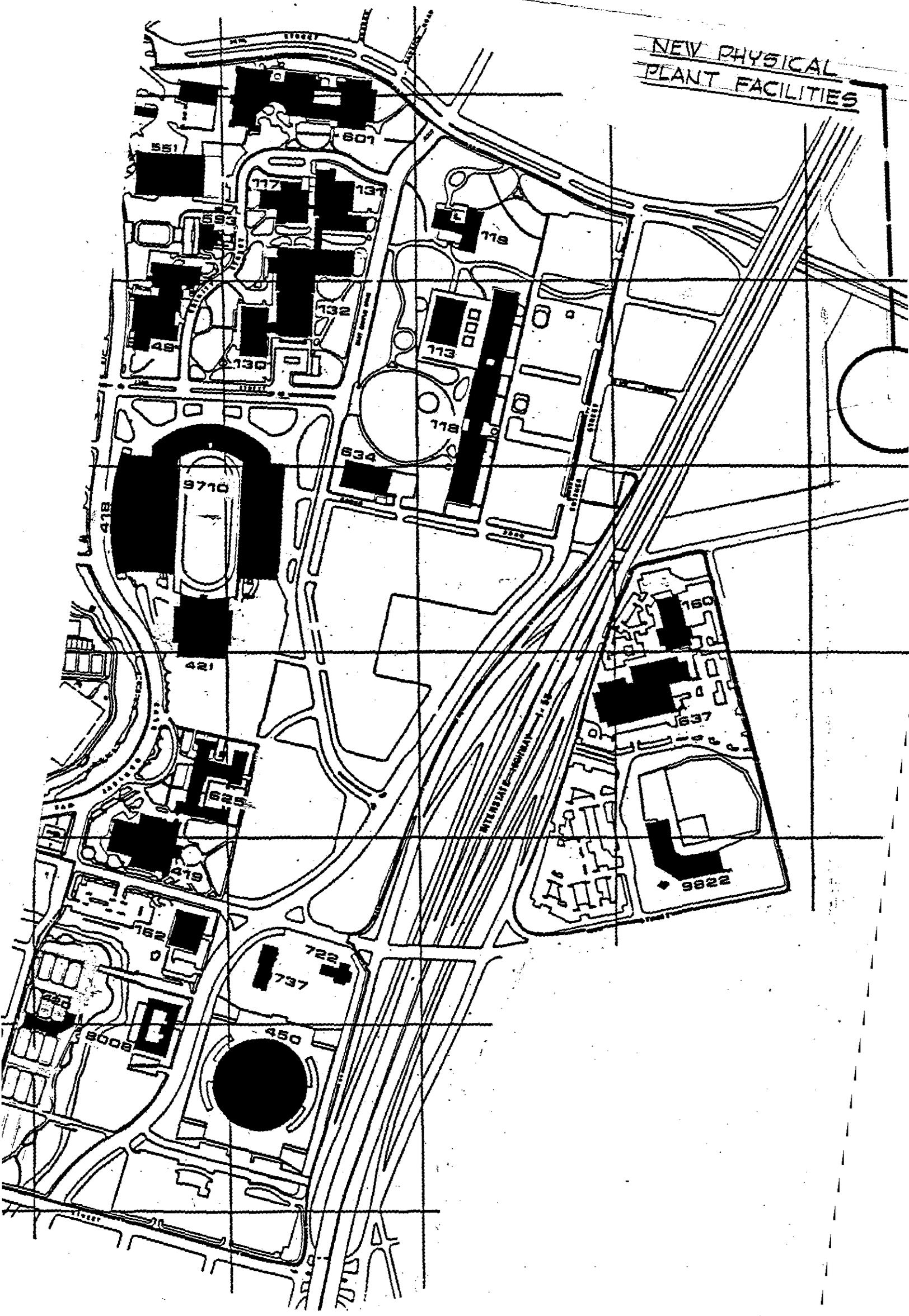
Most preliminary analysis necessary to evaluate the feasibility of this project has been completed; however, the final terms of the ground lease are still being negotiated. If negotiations of the lease are completed and a recommendation can be formulated in a timely manner, such recommendation, along with all necessary background documents, will be mailed to the U. T. Board of Regents at the earliest possible date.

This item requires the concurrence of the Academic Affairs Committee.

# U. T. AUSTIN

MAIN CAMPUS EAST SIDE  
(BUILDING INDEX ON BACK)

NEW PHYSICAL  
PLANT FACILITIES



SUPPLEMENTAL MATERIAL  
BUILDINGS AND GROUNDS COMMITTEE

December 5-6, 1985

2. U. T. Arlington: Proposed Agreement with Ames-Teague Joint Venture, Dallas, Texas, Involving a Ground Lease and Construction of a Parking Facility to be Operated by U. T. Arlington.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Nedderman that the U. T. Board of Regents:

- a. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a ground lease agreement, leasing a tract of the U. T. Arlington campus to Ames-Teague Joint Venture, Dallas, Texas, as a site for a four-level parking garage substantially in the form attached as Attachment A
- b. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a property management agreement with Ames-Teague Joint Venture for operation and management of the parking garage by U. T. Arlington substantially in the form attached as Attachment B

It is further recommended that upon satisfactory conclusion of negotiations, represented by documents substantially in the form of Attachments A and B hereto, the Executive Committee of the U. T. Board of Regents be authorized to approve said documents.

BACKGROUND INFORMATION

Negotiations for provision of a multi-level parking garage on the U. T. Arlington campus have reached the point represented by the attached documents. The documents provide a generally acceptable framework for this project, but details remain to be worked out.

The proposed project includes a 30-year ground lease of a tract on the U. T. Arlington campus to Ames-Teague Joint Venture, which will provide for the financing and construction of a four-level, 360 space parking garage.

The ground lease would grant to Ames-Teague a right of first refusal to build any additional multi-level parking facilities desired by U. T. Arlington during the first fifteen years of the lease. The ground lease would grant to the U. T. Board of Regents the right to purchase the parking garage and all improvements on the leased premises (subject to the approval of the Coordinating Board, Texas College and University System) at an appraised price at any time after the fifth year of the lease. If not purchased earlier, all improvements will revert to the U. T. Board of Regents at the expiration of the lease.

Under the proposal, management and operation of the parking garage will be the responsibility of U. T. Arlington under a property management agreement, and Ames-Teague would pay U. T. Arlington a fee equal to all costs reasonably incurred by U. T. Arlington in operating the garage, excepting only charges for electricity.

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GROUND LEASE

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BY AND BETWEEN

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM  
FOR THE USE AND BENEFIT OF  
THE UNIVERSITY OF TEXAS AT ARLINGTON

OWNER

and

AMES-TEAGUE JOINT VENTURE,  
a Texas joint venture

LESSEE

  
- ATTACHMENT A

ARTICLE I  
DEMISE AND COVENANTS AND WARRANTIES OF OWNER

Section 1.1. Demise of Premises..... 2  
Section 1.3. Warranties..... 2  
Section 1.4. Quiet Enjoyment..... 3

ARTICLE II  
SPECIAL COVENANTS AND AGREEMENTS OF OWNER

Section 2.1. Right of First Refusal.....3  
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GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 1985, by and between The Board of Regents of The University of Texas System for the use and benefit of the University of Texas at Arlington (herein called the "Owner") and Ames-Teague Joint Venture, a Texas joint venture (herein called "Lessee").

Defined terms used in this Lease, which are designated by the capitalization of the first letter thereof, shall have, unless the same are otherwise expressly defined herein or the context otherwise requires, the respective meanings set forth in Article XV of this Lease.

Owner desires to lease and demise all of its right, title and interest in and to the real property described on Exhibit A attached hereto and Lessee desires to lease all of such real property from Owner upon the terms and conditions herein set forth.

Therefore, and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and obligations contained in this Lease, Owner and Lessee agree as follows:

MIS/Uoft-GL

ARTICLE I

Demise and Warranties of Owner

Section 1.1. Demise of Premises. Owner does hereby lease and demise unto Lessee and Lessee does hereby lease and hire from Owner, the Premises and all improvements now or hereafter situated on the Premises, for a term commencing as of the date of this Lease and continuing in full force and effect for thirty (30) years thereafter, ending midnight of \_\_\_\_\_, 2015 unless this Lease is terminated earlier pursuant to the provisions hereof (herein referred to as the "Term").

Section 1.2. Warranties. Owner represents and warrants to Lessee that it has full right and lawful authority to enter into this Lease; that it is lawfully seized of indefeasible record fee simple title to the Premises; that the Premises are free and clear of all liens, exceptions, restrictions and encumbrances, except for the Permitted Encumbrances set forth on Exhibit B attached hereto. Owner hereby binds itself and its successors and assigns to forever warrant and defend the Premises and every part thereof, subject to the Permitted Encumbrances, unto Lessee, its successors and assigns, against the claims and demands of every person whomsoever claiming the same or any part thereof prior to and/or during the Term.

Section 1.3. Quiet Enjoyment. Owner covenants that Lessee, upon paying the Rent and all other sums as herein provided and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be kept, shall and may peaceably and quietly have, hold, occupy and enjoy the Premises during the Term of this Lease.

## ARTICLE II

### Special Covenants and Agreements of Owner

Section 2.1. Right of First Refusal. Should Owner deem it necessary or desirable at any time or times during the first fifteen (15) years of the Term of this Lease to construct additional multi-level parking facilities on the campus of The University of Texas at Arlington, Owner hereby covenants that it shall provide Lessee the right to construct, operate and maintain such additional multi-level parking facilities upon such terms and conditions as Owner and Lessee shall mutually agree. Should Owner receive a bonafide offer from a third party to construct additional multi-level parking facilities on the campus of The University of Texas at Arlington during the first fifteen (15) years of the Term of this Lease, Owner hereby covenants that it shall first provide Lessee the opportunity to perform such construction upon substantially the same terms and conditions as set forth in such bonafide offer. Lessee shall have sixty (60)

days following notice from Owner of such bonafide offer in which to decide whether to exercise its right of first refusal to construct additional multi-level parking facilities and failure of Lessee to so notify Owner within such sixty (60) day period shall constitute a waiver of such right of first refusal with respect to such bonafide offer but shall not constitute a waiver of any future bonafide offer.

Section 2.2. Right of Lessee to Expand Project. Owner hereby agrees that Lessee shall have the right, but not the obligation to expand the Project vertically to accommodate a greater number of vehicles should the demand for parking spaces in the Project warrant such expansion, provided, however, such expansion shall be limited to a maximum of two (2) additional levels. Lessee shall provide Owner written notice of its intention to expand the Project one hundred twenty (120) days prior to the date construction of such expansion is to commence. Additionally, all construction shall be subject to the terms and provisions set forth herein concerning Owner's right of approval of plans and specifications, changes thereto and the obligation of Lessee to perform such construction in a good and workmanlike manner.

Section 2.3. Electricity. Owner hereby covenants and agrees that the Project and any signs associated therewith shall

be connected to The University of Texas at Arlington's electrical power system and that the cost of all electrical power utilized by the Project shall be borne by Owner.

Section 2.4. Promotion of Project. Owner hereby covenants and agrees that it shall cooperate with Lessee, and shall cause the administration of The University of Texas at Arlington to cooperate with Lessee, in promoting the use of the Project by the Administration, faculty, staff and students of The University of Texas at Arlington and visitors to the campus of The University of Texas at Arlington and shall take no action which could or may adversely impact upon the use or operation of the Project. In connection with the foregoing, Owner's obligation to promote the use of the Project shall include the following:

- (a) Owner shall allow Lessee to participate in the registration procedure whereby students register for classes in the forthcoming semester and shall allow Lessee to provide each student the opportunity to purchase a pass at the registration procedure which would enable such student to park within the Project during the forthcoming semester. Should the registration procedure at any time in the future become computerized so that any student

wishing to pre-register or register for classes in the forthcoming semester may do so through the use of computer software, an option shall be provided to each registrant through the computerized or automated system whereby each registrant has the right to purchase a parking pass for parking within the Project during the forthcoming semester. Owner shall further cooperate with Lessee in collecting and disbursing to Lessee any sums received from students with respect to the purchase of parking passes at the registration procedure.

- (b) Owner shall not require a decal or permit to be placed on any vehicle in order to allow such vehicle access to the Project or the campus of The University of Texas at Arlington. Should a student or other person affiliated with the University of Texas at Arlington who has purchased a pass enabling such person to park in the Project be unable to utilize the Project for parking because the Project is full, Owner hereby covenants and agrees that such person shall be entitled to park in any student parking lot on the campus of The University of Texas at Arlington by displaying on

the dashboard of their vehicle the pass entitling such person to park in the Project.

- (c) Owner shall not block nor change the configuration of the existing streets in such a manner as to block any access currently in place leading to the Premises.
- (d) Owner shall include a description of the Project in all promotional materials relating to The University of Texas at Arlington including, without limitation, a designation of the site of the Project on all maps promulgated by Owner; a description of the Project in the University Catalog, and a description of the Project in any forthcoming parking regulations promulgated by the Police Department of The University of Texas at Arlington.
- (e) All visitors to the campus of The University of Texas at Arlington shall be encouraged to utilize the Project and shall be informed of the availability of the Project for parking while visiting the campus of The University of Texas at Arlington.

Section 2.5. Enforcement of Parking Regulations. Owner hereby covenants and agrees that it shall, and shall cause the Administration of The University of Texas at Arlington, to enforce all traffic and parking regulations currently or in the future implemented by The University of Texas at Arlington Police Department regulating parking upon the campus of The University of Texas at Arlington. Owner hereby agrees that failure of Owner and the Administration of The University of Texas at Arlington to enforce such traffic and parking regulations shall cause irreparable harm to the operation of the Project and shall render the Project economically unfeasable.

Section 2.6. Default by Owner. Failure of the Owner and the Administration of The University of Texas at Arlington to comply with the provisions of this Article II and the expiration of thirty (30) days following written notice from Lessee to Owner setting forth the specific provisions of this Article II with which Owner has failed to comply shall constitute a default by the Owner hereunder whereupon:

- (a) Lessee may cease to pay Rent until such default has been remedied;
- (b) Lessee shall not be obligated to perform any of the terms, covenants, provisions and obligations of Lessee set forth herein until such default has been remedied; and
- (c) Lessee shall be entitled to enforce the foregoing obligations of Owner and the Administration of The University of Texas at Arlington by any and all remedies which Lessee may have for breach of covenant at law or in equity.

### ARTICLE III

#### Rent

During the Term of this Lease, Lessee covenants to pay to Owner rental in an amount equal to \$100.00 per year. Such rental shall be due and payable in advance beginning on the date hereof and continuing annually thereafter or may be prepaid.

### ARTICLE IV

#### Use of the Property and Matters Concerning Construction

Section 4.1. Use of the Property. Lessee covenants that it will use the Property only for the development and operation of the Project, including uses now or hereafter customarily

related to or connected with the operation of a parking facility. Owner and Lessee covenant and agree that the Project shall be for the exclusive use and benefit of the students, faculty, employees and guests of Owner and is, therefore, related to the performance of the duties and functions of a public university of the State of Texas.

Section 4.2. Construction by Lessee. Lessee agrees, at its sole cost and expense, to construct the Project on the Premises substantially in accordance with the plans and specifications described and identified on Exhibit C attached hereto, which plans and specifications have heretofore been approved by Owner and Lessee. Lessee agrees to complete such construction and open the Project on or before August 15, 1986. In the event that Lessee desires to alter substantially the plans and specifications described on Exhibit C hereto, Lessee shall deliver to Owner additional plans and specifications in respect thereto for its review and further approval. Such approval, if given by Owner shall be given in writing and shall not be unreasonably withheld or delayed. Owner agrees that it will not use its right to grant or withhold any such approval as a means to obtain increased Rent or to extract other economic concessions from Lessee. Rather, Owner agrees to make its decision, as to whether to grant or withhold approvals of any proposed changes in

the plans and specifications, based solely on its evaluation of whether, if a proposed change is made, the Project will be constructed in a manner consistent with the construction of a high quality parking facility and compatible with the architectural design of the surrounding buildings. Owner will cooperate with Lessee to enable Lessee to obtain any necessary zoning changes or necessary approval of governmental authorities or other parties for easements, utilities, party wall agreements and other matters reasonably necessary to enable Lessee to construct and operate the Project. Lessee covenants that from and after the commencement of construction of the Project, Lessee will cause such construction to be prosecuted with due diligence, in a good and workmanlike manner, substantially in accordance with all plans and specifications theretofor approved by Owner and Lessee and in accordance with all Regulations and will cause such construction to be completed free of any Lien except Leasehold Mortgages.

The plans and specifications for the Project shall provide that the exterior of the building to be constructed thereunder shall provide for a high quality brick veneer in the appropriate areas on the exterior of such building. Said brick shall be of comparable quality and style to those bricks used on the exterior of other buildings located on the campus of Owner.

Notwithstanding the foregoing provisions of this Section 4.2 or any other covenant or agreement of Lessee herein contained regarding the obligation of Lessee to construct the Project, Lessee's obligations hereunder with respect to the construction of the Project are expressly contingent upon Lessee obtaining suitable financing upon terms and conditions acceptable in all respects to Lessee. Should Lessee fail to obtain construction suitable financing within forty-five (45) days from the date of this Lease, the obligations of each party hereto shall cease and this Lease shall henceforth become void and of no further force and effect.

Section 4.3. Force Majeure. The time for the performance of Lessee's obligations relative to the construction, restoration, repair, operation and maintenance of the Project as provided for in this Lease shall be extended for the period that such performance is prevented by failure of Owner to perform actions hereunder required to be performed by Owner; any arbitration, legal proceeding or other litigation by or against Lessee relative to the construction, restoration or repair of the Project in which Lessee is involved in good faith and not merely for purposes of delay; acts of God, force majeure, strikes, labor disputes, work stoppages, riots, insurrections, or by the act of any governmental agency or authority restricting or curtailing

the erection, restoration or repair of the Project; or other causes beyond the reasonable control of Lessee, including, but not limited to inclement weather over and above the normal expected delays due to weather or the inability of Lessee to procure and obtain building materials as a result of any order, law or decree of any governmental authority or agency; or any other Unavoidable Delay. "Unavoidable Delay" shall mean all failures or delays in a party's performance of its obligations hereunder not within such party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation threatened, instituted by or against or defended by such party, in good faith, and not merely for purposes of delay, acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, breakage or accident to machines or lines of pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the construction of the Project or withholding or revoking necessary consents, approvals, permits or licenses, inability to procure and obtain needed building materials (provided such party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials

if practical) whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause whether of the kind herein referred to or otherwise; provided, that such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay.

Section 4.4. Signs. Owner hereby covenants and agrees that Lessee shall be allowed to construct three (3) directional signs (not to exceed six (6) feet square each) which shall direct vehicles to the Project and indicate the available parking spaces within the Project on South Cooper Street and Campus Drive provided that such signs are aesthetically compatible with the campus of The University of Texas at Arlington. Lessee shall also be granted the right in connection with the construction of such signs, to lay conduit along existing roads or rights-of-way from the Project to the location of such signs. Additionally, Lessee shall have the right to construct a sign on the exterior of the Project which indicates that the Project is a public parking facility.

Section 4.5. Failure to Complete Construction. The Project shall be completed and ready for use by September 15,

1986. In the event that construction of the Project is not completed on or before September 15, 1986, the Owner shall be entitled to receive, as its sole remedy, Five Hundred Dollars (\$500.00) per day after September 15, 1986 until the Project is completed and ready for use. The foregoing is subject to any Unavoidable Delay as defined in Section 4.3.

Section 4.6. Competing Facilities. Owner hereby covenants and agrees, as a material inducement to Lessee and in consideration of Lessee's agreements set forth herein, that it or any third party on its behalf or with its consent will not construct, operate or maintain any additional multi-level parking facilities within two thousand feet (2,000') of the Project until after the expiration of the fifteenth (15th) year of the Term. The foregoing shall not be applicable to any multi-level parking facilities which are constructed by Owner or any other party after Lessee has waived its right of first refusal in accordance with Section 2.1 hereof.

#### ARTICLE V

##### Taxes, Charges, Liens and Permitted Contests

Section 5.1. Taxes. Lessee covenants to discharge and pay all Taxes on or before the last day on which they may be paid without penalty.

Section 5.2. Charges. Lessee covenants that it shall pay when due all Charges incurred during the Term with respect to the Property.

Section 5.3. Evidence of Payment and Proration. Upon written request of Owner, Lessee agrees to furnish and deliver to Owner, within thirty (30) days after receipt of such written request, copies of receipts evidencing the payment of all Taxes and Charges within the eighteen (18) months immediately preceding such request. All Taxes and Charges during the first calendar year of the Term and the calendar year in which the Term expires shall be prorated between Owner and Lessee based on the execution date of this Lease and calculated on a daily basis. In no event shall Lessee be liable for or required to pay any assessments or Taxes applicable to any period of time prior to the date of this Lease, whether due to changes in land usage or ownership or otherwise.

Section 5.4. Liens. Lessee covenants that it will not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any Lien upon the Property or any part thereof except for Leasehold Mortgages.

Section 5.5. Permitted Contests. Notwithstanding any provision in this Lease to the contrary, Lessee may contest (by appropriate legal proceedings conducted in good faith and with due diligence) the amount, validity or application, in whole or

in part, of any and all Taxes, Charges, Regulations or Liens; provided that (i) Lessee shall give Owner prior written notice of such contest, (ii) Lessee shall first either make all contested payments (under protest if it desires) unless such proceeding shall suspend the payment or collection thereof or shall file or cause to be filed a bond in the amount of any contested payment with the appropriate authority, and (iii) Owner shall not be exposed thereby to any civil or criminal liability for failure to comply with any Regulation. Lessee agrees that it will pay any and all costs and expenses incurred in any such contest or bonding procedure and pay and discharge the amounts which shall be determined to be payable therein together with all penalties and fines resulting therefrom and will comply with any Regulation required thereby. If Owner is made a party to any such contest by or at the instance of Lessee or any other party, Lessee shall indemnify, defend and hold harmless Owner in connection with such contest including the payment of all reasonable attorneys fees and other expenses.

#### ARTICLE VI

##### Operation, Maintenance and Repair

Section 6.1. Operation, Maintenance and Repair. Owner and Lessee agree that the operation, maintenance and repair of the Project shall be the sole responsibility of Lessee. Lessee shall have the right to contract with Owner or any other person

or entity to discharge Lessee's duties with respect to the operation, maintenance and repair of the Project. Lessee and Owner agree that Lessee's duties with respect to the operation, maintenance and repair of the Project for the first Fiscal Year of the Term shall be discharged by Owner pursuant to that certain Operating Agreement (herein called the "Operating Agreement") to be executed by and between Owner and Lessee. The Operating Agreement shall provide that Lessee shall pay a fee to Owner for the discharge by Owner of its duties under the Operating Agreement which fee shall be equal to the costs reasonably incurred by Owner in performing such duties including, without limitation, costs for labor, management, security and administration. Owner hereby agrees that it shall use its best efforts to operate the Project in the most efficient manner and shall seek to minimize the costs associated with such operation. Additionally, Lessee agrees to maintain the Project in a safe and clean condition at all times. If repairs are necessary to maintain the Project in a safe operating condition or for any other reason, Lessee agrees to undertake to perform such repairs as soon as possible, but in no event later than thirty (30) days after written notice to Lessee by Owner. If at any time during the Term, Owner determines the Project to be unsafe or unfit for use for any reason, Owner may close the Project provided that either (a) any Leasehold Mortgagee and Lessee first consent in writing to such

closing and the duration of such closing or (b) a court of competent jurisdiction issues an order mandating such closing and the Project is closed only for so long as such order remains in effect.

Section 6.2. Charges for Parking. Owner shall impose no maximum or ceiling upon the amount Lessee may charge for parking within the Project or the amount Lessee may charge for a pass enabling a person to park a vehicle in the Project for an extended period of time, rather such rates are to be established by Lessee in its sole judgement taking into consideration occupancy levels of the Project and market conditions.

#### ARTICLE VII

##### Insurance

Section 7.1. Casualty Insurance. During the Term of this Lease, Lessee will keep and maintain (or cause to be kept and maintained) in force policies of insurance on the Project or any replacements or substitutions therefor with deductibles in an amount which Lessee may reasonably desire (not exceeding one percent (1%) of the face amount of such insurance policy unless Owner approves a larger deductible), from and after commencement of construction of the Project, against Insurable Risks, and in all risk builder's risk completed value form during construction, in amounts sufficient to avoid the effects of co-insurance provisions of policies, that is, not less than one hundred

percent (100%) of actual replacement cost (exclusive of cost of excavation, foundations, footings below the surface of the ground or below the lowest basement level and costs of underground flues, pipes and drains). Such "actual replacement cost" shall be confirmed from time to time (but not more frequently than once in any twelve calendar months) at the request of Owner, by one of the insurers or, at the option of Lessee, by an appraiser, engineer, architect or contractor approved by the issuer of such insurance policy and paid by Lessee;

"Insurable Risks" shall mean those risks covered by the Texas Standard Form Fire and Extended Coverage Policy (including fire and direct loss by windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft and land vehicles); sonic shock wave; and leakage from fire protective equipment.

Such insurance shall be secured and maintained in a company or companies reasonably satisfactory to any Leasehold Mortgagee holding a Leasehold Mortgage (or if there be no Leasehold Mortgagee, then reasonably satisfactory to Owner), and shall be carried in the name of both Lessee and Owner, as coinsured, as their respective interests appear, shall contain a mortgage clause acceptable to Lessee's Leasehold Mortgagees, and shall expressly provide that any loss thereunder may be adjusted with Lessee and Lessee's Leasehold Mortgagees, but shall be payable to the Leasehold Mortgagee holding the Leasehold Mortgage

who shall agree to receive and disburse all proceeds of such insurance in accordance with Section 13.4 hereof. Lessee agrees to furnish Owner, and any Leasehold Mortgagee, with duplicate originals or copies of all such policies (or certificates evidencing such insurance), and to furnish and maintain with each of such parties, at all times, a certificate or certificates of the insurance carrier or carriers certifying that such insurance will not be cancelled without at least fifteen (15) days advance written notice to each of such parties. If Owner is notified of the cancellation of any insurance policies required hereunder, then notwithstanding any of the other Terms of this Lease, Owner shall retain sufficient revenues from the Project to purchase such insurance policies.

Section 7.2. Liability Insurance. During the Term of this lease, Lessee agrees to secure and maintain in force, comprehensive general liability insurance issued by a company or companies reasonably satisfactory to Owner and any Leasehold Mortgagee with limits of not less than \$5,000,000.00 with respect to bodily injury or death to any number of persons in any one accident or occurrence; nor less than \$5,000,000.00 with respect to property damage in any one accident or occurrence. Lessee agrees to furnish and thereafter maintain with Owner and any Leasehold Mortgagee certificates of insurance to the effect that the above policy or policies of insurance are in force and that

the same will not be cancelled without fifteen (15) days advance written notice to Owner and any Leasehold Mortgagee.

Section 7.3 Business Interruption Insurance. From and after completion of construction of the Project and for the remainder of the Term, Lessee agrees to secure and maintain in force, business interruption insurance for a Term of six (6) months or greater, issued by a company or companies reasonably satisfactory to Owner and any Leasehold Mortgagee.

Section 7.4. Subrogation. To the extent permissible under the laws of the State of Texas, and anything in this Lease to the contrary notwithstanding, Owner and Lessee each hereby waives any and all rights of recovery, claim, action or cause of action, against the other, its agents, officers, or employees, for any injury, death, loss or damage that may occur to persons or the Project, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the Terms of the policies of casualty insurance Lessee is required to provide then in effect hereunder, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees, and covenants that no insurer shall hold any right of subrogation against such other party. All casualty insurance obtained by either Lessee or Owner hereunder, expressly including the property damage insurance described in this Article VI, shall

contain provisions whereby the insurer releases all rights of subrogation against both Owner and Lessee. The waiver of subrogation provided for herein shall be fully effective so long as such waiver does not invalidate or impair the coverage of any insurance provided for herein.

Section 7.5. Blanket Policies. Any insurance required to be maintained herein by Lessee may be effected under blanket insurance policies relating to the leased premises and other properties.

#### ARTICLE VIII

##### Ownership

Section 8.1. Title to Project. Ownership of and title to the Project, and all machinery, equipment, fixtures and trade fixtures now or hereafter constructed, installed or placed upon the Premises and all additions, alterations, replacements and substitutions thereto when constructed, installed or placed upon the Premises and the Project, shall, until the expiration or earlier termination of this Lease, be and remain in Lessee. During the Term of this Lease, Lessee alone shall be entitled to claim for all taxation purposes depreciation on the Project, on all machinery, equipment and trade fixtures and on all additions, alterations, replacements and substitutions therefor now or hereafter constructed, installed or placed upon the Premises.

Section 8.2 Owner's Option to Purchase The Project. At any time after the expiration of the fifth (5th) calendar year during the Term of this Lease, Owner shall have the option, but not the obligation, exercisable upon ninety (90) days prior written notice to Lessee, to purchase the Project for the cash purchase price or such other consideration as Lessee may specify, payable in full at the closing of such purchase, calculated in accordance with the following formula:

Multiply the gross income derived from the operation of the Project during the previous fiscal year which had the highest gross income times the number of calendar years remaining in the Term of this Lease after the proposed closing of such purchase and discount the result to the date of the closing of such proposed sale using an annual discount factor of five percent (5%).

Section 8.3. Surrender. Upon the expiration of the Term of this Lease, Lessee shall peaceably quit and surrender, lien free, to Owner, the Premises, the Project and all other improvements situated thereon and all machinery, equipment, fixtures, and trade fixtures installed or placed thereon (excluding equipment and trade fixtures owned by any space tenant or third party manager of the Project, any equipment and fixtures leased by Lessee from any party other than Owner and all movable equipment and supplies) in good order and condition, ordinary wear and tear excepted, all of which shall thereupon be and become the property of Owner.

ARTICLE IX

Assignment and Subletting; Control of Lessee

Section 9.1. Assignment.

(a) Except as otherwise expressly provided for herein, Lessee may assign this Lease or any interest therein so long as Lessee also assigns any agreement pertaining to the operation and management of the Project and obtains the prior written consent of Owner, which consent shall not be unreasonably withheld. Owner agrees that it will not use its right to grant or withhold consent as a means to obtain increased Rent or to extract other economic concessions from Lessee. Rather, Owner agrees to make its decision based on its evaluation of whether, if a proposed assignment is completed, the Project will be constructed, operated and maintained as a high quality parking facility, whether the proposed assignee has adequate financial resources and capability to discharge timely all of the obligations of Lessee and whether the persons identified with the ownership, operation and management of the Project are persons of high character and with a favorable reputation for integrity, honesty and veracity.

(b) Should this Lease or any interest herein be assigned prior to the completion of construction of the Project, Lessee shall remain liable for the cost of completion of the Project.

Section 9.2. Subleases. Lessee shall have the right and power, at any time and from time to time, to sublease all or any part of the Project without the consent or approval of Owner so long as the use of the Project remains in accordance with Section 4.1 hereof. In no event shall any sublease relieve Lessee of any of its obligations under this Lease.

#### ARTICLE X

##### Default by Lessee and Right to Cure

Section 10.1. Event of Default. Failure to pay any installment of the Rent due hereunder on or before the due date thereof shall constitute a Default by Lessee under this Lease.

Section 10.2. Rights of Owner Upon Default. Subject to the provisions of Article IX of this Lease, upon the occurrence of a Default, Owner may, at its option, at any time thereafter during the continuance of such Default, terminate this Lease by written notice to Lessee, whereupon this Lease shall end; and thereafter Owner shall have the right without further demand or notice to reenter and take possession of the Property, with or without process of law, and remove all persons and property from the Property without being deemed guilty of trespass and Lessee shall have no financial or other recourse against Owner.

Section 10.3. Additional Rights of Owner. Any failure by Lessee to perform any covenant imposed upon Lessee hereunder

which does not constitute a Default under this Lease, shall not constitute grounds for the termination of this Lease by Owner under the provisions of Section 10.2 above, or otherwise, but shall be subject to any and all other remedies which Owner may have for breach of covenant at law or in equity; provided, however, that in any such action for breach of covenant, Lessee shall not be considered as having failed in the performance of any such covenant unless such failure continues for thirty (30) days after written notice of such failure from Owner, or as to any failure not curable within such thirty (30) day period, Lessee shall have failed to institute appropriate action to cure such failure within said thirty (30) day period and thereafter shall have failed to prosecute such action with due diligence and continuity.

Section 10.4. Owner's Right to Cure. If Lessee does not pay, discharge or contest Taxes, Charges or Liens as provided in Article IV of this Lease, or if Lessee does not, within the time provided, pay any other sum required to be paid by Lessee under the provisions of this Lease, then Owner may, at Owner's option and after thirty (30) days prior written notice to Lessee pay the same and Lessee shall, within thirty (30) days of demand therefor, repay the same to Owner with interest thereon at the rate of ten percent (10%) per annum. If Lessee does not comply with all Regulations as provided in Article III of this Lease,

then Owner may, at Owner's option and after thirty (30) days prior written notice to Lessee, cause or attempt to cause the same to be complied with, and Lessee shall, within ten (10) days of demand therefor, repay the expense incurred by Owner in effecting or attempting to effect such compliance. In each such instance, Lessee shall repay to Owner all expenses incurred by Owner in connection with Lessee's failure and the curing thereof by Owner, including reasonable attorneys' fees.

#### ARTICLE XI

##### Mortgaging the Property

Section 11.1. Leasehold Mortgage. Notwithstanding any provision contained in Article IX hereof to the contrary and without Owner's consent or approval, Lessee shall have the right, at any time and from time to time, in addition to any other right provided in this Lease, to mortgage and encumber all or any part of its right, title and interest under this Lease. Notwithstanding any of the provisions of this Lease, the ownership of the Premises must remain with Owner and the Owner's fee ownership of the Premises may never be subordinated directly or indirectly by any means whatsoever.

Section 11.2. Rights of Leasehold Mortgagee. If, from time to time, Lessee shall mortgage and encumber all or any part of its interest under this Lease with a Leasehold Mortgage, and if the Leasehold Mortgagee registers with Owner by delivering to

Owner a true and correct copy of such Leasehold Mortgage, together with written notice specifying the name and address of the Leasehold Mortgagee, Owner agrees that from and after the date of receipt by Owner of such notice and for so long as any such Leasehold Mortgage shall remain unsatisfied, the following provisions shall apply:

(a) Notices. Owner shall simultaneously send to each such Leasehold Mortgagee a duplicate copy of all notices delivered or sent to Lessee under this Lease. Owner shall not institute any enforcement proceeding with respect to a Default or any other failure by Lessee to fulfill its covenants and obligations hereunder or terminate the Lease unless and until Owner has given to each Leasehold Mortgagee at the time of delivery to Lessee a copy of the notice delivered to Lessee concerning such failure or Default. Any notice required to be given to any Leasehold Mortgagee shall be given by personal delivery or shall be posted in the United States mail, postage prepaid, certified, and addressed to each such Leasehold Mortgagee at the address designated to Owner by such Leasehold Mortgagee and shall be deemed to have been delivered as of the date of personal delivery thereof or five (5) days after the date such notice is postmarked by the United States Postal Service or its successors.

(b) Right to Cure. Upon receipt of any notice provided pursuant to Section 11.2(a) of this Lease, any Leasehold Mortgagee shall have, in addition to the period of time granted hereunder to Lessee to remedy or cure any Default or other breach of this Lease, thirty (30) days to remedy or cause to be remedied any Default or other breach hereunder; or, if complete remedy (other than for failure to pay money) is impossible within said additional thirty (30) day period, any Leasehold Mortgagee shall have whatever time is necessary to remedy or cure the Default or other breach; provided such Leasehold Mortgagee shall pay during said thirty (30) day period, and thereafter during such additional period of time, the Rent and all other sums due under this Lease which accrue and become due and payable during such period of time, and provided such Leasehold Mortgagee institutes appropriate action to cure such Default or failure within said thirty (30) day period and thereafter prosecutes such action with due diligence and continuity. In addition, insofar as the rights of any Leasehold Mortgagee are concerned, the periods for curing all Defaults or other breaches shall be extended for such period of time as the Lessee and/or its interests under this Lease are involved in any bankruptcy, receivership, reorganization, custodial or other legal proceeding only if such actions prevent any Leasehold Mortgagee from curing any such Default or other breach and/or obtaining title to the interest of Lessee under

this Lease and/or actual possession of the Project. Owner hereby agrees to accept performance hereunder by or at the instigation of any Leasehold Mortgagee as if it had been done or performed by Lessee. Owner further agrees that any Leasehold Mortgagee shall have the right to enter upon the Property for the purpose of remedying any Default or other breach hereunder.

(c) Limitation on Right to Terminate. If Owner shall elect to terminate this Lease by reason of a Default, the Leasehold Mortgagee shall have the right to postpone and extend the date of termination of this Lease for a period of not more than sixty (60) days from the expiration of the additional thirty (30) day period or any other additional period of time granted any Leasehold Mortgagee hereunder for the purpose of curing Defaults or other breaches, as the case may be, provided that the Leasehold Mortgagee shall have cured or caused to be cured any existing monetary Default or other monetary breach and paid the Rent required to be paid hereunder and forthwith commence necessary action to acquire Lessee's interest and estate secured by the Leasehold Mortgage by foreclosure thereof, or otherwise, and shall prosecute such action to completion with due diligence and continuity. If, at the end of the sixty (60) day period, the Leasehold Mortgagee shall be actively pursuing the acquisition of Lessee's interest hereunder, any Leasehold Mortgagee shall have the right to postpone and extend such date of termination for

such additional periods of time as shall be reasonably necessary to complete such acquisition. Notwithstanding anything herein to the contrary, in no event shall the Lessee or the Leasehold Mortgagee have the right to postpone and extend the date of termination of this Lease beyond the Term of this Lease or beyond eight (8) months from the date of first notification of Default to Lessee and Leasehold Mortgagee under the terms of this Lease, provided said default is not cured within said period of time. In addition, insofar as the rights of any Leasehold Mortgagee are concerned, the eight (8) month period described in the preceding sentence shall be extended for such period of time as the Lessee and/or its interests under this Lease are involved in any bankruptcy, receivership, reorganization, custodial or other legal proceeding, only if such action prevents any Leasehold Mortgagee from curing the Default or other breach and/or obtaining title to the interests of Lessee under this Lease and/or actual possession of the Project.

(d) Assignment. Owner covenants and agrees that in the event of any foreclosure under any Leasehold Mortgage by judicial proceedings or under power of sale contained therein or by assignment in lieu thereof, all right, title and interest of Lessee under this Lease may, without the consent of Owner, be assigned to and vested in the purchaser at such foreclosure and, notwithstanding that Owner's consent to said assignment had not

been obtained, such purchaser shall be vested with all right, title, interest and obligations of Lessee under this Lease as though Owner had expressly consented thereto.

(e) New Lease. Owner covenants that in the event of a termination of this Lease for any reason whatsoever (other than the expiration of the Term of this Lease), and subject to the rights herein granted to a Leasehold Mortgagee, Owner will enter into a new lease of the Property with any Leasehold Mortgagee (or at the request of such Leasehold Mortgagee, with a corporation formed by or on behalf of such Leasehold Mortgagee) for the remainder of the Term of this Lease within thirty (30) days after receipt of notice from the Leasehold Mortgagee as provided in (i) below, provided all rents and monies due to Owner are paid. Such new lease shall be (1) effective and commence as of the date of termination of this Lease and (2) at the same Rent and upon the same terms, provisions, covenants and agreements as contained in this Lease with the same relative priority as this Lease and having the benefit of and vesting in such Leasehold Mortgagee, its designee or nominee, all the rights, titles, interests, powers, and privileges of the Lessee hereunder. In addition:

- (i) The Leasehold Mortgagee shall make written request upon Owner for the execution of such new lease within thirty (30) days after the date of termination of this Lease, which request shall be accompanied by payment to Owner of all sums then due Owner by Lessee, or by the Leasehold Mortgagee, or both, under this Lease;

- (ii) The Leasehold Mortgagee shall pay to Owner at the time of the execution and delivery of such new lease any sums that at the time of its execution and delivery would be due pursuant to this Lease but for the termination, and, in addition, all reasonable attorneys' fees which Owner shall have incurred by reason of any Default or other breach hereof and all reasonable expenses incurred by Owner by reason of any Default or other breach;
- (iii) The Leasehold Mortgagee shall perform and observe all covenants contained in such new lease on Lessee's part to be performed during the period the Leasehold Mortgagee is in possession of the Property under such new lease.
- (iv) Except as provided in Section 11.2(f) hereof, each party from time to time holding the rights, titles, interests, powers and privileges of Lessee hereunder, shall be liable for the performance of Lessee's obligations hereunder.

Provided that such Leasehold Mortgagee shall pay to Owner all Rent due under this Lease and all other monetary payments due Owner including any monetary judgment awards up to and including the date of commencement of the Term of such new lease, such Leasehold Mortgagee shall not be required to discharge or assume claims by Owner against Lessee which have not been or will not be reduced to a liquidated monetary sum. Nothing contained in this Section 11.2 shall be deemed to relieve Lessee from any liability it may have as a result of the breach of any provision under this Lease. If there is more than one Leasehold Mortgage outstanding at the time of the termination of this Lease, Owner will not

execute and deliver such new lease to any Leasehold Mortgagee, or its nominee or designee, other than the one which has the first lien priority of record unless there shall be an agreement of record between all such Leasehold Mortgagees covering their respective rights with respect to such new lease, and if there be such an agreement, Owner will enter into such new lease with the Leasehold Mortgagee (or its nominee or designee) entitled to cause Owner so to do pursuant to such agreement, provided such agreement is consistent with the terms of any new lease. In the event that at the time the new lease is entered into the Lessee shall be in possession of the Property, Owner, at the request and expense of the Leasehold Mortgagee or its designee or nominee as the new tenant, will take all appropriate steps to remove the Lessee, but shall not be liable to such new tenant for any damages resulting from any delay of the Lessee in vacating the Property, or from any failure to cause Lessee to vacate and there shall be no abatement of rent by reason thereof. In no event shall the Leasehold Mortgagee be under any obligation or liability whatsoever beyond the period of its occupancy under any such new lease or with respect to any such new lease entered into by its designee or nominee.

(f) Limitation of Liability. In addition to the other special provisions of this Lease expressly made applicable or inapplicable during the Leasehold Mortgagee Period (as

hereinafter defined), the following special provisions shall apply during (but only during) the Leasehold Mortgagee Period:

- (i) So long as the party from time to time holding the rights, titles, interests, powers and privileges of Lessee hereunder (herein called the "New Tenant") makes timely payment of all Rent and other charges then owing hereunder, and are not in Default hereunder, Owner may not terminate this Lease. Nothing contained in the previous sentence shall prevent Owner from bringing suit for damages resulting from the breach of any other provision of this Lease or for equitable relief to enjoin the breach of any other provision of this Lease;
- (ii) From and after any assignment or other transfer of its leasehold estate hereunder by any New Tenant, such New Tenant shall be relieved from any obligations which arise after such transfer;
- (iii) Notwithstanding any provision set forth in this Lease to the contrary, no Leasehold Mortgagee shall have any obligation or liability hereunder or under any New Lease executed pursuant hereto with respect to the construction or completion of the Project or any improvements connected therewith.

The term "Leasehold Mortgagee Period" shall mean that portion of the Term commencing with the earliest to occur of (i) the sale of the leasehold estate created hereby pursuant to any Leasehold Mortgage after default by Lessee thereunder, (i) the acquisition by the Leasehold Mortgagee or its designee or nominee of the leasehold estate by conveyance in lieu of foreclosure or in any other manner after default by Lessee under the Leasehold

Mortgage, (iii) the Leasehold Mortgagee's coming into possession of the Property pursuant to any Leasehold Mortgage document or otherwise after default by Lessee under the Leasehold Mortgage, (iv) the effective date of the New Lease, or (v) the appointment of a receiver to take possession of the leasehold estate created hereby for the purpose of protecting the interests of a Leasehold Mortgagee, and continuing thereafter for the remaining balance of the Term.

Notwithstanding the foregoing, Owner shall have all the rights and privileges reserved, accepted and granted to the Owner hereunder in the event any such Leasehold Mortgagee or its successors or assigns fails or refuses to pay the Rent and/or comply with the covenants, agreements, terms and conditions of this Lease.

(g) Agreement Between Owner and Leasehold Mortgagee.

Upon request, Owner shall execute, acknowledge and deliver one or more separate agreements, by and among Owner, Lessee and any Leasehold Mortgagee, agreeing to and confirming all of the provisions of this Section 11.2.

(h) No Surrender or Modification Without Notice.

Notwithstanding any provision contained herein to the contrary except for the termination of this Lease upon Default hereunder by Lessee or by expiration of the Term, Owner and Lessee mutually covenant and agree that so long as there exists an

unpaid mortgage on the leasehold estate of Lessee within the Term, this Lease or any renewal thereof shall not be modified, amended or altered and Owner shall not accept a surrender of the Property or a cancellation or release of this Lease or any renewal thereof from Lessee prior to the expiration or sooner termination thereof as hereinbefore provided, without the prior written consent of the holder of any Leasehold Mortgage, and any such attempted modification, amendment, alteration, surrender, cancellation or release without such prior consent shall be void and of no effect.

## ARTICLE XII

### Condemnation

Section 12.1. No Taking by Owner. Owner hereby covenants and agrees that during the Term it will not exercise or attempt to exercise its power of condemnation over any portion or all of the Property.

Section 12.2. Notice of Taking. In the event of any proposed Taking by any other entity during the Term of this Lease, Lessee shall give written notice thereof to Owner, and any Leasehold Mortgagee, generally describing the nature and extent of the Taking which might result therefrom.

Section 12.3. Total Taking. In the event of a Taking of all of the Property, this Lease shall automatically terminate

as of the Vesting Date and all the Rent and other sums due hereunder shall be apportioned between Owner and Lessee as of the Vesting Date; provided, however, that the termination of this Lease shall not benefit the condemning authority and shall be without prejudice to the rights of either Owner or Lessee to recover just and adequate compensation from the condemning authority.

Section 12.4. Partial Taking. In the case of a Taking of less than all of the Property (other than for a temporary use) Lessee shall determine, within sixty (60) days after the Vesting Date, whether the remaining Property can economically and feasibly be used by Lessee. If it is determined by Lessee that the remaining Property cannot be economically and feasibly used by Lessee, Lessee, at its election, may terminate this Lease upon written notice to Owner to such effect provided that such election to terminate is exercised within ninety (90) days after such determination. Upon any such termination, the Rent and all other sums due hereunder shall be apportioned between Owner and Lessee as of the date of such termination; and between the Vesting Date and the date of such termination, Lessee may (if required) pay directly to the condemning authority rent allocable to the portion of the Property taken and the Rent and other sums due hereunder during such period shall be reduced to accommodate such payment. If Lessee does not elect to terminate this Lease within

the period aforementioned, this Lease shall continue in full force and effect as to the remaining portion of the Property subject to a reduction in the rent as provided in Section 12.6 of this Lease.

Section 12.5. Apportionment of Award Upon Termination.

If this Lease shall terminate pursuant to the provisions of this Article XII, the total award in the condemnation proceedings shall be divided in the following order of priority:

(a) Owner, Lessee and any Leasehold Mortgagee shall be entitled to their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking.

(b) Each holder of a Required Loan shall be entitled to receive an amount equal to the unpaid balance of and all other sums due under all Required Loans held by such holder, and if there is more than one such holder, such award shall be paid first to holders of Required Loans secured by a Leasehold Mortgage, in the order of priority of the Leasehold Mortgages securing such Required Loans, with the balance of such award being paid to the holders of Required Loans which are not secured by a Leasehold Mortgage, in the chronological order in which such loans were made.

(c) Owner shall be entitled to an amount equal to the value of the Premises taken by the condemnation determined as if the Premises were vacant and unimproved.

(d) Lessee shall be entitled to the remainder of such net proceeds.

Section 12.6. Apportionment of Award Without Termination. In the case of a Taking of less than all of the Property (other than for a temporary use) and if this Lease shall not terminate as provided in Section 12.4 of this Lease, Lessee, at its expense, shall commence and proceed with reasonable diligence (subject to delays caused or arising out of any matter described or referred to in Section 4.3 of this Lease) to repair or reconstruct the buildings and improvements to a complete architectural unit or units, including without limitation, temporary repairs, and all other work incidental to and in connection with all of the foregoing (all such repair, reconstruction and work being referred to in this Article XII as "Restoration") and the total award in the condemnation proceeding shall be divided in the following order of priority:

(a) First to Owner, Lessee and any mortgage lien Leasehold Mortgagee for reimbursement of their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking.

(b) Second to any Leasehold Mortgagee to be held and/or disbursed to Lessee in accordance with the provisions of the Leasehold Mortgage.

(c) Third to Owner in an amount equal to the value of the Premises taken by the condemnation determined as if the Premises were vacant and unimproved.

(d) Fourth to Lessee in an amount equal to the remainder of such award, subject to the rights of Leasehold Mortgagees.

Section 12.7. Settlements. Without the written consent of Lessee and any Leasehold Mortgagee, Owner shall not make any settlement with the condemning authority or convey any portion of the Property in lieu of condemnation or consent to any Taking.

Section 12.8. Assignment of Awards. Owner and Lessee, each hereby assigns to the other such of its interest in condemnation awards as is necessary to accomplish the division of such awards in the manner provided in this Article XII.

Section 12.9. Appraisal. If Owner and Lessee are unable to agree in writing on the amount of any reduction in Rent as provided in this Lease or the value of Owner's interest in the Property or the value of Lessee's leasehold estate hereunder as provided in this Lease, within thirty (30) days after the final determination of the amount of the condemnation award, then such reduction in Rent or such value, as the case may be, shall be established by appraisers in accordance with the provisions of this Section. Lessee and Owner shall each nominate one person deemed by them, respectively, to be fit, reputable and impartial,

to appraise and determine such reduction in Rent or such value, as the case may be. The nomination must be in writing and must be given by each party to the other within fifteen (15) days after the aforesaid thirty (30) day period. If only one party shall so nominate an appraiser within the period referred to above, such appraiser's decision as to any such matter when made in accordance with the provisions hereof shall be binding on both parties as if in fact it were made by appraisers selected by both parties. If the two persons nominated and appointed as appraisers by the parties are unable to agree on any such matter in accordance with the Terms hereof within thirty (30) days after the second of the two shall be nominated, then they shall appoint a fit, reputable and impartial person to be umpire between them, if they can agree upon such person. However, if they cannot agree on an umpire within ten (10) days after the expiration of the aforesaid thirty (30) day period for agreement between them, then either party may apply to a District Judge of Tarrant County (or a successor judge exercising similar functions) to appoint a fit, reputable and impartial person, who shall then be umpire, but if such Judge (or successor) shall fail or refuse to act, then either party may apply to any court having jurisdiction for the appointment of such umpire. The appraisers and the umpire shall be members of the American Institute of Real Estate Appraisers and shall be familiar with the Tarrant County area and

experienced in the appraisal of projects similar in nature to the Project. The following written decisions shall be conclusive and binding on the parties: the decision of one appraiser if either party shall fail to appoint its appraiser as hereinabove provided; the unanimous decision of the two appraisers prior to appointment of the umpire; the decision of a majority of the two appraisers and the umpire; or if all of those persons reach a different decision, the decision of the umpire. Each party shall bear the expense of its own appraiser, but the fees and expenses of the umpire shall be shared equally. In no event shall the appraisers have the right or power to vary the Terms of this Lease. Any Leasehold Mortgagee shall, if it so desires, be made a party to any condemnation proceeding.

#### ARTICLE XIII

##### Damage or Destruction

Section 13.1. Lessee to Give Notice. In the event of any damage to or destruction of the Project or any part thereof, Lessee will give written notice thereof to Owner and any Leasehold Mortgagee, generally describing the nature and extent of such damage or destruction.

Section 13.2. Restoration. In the event of any damage to or destruction of the Project which does not result in the termination of this Lease pursuant to Section 13.3 below, this Lease shall continue in full force and effect and Lessee agrees

that it will, at its expense, commence the work of restoring the Project to its condition immediately prior to such casualty, subject to delays caused or arising out of any matter described or referred to in Section 4.3 of this Lease, and will prosecute the restoration to completion with due diligence and continuity.

Section 13.3. Election to Terminate. In the event any destruction of the Project shall occur during the Term to the extent that it is not economically feasible to restore the project and continue this Lease in effect for the remainder of the Term, Lessee shall have the option to terminate this Lease. The determination as to whether it is economically feasible to restore the Project shall be made solely by Lessee. Lessee shall give written notice to Owner within one hundred twenty (120) days after the date of the casualty causing such damage stating whether Lessee has elected to terminate this Lease or whether Lessee has elected to repair and restore such damage. If Lessee elects to terminate this Lease, Lessee shall be obligated to clear the Premises of all rubble and debris. If Lessee does not give such notice within said one hundred twenty (120) day period, then Lessee shall be deemed to have elected to repair and restore and this Lease shall continue in full force and effect.

Section 13.4. Application of Insurance Proceeds.

(a) In the event Lessee elects not to restore the Project and to terminate this Lease as provided in Section 13.3,

the insurance proceeds received on account of any such damage or destruction, after paying or otherwise providing for all liabilities and other sums secured by any Leasehold Mortgage, shall be paid in the following order of priority: (i) there shall be paid to Owner an amount equal to the amount reasonably required to demolish the damaged or destroyed Project, to remove the rubble and clean the Premises, (ii) there shall next be paid to Owner an amount equal to the value of the Premises as determined by mutual agreement of Owner and Lessee as if the Premises were vacant and unimproved and available for its best and most economic lawful use, but as encumbered by this Lease (or if Owner and Lessee cannot agree as to such value, such value shall be determined by an appraisal to be conducted by two or three appraisers chosen in the same manner as set forth in Section 12.9 hereof) and (iii) the remainder of the proceeds shall be paid to Lessee.

(b) Subject to the terms of any mortgage lien Leasehold Mortgage, insurance proceeds paid or payable on account of any damage to or destruction of the Project or any part thereof (other than destruction resulting in the termination of this Lease pursuant to Section 13.3 hereof) shall be delivered to the mortgage lien Leasehold Mortgagee, or if there is no such Leasehold Mortgagee, to the Lessee, and shall be disbursed by such party from time to time as the restoration of the Project

progresses. Upon submission to the Owner of satisfactory evidence that the restoration of the Project has been completed, that the cost thereof has been paid in full and that there are no Liens which have not been released or bonded around, the balance, if any, of such proceeds shall, subject to the terms of any Leasehold Mortgage, be paid to Lessee.

#### ARTICLE XIV

##### Miscellaneous

Section 14.1. Waiver. Failure of Owner or Lessee to insist upon strict performance by the other party of any term, condition or covenant on such party's part to be performed pursuant to the Terms of this Lease or to exercise any option, right, power or remedy contained in this Lease shall not be deemed or construed as a waiver of such performance or relinquishment of such right.

##### Section 14.2. Compliance Certificates.

(a) To the extent permissible under the laws of the State of Texas, Owner and Lessee shall execute, acknowledge and deliver to the other within thirty (30) days after written request therefor, a written declaration, in recordable form, certifying (i) that this Lease is in full force and effect without modification or amendment of any kind (or, if the Lease is not in full force and effect, so stating, or, if there have been modifications or amendments, that this Lease is in full

force and effect as modified or amended and fully describing or attaching such modifications or amendments to such written declaration), (ii) the date to which the Rent has been paid, (or, if no Rent has been paid, so stating) and (iii) that no notice has been received of any Default or other breach which has not been cured and, that to the best of its knowledge and belief no Default or other breach under this Lease exists (or, if a notice has been received or a Default or other breach exists, describing same).

(b) The certificates of Owner or Lessee given pursuant to this Section 14.2 may be relied upon by an prospective mortgagee, any prospective assignee of an interest under this Lease or by any prospective sublessee or purchaser of all or any portion of or interest in the Property.

(c) Owner hereby authorizes, designates and empowers the following officers of the University of Texas at Arlington and/or the University of Texas System to execute, acknowledge and deliver on its behalf all written instruments and certificates described in this Section 14.2: \_\_\_\_\_,

\_\_\_\_\_ and \_\_\_\_\_.

Section 14.3. Merger of Title. There shall be no merger of the Leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person or entity may own or hold both the Leasehold estate created by

this Lease or any interest therein and the fee estate in the Premises or any interest therein; and no such merger shall occur unless and until all persons (including Leasehold Mortgagees) having any interest in the Leasehold estate created by this Lease and the fee estate in the Premises shall join in a written instrument effecting such merger and shall duly record the same.

Section 14.4. Modifications. Owner agrees that in the event it becomes necessary or desirable for Owner to approve in writing any aspect of the construction, operation or maintenance of the Project or to alter or amend any written agreement between Owner and Lessee regarding the construction, operation or maintenance of the Project or to give any consent of Owner required under the terms of this Lease, Owner hereby authorizes, designates and empowers the following officers of The University of Texas at Arlington and/or the University of Texas System to execute any such agreements, approvals, or consents necessary or desirable including, without limitation, the consent of Owner required under Section 9.1(a) of this Lease: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ and  
\_\_\_\_\_

Section 14.5. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and

enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this Lease or the application of such term, provision or covenant to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

Section 14.6. Nondiscrimination. Lessee covenants that it will not discriminate in its employment policies or in making its facilities available on the basis of race, color, creed, national origin, religion or sex.

Section 14.7. Notices, Demand and Other Instruments. All notices, demands, requests, consents, and other instruments required or permitted to be given to Owner or Lessee pursuant to the Terms of this Lease shall be in writing and shall be effective upon receipt thereof whether delivered personally or by first class registered or certified United States mail with postage prepaid and return receipt requested, addressed to each party hereto at the following address:

Owner: The Board of Regents of the  
University of Texas System

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a Copy to:

The University of Texas at Arlington

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Attn: \_\_\_\_\_

Lessee: Ames-Teague Joint Venture,  
a Texas joint venture  
13720 Midway Road, Suite 109  
Dallas, Texas 75244  
Attn: David L. Teague

With a Copy to:

Liddell, Sapp, Zivley & LaBoon  
1500 San Jacinto Tower  
Dallas, Texas 75201  
Attn: David L. Herbert

or at such other address in the United States as Owner or Lessee may from time to time designate in writing and deliver to the other party.

Section 14.8. Successors and Assigns. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, successors and assigns of Owner and Lessee. Whenever reference to the parties hereto is made in this Lease, such reference shall be deemed to include the legal representatives, successors and assigns of said party the same as if in each case expressed. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business organization, syndicate, government or governmental organization or any other entity.

Section 14.9. Headings. The headings to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define the express terms and provisions of this Lease.

Section 14.10. Gender and Numbers. Whenever the singular or plural number, or masculine, feminine, or neuter gender is used in this Lease, it shall equally apply to, extend to, and include the other.

Section 14.11. Recording of Lease. Owner and Lessee hereby agree that this Lease shall not be recorded. Owner and Lessee, upon the written request of either of them, shall execute a memorandum or short form lease, in recordable form and in form and substance satisfactory to Owner and Lessee, wherein a legal description of the Premises, the Term of this Lease and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rent payable hereunder, shall be set forth. Such memorandum or short form lease shall be filed for record in the Deed Records of Tarrant County, Texas.

Section 14.12. Remedies. The specified remedies to which the parties may resort under the Terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the parties may be entitled in case of any breach or threatened breach of any provisions of this Lease.

Section 14.13. Counterparts. This Lease may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

Section 14.14. Applicable Law. This Lease shall be construed under and enforced in accordance with the laws of the State of Texas.

Section 14.15. Liability of Lessee. Subject to the provisions of Section 11.2(f)(iii) hereof, anything to the contrary contained herein or elsewhere notwithstanding, it is expressly agreed and stipulated by Owner, for itself and for each and every succeeding owner and/or holder of the fee simple title to the Premises, that from and after the completion of construction of the Project, the personal liability of the Lessee or any Leasehold Mortgagee or purchaser at any foreclosure sale or any transferee under a deed in lieu of foreclosure shall be limited to an amount equal to \$100,000.00 (except for liability arising out of the fraud, willful misconduct or gross negligence of Lessee), for the performance of any of the Terms of this Lease, but Owner and each and every succeeding owner and/or holder of the fee simple title to the Premises shall look exclusively to any improvements which may be situated on the Premises for the payment and discharge of any moneys due and obligations imposed upon the Lessee hereunder, over and above such \$100,000.00 limit.

Section 14.16. Free Parking. Lessee hereby agrees that Owner, the President of The University of Texas at Arlington, its Administration and invitees shall be entitled to utilize the Project for parking at any time without charge for 5,000 hours of parking per each Fiscal Year during the Term. Such 5,000 hours of parking shall be calculated by multiplying the total number of cars parked without charge in the Project pursuant to the provisions of this Section 14.16 by the total number of hours each car is parked in the Project.

Section 14.17. Entire Agreement. This Lease and the Operating Agreement set forth the entire understanding and agreement of Owner and Lessee with respect to the Property; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment to this Lease shall be binding upon Lessee or Owner unless in writing and signed by both parties hereto.

#### ARTICLE XV

##### Definitions

As used in this Lease, the following terms shall have the respective meanings indicated:

Charges shall mean all charges, costs and expenses of public or private utility services rendered or provided at any time during the Term with respect to the Property, including but

not limited to, water, sewer, gas, telephone and other utility and communication services, excluding electricity which shall be the responsibility of Owner.

Default shall mean the occurrence of an act or event listed in Section 10.1.

Fiscal Year shall mean the period extending from September 1 of a given year during the Term until August 31 of the next succeeding year during the Term if completion of construction of the Project occurs prior to September 1, 1986. If the Project is not completed prior to September 1, 1986 then the Fiscal Year shall commence upon the first day of the calendar month following the calendar month in which the Project is completed and ready for use and shall extend twelve (12) calendar months thereafter. After the first Fiscal Year is established each Fiscal Year thereafter during the Term shall commence and terminate upon the same dates as the first Fiscal Year.

Leasehold Mortgage shall mean any mortgage or deed of trust which constitutes an encumbrance on the Lessee's leasehold estate created by this Lease as security for an indebtedness of Lessee.

Leasehold Mortgagee shall mean the holder or holders of the indebtedness secured by a Leasehold Mortgage.

Lien shall mean any lien covering the Property resulting from the entry of a judgment against Lessee and/or any lien

covering the Property arising by reason of any labor, service or material furnished for any construction (or demolition) on the Property.

Project shall mean a parking facility containing approximately three hundred sixty (360) parking spaces and other improvements to be constructed by Lessee on the Premises substantially in accordance with plans and specifications approved by Owner and Lessee as described in Section 4.2 of this Lease.

Permitted Encumbrances shall mean the exceptions, reservations and other matters set forth on Exhibit B to this Lease.

Premises shall mean that certain tract of land described on Exhibit A hereto, together with all and singular, the rights, benefits, privileges, easements, appurtenances and hereditaments appertaining thereto.

Property shall mean the Premises and the Project, collectively.

Regulations shall mean all federal, state, county and municipal laws, rules, orders and regulations and ordinances affecting the Property or the use thereof and the requirements of policies of public liability, fire and other insurance required under Article VII hereof and shall also mean the requirements of any certificate of occupancy or other direction issued pursuant to any law by any public officer which shall relate to the Property or the use, occupancy or control thereof or the conduct

of any business thereon, including those relating to the environment and those relating to or which necessitate structural changes of the Improvements or the alteration, repair or removal of any Improvement or any part of the Property.

Rent shall mean the rental payable by Lessee to Owner pursuant to Article III hereof.

Required Loans shall mean all indebtedness, together with accrued and unpaid interest thereon and any other sums due thereunder incurred for the purpose of (i) financing or refinancing all direct and indirect costs of constructing, reconstructing or repairing all or any part of the Project, (ii) financing or refinancing all other direct and indirect costs of improving, furnishing or equipping all or any part of the Property and/or (iii) paying or funding operating losses in respect of the Project.

Taking shall mean the acquisition by the United States of America, the State of Texas or by any other governmental subdivision thereof or by any other body having the power of condemnation or eminent domain, either through the exercise of such power or pursuant to a transfer in anticipation of such exercise, of all or any portion of the Property or any interest therein.

Taxes shall mean all real estate and personal property taxes and assessments and other governmental levies and charges

of any nature whatsoever, general or special, ordinary or extraordinary, which may be levied or assessed during the Term of this Lease, or which may become a lien upon the Property, the Premises or the Improvements or any interest or estate therein or any personal property located in, on or about the Premises or used by Lessee or any tenant in connection therewith, including any franchise tax or fee, sales tax or any occupancy tax or tax on or measured by rents (whether or not any such tax or fee is imposed in lieu of existing ad valorem taxes, and whether or not such tax or fee is within the express contemplation of the parties hereto). Such term shall not include any income, inheritance or estate tax assessed against the Owner or the Premises or the income and proceeds derived therefrom by Owner.

Vesting Date shall mean the date title to the Property or any part thereof is vested in the condemning authority pursuant to a Taking.

IN WITNESS WHEREOF, this Lease is executed by Owner and Lessee as of the day and year first above written.

OWNER:

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM FOR THE  
USE AND BENEFIT OF THE UNIVERSITY OF  
TEXAS AT ARLINGTON

By \_\_\_\_\_,  
Chancellor

LESSEE:

AMES-TEAGUE JOINT VENTURE,  
a Texas joint venture

By \_\_\_\_\_  
Raymond Ames,  
Joint Venturer

By \_\_\_\_\_  
David L. Teague,  
Joint Venturer

EXHIBITS:

- Exhibit A - Premises
- Exhibit B - Permitted Encumbrances
- Exhibit C - Description of Plans and Specifications for the Project

STATE OF TEXAS       §  
                              §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_  
day of \_\_\_\_\_, 1985 by \_\_\_\_\_,  
Chancellor of the Board of Regents of the UNIVERSITY OF TEXAS SYSTEM.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                          §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 1985 by Raymond Ames, Joint Venturer of Ames-Teague Joint Venture, a Texas joint venture, on behalf of said joint venture.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                          §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 1985 by David L. Teague, Joint Venturer of Ames-Teague Joint Venture, a Texas joint venture, on behalf of said joint venture.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas  
My Commission Expires: \_\_\_\_\_

**DRAFT**

PROPERTY MANAGEMENT AGREEMENT.

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 1986, by and between AMES-TEAGUE JOINT VENTURE, a Texas joint venture (hereinafter referred to as the "Owner") and THE UNIVERSITY OF TEXAS AT ARLINGTON (hereinafter called "Manager").

RECITALS

1. Owner is the Owner of the leasehold estate arising pursuant to that certain ground lease (the "Ground Lease") by and between Manager and Owner dated effective as of \_\_\_\_\_, 1985 covering all of the real property more particularly described in Exhibit A attached hereto, together with all improvements now located or hereafter situated thereon and all personal property of Owner located thereon (hereinafter the foregoing is collectively referred to as the "Property").
2. Manager is experienced in the business of managing and operating real property.
3. Owner desires to appoint Manager to manage the day to day operations of the Property consistent with Owner's objectives of maximizing the Property's economic value.
4. This Agreement is entered into to set forth the terms upon which Manager will manage the Property.

MIS/UTA-PMA

  
- ATTACHMENT B

NOW THEREFORE, incorporating the Recitals as set forth above, and in consideration of the mutual covenants herein contained, Owner and Manager hereby agree as follows:

ARTICLE I

TERM

The Owner hereby appoints and Manager hereby accepts such appointment as exclusive Manager for the Property for an initial term commencing upon the completion of the construction of that certain parking garage to be located upon the Property all in accordance with certain plans and specifications heretofore agreed upon by Manager (such parking garage located on the Property is hereinafter referred to as the "Project") and ending twelve (12) calendar months thereafter (such period of time is hereinafter referred to as the "Fiscal Year"). At the expiration of the Fiscal Year, this Agreement, if not renewed in writing by Owner, shall then be deemed a month-to-month agreement cancelable by either party on not less than thirty (30) days advance written notice, which notice may be given at any time during a month, provided that in any event, the cancellation shall be effective at the end of the calendar month in which the thirty (30) day notice period ends.

ARTICLE II  
RESPONSIBILITIES OF MANAGER

Manager shall operate, manage and maintain the Project as the independent contractor for and at the expense of Owner in accordance with sound property management practice.

2.1 General. Manager shall manage, operate and maintain the Property in a manner normally associated with the management and operation of a high quality, first-class parking garage situated in a metropolitan area of the state of Texas.

2.2 Employees. Manager shall have in its employ at all times, a sufficient number of capable employees to enable it to properly, adequately, safely and economically manage, operate and maintain the Property. All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of Manager. Manager is in all respects the employer of such employees. Manager shall fully comply with all applicable laws and regulations having to do with workers compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employee-employee related subjects. In the event that Manager's employees are engaged to work in connection with other properties, wages and other expenses with respect to such work shall be allocated between the properties which wages and other expenses shall be subject to review and approval by Owner.

2.3 Operating Budget. Manager shall prepare and then submit to Owner a proposed Operating Budget for the Property for the management and operation of the Property for the forthcoming Fiscal Year no later than \_\_\_\_\_. Within thirty (30) days after such proposed budget is submitted to Owner, Owner will consider the proposed budget and then will consult with the Manager in order to agree on an "Approved Operating Budget" within such thirty (30) day period. If Owner and Manager are unable to agree on an Operating Budget by the beginning of the Fiscal Year, then Owner shall have the option to terminate this Agreement by giving Manager thirty (30) days written notice at any time prior to the commencement of the Fiscal Year.

Manager shall have the right, from time to time, during the Fiscal Year, to submit revised budgets to Owner, and Owner shall endeavor to promptly as possible, approve the same or revisions thereto as Owner and Manager may deem proper. Manager agrees to use diligence and all reasonable efforts to insure that the actual costs of maintaining and operating the Property shall not exceed the Approved Operating Budget.

2.4 Collection of Parking Fees. Manager shall use diligent efforts to collect from the operators of all vehicles parking within the Property, the applicable parking fees for each vehicle. All monies so collected shall be deposited in the Operating Account (as defined in Article 5.01).

2.5 Maintenance and Repairs. Manager shall institute and supervise all ordinary and extraordinary repairs, decorations and alterations, including the administration of a preventative maintenance program for all mechanical, electrical and plumbing systems and equipment, provided that such (unless the same relate to emergencies) are included in the Approved Operating Budget.

2.6 Operation of Property. Manager shall institute and supervise all operational activities of the Property including, but not limited to, the following:

1. Responsibility for and supervision of the cleaning of the Property;
2. Supervision of security, covering all portions of the Property;
3. Responsibility for and supervision of any landscaping;
4. Responsibility for and supervision of a preventative maintenance program;
5. Responsibility for and supervision of any necessary repairs to the Property; and
6. Any other activity expedient to the normal operation of a first-class parking garage similar to the Project.

2.7 Compliance with Mortgage. Manager shall be responsible for operation of the Property in compliance with all terms and conditions in the Ground Lease and any mortgage, deed of trust or other security instrument affecting the Property of which Manager has knowledge, but Manager shall not be required to make any payment or incur any liability on account thereof.

2.8 Banking. Manager shall handle all bank deposits relating to its contractual responsibility hereunder.

2.9 Inspection. Manager shall conduct from time to time inspections of the Property and provide Owner with a written report of Manager's findings.

2.10 Books and Records. Manager shall maintain completed and identifiable records and files on all matters pertaining to the Property, including, without limitation, all revenues and expenditures, service contracts and leases. Said books and records shall be kept at the offices of Manager on the campus of the University of Texas at Arlington or such other place as Owner and Manager shall from time to time agree. Manager shall keep accurate and complete books and accounts showing operations and transactions relating to the Property. Owner's duly authorized representatives shall at all times during regular business hours have access to and may inspect and copy any such books and records.

2.11 Reports and Reconciliation of Operating Accounts. On or before the fifteenth (15th) day of each calendar month during the term of this Agreement, Manager shall provide the following to Owner for the preceding calendar month:

1. Detailed reports of all monies collected (identified by source) which shall include all monies received from the operation of the Project and all monies paid in parking fees for use of the Project for parking;

2. Detailed report of all expenses in accordance with the Approved Operating Budget;
3. A comparison of the current month and year-to-date account of actual expenses to budgeted amounts;
4. Calculations of monthly and year-to-date variances from the Approved Operating Budget, and appropriate descriptions of any significant monthly or year-to-date variances;
5. A written report describing any material changes in the Property which occurred during the month or are anticipated to occur;
6. Reconciliation of amounts receivable or due to Owner accompanied by payment of same;
7. Reconciliation of Operating Account; and
8. Any other special information as reasonably required from time to time by Owner.

Periodically, Manager shall furnish to Owner as reasonably requested:

- (1) a market survey and any other information pertaining to the rate of use of the Project by students for parking;
- (2) reports covering on-site physical inspections and operating review; and
- (3) a current inventory of personal property and equipment used in connection with the Project.

The format of all reports shall be subject to the reasonable approval of Owner. All original reports, documents and other information forwarded to Owner are to be retained in Owner's possession or deposited as directed by Owner. Copies will be retained by Manager.

2.12 Customer Relations. Manager shall attempt, through whatever means it deems appropriate, to promote the Project and the use thereof for parking by students, faculty, visitors and administrators of the University of Texas at Arlington.

2.13 Compliance with Law. Manager shall take such action as may be reasonably necessary to assure full compliance with federal, state and municipal laws, ordinances, regulations and orders relative to the use, operation, repair and maintenance of the Property and with the rules and regulations or orders of any local Fire Department or Police Department or other similar body. Manager shall promptly remedy any violation of any such law, ordinance, rules, regulations or order which comes to its attention, all at Owner's expense.

2.14 Emergencies. Notwithstanding anything contained herein to the contrary, in case of emergency, Manager may make expenditures for repairs and other items which exceed other budgeted amounts then in effect or go beyond the scope of prior approvals of Owner, without Owner's prior written approval if, in the reasonable judgment of Manager, such expenditures are necessary to prevent damage or injury to the Property or to persons utilizing the Project. Manager shall inform Owner of any such expenditures before the end of the next business day.

2.15 Notification to Owner. Manager shall notify Owner immediately of any lawsuits, condemnation proceedings, rezoning or other governmental order or action or any threat thereof that becomes known to Manager that might adversely affect the Property or any interest of Owner therein.

### ARTICLE III

#### MANAGEMENT AUTHORITY

3.1 Limitation. Manager's authority is expressly limited to the provisions provided herein, as amended in writing from time to time by Owner and Manager.

3.2 Contracts. No contract entered into by Manager shall be for a period which exceeds the term of this Agreement. All contracts should be in the name of and executed by Owner.

### ARTICLE IV

#### BANK ACCOUNTS

4.1 Operating Account. Manager shall deposit all fees received by Manager for parking within the Project and any other funds so collected by Manager from the operation of the Project, including any and all advanced funds, in the Bank designated by Owner, in a special account (the "Operating Account") for the Project in the name of Owner. The Bank shall be informed in writing that the funds are held in trust for Owner. Owner may direct Manager to change depository banks or the depository arrangements at any time.

ARTICLE V

INDEMNIFICATION AND INSURANCE

5.1 Liability Insurance. Owner agrees to carry public liability and contractual liability insurance, and such other insurance as may be necessary for the protection of Owner and Manager. The public liability and contractual liability insurance must contain a severability of interest clause and coverage for personal injury insurance. The carrier and the amount of coverage in each policy shall be decided upon by Owner. Notwithstanding the above insurance requirements, Owner may elect to self insure against the risks covered by this Section.

5.2 Indemnification. To the extent permissible under the laws of the State of Texas, Manager shall indemnify and hold harmless the Owner against any claim which may be made against the Owner arising out of:

- (1) Any failure of the Manager to promptly perform in any of its obligations under this Agreement, provided such failure was not caused by Owner or events beyond the reasonable control of Manager, and provided further that Owner has, after written request and to the extent not available from funds received by Manager for Owner's account, furnished to Manager sufficient funds to perform such obligations;
- (2) Any act of the Manager beyond the scope of the Manager's authority hereunder not authorized or ratified by Owner, and

(3) Any negligence by Manager, its agents or employees.

Except as set forth in this Article 7.2, Owner shall indemnify and hold harmless Manager against any and all claims made against Manager or arising out of the management, ownership, development, construction or operation of the Project by Owner.

#### ARTICLE VI

##### COMPENSATION OF MANAGER

At the expiration of the Fiscal Year (and at the expiration of any additional Fiscal Year, if any, during which Manager is providing services hereunder), Owner shall pay to Manager, as compensation for the services of Manager provided hereunder the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Management Fee").

#### ARTICLE VII

##### TERMINATION

7.1 Termination of Agreement. Notwithstanding the provisions of Article I above to the contrary, this Agreement may be terminated and the obligations of the parties hereunder shall thereupon cease, upon the occurrence of the following circumstances:

- (1) In the event of a bonafide sale or substantial destruction of the Project, either party may terminate

this Agreement upon thirty (30) days written notice to the other party.

- (2) If a petition for bankruptcy, reorganization or rearrangement is filed under state or federal insolvency statutes by or against the Manager, or Manager shall make an assignment for the benefit of creditors or take advantage of any insolvency act, Owner may terminate this Agreement upon ten (10) days written notice to Manager;
- (3) If either party shall fail in the performance of any of its obligations hereunder and such default shall continue for thirty (30) days after written notice from one party to the defaulting party designating such default, the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party.

7.2 Obligation Upon Termination. Upon termination of this Agreement, for whatever reason, each party shall promptly pay to the other, as soon as the same is determinable after the effective date of such termination, all amounts due such other party under the terms of this Agreement, and upon such payment neither party shall have any other claim or right against the other except as expressly hereinafter.

Upon termination of the Agreement for whatever cause, Manager shall, not later than the effective date of termination, deliver to Owner the original of all books, permits, plans, records, leases, licenses, contracts and other documents pertaining to the Project and its operation, all insurance policies, bills of sale or other documents evidencing title, the

rights of Owner and any and all records or documents, whether or not enumerated herein, which are necessary or desirable for the ownership of the Project. Manager shall assign unexpired service contracts to Owner or parties designated by Owner. All personal property of Owner, whether on the Property or elsewhere shall be delivered intact to Owner or its representatives. The Operating Account provided for in Article 5.01 hereof will be transferred as directed by Owner. Manager further agrees to do all other things to be reasonably necessary to cause an orderly transition of the management of the Project without detriment of the rights of Owner or to the continued management of the Project.

#### ARTICLE VIII

##### MISCELLANEOUS PROVISIONS

8.1 Headings. The headings used herein are for purposes of convenience only and should not be used in construing the provisions hereof.

8.2 Notice. Any notice, demand or communication required or permitted hereunder shall be given in writing and deemed received immediately upon delivery in person or three (3) days after deposited in the United States Mail, certified or registered, return receipt requested, addressed to the respective parties hereto at the following addresses:

If to Owner:

Ames-Teague Joint Venture  
13720 Midway Road  
Suite 109  
Dallas, Texas 75244

Attention: David L. Teague

With a Copy to:

Liddell, Sapp, Zivley & LaBoon  
2121 San Jacinto Street  
Suite 1500  
Dallas, Texas 75201

Attention: David L. Herbert

If to Manager:

The University of Texas at Arlington

Arlington, Texas \_\_\_\_\_

Attention: \_\_\_\_\_

With a Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

or such other party as any party may hereafter designate by written notice.

8.3 Relationship of the Parties. Manager is an independent contractor hired by the Owner pursuant to the terms hereof. Nothing contained in this Agreement, nor any acts of the

parties hereto shall be deemed or construed by the parties hereto or either of them, or any third party, to create the relationship of principal and agent or a partnership or a joint venture between the parties hereto.

8.4 Covenant of Further Assurances. The parties hereby agree to execute such other documents, perform such other acts as may be reasonably necessary or desirable to carry out the purposes of this Agreement.

8.5 Entire Agreement. This document represents the entire Agreement between the parties with respect to the subject matter hereof and supercedes all other prior agreements, representations and covenants; oral or written amendments to this Agreement must be in writing and signed by both parties.

8.6 Assignment. Owner shall have the right at any time in its sole discretion, to assign its rights and obligations hereunder to a third party, provided that any such third party enters into a written agreement assuming Owner's obligations hereunder. Manager shall not assign its rights and duties hereunder without the prior written consent of Owner and any such assignment without Owner's prior written consent shall be void and of no effect.

8.7 Successors and Assigns. Subject to the limitations concerning assignment, this Agreement shall be binding upon and

inure to the benefit of the parties hereto, their successors and assigns.

8.8 Attorney's Fees. In the event of any controversy, claim or action being filed respecting this Agreement or in connection with the Property, the prevailing party shall be entitled, in addition to all expenses, costs or damages, reasonable attorney's fees as determined by a court whether or not such controversy was litigated or prosecuted to a judgment.

8.9 Time of the Essence. Time is of the essence of this Agreement.

8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8.11 Severability. Every provision of this Agreement is intended to be severable. If any term of provision hereof is illegal for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

8.12 Exculpatory Clause. Manager agrees that no trustee, joint venturer, officer, employee or agent of Owner shall be personally liable for any of the obligations of Owner hereunder and that Manager must look solely to the assets of Owner for the enforcement of any claims against Owner arising hereunder.

8.13 Manager's Representative. Manager shall designate one (1) person to serve as its representative in all dealings with the Owner. Whenever the approval or consent or other action of Manager is required hereunder, such approval, consent or action shall be binding upon Manager if transmitted by its representative. The Manager's representative shall be \_\_\_\_\_ . Such representative may be changed at the discretion of Manager at any time, by written notice to Owner.

8.14 Ownership of Information and Materials. Manager shall, upon completion of Manager's services or any sooner termination of this Agreement, deliver to Owner, all written data and information generated by or for Manager in connection with the Property or supplied to Manager by Owner or Owner's contractors or agents, and all drawings, plans, books, records, contracts, agreements and all other documents and writings in its possession relating to its services for the Property and the Owner shall have the right to use the same without further compensation to Manager. Such data and information and all such documents shall at all times be the property of Owner. Manager agrees to hold in confidence and not use or disclose to others any confidential or proprietary information of Owner heretofore or hereafter disclosed to Manager and designated as such by

Owner, including but not limited to any data, information, plans, programs, processes, equipment, costs, operations, tenants or customers which may come within the knowledge of Manager in the performance of or the result of, its services, except where:

- (1) Owner specifically authorizes Manager to disclose any of the foregoing to others or such disclosure reasonably results from the performance of Manager's duties hereunder; or
- (2) such written data or information shall have theretofore been made publicly available by parties other than Manager.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

OWNER:

AMES-TEAGUE JOINT VENTURE,  
a Texas joint venture

By \_\_\_\_\_  
Raymond Ames,  
Joint Venture

By \_\_\_\_\_  
David L. Teague,  
Joint Venturer

MANAGER:

THE UNIVERSITY OF TEXAS AT ARLINGTON

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

3. U. T. Austin - Expansion of Physical Plant Facilities, Phase I (Project No. 102-454): Request for Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Cunningham that the U. T. Board of Regents:

- a. Authorize the Office of Facilities Planning and Construction to advertise for bids for the Expansion of Physical Plant Facilities, Phase I, at U. T. Austin at an estimated total project cost of \$12,500,000 (excluding the cost of the Project Analysis)
- b. Authorize the Executive Committee to award contracts associated with this project within the authorized total project cost
- c. Appropriate \$11,950,000 from Permanent University Fund Bond Proceeds for total project funding. Previous appropriations have been \$442,000 from the same source and \$108,000 from Pooled Interest on Bond and Other Construction Funds

#### BACKGROUND INFORMATION

At the August 1985 meeting, the U. T. Board of Regents approved final plans and specifications prepared by the Project Architect, Wilson Stoeltje Martin, Inc., Austin, Texas, for the Expansion of Physical Plant Facilities, Phase I, at U. T. Austin.

The project will provide new Physical Plant Facilities to be constructed on approximately 12.4 acres east of IH-35 between East 26th Street and Manor Road at an estimated total project cost of \$12,500,000. These facilities include approximately 210,000 square feet of floor area for workshops, central stores, greenhouses, and administrative offices for the Department of Physical Plant. The estimated construction cost of the new facilities is \$11,200,000 resulting in a cost of approximately \$53 per gross square foot. Fees and other expenses related to the Project Analysis accepted by the U. T. Board of Regents in December 1982 are not included in the above estimated total project cost.

This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

4. U. T. Austin - Residence Halls - Emergency Lighting System: Request for Approval of Preliminary Plans and for Authorization to Prepare Final Plans; Submission to Coordinating Board and Subject to Approval, Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Cunningham that the U. T. Board of Regents:

- a. Approve the preliminary plans for the Residence Halls - Emergency Lighting System at U. T. Austin and authorize the Project Engineer to prepare final plans and specifications at an estimated total project cost of \$1,812,000
- b. Authorize submission of the project to the Coordinating Board, Texas College and University System
- c. Subject to approval of the Coordinating Board, authorize the Office of Facilities Planning and Construction to advertise for bids and the Executive Committee to award construction contracts within the authorized total project cost
- d. Appropriate \$1,777,000 from Housing and Food Service Reserves Account for total project funding. Previous appropriations have been \$35,000 from the same source

This item requires the concurrence of the Finance and Audit Committee.

#### BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in April 1985, preliminary plans for the Residence Halls - Emergency Lighting System at U. T. Austin have been prepared by the Project Engineer, Triad Engineering, Austin, Texas.

This project will be accomplished in two phases. The first phase will be undertaken by the U. T. Austin Division of Physical Plant and will consist of the installation of two emergency generators, one near Jester Center (500KW) and one near Kinsolving Dormitory (150KW), and the installation of the primary distribution systems to the residence halls in the vicinity of each generator at an estimated total project cost of \$455,000.

The second phase will be the installation of the emergency lighting systems within the residence halls for which preliminary plans have been prepared by the Project Engineer. The estimated total project cost for this phase of the work is \$1,357,000 making a combined total project cost of \$1,812,000.

5. U. T. Austin - Scott House - Sweetbrush - Renovation and Additions (Project No. 102-582): Request for Approval of Final Plans for Additions; Approval of Increased Project Cost; Authorization to Advertise for Bids; Executive Committee to Award Contract; and Additional Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Cunningham that the U. T. Board of Regents:

- a. Approve the final plans for the additions to Scott House - Sweetbrush at U. T. Austin
- b. Approve an increase in the scope of the project to include the additions and the previously approved renovations at an estimated total project cost of \$1,100,000
- c. Authorize the Office of Facilities Planning and Construction to advertise for bids upon completion of final review
- d. Authorize the Executive Committee to award all contracts associated with this project within the authorized total project cost
- e. Appropriate \$990,000 from Permanent University Fund Bond Proceeds for total project funding. Previous appropriations have been \$110,000 from Permanent University Fund Bond Proceeds

This item requires the concurrence of the Finance and Audit Committee.

#### BACKGROUND INFORMATION

In August 1985, the U. T. Board of Regents approved final plans for the restoration and adaptive reuse of the Scott House - Sweetbrush. This historic structure will be the residence of the President of U. T. Austin. The estimated total project cost for renovation of the existing house and limited outside improvements was \$587,300 exclusive of furnishings and interior finishes.

Reassessment of the use of Scott House - Sweetbrush not only as a residence, but as a facility for official University functions, suggests that it will be prudent to proceed with the addition to the house at the same time as the repair and restoration work is done.

The estimated total construction cost would be \$917,000. This would include limited site work. The estimated total project cost would be \$1,100,000. The amount includes construction cost, professional fees, and other related project expenses.

6. U. T. Dallas - Multipurpose and Engineering Start-Up Facility: Request for Project Authorization; Appointment of Project Architect to Prepare Preliminary Plans; and Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Rutford that the U. T. Board of Regents:

- a. Authorize a project for the construction of a Multipurpose and Engineering Start-Up Facility at U. T. Dallas at an estimated total project cost of \$4,800,000
- b. Appoint a Project Architect from the list set forth on Page B&G - 10 to prepare preliminary plans and a detailed cost estimate for consideration at a future meeting
- c. Appropriate \$110,000 from Permanent University Fund Bond Proceeds for fees and administrative expenses through the completion of preliminary plans

#### BACKGROUND INFORMATION

The proposed project will provide approximately 60,000 gross square feet of moderately priced, multipurpose buildings containing classrooms, offices and dry laboratories.

Moderately priced buildings planned as multipurpose, flexible-use facilities will be essential to absorb the growth of students, faculty, and research as new permanent classroom and research buildings are planned and constructed. In addition, these facilities would be available to accommodate programs displaced during major rehabilitation projects in existing buildings, would allow for anticipated need for additional dry laboratory research space, and would provide for research activities currently housed in poor quality space. This latter move would allow for consolidation of all physical plant activities in a single site on campus rather than being scattered around the campus in temporary "space available" quarters.

This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

List of Firms for Consideration

<u>Project Architect</u>	<u>Representative Projects</u>
The O'Brien Partnership Arlington, Texas	Texas Christian University: School of Business Expansion* North Texas State University: Science Research Building* Alcon Laboratories Research Center, Fort Worth, Texas* U. T. Arlington: School of Nursing* *Worked as principal architect with another firm
F&S Partners, Inc. Dallas, Texas	U. T. Dallas: Fine Arts Studio; Student Union, Conference Center Texas College of Osteopathic Medicine, Fort Worth, Texas U. T. Austin: College of Fine Arts and Performing Arts Center UTHSC-Dallas: Ambulatory Care Teaching Center
Hatfield Halcomb Architects Dallas, Texas	Brookhaven Community College, Dallas, Texas: Learning Center; Business Building North Texas State University, Denton, Texas: Auditorium; Student Union Addition Stephen F. Austin University, Nacogdoches, Texas: Home Economics; Forestry; Music Buildings

7. U. T. Dallas: Recommendation for Approval to Enter Into a Ground Lease With a Private Entity for the Provision of Student Housing.--

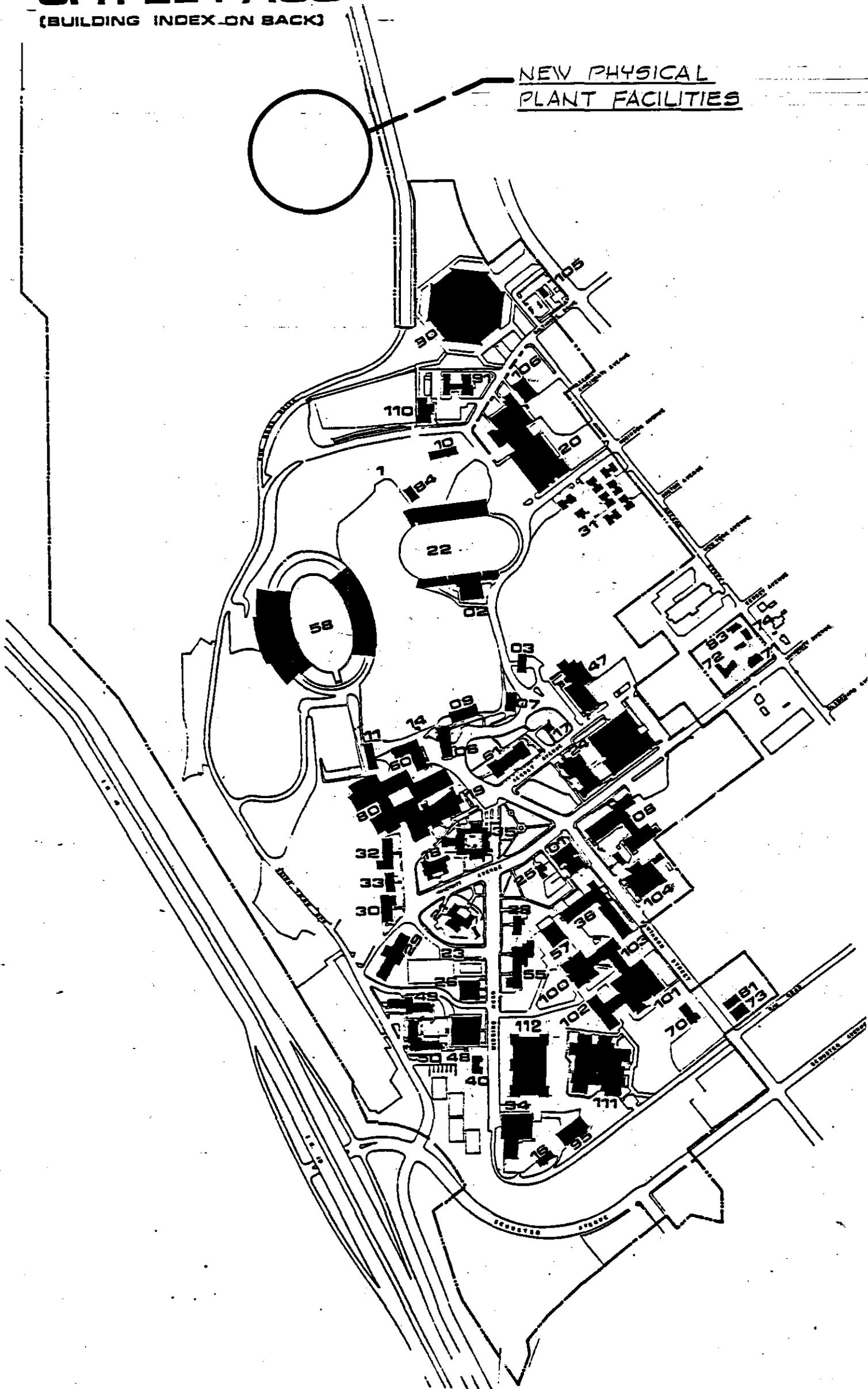
EXPLANATION

Administrative officers of U. T. Dallas and U. T. System Administration have been negotiating with representatives of First Southwest Equity Corporation, Dallas, Texas, to complete an agreement for joint development of a student housing apartment project. The plan includes the ground lease of a designated tract on the U. T. Dallas campus to First Southwest Equity Corporation, who would then arrange for the financing and construction of apartments for student and faculty housing. First Southwest would operate and manage the apartments under a Property Operating Agreement with the U. T. Board of Regents. The plan will also provide for the eventual acquisition of ownership of the apartments by the U. T. Board of Regents, either by exercise of an option to purchase (subject to approval by the Coordinating Board, Texas College and University System) or by reversion of the land and improvements at the expiration of the ground lease term.

# U. T. EL PASO

(BUILDING INDEX ON BACK)

NEW PHYSICAL  
PLANT FACILITIES



SUPPLEMENTAL MATERIAL  
BUILDINGS AND GROUNDS COMMITTEE  
December 5-6, 1985

7. U. T. Dallas: Recommendation for Approval to Enter into a Ground Lease With a Private Entity for the Provision of Student Housing.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Rutford, that the U. T. Board of Regents:

- a. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a ground lease agreement, leasing a 9.72-acre tract of the U. T. Dallas campus to Texas University Apartments I, Ltd., Dallas, Texas, as a site for a student housing apartment project substantially in the form attached hereto as Attachment A
- b. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a property operating agreement, providing for Texas University Apartments I, Ltd. to operate the apartment project substantially in the form attached hereto as Attachment B

It is further recommended that upon satisfactory conclusion of negotiations, represented by documents substantially in the form of Attachments A and B hereto, the Executive Committee of the U. T. Board of Regents be authorized to approve said documents.

BACKGROUND INFORMATION

Negotiations for the provision of student housing on the U. T. Dallas campus by a private entity have reached the point represented by the attached documents. The documents provide a generally acceptable framework for this project, but details remain to be worked out.

The proposed project includes a 35-year ground lease of a 9.72-acre tract of the U. T. Dallas campus to Texas University Apartments I, Ltd., which will provide for the financing and construction of eleven two and three story apartment buildings containing 200 units for student housing, as well as a clubhouse providing amenities for students and parking for 350 vehicles.

The ground lease provides that the U. T. Board of Regents will receive a percentage rental payment based on the net revenues from the lessee's operation of the apartments, and further grants the U. T. Board of Regents the right to purchase the apartments and all improvements on the leased premises (subject to approval by the Coordinating Board, Texas College and University System) at an appraised price at any time after the fifth year of the lease. If not purchased earlier, the improvements will revert to the U. T. Board of Regents at the expiration of the lease.

Under the proposal, management and operation of the student apartments will be the responsibility of Texas University Apartments I, Ltd. under a property operating agreement with the U. T. Board of Regents.

The Executive Vice Chancellor for Academic Affairs, the President of The University of Texas at Dallas, and the Office of General Counsel will make necessary presentations at the meeting on December 5.

THE BOARD OF REGENTS OF  
THE UNIVERSITY OF TEXAS SYSTEM  
FOR THE USE AND BENEFIT OF THE  
UNIVERSITY OF TEXAS AT DALLAS

LESSOR

AND

TEXAS UNIVERSITY APARTMENTS I, LTD.,  
a Texas limited partnership

LESSEE

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GROUND LEASE  
(Apartment Site)

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Dated: As of \_\_\_\_\_, 1985

  
- ATTACHMENT A

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GROUND LEASE

(Apartment Site)

THE STATE OF TEXAS

COUNTY OF DALLAS

THIS GROUND LEASE made and entered into as of the day of \_\_\_\_\_, 1985, by and between The Board of Regents of The University of Texas System, for the use and benefit of The University of Texas at Dallas ("Lessor"), and Texas University Apartments I, Ltd., a Texas limited partnership ("Lessee").

W I T N E S S E T H

ARTICLE I.

Lease, Term and Use

Section 1.1. Leased Premises. Subject to the terms, provisions and conditions hereinafter set forth, and in consideration of the covenants of payment and performance stipulated herein, Lessor has leased, demised and let, unto Lessee and the Lessee by these presents does hereby Lease and take from Lessor, the tract of land (herein called the "Land") situated in the City of Richardson, Dallas County, Texas, more particularly described in Schedule I attached hereto and for all purposes made a part hereof, together with all Improvements now or hereafter located thereon and all and singular the rights, easements, privileges and appurtenances thereunto attaching or in anywise belonging (hereinafter called the "Leased Premises") subject only to the matters set forth in Schedule II hereto to the extent the same affect the Leased Premises (the "Permitted Encumbrances").

TO HAVE AND TO HOLD the Leased Premises unto Lessee, and its successors in interest and assigns, for and during the term hereinafter set forth.

Section 1.2. Term. Unless sooner terminated under the provisions hereof, this Lease shall be and continue in full force and effect for a term commencing on the date hereof and expiring at midnight December 31, 2020.

Section 1.3. Use of Leased Premises. Lessee shall have the right to use the Leased Premises solely for the development and operation of the Apartment Improvements (hereinafter defined)

and ancillary uses including uses now or hereafter customarily related to or connected with the ownership and operation of a multi-family residential development. Lessor and Lessee covenant and agree that the Apartment Improvements shall be for the exclusive use and benefit of the students, faculty, administration, employees and guests of Lessor and such other persons as Lessor and Lessee shall mutually agree. Lessee shall comply with all Federal, State, County and City Laws and ordinances applicable to and as required for Lessee's use of the Leased Premises as such laws and ordinances are enforced by any governmental authority having jurisdiction with respect to the Leased Premises.

## ARTICLE II.

### Construction and Ownership of Improvements

Section 2.1. Construction of Improvements. The "Apartment Improvements" referred to in this Article II and elsewhere herein shall mean an apartment complex containing \_\_\_ units to be constructed on the Land by Lessee substantially in accordance with preliminary plans and specifications (herein referred to as the "Design Plan") prepared by Lessee's architect (the "Project Architect"), with such alterations thereto as may be made after initial completion of such Improvements pursuant to Section 7.2 hereof. When used herein the term "Commencement of Construction" of the Apartment Improvements shall mean the date on which labor is first performed on the Land in preparing the Land for construction, and Lessor and Lessee shall promptly thereafter enter into a recordable instrument substantially in the form of Schedule III attached hereto which shall conclusively establish the date of Commencement of Construction of the Apartment Improvements.

Prior to the commencement of the construction of the Apartment Improvements, Lessee shall submit to Lessor for its approval the Design Plan for the Apartment Improvements. After the Design Plan is approved by Lessor, which approval shall not be unreasonably delayed or withheld, Lessee shall cause plans and specifications for the Apartment Improvements to be prepared by the Project Architect without material deviation from the Design Plan (such plans, as modified with Lessee's consent or approval herein referred to as "Plans and Specifications").

Lessee shall, at Lessee's cost, risk and expense, construct, erect and complete the Apartment Improvements upon the Land. The Apartment Improvements shall be constructed in a good and workmanlike manner substantially in compliance with the Plans and Specifications.

If Commencement of Construction of the Apartment Improvements has not occurred on or before December 31, 1986, Lessor may treat such event as an event of default under this Lease. After Commencement of Construction, Lessee covenants and agrees to complete construction of the Apartment Improvements with reasonable diligence, subject to the provisions of this Article II, without material deviation from the Plans and Specifications for the Apartment Improvements. The date on which construction of the Apartment Improvements is completed (the "Completion Date") shall be the date as certified by the Project Architect as the date on which the Apartment Improvements have been completed substantially in accordance with the Plans and Specifications therefor.

Lessor agrees that in connection with the construction of the Apartment Improvements, Lessee shall have the right to construct the Apartment Improvements in a manner which overlaps or extends beyond the boundaries of the Land onto adjoining properties owned or leased by Lessee. If the Apartment Improvements are constructed upon the Land and other property, Lessor agrees, upon request by Lessee, to join an operating agreement approved by Lessee to set forth the ownership and operating rights that will apply to the owners of the Apartment Improvements after the expiration or termination of this Lease.

Section 2.2. Ownership of Improvements. All of the Apartment Improvements, and all other Improvements of any nature on the Land, shall be owned by and shall be the property of Lessee during the term of this Lease. The term "Improvements" shall mean the Improvements from time to time on the Land, including, without limitation, the Apartment Improvements and alterations to the Apartment Improvements pursuant to the provisions of this Lease.

Upon the termination of this Lease, whether by expiration of the term hereof or by reason of default on the part of Lessee, or for any other reason whatsoever, the Apartment Improvements, and all parts thereof, and any other Improvements erected on the Land by Lessee in the future during the term of this Lease, shall merge with the title to the Land, free of any provisions of Article X hereof with respect to the rights of Leasehold Mortgagees holding Leasehold Mortgages, as both such terms are hereinafter defined, and tenants under subleases) claiming under or through Lessee (except for purchase money security interests in equipment and except for trade fixtures and personal property of sublessees of space in the Improvements that can be removed without damage to the Improvements). Subject to the provisions of Articles VI and XI hereof, Lessee shall deliver

up the Leased Premises to Lessor in reasonably good condition, actual wear and tear excepted, upon the termination of this Lease, Lessee, at Lessor's request, will execute a recordable instrument evidencing the termination of this Lease and stating the termination date.

Section 2.3. Lessor's Option to Purchase Apartment Improvements. At any time after the expiration of the fifth (5th) calendar year during the term of this Lease, Lessor shall have the option, but not the obligation, exercisable upon ninety (90) days prior written notice to Lessee, to purchase the Apartment Improvements for the cash purchase price or such other consideration as Lessee may specify, payable in full at the closing of such purchase, set forth on Schedule IV attached hereto and made a part hereof.

Section 2.4. Force Majeure. Lessee's obligations hereunder relative to the timely construction, restoration, repair, operation and maintenance of the Apartment Improvements as provided for in this Lease shall be extended for the period that such performance is prevented by failure of Lessor to perform actions hereunder required to be performed by Lessor; any arbitration, legal proceeding or other litigation against Lessee relative to the construction, restoration or repair of the Apartment Improvements in which Lessee is involved in good faith and not merely for purposes of delay; acts of God, force majeure, strikes, labor disputes, work stoppages, riots, insurrections, or by the act of any governmental agency or authority restricting or curtailing the erection, restoration or repair of the Apartment Improvements on the Land; or other causes beyond the reasonable control of Lessee, including, but not limited to inclement weather or the inability of Lessee to procure and obtain building materials as a result of any order, law or decree of any governmental authority or agency; or any other Unavoidable Delay. "Unavoidable Delay" shall mean all failures or delays in a party's performance of its obligations hereunder not within such party's reasonably control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation threatened, instituted against or defended by such party, in good faith, and not merely for purposes of delay, acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, works stoppages, riots, insurrections, breakage or accident to machines or lines of pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the construction of the Apartment Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, inability to procure and obtain needed building materials

(provided such party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials if practical) whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause whether of the kind herein referred to or otherwise; provided, that such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay. The inability of a party to secure funds required to perform its agreements hereunder shall not constitute Unavoidable Delay unless by virtue of governmental regulation it is impossible to obtain Mortgage funds from an institutional lender.

### ARTICLE III.

#### Rental

Section 3.1. Base Rental. Lessee covenants and agrees to pay Lessor the sum of Four Hundred Eighty-Six Dollars (\$486.00) (calculated on the basis of \$1.00 per acre of the Land) multiplied by the number of calendar years of the term of this Lease as full payment of rental (such amount is herein called "Base Rental"). Base Rental shall be due and payable in full upon the execution of this Lease by Lessor and Lessee.

Section 3.2. Percentage Rental. Lessee agrees to pay to Lessor, as additional Rental (such amounts herein called the "Percentage Rental") beginning on the date which is ninety (90) days following the end of the calendar year in which the Apartment Improvements are completed and operational and on the date which is thirty (30) days following each calendar year thereafter during the term of this Lease as set forth in Section 1.2, an amount equal to twenty five percent (25%) of the Net Revenues from the operation of the Apartment Improvements during said calendar year.

Each Percentage Rental payment shall be due and payable within ninety (90) days after the close of each calendar year during the term of this Lease; provided, however, if within such ninety (90) day period after the close of each fiscal year throughout the term of this Lease the amount of Percentage Rental then due and payable cannot accurately be determined because the Net Revenues generated by the Apartment Improvements for such calendar year have not been finally calculated, Lessee shall pay an amount reasonably estimated to be the Percentage Rental payment then due and within one hundred twenty (120) days after the close of each calendar year throughout the term of this

Lease, Lessee shall pay to Owner or Owner shall refund to Lessee any amounts overpaid or underpaid by Lessee which a final calculation of the Net Revenues of the Apartment Improvements shall indicate so that the correct amount of Percentage Rental shall be paid for the applicable calendar year throughout the term of this Lease.

As used herein, the term "Net Revenues" shall mean all revenues and receipts of any kind received by Lessee directly or indirectly from or in connection with the operation of the Apartment Improvements net of:

- (i) all real estate, personal property, utility, business or occupation taxes and other taxes, imposed by any governmental authority which at any time may be assessed, levied or imposed on or with respect to the Apartment Improvements;
- (ii) payments made in accordance with this Lease other than the Percentage Rental;
- (iii) payments under equipment leases or other leases of personal property;
- (iv) all regularly scheduled payments of principal and interest due and payable and paid during the term of this Lease in respect of indebtedness secured by any mortgage on the Apartment Improvements, to the extent that the proceeds have been utilized by Lessor solely for the purpose of financing the acquisition, construction and equipping of the Apartment Improvements;
- (v) all expenses reasonably incurred by Lessee in operating the Apartment Improvements as such expenses are calculated by generally accepted accounting principles; and
- (vi) all other expenses reasonably incurred by Lessee in owning and operating the Apartment Improvements including reserves established by Lessee in connection with such ownership and operation.

Within ninety (90) days after the end of each calendar year during the operation of the Apartment Improvements, Lessee shall cause to be delivered to Lessor financial statements in respect of such calendar year consisting of a balance sheet and related statement of profits and loss together with a source and

application of funds analysis for such calendar year, as prepared in accordance with generally accepted accounting principles consistently applied. The annual financial statement shall also include or be accompanied by a statement showing the calculation of Percentage Rental for the preceding calendar year. Unless Lessor refuses to concur with the accuracy of such financial statements within sixty (60) days from the date such financial statements are delivered to Lessor, such financial statements shall be conclusive upon the parties hereto and shall be deemed to be a final determination of the Percentage Rental for the preceding calendar year. Should Lessor refuse to concur with the accuracy of such financial statements and wish to audit such financial statements, it may do so (provided that Lessor notifies Lessee within such sixty (60) day period of its refusal to concur with the accuracy of such financial statements) at its sole cost and expense and should any such audit calculate that the Percentage Rental for the preceding calendar year should be greater or less than the Percentage Rental actually paid to Lessor by Lessee in respect of such calendar year, Lessee shall immediately pay to Lessor any sum indicated by such audit which is due and owing to Lessor as Percentage Rental and any sum due and owing from Lessor to Lessee because of Lessee's overpayment of Percentage Rental shall be immediately paid by Lessor to Lessee.

Section 3.3. Rental After Foreclosure. From and after the date on which a Leasehold Mortgagee (or other purchaser at Foreclosure) has acquired the leasehold estate under this Lease by Foreclosure of a Leasehold Mortgage or a Leasehold Mortgagee has obtained a new lease under the provisions of Section 10.2 hereof, the Base Rental and Percentage Rental provided for herein shall be payable by the Mortgagee Lessee. "Leasehold Mortgagee" shall mean any Mortgage, deed of trust or similar lien on the leasehold estate of Lessee hereunder. "Mortgagee Lessee" shall mean any Leasehold Mortgagee or other purchaser at a Foreclosure or other sale pursuant to the terms of a Leasehold Mortgage that has acquired the leasehold estate under this Lease by Foreclosure or a Leasehold Mortgagee that has obtained a new lease under the provisions of Section 10.2 hereof, or the successors or assigns of such party so acquiring the Leasehold estate under such new lease. "Foreclosure" shall mean any judicial or non-judicial foreclosure (or similar enforcement proceeding) of a Leasehold Mortgage, or acceptance of a deed in lieu of foreclosure by a Leasehold Mortgagee.

Section 3.4. No Demand Required; Interest. The Rental shall be in addition to all other payments to be made by Lessee as herein provided and shall be paid to Lessor in lawful money of the United States of America without notice, demand or abatement. If Lessee fails to pay an installment of Rental due under the terms hereof by the tenth (10th) day after such installment is due, such amount which continues to be past due after such ten (10) days shall bear interest at the rate of eighteen percent (18%) per annum from the date such installment was originally due until the date it is paid, and shall be payable as additional rent.

Section 3.5. Place and Manner of Payment. Subject to the further provisions hereof, the Rental hereinabove provided for shall be payable to the Lessor at the original or changed address of Lessor called for in Article XV hereof or to such other person or persons at such address or addresses as Lessor may designate from time to time in writing (subject to the provisions of Article XV). In addition to other proper methods of payment, all payments of Rental and other sums payable to Lessor by Lessee under this Lease may be made, and shall be deemed to have been properly made, by the mailing or delivery to Lessor of Lessee's check or draft in the amount of such payment, and shall be deemed timely made if received by Lessor on or before the due date thereof; provided that if such check or draft be not paid and honored upon presentation thereof, duly endorsed, such check or draft shall not constitute payment.

Section 3.6. Net Lease. This Lease shall be deemed and construed to be a "net lease", and the Lessee shall pay to the Lessor the Rental and other payments hereunder, without abatement, deduction or set-off; and under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the present contemplation of the parties, shall the Lessor be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder except as herein otherwise expressly set forth.

#### ARTICLE IV.

##### Impositions and Utilities

Section 4.1. Definition of Impositions. The term "Impositions" shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind

and nature whatsoever, which shall or may during the term of this Lease be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become due or payable out of or on account of or become a lien on the Leased Premises or any part thereof, or the Improvements now or hereafter comprising a part thereof, or the appurtenances thereto or the sidewalks, streets or vaults adjacent thereto, or the rent and income received by or for the account of Lessee from any subtenants or for any use or occupation of the Leased Premises, and such franchises, licenses and permits as may be appurtenant to the use of the Leased Premises, or any documents to which the Lessee is a party creating or transferring an interest or estate in the Leased Premises, payable to any governmental body; but shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes or similar tax of Lessor, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease, by any municipality, county or state, the United States of America or any governmental body; provided, however, that if at any time during the term of this Lease, the present method of taxation or assessment shall be so changed that the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and Improvements thereon shall be discontinued and as a substitute therefor, taxes, assessments, levies, Impositions, or charges shall be levied, assessed and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, Impositions or charges, to the extent so levied, assessed or imposed, shall be deemed to be included within the term "Impositions".

Section 4.2. Lessor's Payments of Impositions on Land. Lessor covenants and agrees with Lessee, its successors and assigns, to pay to the appropriate taxing authority all ad valorem taxes against the Land or Impositions which are not the obligation of the Lessee under the provisions of Section 4.3 hereof regarding proration of taxes between Lessor and Lessee.

Section 4.3. Lessee's Payment of Impositions. As additional rental during the term of this Lease, Lessee will pay or cause to be paid as and when the same shall become due, subject to the further provisions hereof, all the Impositions assessed against (i) the Apartment Improvements or other Improvements from time to time located on the Land, (but excluding all Impositions payable by Lessor under Section 4.2), (ii) all fixtures, equipment and machinery therein owned by Lessee, and

(iii) the Land (to the extent not payable by Lessor under Section 4.2), except that:

- (a) All Impositions that are payable by Lessee pursuant hereto for the tax year in which this Lease begins as well as during the year in which the term of this Lease expires shall be apportioned so that Lessee shall pay its proportionate share of the Impositions that are payable by Lessee pursuant hereto which are payable in the year in which the term of this Lease begin and in the year in which the term of this Lease expires, and Lessor shall pay its proportionate part.
- (b) Where any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay such Imposition (or proportionate part thereof) in installments as and when such installments become due.
- (c) The provisions of this Article shall never be construed as imposing any liability upon Lessee for the payment of any taxes, assessments or other charges imposed by city, county, state or federal laws or ordinances or any other laws or ordinances, upon the income of Lessor, or upon the transfer or passing of any interest owned by Lessor in the Leased Premises, generally known as income, inheritance, estate, succession or transfer taxes, nor shall Lessee be obligated to pay any withholding, profit or revenue tax or charge levied upon the rents payable to Lessor under the terms of this Lease, or any corporate franchise tax or corporate license fee which may be levied upon or against Lessor or any successor corporate lessor.

Section 4.4. Tax Receipts Upon Request. Notwithstanding any other provision in this Article IV to the contrary, Lessor shall pay all Impositions which Lessor is obligated to pay under Section 4.2 directly to the taxing or other public authority and Lessee shall pay all Impositions which Lessee is obligated to pay under Section 4.3 directly to the taxing or other public authority and Lessee and Lessor shall, upon request of the other party or the holder of any Leasehold Mortgage, exhibit and deliver to Lessee, Lessor or the holder of any Leasehold Mortgage photostatic copies of the receipted bills or other evidence satisfactory to Lessee, Lessor or the holder of

any Leasehold Mortgage showing such payment promptly after such receipts shall have been received by Lessee or Lessor, and upon the written request of the other party, Lessee or Lessor shall exhibit and deliver to Lessee or Lessor evidence of payment when due of all other Impositions which Lessee or Lessor is obligated to pay under Sections 4.2 and 4.3.

Section 4.5. Tax Contests. Lessee may, if it shall so desire, contest the validity or amount (including the assessed valuation upon the Leased Premises) of any Imposition for which Lessee is responsible in whole or in part. In the event of any such contest, the payment of a contested Imposition may be deferred during the pendency of such contest, if diligently prosecuted, and Lessor agrees to join such contest upon request by Lessee; provided that, prior to the initiation of such contest and in any event, within thirty (30) days after the contested Imposition was initially due and Payable, the Lessee shall have deposited with the holder of the Leasehold Mortgage of first priority, or if there be no Leasehold Mortgage then with a national bank having its principal place of business in Dallas County, Texas, selected by Lessee (herein called "Imposition Trustee") an amount sufficient to pay such contested Imposition together with the interest and penalties thereon and all fees and expenses of the Imposition Trustee, if any (as reasonably estimated by the Imposition Trustee), which amount shall be applied to the payment of such contested Imposition when the amount thereof shall be finally fixed and determined; provided, however, that the application of such deposited funds toward the payment of such contested Imposition shall not alter or in anywise affect the obligations of Lessor and Lessee with regard to determining the party responsible for such payment as set forth in Sections 4.2 and 4.3. In lieu of such cash deposit, the Lessee may deliver to the Lessor a surety company bond in form and substance reasonably satisfactory to Lessor. Nothing herein contained, however, shall be so construed as to allow such items to remain unpaid for such length of time as shall permit the Leased Premises, or any part thereof, to be sold by any governmental city or municipal authority for the non-payment of same. If the amount so deposited as aforesaid shall exceed the amount of such payment as finally adjudged to be due, the excess shall be paid to the Lessee, or, in case there shall be any deficiency, the amount of such deficiency shall be paid by party liable for such Imposition as herein provided, and, if not so paid, may be paid by the other party as provided in Section 4.10. Within thirty (30) days after the amount of such contested Imposition is finally determined to be due, the party liable for such Imposition shall pay the amount so determined, together with the penalties, interest and expenses of such contest.

Section 4.6. Evidence of Impositions Payable. The certificate, advice, bill or statement issued or given by the appropriate officials authorized or designated by law to issue or give the same or to receive payment of any Imposition, of the existence, non-payment or amount of such Imposition shall be prima facie evidence for all purposes of the existence, non-payment or amount of such Imposition.

Section 4.7. Rendition. Lessee shall have the right to render the Leased Premises, the Land and/or the Apartment Improvements for all taxing jurisdictions imposing Impositions, if any, and Lessor agrees to join in Lessee's rendering if requested to do so by Lessee.

Section 4.8. Utilities. Lessee shall pay (or cause to be paid or discharged) all charges to Lessee for gas, electricity, light, heat or power, telephone and other communication services used, rendered or supplied upon or in connection with Lessee's use of the Leased Premises, and all water and sewer service charges levied or charged against the Leased Premises during the continuance of this Lease; however, nothing herein shall obligate Lessee to pay utility or other charges by the suppliers of such utilities or services directly to a subtenant of the Leased Premises.

Section 4.9. Expenses of Contest. All costs and expenses of any contest of any Imposition pursuant to this Article IV by Lessee shall be paid by Lessee.

Section 4.10. Option of other Party to Pay Impositions. If either Lessor or Lessee shall fail to pay any of such Impositions for which it is liable, or its proportionate part thereof, as the case may be, before the same becomes delinquent, or fails to notify the other party of its intention to contest the same prior to such delinquency, or fails to pay contested Impositions as provided for in Section 4.5 hereof, such other party may, at such other party's election (but shall not be obligated to), upon ten (10) days prior written notice to such other party, pay such Impositions with any interest and penalties due thereon, and the amount so paid by such other party shall be repayable to it by the party failing to pay on demand, together with interest thereon at the rate of 18% per annum from the date of such payment until repaid; provided, however, that before Lessor may pay any such Imposition on behalf of the Lessee, the Lessor shall give the Lessee notice of such intended payment in the same manner as provided herein for any default by Lessee.

## ARTICLE V.

Insurance

Section 5.1. Casualty Insurance. During the term of this Lease, Lessee will keep and maintain (or cause to be kept and maintained) in force a policy of insurance on the Apartment Improvements or any replacements or substitutions therefor with deductibles in an amount which Lessee may reasonably desire (not exceeding five percent of the face amount of such insurance policy unless Lessor approves a larger deductible), from and after commencement of construction of the Apartment Improvements, against Insurable Risks, and in builder's risk completed value form during construction, in amounts sufficient to avoid the effects of co-insurance provisions of policies, that is, not less than ninety percent (90%) of actual replacement cost (exclusive of cost of excavation, foundations, footings below the surface of the ground or below the lowest basement level and costs of underground flues, pipes and drains). Such "actual replacement cost" shall be confirmed from time to time (but not more frequently than once in any twelve calendar months) at the request of Lessor, by one of the insurers or, at the option of Lessee, by an appraiser, engineer, architect or contractor approved by the issuer of such insurance policy and paid by Lessee;

"Insurable Risks" shall mean those risks covered by the Texas Standard Form Fire and Extended Coverage Policy (including fire and direct loss by windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft and Land vehicles; sonic shock wave; and leakage from fire protective equipment).

Such insurance shall be secured and maintained with a company or companies reasonably satisfactory to the Leasehold Mortgagee holding the Leasehold Mortgage of first priority (or if there be no Leasehold Mortgagee, then reasonably satisfactory to Lessor), and shall be carried in the name of both Lessor and Lessee, as their respective interests appear, shall contain a mortgage clause acceptable to Lessee's Leasehold Mortgagees, but shall be payable to the Leasehold Mortgagee holding the Leasehold Mortgage of first priority who shall agree to receive and disburse all proceeds of such insurance as set forth in Article VI hereof. Lessee agrees to furnish Lessor, and any Leasehold Mortgagee, with duplicate originals or copies of all such policies (or certificates evidencing such insurance), and to furnish and maintain with each of such parties, at all times, a certificate or certificates of the insurance carrier or carriers certifying that such insurance will not be cancelled without at least thirty (30) days' advance written notice to each of such parties.

Notwithstanding the forgoing provisions hereof, Lessee shall not be obligated to maintain (or cause to be maintained) insurance policies with respect to Improvements constructed, owned and insured (or self-insured) by a sublessee under the terms of a sublease which Lessor has recognized pursuant to a non-disturbance agreement between Lessor and such sublessee.

Section 5.2. Indemnity. Lessee shall indemnify and hold harmless Lessor and its successors (the "Indemnified Parties"), from all claims, suits, actions and proceedings ("Claims") whatsoever which may be brought or instituted on account of or growing out of any and all injuries or damages, including death, to persons or property relating to the use of occupancy of the Leased Premises (including without limitation the construction, maintenance or operation of the Apartment Improvements), and all losses, costs, penalties, damages and expenses, including but not limited to attorneys' fees and other costs of defending against, investigating and settling the Claims; provided, however, that the indemnity with respect to injuries or damages caused by the negligence or willful misconduct of Lessor, its agents or employees. Lessee shall assume on behalf of the Indemnified Parties and conduct with reasonable diligence and in good faith the defense of all Claims against the Indemnified Parties, whether or not Lessee is joined therein; provided, however, without relieving Lessee of its obligations under this Agreement, the Indemnified Parties, at their election may defend or participate in the defense of any or all of the Claims with attorneys and representatives of their own choosing. Maintenance of the insurance referred to in this Agreement shall not affect Lessee's obligations under this Section 5.2 and the limits of such insurance shall not constitute limit on Lessee's liability under this Section 5.2 (but the provisions hereof shall not alter the limitations of liability contained in Article IX hereof); provided, however, that Lessee shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of Lessee (or recovered in respect of any insurance carried by Lessor) and either (i) paid to Lessor or (ii) paid for Lessor's benefit in reduction of any liability, penalty, damage, expense or charge imposed upon Lessor in connection with the Claims. Lessor covenants and agrees that Lessee shall have the right to contest the validity of any and all such Claims of any kind or character and by whomsoever claimed, in the name of Lessee or Lessor, as Lessee may deem appropriate, provided that the expenses thereof shall be paid by Lessee, or Lessee shall cause the same to be paid by its insurer.

Section 5.3. Liability Insurance. During the term of this lease, Lessee agrees to secure and maintain in force, comprehensive general liability insurance issued by a company or companies reasonably satisfactory to Lessor, with limits of not less than \$10,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence; nor less than \$300,000 with respect to property damage in any one accident or occurrence. Lessee agrees to furnish and thereafter maintain with Lessor certificates of insurance to the effect that the above policy or policies of insurance are in force and that the same will not be cancelled without thirty (30) days' advance written notice to Lessor.

Section 5.4. Expenses of Indemnity. All costs and expenses of Lessee in fulfilling any of its obligations or agreements hereinabove set forth, including its indemnity agreements to the extent same are not covered and paid by insurance policies maintained by Lessee, and the cost of any judgment or settlement, attorneys' fees and insurance deductibles, shall be operating expenses of Lessee for the year in which the expenditure occurs.

Section 5.5. Subrogation. Anything in this Lease to the contrary notwithstanding, to the extent permissible under the laws of the State of Texas, Lessor and Lessee each hereby waives any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees, for any injury, death, loss or damage that may occur to persons or the Apartment Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which could be insured against under the terms of the policies of casualty insurance Lessee is required to provide then in effect hereunder, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees, and covenants that no insurer shall hold any right of subrogation against such other party. All casualty insurance obtained by either Lessee or Lessor hereunder, expressly including the property damage insurance described in this Article V, shall contain, if reasonably obtainable, provisions whereby the insurer releases all rights of subrogation against both Lessor and Lessee and any and all sublessees. The waiver of subrogation provided for herein shall be fully effective so long as such waiver does not invalidate or impair the coverage of any insurance provided for herein.

Section 5.6. Blanket Policies. Any insurance required to be maintained herein by Lessee may be effected under blanket insurance policies relating to the Leased Premises and other properties.

## ARTICLE VI.

Destruction of Improvements

Section 6.1. Lessee's Obligation to Restore. Should the Apartment Improvements or any other Improvements constructed by Lessee hereafter situated on the Land (excluding herefrom Improvements constructed by a sublessee of Lessee), or fixtures therein or thereon, during the term of this Lease be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever which is an Insurable Risk, Lessee shall promptly repair, replace, restore or reconstruct the same in substantially the form in which the same existed prior to any such casualty (subject to the provisions of Section 10.3 hereof) and with at least as good workmanship and quality as the Improvements being repaired or replaced, all in compliance with the provisions of Section 7.2 hereof but with such alterations or modifications to the restored Improvements as may be consistent with the further terms and provisions hereof; provided, however, that Lessee shall not be obligated to repair, replace or reconstruct such Improvements unless (i) insurance proceeds received by Lessee from the policies of insurance maintained with respect to such Improvements (plus the applicable deductible under such policies) are sufficient to pay the costs and expenses of such repair, replacement and reconstruction and (ii) such damage resulted from an Insurable Risk (it being understood that Lessee has no obligation to repair or reconstruct Improvements damaged by a risk or casualty that is not an Insurable Risk). Should the cost of said repairs, restoration and rebuilding be estimated by Lessee's architect (which estimate must be made within a reasonable time under the circumstances) to be in excess of said insurance proceeds (plus the applicable deductibles under such policies) and Lessee fails to commence such repairs, restoration and rebuilding within a reasonable time, in no event exceeding one hundred eighty (180) days after the cost of such repairs, restoration and rebuilding is known to Lessee and the amount of such available insurance proceeds is determined, Lessor shall have the option to terminate this Lease by written notice to Lessee subject, however, to the rights of any Leasehold Mortgagee as set forth in Article X hereof. Notwithstanding any provision to the contrary in Article IX or elsewhere in this Lease, the termination option of Lessor set forth in the preceding sentence shall be the sole and exclusive recourse that Lessor may take against Lessee as a result of Lessee's failure to commence (or complete) such repairs, restoration and rebuilding is a breach of Lessee's obligation hereunder when insurance proceeds are sufficient for restoration or is a result of Lessee's election not to rebuild

after determining that available insurance proceeds are insufficient to cover the costs of repairs and restoration.

In the event of a termination of this Lease by Lessor as a result of Lessee's failure to commence (or complete) restoration for any of the reasons or under any of the circumstances set forth above, this Lease shall terminate and come to an end upon Lessor's termination as aforesaid as though the date of such termination by Lessor were the date of expiration of the term of this Lease, and all insurance proceeds shall be payable as follows: first to discharge any Leasehold Mortgages; second, to Lessor in an amount sufficient to pay the cost to clear the Land of the partially damaged or destroyed Improvements; third to Lessee in an amount equal to Lessee's equity invested in project plus the then present value (discounted at 10% per annum) of the leasehold estate hereunder for the balance of the stated term of this Lease based upon average net cash flow for preceding three years; and the balance to be paid to Lessor.

Section 6.2. Deposit of Funds for Restoration. So long as there exists a Leasehold Mortgage, all fire and extended coverage insurance proceeds shall be deposited with the holder of such Leasehold Mortgage having the first lien priority. If there be no Leasehold Mortgage, such proceeds shall be deposited with a national bank in Dallas, Texas selected by Lessee ("Qualified Bank"). In any event such proceeds shall be received, held or paid out by such Leasehold Mortgagee, if any, or by such Qualified Bank, and shall be disbursed for restoration of the casualty damages as follows:

- (a) Lessee must first secure Lessor's and any Leasehold Mortgagee's reasonable approval of the Plans and Specifications for the proposed restorative work if such Plans and Specifications or restoration deviate materially from the Plans and Specifications for the Improvements which have been so damaged. The insurance proceeds will be paid to Lessee by the first lien Leasehold Mortgagee, if any, or disbursed by such Qualified Bank, if any, after delivery of evidence reasonably satisfactory to such Leasehold Mortgagee, if any, and to Lessor that (a) such repair, restoration or rebuilding has been completed and effected in compliance with this Lease, and (b) no mechanic's or materialmen's liens have attached to the fee or leasehold estate; or at the option of Lessee, such proceeds may be advanced by such Leasehold Mortgagee or disbursed by such Qualified Bank in reasonable installments. Each

such installment (except the final installment) is to be advanced by such Leasehold Mortgagee, if any, or disbursed by such Qualified Bank, if any, in an amount equal to the cost of construction of the work completed (including Lessee's overhead directly related or reasonably allocated thereto) since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by the Lessee's architect in charge, less statutorily required retainage in respect of mechanic's and materialman's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to any such Leasehold Mortgagee that no lien affidavit has been filed in Dallas County for any labor or material in connection with such work. The final payment or disbursement, which shall be in an amount equal to the balance of such proceeds, shall then be made upon the architect's proper certificate of completion and upon receipt of evidence required by (i)(a) and (i)(b) above, but in no event shall such Leasehold Mortgagee, if any, or such Qualified Bank, if any, be required to advance more than the balance of such insurance proceeds remaining on deposit within such disbursing agent;

- (b) Should the cost of said repairs, restoration or rebuilding as estimated by Lessee's architect be in excess of said insurance proceeds and Lessee has nevertheless elected to repair and restore such Improvements, or should the actual cost determined after Lessee has commenced restoration be in excess of said proceeds, Lessee will, upon demand by any such Leasehold Mortgagee, deposit the necessary funds to cover such deficiency with such Leasehold Mortgagee;
- (c) Any or all of such insurance proceeds in excess of the cost of such repairs, restoration or rebuilding may, if any Leasehold Mortgage so provides, be applied in reduction of unpaid principal and other indebtedness due under such Leasehold Mortgage in the order of priority of such Leasehold Mortgages; provided, however, that no insurance proceeds in excess of the cost of such repairs, restoration or rebuilding shall be applied to reduce the amount of any Leasehold Mortgage unless the architect has delivered to Lessor a certificate to the effect

that such repairs, restoration or rebuilding have been completed substantially in accordance with Plans and Specifications therefor. In the event that there is no Leasehold Mortgage on Lessee's interest, or no Leasehold Mortgagee elects to apply any such excess, the amount of excess shall be paid over to Lessee.

Section 6.3. No Abatement. In the event of any such casualty, the Rental and other payments herein provided for shall not be abated, and the happening of any such casualty shall not cause a termination of this Lease except as herein provided.

#### ARTICLE VII.

##### Use, Repairs and Alterations

Section 7.1. Use of and Repairs to Leased Premises. Throughout the term of this Lease, Lessee shall keep (or obtain from sublessees under subleases appropriate covenants or agreements to keep) all Improvements hereafter situated upon the Land, and all appurtenances thereunto belonging, in good and safe condition and in reasonable repair, and Lessee shall conform to and comply with all valid and enforced ordinances (as modified by variances applicable to the Land and Improvements thereon), regulations or laws (federal, state or municipal) affecting the Leased Premises, and shall indemnify and hold Lessor harmless from any and all penalties, damages and charges imposed or incurred for any violation of such ordinances, regulations or laws relating to Lessee's use and operation of the Leased Premises. Lessor covenants and agrees that Lessee shall have the right to contest any such asserted or alleged violations of such ordinances, regulations or laws and the expenses of such contest shall be paid by Lessee, or Lessee shall cause the expenses of such contest to be paid by its insurer. It is understood, however, that Lessee shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of either Lessee or Lessor, and (i) paid to Lessor or (ii) paid for Lessor's benefit in reduction of any such liability, penalties, damages, expense or charges imposed upon Lessor. It is further understood that the provisions hereof are subject to the limitations of liability and other provisions of Article IX hereof.

Section 7.2. Alterations. Lessee shall have the right, from time to time, to make additions, alterations and changes (hereinafter sometimes referred to collectively as "Alterations")

in or to the Apartment Improvements (which term shall, when used in this Section 7.2, include any replacement or substitution therefor), provided that no Event of Default (as defined herein) shall exist by Lessee in the performance of any of Lessee's covenants or agreements in this Lease, subject, however, to the following:

- (a) no structural Alterations of the original facade or exterior of the Apartment Improvements shall be commenced except after receipt of Lessor's written approval of such Alterations, which approval Lessor agrees not to unreasonably withhold;
- (b) no Alterations shall be made which would impair the structural soundness of the Apartment Improvements;
- (c) no Alterations shall be undertaken until Lessee shall have procured and paid for, so far as the same may be required from time to time, all permits, licenses and authorizations of all municipal departments and governmental subdivisions having jurisdiction and all required consents of Leasehold Mortgages having any interest in or lien upon the Leased Premises. Lessor shall join, but without expense to Lessor, in the application for such permits, licenses or authorizations whenever such action is necessary and is requested by Lessee;
- (d) any Alterations shall be commenced and completed within a reasonable time (subject to Unavoidable Delays and other matters referred to in Section 2.4 hereof) and in a good and workmanlike manner and in substantial compliance with all applicable permits, licenses and authorizations and buildings laws and with all other applicable enforced laws, ordinances, orders, rules, regulations and requirements of federal, state and municipal governments, departments, commissions and boards;
- (e) if any involuntary liens for labor and materials supplied or claimed to have been supplied to the Leased Premises shall be filed, Lessee shall pay or bond around such liens to Lessor's reasonable satisfaction or otherwise obtain the release or discharge thereof at least sixty (60) days prior to the time that Lessor's interest in the Land and/or Apartment Improvements may become subject to forced sale with respect to such involuntary liens;

- (f) Lessee shall obtain workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the leased Premises; and
- (g) Lessee will upon demand by Lessor give reasonably satisfactory proof or assurances to Lessor that the funds required to pay for the Alterations are or will be available to Lessee for such purpose.

Section 7.3. No Abatement. In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of the Rental and other charges herein reserved or required to be charged by reason of such Alterations, nor shall Lessee, by reason thereof, be released of or from any other obligations imposed upon Lessee under this Lease.

Section 7.4. Lessee Has No Authority to Bind Lessor's Interest. Neither Lessee nor any of Lessee's agents, employees, representatives, contractors or subcontractors shall have any power or authority to do any act or thing or to make any contract or agreement which shall result in the creation of any mechanics' lien or other lien or claim upon or against Lessor or Lessor's interest in the Leased Premises, and Lessor shall have no responsibility to Lessee or to any contractor, subcontractor, supplier, materialman, workman or other person, firm or corporation who shall engage in or participate in any alterations. Lessee shall have the right to contest any mechanics' lien or other involuntary lien in good faith and by proper proceedings; however, in any event, Lessee shall be obligated to bond or otherwise discharge of record any such lien asserted against the interest of Lessor as a result of Lessee's work on the Leased Premises at least sixty (60) days prior to the time Lessor's interest might be claimed to be subject to forfeiture or forced sale as a result of any such lien claim.

#### ARTICLE VIII.

##### Assignment, Subletting and Mortgage; Obligations After Assignment or Termination

Section 8.1. Lessee May Assign, Sublet and Mortgage. Lessee may freely assign, transfer, sublet, hypothecate, pledge or mortgage the leasehold estate created by this Lease without

Lessor's prior written consent (except as expressly required in this Section 8.1), subject only to the provisions of this Section 8.1.

- (a) Lessee shall not sell, assign, transfer or convey (hereinafter referred to as "Transfer") the leasehold estate under this Lease to any party other than an Affiliate of Lessee, except in favor of one or more Leasehold Mortgagees, until after the completion of the construction of the Apartment Improvements unless Lessor shall expressly consent to and approve such transfer in writing.
- (b) If Lessee desires to Transfer (other than the granting of a Leasehold Mortgage) all or any portion of the interest of Lessee in and to the leasehold estate under this Lease to any party other than an Affiliate of Lessee or to an Excluded Transferree, Lessee shall give Lessor written notice of Lessee's desire to offer for Transfer such leasehold estate interest. Such notice shall set forth the price and other terms at which Lessee is willing to transfer such interest in the leasehold estate. Lessor shall have the option, exercisable within seventy-five (75) days after receipt of such notice, to obtain such Transfer of the offered interest on the terms set forth in such notice (or if such notice contains terms other than for cash or equivalent, then at a price equal to the price set forth in such notice if Lessor cannot reasonably comply with such other terms). For purposes of the previous sentence, a promissory note executed by Lessor shall be deemed the equivalent of a promissory note executed by a third party, provided that the terms are otherwise the same. In the event Lessor exercises its option under this Subparagraph (b), the leasehold estate interest will be transferred to Lessor and the Lessor shall pay to Lessee the applicable price and other consideration for such Transfer at the time of closing held within the time provided in Lessee's original notice to Lessor, or if no time is stated by Lessee, then at a closing held not later than one hundred twenty (120) days after Lessor notifies Lessee of Lessor's election to exercise its option under this Subparagraph (b). In the event Lessor does not exercise its option under this Subparagraph (b) within the seventy-five

(75) day period referred to above, then all rights of the Lessor to obtain a Transfer of the leasehold estate interest shall terminate and Lessee shall be free to transfer such leasehold estate interest to a third party at the price and terms set forth in such notice (or under more favorable terms and conditions as to Lessee) within the one hundred eighty (180) day period following such seventy-five (75) day period; provided, however, that the identity of such third party shall be subject to Lessor's prior approval, which approval shall not be unreasonably withheld (which shall be deemed granted unless Lessor notifies Lessee of disapproval within 30 days following receipt of information identifying such third party); and provided further, however, that if Lessor does not approve the identity of such third party, Lessor shall then be obligated to accept a transfer of such leasehold estate interest upon the same terms and conditions as such third party had agreed to accept transfer of same. If a Transfer to an approved third party is not consummated within such 180 day period, then Lessee may not thereafter transfer the leasehold estate without again complying with the provisions of this Subparagraph (b).

As used in this Lease, "Affiliate" when used in reference to Lessor or Lessee shall refer to any person, firm, corporation, partnership or other legal entity (hereinafter referred to as "person") controlled by, controlling or under common control with a party. Control as used in this definition means actual direction or power to direct the affairs of the controlled person, and no person shall be deemed in control of another simply by virtue of being a director, officer or holder of voting securities of any entity. A person shall be presumed to control any partnership of which he or it is a general partner.

For purposes hereof, the phrase "Excluded Transferee" shall mean the transferee in any transaction to evidence (i) a sale to all or any of the partners of Texas University Apartments I, Ltd. (the "Partners"), or all or any Partner's spouse, issue (including without limitation children by adoption), brother, sister, or parent (the

"Partner's Family"), (ii) a gift to any Partner, to one or more of any Partner's Family, or to the trustee or trustees of a trust the vested beneficiaries of which then include any Partner or any Partner's Family (but no other persons or entities) or (iii) the inheritance by or the allocation thereof to spouse or the spouse of one of any Partner's Family in connection with a division of their community or other property.

- (c) Lessee may close any Leasehold Mortgage loan provided that the loan documents relative thereto contain provisions substantially in compliance with Section 8.2 and provided further that the final maturity thereof does not extend beyond the date stated in Article I hereof for the expiration of the term of this Lease.
- (d) Lessee may enter into subleases having lease terms (including renewal options) that do not extend beyond the date originally provided for in Article I hereof for the expiration of the term of this Lease. Lessee shall not enter subleases with a term (including all renewal options) extending beyond the date originally provided for in Article I hereof for the expiration of the term of this Lease without Lessor's prior consent.

Section 8.2. Leasehold Mortgage Provisions. Every lienholder to whom Lessee shall grant a mortgage, pledge, lien or other encumbrance upon Lessee's leasehold estate hereunder must expressly agree in the loan documents that (i) such mortgage, pledge, lien or other encumbrance upon Lessee's leasehold estate hereunder is second, inferior and subordinate to the rights of Lessor in and to the Land, the Leased Premises, the Apartment Improvements or the Improvements, (ii) all notices to Lessee of any default or defaults of Lessee under such loan documents or in connection with such loan, including notice of acceleration of the maturity of the indebtedness, will be given to Lessor as well as to Lessee and shall not be effective until so given to Lessor, (iii) such lienholder will accept a cure of any default under such loan documents by Lessor, but that Lessor shall not be required to cure any such default, and (iv) all payments so made and all things so done or performed by Lessor shall be as effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies by such lienholder upon default by Lessee thereunder as the same would have been if

paid, done or performed by Lessee instead of by Lessor. Lessor shall not be or become liable to any such lienholder as a result of the right and option to cure any such default or defaults by Lessee.

Section 8.3. Lessor Transfers and Mortgages. Lessor may not assign, transfer, sublet, hypothecate, pledge or mortgage the Land or Lessor's interest under this Lease, without Lessee's prior written consent.

Section 8.4. Compliance Certificates. To the extent permitted under the laws of the State of Texas, Lessor and Lessee shall, from time to time, without additional consideration, execute and deliver to each other or to any person whom the requesting party may designate or, upon request, of any Leasehold Mortgagee an Compliance Certificate (in substantially the form attached hereto as Schedule V in the case of Lessor) consisting of statements, if true, that (i) this Lease is in full force and effect, with Rental current through the date of the certificate; (ii) this Lease has not been modified or amended (or setting forth all modifications and amendments); and (iii) to the best of such party's knowledge and belief, the other party is not then in default, and Lessee and Lessor have fully performed all of Lessee's and Lessor's obligations, respectively, hereunder; and such further consents and instruments of a similar nature evidencing the agreement of Lessor or Lessee of the fee or leasehold estate created hereby as may be reasonably requested by Lessor or Lessee or any Leasehold Mortgagee, assignee or transferee of the interest of Lessee, as applicable.

#### ARTICLE IX.

##### Default

Section 9.1. Events of Default. Each of the following shall be deemed an Event of Default by Lessee under this lease:

- (a) Failure by Lessee to pay any installment of Rental or to pay or to cause to be paid Impositions (to the extent Lessee is obligated to pay same or cause same to be paid), insurance premiums or other liquidated sums of money herein stipulated in this Lease to be paid by Lessee if such failure shall continue for a period of thirty (30) days after written notice ("First notice") thereof has been received by Lessee (with a copy of said notice to any Leasehold Mortgagee or trustee as provided in Article X hereof).

- (b) Material failure by Lessee to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than the payment of rent, Impositions, insurance premiums or other liquidated sums of money and other than the obligation to commence construction by the date provided in Section 2.1) stipulated in this Lease to be observed and performed by Lessee if such failure shall continue for a period of one hundred twenty (120) days after notice ("First notice") (which notice shall explicitly specify the nature of any such material failure by Lessee to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease and where appropriate, recommend possible remedial actions to be taken by Lessee) thereof has been received by Lessee (with a copy of said notice to any Leasehold Mortgagee or trustee as provided in Article X hereof); provided, however, that if any such failure (other than failure involving payment of liquidated sums of money) cannot reasonably be cured within such one hundred twenty (120) day period, then Lessor shall not have the right to exercise Lessor's remedies pursuant to Subparagraph (a) or (b) of Section 9.2 for so long as Lessee proceeds in good faith and with due diligence to remedy and correct such failure.

Section 9.2. Lessor Remedies for Lessee Default. If an Event of Default occurs hereunder, Lessor may, at any time thereafter (i.e. after the period following the First notice provided for in Section 9.1) during the continuance of such Event of Default after ten (10) days following written notice ("Second notice") to Lessee (with a copy of said Second notice to any Leasehold Mortgagee or trustee as provided in Article X hereof), do one or more of the following as Lessor's sole remedies for such Event of Default:

- (a) Subject to the provisions of Article X hereof with respect to the rights of any Leasehold Mortgagee and the rights of sublessees, terminate this Lease by giving Lessee written notice of termination (with a copy of said notice to any mortgagee or trustee as provided in Article X hereof), in which event this Lease and the leasehold estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall

automatically terminate upon the effective date of such termination notice with the same force and effect and to the same extent as of the effective date of such notice were the day originally fixed in Article I hereof for the expiration of the term of this Lease, and Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Leased Premises (including all Improvements comprising part thereof) and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies of Lessor for past due rent or other sums due under the provisions hereof.

- (b) Subject to the provisions of Article X hereof with respect to the rights of any Leasehold Mortgagee and rights of sublessees, terminate Lessee's right to possession of the Leased Premises and enjoyment of the rents, issues and profits therefrom, without terminating this Lease or the leasehold estate created hereby, reenter and take possession of the Leased Premises (including all buildings and other Improvements comprising part thereof) and remove all persons and property therefrom, with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for any breaches of covenants (including the payment of rent), then existing or thereafter occurring, and lease, manage and operate the leased Premises and collect the rents, issues and profits therefrom in the manner provided in Section 9.4, all for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing and operating the Leased Premises). If the net rental so received by Lessor exceeds the amounts necessary to satisfy all of Lessee's obligations under this Lease (including reasonable reserves for operations and replacements), Lessee shall be entitled to such excess; provided that all accrued and unpaid Rental owing to Lessor shall be paid prior to the payment of any such excess to Lessee. In the event Lessor retakes possession of the Leased Premises under the foregoing provisions hereof, Lessor shall not be

liable for any damages or injuries arising from its management and operation of the Leased Premises unless caused by the negligence or misconduct of Lessor, its agents or employees.

Upon the exercise of Lessor's remedies pursuant to this Section 9.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request to accurately set forth of record the status of the leasehold estate and Lessee's rights hereunder.

The liability of Lessee for the payment of Rental and any other sums hereunder shall be expressly subject to the further limitations and provisions of this Article IX, including Sections 9.5 and 9.6 hereof.

Section 9.3. No Waiver of Default. No waiver of any breach of any covenant or provision of this Lease shall be construed to be a waiver of any other or subsequent breach of the same or of any other covenant or provisions, and the acceptance of Rental or default shall not be deemed a waiver of the right to demand the complete performance by Lessee of its obligations hereunder.

Section 9.4. Limitation on Liability. Excluding Lessor's right to maintain an action against Lessee for fraud and for failure to comply with the obligations of Lessee set forth in Article V hereof, Lessor specifically agrees that the exclusive remedies of Lessor for the failure of Lessee to perform any of its other obligations under this Lease shall be limited to proceeding against the interest of Lessee under this Lease in and to the Land and any Improvements thereon. Should Lessee fail to pay any sum required to be paid by Lessee hereunder, or fail to perform any obligation required to be performed by Lessee hereunder, other than as set forth in the preceding sentence, any proceedings brought by Lessor against Lessee shall be limited to proceeding against Lessee's rights and interests under this Lease in and to the Land any Improvements thereon, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties, or funds of Lessee, or any partner of Lessee, its successors or assigns, other than against Lessee's interest under this Lease in and to the Land and any Improvements thereon. Without limiting the generality of the foregoing, no deficiency or other monetary judgment shall ever be sought or obtained by Lessor against Lessee. No provision of this Section 9.4 shall be construed to prevent Lessor from obtaining the proceeds of insurance policies property payable to Lessor in accordance with the provisions hereof.

Section 9.5. Agreements Binding During Ownership. The term "Lessee" as used in this Lease so far as covenants or obligations on the part of the Lessee are concerned shall be limited to mean and include only the owner or owners at the time in question of the Apartment Improvements and in the event of any assignment, sale or transfer by Lessee of its leasehold hereunder, the Lessee herein named (and in case of any subsequent transfer or conveyances the then transferor) shall from and after the effective date thereof be automatically freed and relieved from and after the date of such transfer or conveyance of all liability and obligation as respects the performance of any covenants or obligation on the part of the Lessee contained in this Lease thereafter to be performed; provided that any funds in the hands of such Lessee or the then transferor at the time of such transfer, in which the Lessor has an interest, shall be turned over to the transferee and any amount then due and payable to the Lessor by the Lessee or the then transferor under any provision of this Lease, shall be paid to the Lessor; and provided further that upon any such transfer, the transferee shall assume, subject to the limitations of this Section 9.5 and Section 9.4, all of the terms, covenants and conditions in this Lease to be performed on the part of the Lessee, it being intended that the covenants and obligations contained in this Lease on the part of the Lessee shall, subject as aforesaid, be binding on the Lessee, its successors and assigns, only during and in respect to their respective successive periods of ownership. In the event of any assignment or other transfer by Lessee pursuant to the provisions of this Article IX, and upon any termination of this Lease, Lessee shall be relieved of all liabilities or obligations under this Lease (including specifically, but without limitation, any obligation to pay any Rental provided that all Rental payments due to the date of such assignment have been paid).

Section 9.6. Default by Lessor. Should Lessor fail to perform its obligations under the provisions set forth herein or under any other written agreement between Lessor and Lessee, Lessee's sole remedy for such failure shall be to cease paying Percentage Rental to Lessor until such failure shall be cured or remedied by Lessor.

#### ARTICLE X.

##### Rights of Leasehold Mortgagee

Section 10.1. Rights of Leasehold Mortgagee. In the event that Lessee, during the term of this Lease, should mortgage or otherwise encumber its leasehold estate or interest in any Improvements hereafter situated upon the Land in accordance with

the terms hereof, Lessee (or such Leasehold Mortgagee) shall give Lessor written notice of the same and the name and address of any such mortgagee and/or trustee; and thereafter, while any such Leasehold Mortgage or encumbrance is in force, Lessor shall give any such Leasehold Mortgagee or trustee a duplicate copy of any and all notices of default or other notices in writing which Lessor may give or serve upon Lessee pursuant to the terms of this Lease, and any such notice shall not be effective until said duplicate copy is actually delivered to such Leasehold Mortgagee or trustee at such addresses as such Leasehold Mortgagee may from time to time designate, including the designation of an agent of such Leasehold Mortgagee for receipt of such notice; provided, however, that in no event shall Lessor be obligated to furnish such notice to more than two persons or corporations as to any one Leasehold Mortgage or other encumbrance, irrespective of the number of entities actually owning an interest in such Leasehold Mortgage or other encumbrance or acting as trustee thereunder or acting as an agent for any such Leasehold Mortgagee. Different addresses may be designated by such Leasehold Mortgagee or trustee by written notice delivered to Lessor from time to time. Any such Leasehold Mortgagee and/or trustee may, at its option, at any time before this Lease has been cancelled and terminated by Lessor as provided for in this Lease, pay any of the rents or other sums of money herein stipulated to be paid by Lessee or do any other act or thing required of the Lessee by the terms of this Lease; and all payments so made and all things so done or performed by any such Leasehold Mortgagee and/or trustee shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by any such Leasehold Mortgagee or trustee. It is further agreed that Lessor shall not have the right to terminate this lease for any non-monetary default by Lessee during such time as the holder of a Leasehold Mortgage in good faith and with reasonable diligence either attempts to cure such default or commences and thereafter prosecutes with diligence appropriate proceedings for foreclosure or other enforcement of the liens securing such Leasehold Mortgage loan. Any such Leasehold Mortgage or deed of trust so given by Lessee may, if Lessee so desires, be conditioned as to provide that, as between any such Leasehold Mortgagee or trustee and Lessee, said trustee or Leasehold Mortgagee, on making good and performing any such default or defaults on the part of Lessee, shall be thereby subrogated to any and all of the rights of the person or persons to whom any payment is made by said Leasehold Mortgagee or trustee, and all of the rights of Lessee under the terms and provisions of this Lease, but any such subrogation shall not impair Lessor's rights under this Lease. No such Leasehold Mortgagee or trustee of the rights and interests of Lessee

hereunder shall be or become liable to Lessor as an assignee of this Lease until such time as said Leasehold Mortgagee or trustee shall by foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by such Leasehold Mortgage or deed of trust, or by proper conveyance from Lessee, either acquires the rights and interests of Lessee under the terms of this Lease or actually takes possession of the Leased Premises, and upon such Leasehold Mortgagee's or trustee's assigning such rights and interests to another party or relinquishing such possession, as the case may be, such Leasehold Mortgagee or trustee shall have no further liability.

Upon termination of this Lease for any reason other than expiration by passage of time of the stated term, the holder of the Leasehold Mortgage of first priority upon Lessee's leasehold estate shall have the option, upon written notice delivered to Lessor not later than ninety (90) days after receipt of written notice from Lessor of such termination, to elect to receive, in its own name or in the name of its nominee or assignee, from Lessor a new lease of the Leased Premises for the unexpired balance of the term of this Lease on the same terms and conditions as in this Lease set forth, and Lessor agrees to execute such lease provided:

- (a) said Leasehold Mortgagee shall undertake forthwith to remedy any default of Lessee;
- (b) if the lease was terminated pursuant to Section 6.1 hereof, then said Leasehold Mortgagee shall be obligated to repair or restore the Apartment Improvements on the Land, with such alterations as may be made thereto under the provisions of Sections 7.2 and 10.3 of this Lease.

Section 10.2. Rights Following Foreclosure or Execution of New Lease. Notwithstanding any provision hereof to the contrary, in the event of Foreclosure of a Leasehold Mortgage, should a Leasehold Mortgagee enter into a new lease with Lessor pursuant to Section 10.1 hereof and thereby become a Mortgagee Lessee, the following provisions shall apply, and the owner of the Lessee's interest under this Lease subsequent thereto shall have the following rights (in addition to any other rights enumerated in this Lease):

- (a) Upon the prior written consent of Lessor, such owner shall have the right to construct additional or substitute Improvements on the Land provided

such construction will not violate the terms and provisions of restrictions or protective covenants applicable to the Land.

- (b) Such owner may make such alterations in and to the Apartment Improvements as it deems necessary or appropriate provided that such alterations do not violate the terms and provisions of the subleases then in effect and the conditions set forth in Section 7.2 of this Lease are complied with.
- (c) In the event of such Foreclosure or upon the execution of such a new lease, the restrictions otherwise applicable under Subparagraph (a) of Section 8.1 hereof with respect to transfers prior to the Completion Date shall be null and void and of no further force or effect, as if said restrictions and/or limitations on rights of the Lessee had been stricken from this Lease.

Section 10.3. Non-Termination Pending Foreclosure. Notwithstanding the provisions of this Article X, it is agreed that so long as there is a first Mortgage on Lessee's interest in this lease, the effective termination of this lease by reason of the occurrence of any of the actions specified in this Article X shall be postponed provided that (i) within a period of four (4) months after notice of such event of default is given by Lessor to the First Mortgagee, said Mortgagee shall (subject, however, to delay due to circumstances beyond the control of Mortgagee) commence a foreclosure proceeding or sale under its Mortgage, (ii) such foreclosure or sale is prosecuted with due diligence under the circumstances, (iii) all current rentals and other monetary obligations of the Lessee under and in connection with this lease are timely paid in full or complied with and (iv) title to said leasehold passes in due course, but; in any event, before the expiration of twelve (12) months (subject, in the case of Lessee's bankruptcy, to delay caused by enjoinder of such foreclosure by a bankruptcy court) following Lessor's giving the written notice provided for in this Section 10.3 under foreclosure by said mortgagee. If any one of such conditions is not met at any time, the termination of this lease as provided in this Article X shall thereupon become effective without further notice, act or deed on the part of Lessor.

Section 10.4. Recognition of Subleases. If for any reason this Lease and the leasehold estate of Lessee hereunder, or Lessee's right to possession of the Leased Premises, is terminated by Lessor by summary proceedings or otherwise in accor-

dance with the terms of this Lease, Lessor covenants and agrees that such termination of this Lease shall not result in a termination of any subleases affecting the Leased Premises that have been entered into by Lessee prior to such termination and that such subleases shall all continue thereof as direct leases between Lessor hereunder and the sublessee thereunder, with the same force and effect as if Lessor hereunder had originally entered into such subleases as Landlord thereunder; however, Lessor shall not be liable or responsible to such sublessees for any security deposits under their leases nor for any rental which is paid more than thirty (30) days in advance of the date due under the terms of such subleases. Lessor's recognition of such subleases shall include, without limitation, recognition of the rights granted to tenants under such subleases to remove furnishings and trade fixtures of such tenants upon the terms set forth in such subleases. Any sublessee shall not be named or joined in any action or proceeding by Lessor under this Lease to recover possession of the Leased Premises or for any other relief. Lessor shall, upon request, execute, acknowledge and deliver such agreements, evidencing and agreeing to the foregoing as any sublessee under a sublease shall reasonably require. Lessee agrees to use reasonable efforts to include in each sublease a provision whereby the sublessee will attorn to Lessor and to any purchaser at Foreclosure in the event of a termination of this Lease or Foreclosure of any Leasehold Mortgage.

#### ARTICLE XI.

##### Condemnation

Section 11.1. Total Taking. Lessor and Lessee agree that should the whole of the Leased Premises be taken (which term when used in this Article XI shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the Government of the United States, State of Texas, City of Richardson or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should the whole of said Leased Premises and Improvements be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state, or United States, then this Lease shall terminate as of the date of taking of possession by the condemning authorities (or the later date on which Lessee receives its portion of the award) and the award will be distributed and payable to Lessor and Lessee as follows:

- (a) First, to the Lessor for each square foot of the Land taken in an amount equal to the lesser of (i)

full value of the fee simple title to the Land determined on a per square foot basis, exclusive of the Improvements and appurtenances thereto, undiminished by the existence of the leasehold estate of this Lease therein and calculated as if the Land were vacant and there were no Improvements or excavations thereon or (ii) \_\_\_\_\_ per square foot for the portion of the Land taken (the amount determined under this Subparagraph herein called the "Ground Lessor's Condemnation Award");

- (b) Second, to the Leasehold Mortgagees, the amount required to pay and discharge any Leasehold Mortgages and if there has been a Foreclosure of a Leasehold Mortgage, to the Mortgagee Lessee for the amount of its foreclosure investment in the leased Premises; and
- (c) the balance shall be payable to Lessor and Lessee in the proportions that their respective interests bear to each other determined as follows:
  - (i) the interest of the Lessor shall be based on the value of Lessor's interest in the Land and Improvements, subject to this Lease and taking into account for all purposes in making such evaluation the existence of the leasehold estate created under this Lease and the amount of Rental provided to be paid by Lessee (including the extension and purchase options, if any, of Lessee), and
  - (ii) the interest of the Lessee shall be based upon the value of Lessee's interest in the Land and the Improvements, including the full value of the Improvements on the Land and the value for the taking of Lessee's leasehold estate and interest under this Lease.

The portion of the total award payable to Lessor under Subparagraph (c) above shall be reduced by the portion of the award first payable to Lessor under Subparagraph (a) above.

Section 11.2. Partial Taking. Lessor and Lessee agree that should the fee simple title be taken to a part of the Leased Premises by the Government of the United States, State of Texas,

City of Richardson, or any other government of power whatsoever, or by any corporation under the right of eminent domain or should a part of said Leased Premises be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then in such event this Lease shall nevertheless continue in effect as to the remainder of the Leased Premises unless in Lessee's reasonable judgment so much of the Leased Premises shall be so taken or condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Lease shall terminate upon notice of termination by the Lessee to Lessor, with such termination to be effective as of the date of taking of possession by the condemning authority (or later date on which Lessee receives its portion of the award) in the same manner as if the whole of the Leased Premises had been thus taken or condemned; provided, however, that if a Leasehold Mortgage then encumbers the leasehold Premises this Lease shall not terminate without the prior written consent of the Leasehold Mortgagee. In the event of such taking or condemnation of a portion of the Leased Premises where this Lease is not terminated thereby under the provisions of the first sentence of this Paragraph, the Rental payable during the remainder of the term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis having due regard to the square footage of the portion of the Land thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which Lessee's use of the remainder of the Leased Premises shall have been impaired or interfered with by reason of such partial taking or condemnation. If Lessor and Lessee are unable to agree as to a just reduction in such Rental Payments, the matter shall be submitted to arbitration as provided in Article XVIII hereof.

Section 11.3. Award. In the event that a part of the Leased Premises and Improvements be taken under the power of eminent domain, or by condemnation proceedings and this Lease is terminated by reason of such partial taking, and no Work (as hereinafter defined) will have to be performed as a result thereof, then the award will be distributed to Lessor and Lessee in accordance with Section 11.1. In the event that a part of the Leased Premises and Improvements be taken under the power of eminent domain or by condemnation proceedings and this Lease is not terminated by reason of such partial taking, then the Ground Lessor's Condemnation Award determined as set forth in Section 11.1 (based as therein set forth on the per square foot value of the portion of the Land taken, not exceeding the maximum per square foot value of the Land as stated above attributable to the portion of the Land taken) shall be payable out of the award to

Lessor, and the entire remaining portion of the award, including that made by reason of the taking of a portion (and the damages to the balance) of the Improvements and appurtenances placed thereon by Lessee and the award for the taking of any of Lessee's leasehold estate, shall be payable to Lessee as follows:

- (a) If the balance of said award or awards (after Ground Lessor's Condemnation Award is paid to Lessor), including in such balance compensation for the Apartment Improvements or portion thereof taken, and damages, if any, to the part of such Improvements, not so taken, payable to Lessee (herein sometimes referred to "Lessee's Condemnation Proceeds") shall be in an amount of \$ or less, such Lessee's Condemnation Proceeds shall be paid to Lessee for application by Lessee to the Work (as hereinafter defined), or if an amount in excess of \$ \_\_\_\_\_ shall be paid to and deposited with (i) the holder of the first lien Leasehold Mortgage, if any, and (ii) if none, with a bank in Dallas, Texas, selected by Lessee and shall be paid to Lessee in installments in the manner provided for in Section 6.2 hereof;
- (b) Lessee shall commence and thereafter proceed with reasonable diligence to repair, alter and restore the remaining part of the Apartment Improvements or other Improvements so as to constitute complete, rentable Improvements, subject to such changes or alterations as Lessee may elect to make in conformity with the provisions of Section 7.2 hereof (the foregoing being herein referred to as the "Work"); provided that the obligation of Lessee to so repair and restore shall be limited to Lessee's Condemnation Proceeds. Should the cost of the Work be estimated by Lessee's architect to be in excess of Lessee's Condemnation Proceeds and Lessee fails to commence to repair, alter and restore the remaining part of the Apartment Improvements or other Improvements within one hundred eighty (180) days after the amount of Lessee's Condemnation Proceeds is determined, Lessor shall have the option to terminate this Lease by giving written notice thereof to Lessee, subject, however, to the rights of any Leasehold Mortgages as set forth in Article X hereof. Notwithstanding any provision to the contrary in Article IX or elsewhere in this Lease, the

termination option of Lessor set forth in the preceding sentence shall be the sole and exclusive recourse that Lessor may take against Lessee as a result of Lessee's failure to commence and perform the Work as aforesaid. In the event of a termination of this Lease as a result of Lessee's failure to commence and perform the Work, this Lease shall terminate and come to an end as though the date of the taking were the expiration date of the term of this Lease and Lessee's Condemnation Proceeds in excess of the amount needed to discharge any Leasehold Mortgages shall be allocated between Lessor and Lessee in the same manner as provided in Section 11.1.

Section 11.4. Temporary Taking. If the whole or any part of the Leased Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the term of this Lease shall not be reduced or affected in any way and Lessee shall continue to pay the Rental in full. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease as though such taking had not occurred. In the event of any such taking as in this Section referred to, Lessee shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the expiration date of the term of this Lease in which case such award, after payment to Lessor therefrom of the estimated cost of restoration of the Leased Premises to the extent that any such award is intended to compensate for damage to the Leased Premises, shall be apportioned by Lessor and Lessee as of such date of expiration in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration and that part falling after, bear to such entire period.

Section 11.5. Rights of Leasehold Mortgagee. If any Leasehold Mortgages encumber the leasehold estate, the Leasehold Mortgagees shall, to the extent permitted by law, be made a party to any condemnation proceeding, if any so desire.

Section 11.6. Voluntary Dedication; Easement Grants. It is further understood, however, that if during the term of this Lease any portion of the Leased Premises (that is, with respect to the leasehold interest therein) shall be voluntarily

dedicated to public use by Lessee, it is expressly agreed that there shall be no abatement of Rental on account of said voluntary application to public use, nor shall Lessee thereby permit the public to acquire any right to or interest in any part of the Leased Premises which will continue beyond the termination of this Lease for any cause without Lessor's prior consent. Lessor covenants and agrees to join with Lessee in any action to dedicate portions of the Land in a manner consistent with the Design Plan for public streets along the boundaries of the Land if Lessee determines such action is appropriate or if such dedication is required by the City of Richardson as a condition to approve construction of the Apartment Improvements.

Lessor further covenants and agrees that it will not undertake or consent to any change in the zoning applicable to the Land, if any, without Lessee's prior written consent. Further, Lessor agrees to join Lessee in any application Lessee desires to file regarding the zoning or rezoning of the Land from time to time in a manner consistent with the Design Plan.

Upon the prior written consent of Lessor (which consent shall not be unreasonably withheld), Lessee may grant to the City of Richardson or to any utility company any easements with respect to the Leased Premises which are consistent with the Design Plan which Lessee determines to be reasonably necessary in connection with the construction and operation of Improvements on the Land, and Lessor will join any such easement grants by Lessee upon request.

Any dedication of any portion of the Land by plat or easement grant approved in connection with the Design Plan for initial Improvements to be constructed on the Land, utilities or other purposes provided above shall not result in any reduction or abatement of Rental under this Lease.

#### ARTICLE XII.

##### Warranty of Peaceful Possession

Lessor covenants and warrants that Lessee, on paying the Rental and other payments herein provided and performing and observing all of its covenants and agreements herein contained and provided, shall and may peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the entire term of this Lease, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental rules and regulations; and Lessor

agrees to warrant and forever defend Lessee's right to such occupancy, use, and enjoyment and the title to the Leased Premises against the claims of any and all persons whomsoever lawfully claiming or to claim the same, or any part thereof, subject only to the provisions of this Lease and applicable governmental rules and regulations.

ARTICLE XIII.

Lessee's Right to Construct other Improvements

At any time and from time to time after completion of construction of the Apartment Improvements, Lessee may demolish, remove, or replace the Apartment Improvements or any other Improvements then located on the Lease Premises and construct new Improvements in place thereof provided that: (i) prior to the commencement of any action to demolish, remove or replace the Apartment Improvements, Lessee shall first obtain Lessor's approval (which approval shall not be unreasonably withheld) of (1) the Design Plan for such Improvements (2) the timetable for such demolition and reconstruction and (3) the manner in which Lessee proposes to finance any such demolition and reconstruction; (ii) the construction of such new Improvements is in compliance with the deed restrictions and protective covenants then applicable to the Land; (iii) no Event of Default shall exist hereunder; and (iv) any such replacement Improvements will be, when completed, at least equal in value to any Improvements demolished, removed or replaced.

ARTICLE XIV.

Inspection by Lessor

Lessor, in person or by or through its agents and representatives, shall have the right to enter upon portions of the Leased Premises not leased to sublessees for purposes of inspection of same from time to time to assure Lessee's compliance with this Lease after reasonable notice of Lessor's intention to inspect the Leased Premises, and Lessor agrees that such inspection shall be during reasonable normal business hours.

ARTICLE XV.

Recording of Lease

Lessor and Lessee hereby agree that this Lease shall not be recorded. Lessor and Lessee, upon the written request of either of them, shall execute a memorandum or short form lease, in recordable form and in form and substance satisfactory to Lessor and Lessee, wherein a legal description of the Leased Premises, the term of this Lease and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rental payable hereunder, shall be set forth. Such memorandum or short form lease shall be filed for record in the Real Property Records of Dallas County, Texas.

ARTICLE XVI.

Notice

Any notice, communication, request, reply or advice or duplicate thereof (herein severally and collectively, for convenience called "Notice") in this instrument provided or permitted to be given, made or accepted by either party to any other party must be in writing and shall, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this lease, from and after the expiration of four (4) days after it is so deposited, regardless of whether or when same is actually received by the addressee, except that in all cases notice given to the holder of any Leasehold Mortgage must be received by such Leasehold Mortgagee to be effective. Notice in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Lessor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lessee, to: Texas University Apartments I, Ltd.  
100 W. Adams, Suite 300  
Temple, Texas 76501  
Attn: Mr. Brian Selbo

With a copy to: Liddell, Sapp, Zivley & LaBoon  
1500 San Jacinto Tower  
Dallas, Texas 75201  
Attn: Mr. David L. Herbert

However, the parties hereto, and their respective heirs, successors, legal representatives and assigns, shall have the right from time to time at any time to change their respective addresses and each shall have the right to specify as such party's address any other address within the United States of America by at least fifteen (15) days' written Notice to the other party; provided, however, that if at any one time more than one person or party owns an interest in the Leased Premises, nevertheless such persons or parties may not designate more than two places and addresses to receive Notice pursuant to the terms hereof (but with copies of notices to not more than two additional addresses).

ARTICLE XVII.

Entire Contract and Non-Waiver

No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless executed by it or by a duly authorized officer or a duly authorized agent of the particular party. No waiver or waivers of any breach or default or any breaches or defaults by either party of any term, condition, or liability of or performance by the other party of any duty or obligation hereunder, including without limitation, the acceptance by Lessor or payment by Lessee of any Rental at any time or in any manner other than as herein provided shall be deemed a waiver thereof, nor shall any such waiver or waivers be deemed or construed to be a waiver or waivers of subsequent breaches or defaults of any kind, character, or description under any circumstance.

ARTICLE XVIII.

Separate Agreements

It is expressly understood and specifically agreed that each other agreement now existing or entered in the future between the parties to this Lease shall be an independent agreement

between such parties and shall constitute no part of the consideration for this Lease; no default under this Lease shall constitute an event of default under or with respect to such other agreements nor shall any default under or with respect to such other agreements constitute default hereunder, each and every such other agreement being a separate, independent instrument and agreement.

ARTICLE XIX.

No Merger of Title

Except upon expiration of the term of this Lease or upon termination of this Lease pursuant to express right to do so set forth herein, there shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the Leased Premises or any part thereof by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate (including the Apartment Improvements or any other Improvements hereafter situated upon the Leased Premises), and (b) the fee estate in the Leased Premises or any part thereof or any interest in such fee estate (including the reversionary interest in the Apartment Improvements or any other Improvement hereafter situated upon the Leased Premises), unless and until all persons having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in the Leased Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE XX.

Binding Agreement

Subject to the restrictions set forth in Section 8.1 and 8.3 hereof, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective heirs, successors, assigns, and legal representatives.

ARTICLE XXI.

Miscellaneous

This lease shall be construed and enforced in accordance with the laws of the State of Texas.

Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural and the plural the singular of all nouns and pronouns herein wherever applicable. Paragraph and section headings in this Lease (as well as the table of contents preceding this Lease) are for convenience of reference and shall not affect interpretation of this Lease and in no way define, limit or describe the scope or intent of this Lease.

Any provisions of this Lease which is prohibited or or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing contained in this Lease shall be construed to create a partnership, an association, a trust or other entity, nor to constitute either party the agent of the other.

IN WITNESS WHEREOF, this lease is made and entered into in multiple original counterparts, on the day and year first above written.

LESSOR:

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM, FOR THE  
USE AND BENEFIT OF THE UNIVERSITY OF  
TEXAS AT DALLAS

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

LESSEE:

TEXAS UNIVERSITY APARTMENTS I, LTD.,  
a Texas limited partnership,

By: FS/Southwest XV, a Texas  
general partnership,  
General Partner

By: First Southwest Equity  
Corporation, a Texas  
corporation, Managing  
General Partner

By \_\_\_\_\_  
Its \_\_\_\_\_

SCHEDULE IV

In accordance with the provisions of Section 2.3 of this Lease, Lessor shall have the option to purchase the Apartment Improvements for the cash purchase price set forth opposite the year in which Lessor's option to purchase the Apartment Improvements is closed:

<u>YEAR OPTION TO PURCHASE IS CLOSED</u>	<u>CASH PURCHASE PRICE</u>
6	\$ 8,335,000.00
7	\$ 8,668,000.00
8	\$ 9,015,000.00
9	\$ 9,375,000.00
10	\$ 9,750,000.00
11	\$10,140,000.00
12	\$10,546,000.00
13	\$10,970,000.00
14	\$11,400,000.00
15	\$11,863,000.00
16	\$12,340,000.00
17	\$12,830,000.00
18	\$13,345,000.00
19	\$13,878,000.00
20	\$14,435,000.00
21	\$15,010,000.00
22	\$15,610,000.00
23	\$16,235,000.00
24	\$16,885,000.00
25-35	\$17,560,000.00

SCHEDULE IV

PROPERTY OPERATING AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, FOR THE USE AND BENEFIT OF THE UNIVERSITY OF TEXAS AT DALLAS, (hereinafter referred to as "UTD") and TEXAS UNIVERSITY APARTMENTS I, LTD., a Texas limited partnership (hereinafter called the "Owner").

RECITALS

1. Owner is the owner of the leasehold estate arising pursuant to that certain ground lease (the "Ground Lease") by and between UTD and Owner dated effective as of \_\_\_\_\_, 19\_\_, covering all of the real property (the "Property") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes.

2. In accordance with the terms and provisions of the Ground Lease, the Owner shall cause to be constructed upon the Property an apartment project (the "Apartment Improvements") containing 200 housing units and certain related facilities and amenities. (The Property and all improvements, fixtures, amenities, facilities and personal property located thereon is hereinafter referred to as the "Project").

3. UTD desires that the Project be constructed and operated by the Owner consistent with UTD's objectives of providing housing at low cost to the community associated with The University of Texas at Dallas.

4. This Agreement is entered into to set forth the terms upon which the Owner will construct and operate the Project.

NOW, THEREFORE, incorporating the recitals as set forth above, and in consideration of the mutual covenants herein contained, UTD and the Owner hereby agree as follows:

ARTICLE I.

AUTHORIZATION OF CONSTRUCTION

UTD hereby authorizes the Owner to construct the Project upon the Property in accordance with certain plans and specifications heretofore approved by UTD.

ARTICLE II.

TERM

Unless sooner terminated under the provisions hereof, this Agreement shall be and continue in full force and effect for a term commencing on the date hereof and expiring at midnight, December 31, 2020.

ARTICLE III.

RESPONSIBILITIES OF THE OWNER AND UTD

The Owner shall operate, manage and maintain the Project at the expense of the Owner in accordance with sound property management practice.

3.1. General. The Owner shall manage, operate and maintain the Property in a manner normally associated with the management and operation of a high quality, first-class apartment project situated in a metropolitan area of the State of Texas.

3.2. Employees. The Owner shall have in its employ at all times, a sufficient number of capable employees to enable it to properly, adequately, safely and economically manage, operate and maintain the Project. All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of the Owner. The Owner is and shall be in all respects the employer of such employees. The Owner shall fully comply with all applicable laws and regulations having to do with workers compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employee-related subjects. In the event that the Owner's employees are engaged to work in connection with other properties, wages and other expenses with respect to such work shall be allocated between such other properties and the Project.

3.3. Review of Rental Rates. Contemporaneously with the submission to UTD of the proposed operating budget for each fiscal year of the Term, the Owner shall propose the rent schedule to be charged during the forthcoming fiscal year for the leasing of apartment units in the Project. The rent schedule for the first fiscal year of operation of the Project is attached

hereto as Exhibit B and is hereby approved by UTD. Provided that the average rental per unit in the Project does not increase by more than the greater of (i) ten percent (10%) over that charged in the preceding fiscal year or (ii) an amount determined by multiplying the average rental charged per each unit in the Project by a fraction, the denominator of which shall be the most recent Consumer Price Index figure published prior to the date of this Agreement is entered into, and the numerator of which shall be the most recent Consumer Price Index figure published prior to the date of the end of the preceding fiscal year, UTD shall be deemed to have consented to such increase in the rental charged by the Owner or the leasing of units in the Project. Any increases in rental greater than those allowed by this Section 3.3 must be approved by UTD.

3.4. Collection of Rental. The Owner shall use diligent efforts to collect all rents and other charges which may become due at any time from any tenant or from others for services provided in connection with or for the use of the Project or any portion thereof. Owner shall also collect and identify any income due for miscellaneous services provided to tenants or the public including, but not limited to, parking income, tenant storage, and coin operated machines of all types (e.g., washers, dryers, vending machines, pay telephones, etc.).

3.5. Maintenance and Repairs. The Owner shall institute and supervise all ordinary and extraordinary repairs, decorations and alterations to the Project, including the administration of a preventative maintenance program for all mechanical, electrical and plumbing systems and equipment of the Project.

3.6. Operation of the Project. The Owner shall institute and supervise all operational activities of the Project including, but not limited to, the following:

(a) Responsibility for and supervision of the cleaning of the Project;

(b) Responsibility for and supervision of any landscaping;

(c) Responsibility for and supervision of a preventative maintenance program;

(d) Responsibility for and supervision of any necessary repairs to the Project; and

(e) Any other activity expedient to the normal operation of a first-class apartment project similar to the Project.

3.7. Taxes. The Owner shall obtain, verify and review with UTD all bills for personal property taxes, sales taxes and other like charges which are or may become liens against any portion of the Project.

3.8. Compliance with Mortgage and Ground Lease. The Owner shall be responsible for operation of the Project in compliance with all terms and conditions in the Ground Lease and any mortgage, deed of trust or other security instrument affecting the Project.

3.9. Inspection. The Owner shall conduct from time to time inspections of the Project and provide UTD with a written report of the Owner's findings. UTD may inspect the Project during normal business hours upon the prior written consent of the Owner.

3.10. Books and Records. The Owner shall maintain completed and identifiable records and files on all matters pertaining to the Project, including, without limitation, all revenues and expenditures, service contracts and leases. Said books and records shall be kept at the offices of the Owner. The Owner shall keep accurate and complete books and accounts showing operations and transactions relating to the Project and showing the assets, liabilities and financial condition of the Project. UTD's duly authorized representatives shall at all times during regular business hours have access to and may inspect and copy any such books and records. UTD shall have the right to:

- (a) require that such books and records are kept in accordance with generally accepted accounting principles; and
- (b) to audit said records and books at UTD's expense.

3.11. Leasing Policy and Restrictions. Subject to the performance of UTD of its obligations set forth in Section 3.12 below, the Owner hereby agrees that it will restrict the leasing of apartment units in the Project to the Administration, Faculty, Staff and Students of UTD and any other person who is employed by or attends classes at UTD. Should the occupancy level of the Project fall below eighty-five percent (85%) for two (2) consecutive months, the restrictions set forth in the preceding sentence pertaining to the leasing of apartment units shall be lifted and Owner shall be allowed to lease apartment units in the Project to such additional persons as shall be mutually agreed upon by Owner and UTD. The Owner further agrees to use its best efforts to follow the Student Housing Policy promulgated by The University of Texas System, an outline of which is attached hereto as Exhibit C.

3.12. Customer Relations. UTD hereby covenants and agrees that it shall use its best efforts to promote and market the use of the Project for housing by the administration, faculty, staff, students and employees of UTD and shall take no action which could or may adversely impart upon the use or operation of the Project.

3.13. Compliance with Law. The Owner shall take such action as may be reasonably necessary to assure full compliance

with federal, state and municipal laws, ordinances, regulations and orders relative to the use, operation, repair and maintenance of the Project and with the rules and regulations or orders of any local fire department or policy department or other similar body. The Owner shall promptly remedy any violation of any such law, ordinance, rules, regulations or order which comes to its attention.

3.14. Notification to Owner. The Owner shall notify UTD immediately of any lawsuits, condemnation proceedings, rezoning or other governmental order or action or any threat thereof that becomes known to the Owner that might adversely affect the Project or any interest of UTD therein.

#### ARTICLE IV.

##### MANAGEMENT AUTHORITY

4.1. Limitation. The Owner's authority is expressly limited to the provisions provided herein and contained in the Ground Lease, as the same may be amended in writing from time to time by UTD and the Owner.

4.2. Access to the Project. UTD hereby grants to the Owner the right of ingress and egress over and upon real property owned by UTD in order that the Owner may have access to the Property; such right of ingress and egress shall constitute a covenant running with the Property and shall expire upon the expiration of the Term or the earlier termination of this Agreement.

4.3. Access to Data. UTD hereby agrees that it will provide to the Owner all information, data, statistics and surveys relating to enrollment, housing and all other pertinent information concerning the faculty, staff and students of UTD which are now or subsequently in the possession of UTD.

4.4. Right to Provide Service. UTD hereby grants to the Owner the right, but not the obligation, to provide all supplementary services to the residents of the Project which are provided within the Project or upon the Property including vending services, laundry, health facilities, recreational equipment rental and all other services provided to residents of the Project either within the Project or upon the Property.

4.5. Contracts. No contract entered into by the Owner shall be for a period which exceeds the Term. All contracts should be in the name of and executed by the Owner.

#### ARTICLE V.

##### OWNER'S INSURANCE

The Owner shall provide UTD with evidence of worker's compensation insurance and employer liability insurance in amounts deemed prudent and in compliance with law. The Owner shall use its best efforts to obtain a provision that any insurance policies hereunder contain a waiver of subrogation in favor of UTD.

ARTICLE VI.

SECURITY SERVICES

UTD shall be required to provide such security services in and around the Project which are necessary and customary taking into consideration the number of residents of the Project and the security services customarily provided at student housing projects located upon campuses which are a part of The University of Texas System.

ARTICLE VII.

INDEMNIFICATION AND INSURANCE

7.1. Insurance. Owner and UTD agree to procure and maintain in force all policies of insurance covering the Project and the Property in accordance with the provisions pertaining to insurance set forth in the Ground Lease.

7.2. Indemnification. Owner shall indemnify and hold harmless UTD against any claim which may be made against UTD arising out of:

(a) Any failure of the Owner to promptly perform any of its obligations under this Agreement, provided such failure was not caused by UTD or events beyond the reasonable control of the Owner;

(b) Any act of the Owner beyond the scope of the Owner's authority hereunder not authorized or ratified by UTD; and

(c) Any gross negligence by the Owner, its agents or employees.

Except as expressly set forth in this Article 8.2 and to the extent permissible under the laws of the State of Texas, UTD shall indemnify and hold harmless the Owner against any and all claims made against the Owner or arising out of the management, ownership, development, construction or operation of the Property by UTD.

ARTICLE VIII.

TERMINATION

8.1. Termination of Contract. Notwithstanding the provisions of Article I above to the contrary, this Agreement may be terminated and the obligations of the parties hereunder shall thereupon cease, upon the occurrence of a default by Owner under the terms of the Ground Lease and the expiration of any applicable cure period set forth therein.

8.2. Obligation Upon Termination. Upon termination of this Agreement, for whatever reason, neither party shall have any other claim or right against the other except as expressly hereinafter set forth.

Upon termination of this Agreement for whatever cause, the Owner shall, not later than the effective date of termination, deliver to UTD the original of all books, permits, plans, records, leases, licenses, contracts and other documents pertain-

ing to the Project and its operation, all insurance policies, bills of sale or other documents evidencing title, the rights of UTD and any and all records or documents, whether or not enumerated herein, which are necessary or desirable for the operation of the Project. The Owner shall assign unexpired service contracts to UTD or parties designated by UTD. All personal property of UTD, whether in the Project or elsewhere, shall be delivered intact to UTD or its representatives. The Owner further agrees to do all other things reasonably necessary to cause an orderly transition of the operation and management of the Project without detriment to the rights of UTD or to the continued management of the Project.

ARTICLE IX.

MISCELLANEOUS PROVISIONS

9.1. Headings. The headings used herein are for purposes of convenience only and should not be used in construing the provisions hereof.

9.2. Notice. Any notice, demand or communication required or permitted hereunder shall be given in writing and deemed received immediately upon delivery in person or five (5) days after deposited in the United States Mail, certified or registered, return receipt requested, addressed to the respective parties hereto at the following addresses:

If to UTD:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Owner:

Texas University Apartments I, Ltd.,  
a Texas limited partnership  
4100 Alpha Road  
Dallas, Texas 75244  
Attention: James Robertson

With a Copy to:

Liddell, Sapp, Zivley & LaBoon  
2121 San Jacinto Tower  
Suite 1500  
Dallas, Texas 75201  
Attention: David L. Herbert

or such other party as any party may hereafter designate by written notice.

9.3. Relationship of the Parties. Nothing contained in this Agreement, nor any acts of the parties hereto shall be deemed or construed by the parties hereto or either of them, or any third party, to create the relationship of principal and agent or a partnership between the parties hereto.

9.4. Covenant of Further Assurances. The parties hereby agree to execute such other documents, perform such other acts as may be reasonably necessary or desirable to carry out the purposes of this Agreement.

9.5. Entire Agreement. This document represents the entire Agreement between the parties with respect to the subject matter hereof and supercedes all other prior agreements, representations and covenants; oral or written amendments to this Agreement must be in writing and signed by both parties. Reference is hereby made to the provisions contained in the Ground Lease and to the extent, but no further, that such provisions are inconsistent with the provisions contained herein then the provisions of the Ground Lease shall control.

9.6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

9.7. Time of the Essence. Time is of the essence in this Agreement.

9.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

9.9. Severability. Every provision of this Agreement is intended to be severable. If any term of provision hereof is illegal for any reason whatsoever, such provision shall be sev-

ered from this Agreement and shall not affect the validity of the remainder of this Agreement.

9.10. Owner's Representative. The Owner shall designate one (1) person to serve as its representative in all dealings with UTD. Whenever the approval or consent or other action of the Owner is required hereunder, such approval, consent or action shall be binding upon the Owner if transmitted by its representative. The Owner's representative shall be \_\_\_\_\_  
\_\_\_\_\_. Such representative may be changed at the discretion of the Owner at any time, by written notice to UTD.

9.11. UTD's Representative. UTD shall designate one (1) person to serve as its representative in all dealings with the Owner. Whenever the approval or consent or other action of UTD is required hereunder, such approval, consent or action shall be binding upon UTD if transmitted by its representative. UTD's representative shall be \_\_\_\_\_. Such representative may be changed at the discretion of UTD at any time, by written notice to the Owner.

9.12. Ownership of Information and Materials. The Owner shall, upon completion of the Owner's services or any sooner termination of this Agreement, deliver to UTD, all written data and information generated by or for the Owner in connection with the Project or supplied to the Owner by UTD or UTD's con-

tractors or agents, and all drawings, plans, books, records, contracts, agreements and all other documents and writings in its possession relating to its services for the Project and the Owner shall have the right to use the same without compensation to the Owner. The Owner agrees to hold in confidence and not use or disclose to others any confidential or proprietary information of UTD heretofore or hereafter disclosed to the Owner and designated as such by UTD, including but not limited to any data, information, plans, programs, processes, equipment, costs, operations, tenants or customers which may come within the knowledge of the Owner in the performance of or the result of, its services, except where:

(a) UTD specifically authorizes the Owner to disclose any of the foregoing to others if such disclosure reasonably results from the performance of the Owner's responsibilities hereunder; or

(b) such written data or information shall have theretofore been made publicly available by parties other than the Owner.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

OWNER

TEXAS UNIVERSITY APARTMENTS I, LTD.,  
a Texas limited partnership

By: FS/SOUTHWEST XXV,  
a general partnership,  
General Partner

By: First Southwest Equity  
Corporation, Managing  
General Partner

By \_\_\_\_\_  
Its \_\_\_\_\_

UTD

The Board of Regents of The Univer-  
sity of Texas System, for the Use  
and Benefit of The University of  
Texas at Dallas

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

- Exhibit A - Property
- Exhibit B - First Year Rental Schedule
- Exhibit C - Student Housing Policy

All preliminary analysis necessary to evaluate the feasibility of this project has been completed; however, final drafts of the Ground Lease and Property Operating Agreement are not complete. Officials of U. T. Dallas and First Southwest Equity Corporation are anxious to proceed with this project and anticipate arriving at acceptable final drafts of those documents very shortly. If a firm recommendation can be formulated in a timely manner, such recommendation, along with accompanying documents and background information, will be mailed to the U. T. Board of Regents at the earliest possible date.

This item requires the concurrence of the Academic Affairs Committee.

8. U. T. El Paso - Physical Plant Facilities (Project No. 201-563): Request for Authorization to Advertise for Bids and for Executive Committee to Award Contracts and Additional Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Monroe that the U. T. Board of Regents:

- a. Authorize the Office of Facilities Planning and Construction to advertise for bids for the construction of the Physical Plant Facilities at U. T. El Paso at an estimated total project cost of \$6,980,000 (excluding the cost of the Project Analysis)
- b. Authorize the Executive Committee to award contracts associated with this project within the authorized total project cost
- c. Appropriate \$6,615,000 from Permanent University Fund Bond Proceeds for total project funding. Previous appropriations have been \$365,000 from the same source

#### BACKGROUND INFORMATION

At the December 1984 meeting, the U. T. Board of Regents approved final plans and specifications prepared by the Project Architect, Langford Anderson Thacker, Inc., El Paso, Texas, for the U. T. El Paso Physical Plant Facilities and Site Development for Recreational Facilities at an estimated total project of \$8,276,000.

At this time, authorization to advertise for bids and to award contracts is requested for the new Physical Plant Facilities and related site work only at an estimated total project cost of \$6,980,000. The Site Development for Recreational Facilities has been deferred. Fees and other expenses related to the Project Analysis accepted by the U. T. Board of Regents in February 1984 are not included in the above estimated total project cost.

The new Physical Plant Facilities will be located on approximately 7.2 acres and will include approximately 69,300 gross square feet of new structures for Physical Plant offices, shops, motor pool and warehouse functions. In addition to these new buildings, an existing 10,600 square foot metal storage building will be relocated to the new site. Two covered storage areas and a covered fuel island, totaling approximately 2,900 square feet, will also be provided. The estimated construction cost for the site development (drainage facilities and compacted fill) of the 7.2 acres is \$600,000. The estimated construction cost for the new structures and finish site work is \$5,100,000 or an average of \$61.60 per square foot.

This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

9. U. T. El Paso: Recommendation for Approval of a Ground Lease to the City of El Paso to Provide a Site for a Sesquicentennial Monument.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendation that Chancellor Mark be authorized to sign the lease agreement between the City of El Paso and the U. T. Board of Regents set forth on Pages B&G 13-18 for a .780-acre tract of campus land for a term of 99 years. The leased land is to be used as a site for a commemorative arch and bell tower which will be the major project of the City of El Paso for the Texas Sesquicentennial celebration. All plans for design and construction will be submitted to the U. T. Board of Regents for approval prior to beginning the project.

#### BACKGROUND INFORMATION

The tract of land to be leased is on the west side of the campus. U. T. El Paso has no plans for the use of the site because of prohibitive site development costs and proximity to the freeway. The proposed Sesquicentennial Monument and surrounding landscaping will enhance the appearance of the western portion of the campus and be visible from the freeway to millions of travelers each year. The proposed project is being developed by the Texas Sesquicentennial Committee of El Paso. The City of El Paso will be responsible for the construction and subsequent maintenance of the site and monument.

STATE OF TEXAS  
COUNTY OF EL PASO

)  
)  
)

LEASE

THIS AGREEMENT made this 22 day of June, 1985,  
by and between the Board of Regents of the University of Texas  
System ("the University"), and the City of El Paso ("the City"),

WITNESSETH:

WHEREAS, the City has requested the University to permit the  
construction, maintenance and operation of a landscape area on  
the campus of the University of Texas at El Paso which would  
include a monument to the Pass of the North to be erected in  
conjunction with the Texas Sesquicentennial Celebration; and

WHEREAS, the University has indicated its willingness to  
approve the establishment of such facility, upon the condition  
that the City will assume the responsibility of constructing and  
maintaining the landscape area, at no cost to the University, and  
the further condition that such use would be in the public  
interest.

NOW, THEREFORE, it is hereby agreed as follows:

1. For and in consideration of the premises and the terms  
and conditions hereinafter set out and other good and valuable  
consideration, the University hereby leases to the City for a  
period of ninety-nine years, commencing on the date of the  
execution of this Lease, the following property owned by the  
University:

A parcel of land out of Block 25, Old Fort Bliss,  
in El Paso, El Paso County, Texas, as shown on the map  
marked Exhibit "A" attached hereto and made a part  
hereof for all purposes and, being more particularly  
described as follows:

From a Texas Department of Highways and Public  
Transportation monument, said monument being located on  
the easterly right-of-way of Interstate Highway 10 at  
Texas State Plane Coordinates North 817,693.88, East  
81,943.60, said point being the true point of beginning  
of this description.

Thence North 30°52'59" West along the said Easterly  
right-of-way of Interstate Highway 10 a distance of  
three hundred ninety-three and no hundredths (393.00)  
feet to a point.

Thence North 54°33'00" East a distance of eighty-two  
and seventy-one hundredths (82.71) feet to a point on  
the Westerly boundary of a one hundred (100) foot El  
Paso Electric Company right-of-way.

Thence South 35°27'00" East along said Electric Company Westerly right-of-way a distance of thirty-one and eighty hundredths (31.80) feet to a point.

Thence South 24°01'40" West a distance of thirty-one and fifty-six hundredths (31.56) feet to a point.

Thence South 36°40'34" East a distance of one hundred seventy-five and eighty-four hundredths (175.84) feet to a point.

Thence South 86°47'00" East a distance of thirty and no hundredths (30.00) feet to a point on the said Electric Company Westerly right-of-way.

Thence South 35°27'00" East along said Electric Company Westerly right-of-way a distance of one hundred four and seventy-five hundredths (104.75) feet to a point of deflection of said right-of-way.

Thence South 12°40'43" East along said Electric Company Westerly right-of-way a distance of sixty-five and fifty-six hundredths (65.56) feet to a point.

Thence South 64°40'17" West a distance of ninety and three hundredths (90.03) feet to the point of beginning.

Said parcel contains 33,981.41 square feet or 0.780 acres more or less.

2. The City will prepare, or provide for the preparation of construction plans for the facility, and will provide for the construction work as required by the plans. The plans shall include the design of the monument, the access control, adequate landscape treatment, and general layout; they shall also delineate and define the construction responsibilities of the City. Upon completion of the plans, the City will submit them to the University for approval and only after such approval is given will the City proceed with construction. Any future revisions or addition of permanent improvements shall be made only upon the prior written approval of the University.

City will take all necessary steps to protect and maintain in their present state and condition all natural vegetation, rock formations, and natural land contours during the construction phase and at all times thereafter, unless otherwise provided in the approved plans relating to the construction and landscaping of the site area.

3. Ingress and egress across University property shall be allowed at all reasonable times to such facility for City forces

and equipment for construction and maintenance operations; however, the University cannot guarantee that parking will be available at all times for the public. University shall have the right to enter the leased premises for purposes of inspection and to perform maintenance not performed by City.

4. Maintenance and operation of the monument and the landscape area shall be entirely the responsibility of the City. Such responsibility shall not be transferred, assigned, or conveyed to a third party without prior written approval of the University, further, such responsibility shall include but is not limited to picking up trash, landscape maintenance, and otherwise keeping the facility in a clean and sanitary condition and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public.

5. The City shall have no right to erect or maintain or to permit any person, partnership, corporation or association to erect or maintain any structure upon the leased premises other than as provided for in the plans that are approved by the University under Paragraph 2 hereof. City shall have no right to operate any concession or other commercial enterprise upon the leased premises nor to permit any person, partnership, corporation or association to operate a concession or other commercial enterprise.

6. The City shall provide necessary safeguards to protect the public, including adequate insurance, or self-insurance for payment of any damages to persons or property which might result during the construction of facility, or thereafter, and to save the University harmless from liability for such damages, to the extent of said insurance coverage and insofar as the City may legally do so.

7. Upon expiration of the term of the lease, the premises and all improvements thereon shall revert to University.

8. The City shall assume and promptly pay for all costs or charges for utility services furnished and to be used on the

property during the term of this lease, including the cost of extending the utility lines within the boundaries of the properties, connecting such lines, setting meters, or relocation of lines necessary for the construction or maintenance of the monument. Any such utility lines shall be installed underground and outside lighting will not be operated at such intensity as to constitute a nuisance to the University.

9. All the terms, provisions, and covenants, and conditions of this lease inure to the benefit of and are binding upon the parties, their successors and assigns.

10. The laws of the State of Texas shall govern the validity, performance, and enforcement of this lease.

11. This document contains all the agreements between the parties and may not be modified, except by agreement in writing signed by both parties.

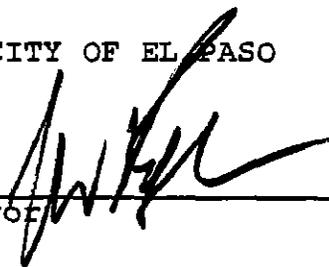
12. The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

13. This lease is subject to all rights-of-way, easements, dedications, restrictions, reservations, and other encumbrances of record running with the land.

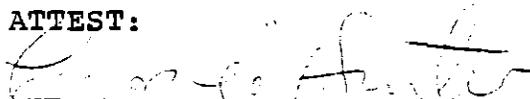
WITNESS the following signatures and seals:

THE CITY OF EL PASO

BY  
Mayor

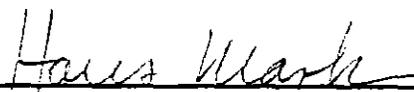


ATTEST:

  
City Clerk

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

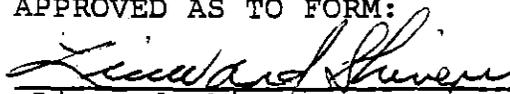
BY  
Hans Mark, Chancellor



Approved as to form:

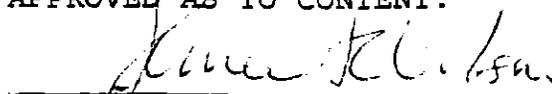
APPROVED AS TO FORM:

  
Assistant City Attorney

  
Linward Shivers  
University Attorney

DS6:001  
10/24/85 (Rev.)

APPROVED AS TO CONTENT:

  
James S. Wilson  
Manager, Endowment Real Estate

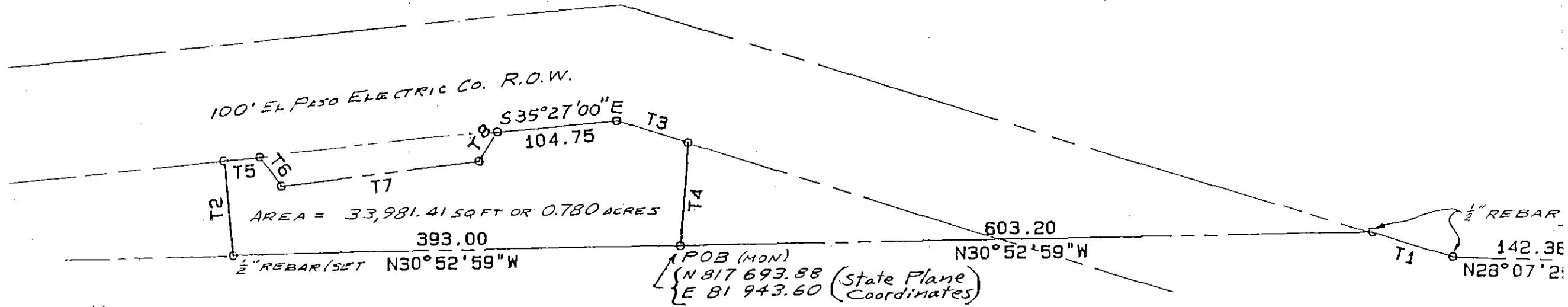
CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Lease Agreement was approved by the Board of Regents of The University of Texas System on the \_\_\_\_\_ day of December, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Executive Secretary, Board of Regents  
The University of Texas System

# PROPOSED LAND LEASE FROM UTEP

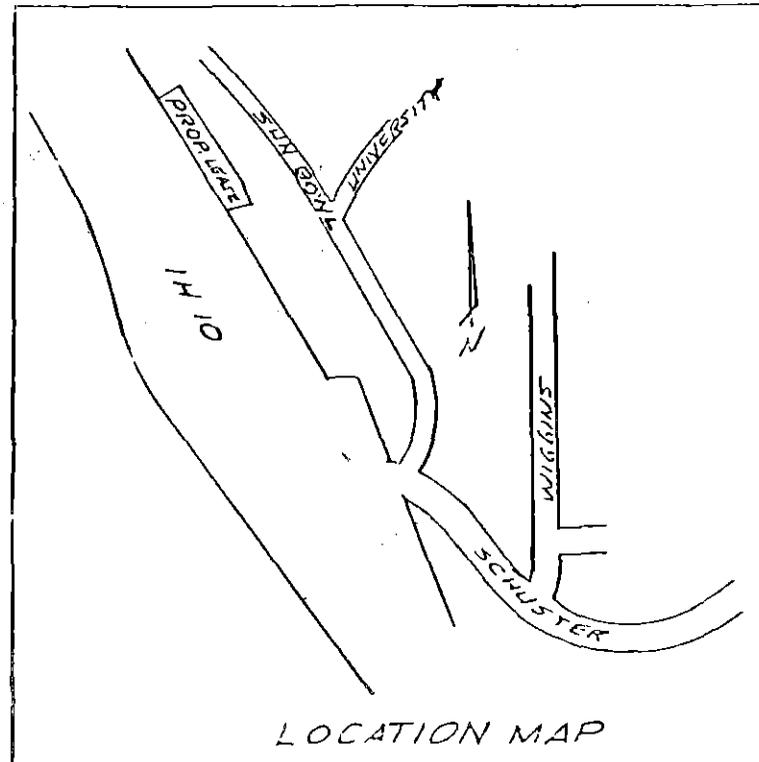
SCALE 1" = 100'



INTERSTATE HIGHWAY 10

B&G - 18

NO.	BEARING	DISTANCE
T1	N12°40'43"W	72.74
T2	N54°33'00"E	82.71
T3	S12°40'43"E	65.56
T4	S64°40'17"W	90.03
T5	S35°27'00"E	31.80
T6	S24°01'40"W	31.56
T7	S36°40'34"E	175.84
T8	S86°47'00"E	30.00



NOTE  
 ALL BEARINGS BASED ON  
 TDHPT 9024-2-14

Exhibit A

10. U. T. Permian Basin: Request for Authorization to Purchase Computer Equipment and Appropriation Therefor.--

RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Leach that the U. T. Board of Regents:

- a. Authorize the purchase of computer equipment for U. T. Permian Basin at an estimated total project cost of \$750,000
- b. Appropriate \$750,000 from Permanent University Fund Bond Proceeds for total project funding

BACKGROUND INFORMATION

For the last two years, computer costs for U. T. Permian Basin (including the use of computers at U. T. Dallas and the Regional Computer Center, Dallas) have averaged \$300,000 per year, and for 1985-86 this cost will approach \$400,000. U. T. Permian Basin can reduce this cost to \$250,000 and improve the academic and administrative services available to the campus by purchasing its own computer equipment.

Both centralized and decentralized computing facilities are now needed in the academic setting to facilitate the many and varied uses of computers today. The mainframe will not only accommodate the large programs run by engineering and scientific faculty and students; it will also make available to the off-campus student the ability to dial up the host computer and work off-campus. At the same time, microprocessors afford the flexibility that many academic needs present, and the redundancy of microprocessors virtually guarantees that computing power is always available to the user. With skyrocketing costs of the present arrangement and increasing academic needs, especially in business and computer science, acquiring its own computing equipment is now the number one priority at U. T. Permian Basin.

The personal computers will help meet faculty and student computing needs and fill the gap created by the budgetarily curtailed Word Processing Center.

This purchase is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

11. U. T. Permian Basin - Mesa Building Reroofing, Phase I: Request for Project Authorization; Preparation of Final Plans and Specifications; Advertisement for Bids; Award of Contract; and Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Leach that the U. T. Board of Regents:

- a. Authorize a project for the reroofing of the north half of the Mesa Building at U. T. Permian Basin at an estimated total project cost of \$200,000
- b. Authorize preparation of final plans and specifications, advertisement for bids, and award of a construction contract within authorized total project cost by the U. T. Permian Basin Administration with its own forces or through contract services in consultation with the Office of Facilities Planning and Construction
- c. Appropriate \$200,000 from Permanent University Fund Bond Proceeds for total project funding

#### BACKGROUND INFORMATION

A phased reroofing program is planned for all existing buildings on the U. T. Permian Basin campus in the next three years. The north half of the Mesa Building, the main building on the campus, is the most critical and will comprise the first phase at an estimated total project cost of \$200,000. The estimated total project cost for all phases beyond the initial phase is \$332,000.

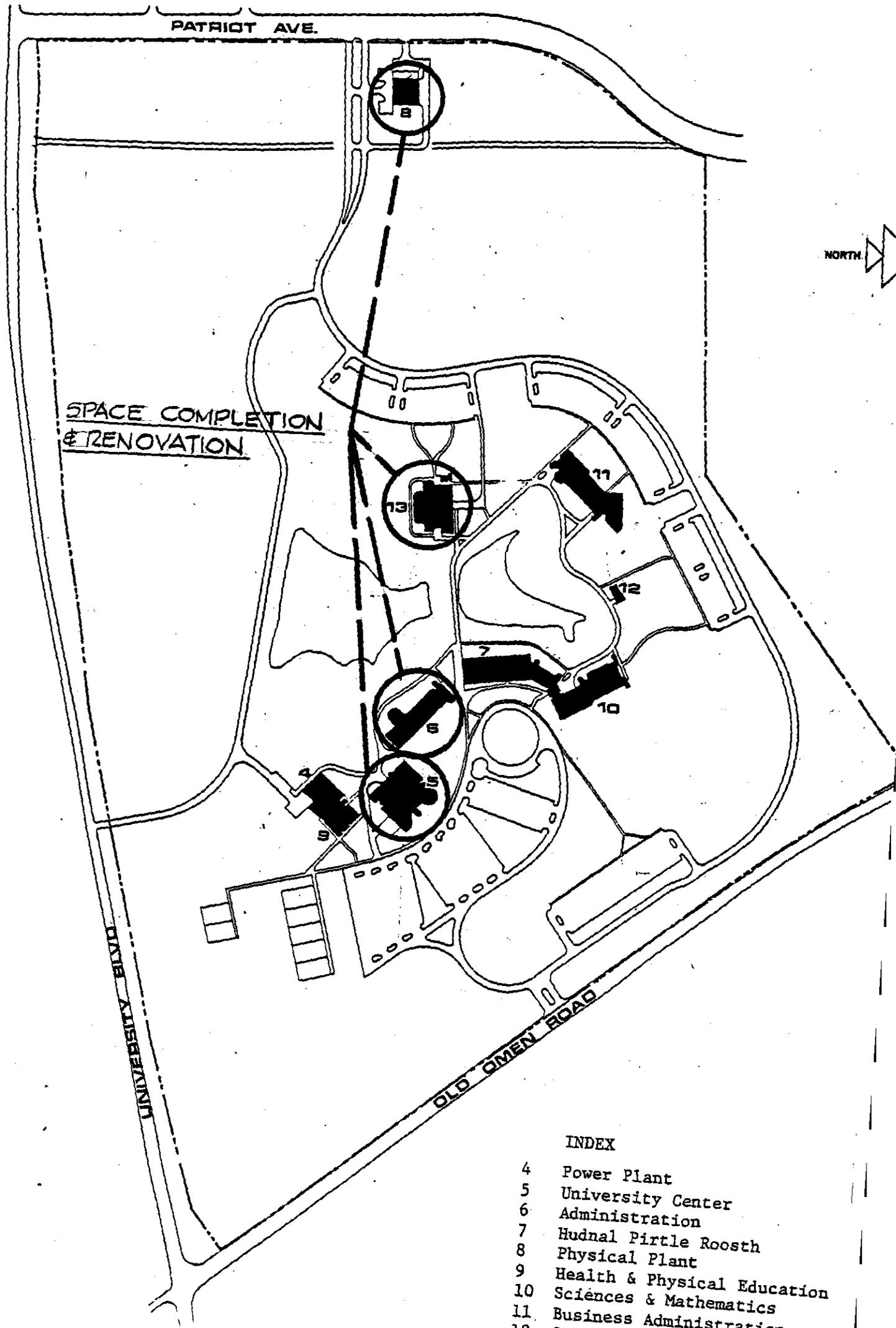
This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

12. U. T. San Antonio: Recommendation for Approval to Enter Into a Ground Lease with a Private Entity for the Provision of Student Housing.--

#### EXPLANATION

Administrative officers of U. T. San Antonio and U. T. System Administration have been negotiating with representatives of Sandalwood Properties, San Antonio, Texas, to complete an agreement for the joint development of a student housing project. The plan includes a ground lease of a designated portion of the U. T. San Antonio campus from the U. T. Board of Regents to Sandalwood Properties, who would then provide for financing and construction of a four-story dormitory, an adjacent building providing amenities for dormitory residents, and parking facilities.

# U. T. TYLER



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- 5 University Center
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- 9 Health & Physical Education
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- 12 Greenhouse
- 13 Library

SUPPLEMENTAL MATERIAL  
BUILDINGS AND GROUNDS COMMITTEE

December 5-6, 1985

12. U. T. San Antonio: Recommendation for Approval to Enter Into a Ground Lease With a Private Entity for the Provision of Student Housing.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Wagener that the U. T. Board of Regents:

- a. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a ground lease agreement, leasing a 6.013-acre tract of the U. T. San Antonio Campus to Mr. Clarence T. Bach as a site for a student dormitory and a recreation center substantially in the form attached hereto as Attachment A
- b. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a management agreement with Sandalwood Management, Inc., San Antonio, Texas, and "UTSA Phase I Dormitory Partnership" for the operation and management of the student dormitory substantially in the form attached hereto as Attachment B
- c. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a management agreement with Sandalwood Management, Inc., San Antonio, Texas, and "UTSA Phase I Dormitory Partnership" for the operation and management of a recreation center substantially in the form attached hereto as Attachment C
- d. Authorize the Office of the Chancellor and the Office of General Counsel to conclude negotiations on a Statement of Policy and Undertaking to be delivered to Lloyds Bank Int. Ltd. substantially in the form attached hereto as Attachment D

It is further recommended that upon satisfactory conclusion of negotiations, represented by documents substantially in the form of Attachments A, B, C, and D hereto, the Executive Committee of the U. T. Board of Regents be authorized to approve said documents.

#### BACKGROUND INFORMATION

Negotiations for the provision of student housing on the U. T. San Antonio campus by a private entity have reached the point represented by the attached documents. The documents provide a generally acceptable framework for this project, but details remain to be worked out.

The proposed project includes a 35-year ground lease of a 6.013-acre tract of the U. T. San Antonio campus to Mr. Bach, who will provide for the financing and construction of Phase I of the housing project, consisting of a four-story dormitory housing 520 residents, an adjacent recreation center providing amenities for students, and parking facilities.

The ground lease would grant to Mr. Bach a right of first refusal to lease additional tracts within the 20-acre area now designated for student housing, selected by U. T. San Antonio from time to time as necessary for development of subsequent phases of the student housing plan. The ground lease would grant the U. T. Board of Regents the right to purchase all the improvements on the leased premises (subject to the approval of the Coordinating Board, Texas College and University System) at an appraised price beginning December 31, 1994. If not purchased earlier, all improvements will revert to the U. T. Board of Regents at the expiration of the lease.

Under the proposal, management of the dormitory and recreation center will be the responsibility of Sandalwood Management, Inc. (an affiliated entity of Mr. Clarence T. Bach) pursuant to management agreements, to which the U. T. Board of Regents will be a party.

The Executive Vice Chancellor for Academic Affairs, the President of The University of Texas at San Antonio, and the Office of General Counsel will make necessary presentations at the meeting on December 5.

THIS AGREEMENT IS SUBJECT TO ARBITRATION  
UNDER THE TEXAS GENERAL ARBITRATION ACT,  
TEX. REV. CIV. STAT. ART. 224 ET SEQ.

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GROUND LEASE AGREEMENT

Dated as of \_\_\_\_\_, 1985

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*By and Between*

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM, *Lessor*

and

CLARENCE T. BACH, *Lessee*

---

RELATING TO THE UNIVERSITY OF TEXAS  
AT SAN ANTONIO  
DORMITORY FACILITIES

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0493Z  
SAOF&J  
Draft of 10/16/85  
Draft of 11/14/85  
Draft of 11/22/85  
Draft of 11/26/85  
Draft of 11/27/85

  
- Attachment A

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GROUND LEASE AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

This Ground Lease Agreement is made and entered into by and between The Board of Regents of the University of Texas System, for the use and benefit of the University of Texas at San Antonio, acting by and through its authorized officers, and Clarence T. Bach, an individual who resides in Bexar County, Texas.

W I T N E S S E T H:

Whereas, Section 65.39 of the Texas Education Code provides that the Board of Regents of The University of Texas System (the "LESSOR") has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, The University of Texas System;

Whereas, such Section 65.39 provides further that the LESSOR may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of The University of Texas System, not in conflict with the constitution;

Whereas, in order to assist in the development of campus housing facilities and related facilities for students at The University of Texas at San Antonio ("UTSA"), the LESSOR deems it is best for the interest of The University of Texas System, and particularly for UTSA and prudent in light of the unavailability of public funds for such development, that a portion of the campus of UTSA be leased to Clarence T. Bach, an individual who resides in Bexar County, Texas (the "LESSEE") for the purpose of developing, constructing,

owning and operating such student housing and related facilities;

Whereas, in furtherance of the aforesaid purposes, the LESSOR and the LESSEE have determined to enter into this Ground Lease Agreement (this "*Lease*") whereby the LESSOR will lease a tract of approximately 6.013 acres of land (the "*Leased Premises*") on the campus of UTSA to the LESSEE, and the LESSEE will develop, construct, own and operate on the leased premises a dormitory, for use by UTSA students and participants in university-sponsored events, and a recreation center for use by such students and participants and UTSA faculty and staff, subject to the terms herein stated;

Now, THEREFORE, in consideration of the mutual covenants, conditions and agreements which follow, the parties hereby agree:

[End of Recitals]

ARTICLE ONE

LEASE OF PROPERTY - TERMS OF LEASE

Section 1.01. *Lease of Premises.* LESSOR, in consideration of the rents, covenants, agreements and conditions herein set forth, which LESSEE hereby agrees shall be paid, kept and performed by LESSEE, does hereby let, demise and rent exclusively unto LESSEE, and LESSEE does hereby rent and lease from LESSOR, a 6.013 acre tract of real property (the "*Leased Premises*") more particularly described in Exhibit A attached hereto, being incorporated into this Lease and made a part hereof with the same effect as if set forth herein.

Section 1.02. *Easements.* This lease is subject only to (i) the matters set forth in Exhibit B attached hereto, being incorporated into this Lease and made a part hereof with the same effect as if set forth herein, and (ii) all present and future laws, ordinances, resolutions, regulations and orders of all municipal, county, state, federal or other governmental bodies, boards, agencies or other authority now or hereafter having jurisdiction.

LESSEE, by execution of this Lease, accepts the leasehold estate herein demised subject to all easements and other matters referred to on Exhibit B, including, without limiting the generality of the foregoing, the reserved rights of LESSOR to use those portions of the Leased Premises described or referred to in the instruments designated \_\_\_\_\_ on such Exhibit B for the purposes therein stated.

Section 1.03. *Term.* TO HAVE AND TO HOLD the hereinabove described tract of land subject to the matters as aforesaid, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging unto LESSEE, his successors and assigns, for a term commencing on the date hereof and ending at midnight on December 31, 2020, subject to earlier termination as herein provided, and upon and subject to the covenants, agreements, terms, provisions and limitations hereafter set forth, all of which the LESSEE covenants to perform and observe.

ARTICLE TWO

DEFINITIONS

Section 2.01. The terms defined in this ARTICLE shall for all purposes of this Lease, and all agreements supplemental hereto, have the meanings herein specified, unless the context otherwise requires.

*"Additional Dormitory or Dormitories"* means one or more of the Phase II, III and IV Dormitories.

*"Additional Leased Premises"* means any real property on the UTSA campus which is leased by the LESSOR to the LESSEE or to one or more Affiliated Entities pursuant to Section 12.01 hereof for the purpose of the development and construction of developing Additional Dormitories thereon.

*"Affiliated Entity"* means any corporation, partnership or other entity in which Clarence T. Bach, his spouse and descendants, or any one or more of them, own fifty percent (50%) or more of the issued and outstanding stock, partnership interests or equitable interests, as the case may be.

*"Commencement of Construction"* means the date on which excavation or foundation work is begun for either the Phase I Dormitory or the Recreation Center.

*"Date of Opening"* means the date any Dormitory or the Recreation Center is opened for occupancy or use.

*"Dormitory"* means a dormitory building to be constructed by the LESSEE in accordance with the Plans and Specifications, on the Leased Premises, as well as all modifications and replacements thereto, for use and occupancy by students of UTSA and by participants in university-sponsored events.

*"Dormitory Facilities Area"* means the real property comprising 18.949 acres described in Section 12.02 and more particularly described in Exhibit D, together with all appurtenances thereto.

*"Expiration Date"* means the expiration date of this Lease, December 31, 2020.

*"Facilities"* means a complex of buildings including four dormitories, referred to herein, respectively, as Phase I Dormitory, Phase II Dormitory, Phase III Dormitory, and Phase IV Dormitory and a Recreation Center, together with related facilities, each such building to be constructed from time to time on the Leased Premises or the Additional Leased Premises as well as all modifications and replacements thereto, for use by students of UTSA.

*"Force Majeure"* means those items enumerated in ARTICLE 30.

*"Leased Premises"* means the real property described in Section 1.01 and more particularly described in Exhibit A, together with all appurtenances thereto.

*"LESSEE"* means Clarence T. Bach, an individual who resides in Bexar County, Texas, and his heirs, devisees and assigns.

*"LESSOR"* means The Board of Regents of The University of Texas System.

*"LESSOR Representative"* means any person designated and authorized in writing from time to time by the LESSOR to represent LESSOR in exercising its rights and performing its obligations under this Lease.

*"OFPC"* means the Office of Facilities Planning and Construction of the University of Texas System.

*"OFPC Representative"* Means that person from the OFPC authorized in writing by LESSOR to represent LESSOR in certain matters pertaining to the construction of the facilities.

*"Operating Agreement or Agreements"* means one or more of the agreements relating to the operation and management of any of the Dormitories or the Recreation Center.

*"Phase I Dormitory"* means that Dormitory which is to be developed and constructed on the Leased Premises, in accordance with the Plans and Specifications.

"Phase I Dormitory Tract" means the real property comprising 4.623 acres of the Leased Premises described in Section and more particularly described in Exhibit E.

"Phase II Dormitory" means that Dormitory which is the first to be developed and constructed constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Phase III Dormitory" means that Dormitory which is the second to be developed and constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Phase IV Dormitory" means that Dormitory which is the third to be developed and constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Plans and Specifications" means the plans and specifications for the development and construction of the Facilities on file in the office of the LESSEE, as the same may be implemented and detailed from time to time by LESSEE, with the approval of the LESSOR.

"Recreation Center" means that building of the Facilities to be constructed by LESSEE on the Leased Premises in accordance with the Plans and Specifications, containing a swimming pool, a game room, dining facilities and other amenities, for use by students, faculty and staff of UTSA and by participants in UTSA-sponsored events.

"UTSA" means The University of Texas at San Antonio, a component institution of the University of Texas System, located in San Antonio, Bexar County, Texas, being an "institution of higher education" as defined in Section 53.02 and Section 61.003(7), Texas Education Code.

Section 2.02. The Table of Contents preceding this Lease is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental hereto or amendatory hereof.

### ARTICLE THREE

#### RENT

LESSEE agrees to pay to LESSOR at the office of the Lessor or to such other office as shall be designated to LESSEE in writing by LESSOR those sums, as rental for the use and occupancy of the Leased Premises, set forth on Exhibit C attached hereto and incorporated herein for all purposes.

### ARTICLE FOUR

#### USE OF LEASED PREMISES

Section 4.01. *Purpose of Lease.* LESSEE enters into this Lease for the purpose of developing and constructing the Phase I Dormitory and the Recreation Center in accordance with the Plans and Specifications and of operating and maintaining the Phase I Dormitory and Recreation Center in accordance with the Operating Agreements. The Leased Premises are to be used for no other purpose.

Section 4.02. *Benefit of UTSA.* LESSEE shall lease and hold the Leased Premises for the support, maintenance or benefit of UTSA, or the Leased Premises are not leased for a purpose not related to the performance of the duties and functions of the state or are not leased to provide private residential housing to members of the public other than students of UTSA and participants in UTSA-sponsored activities.

### ARTICLE FIVE

#### ACCEPTANCE AND CONDITION OF PREMISES

Section 5.01. *LESSEE'S Inspection.* LESSEE has had full opportunity to inspect and examine the Leased Premises. LESSEE'S execution of this Lease shall be conclusive evidence of LESSEE'S acceptance thereof in an "AS IS" condition and, subject to LESSOR'S obligations

set forth herein, LESSEE hereby accepts the Leased Premises in their present condition as suitable for the purpose for which leased.

Section 5.02. *No Representations.* LESSEE agrees that no representations respecting the condition of the Leased Premises and no promises to alter or improve the Leased Premises have been made by LESSOR or its agents to LESSEE unless the same are contained herein or made a part hereof by specific reference.

Section 5.03. *LESSOR'S Easements.* LESSOR shall provide any easements, reasonably required by Lessee in connection with this Lease, including but not limited to, utility easements through the UTSA campus, and access to and between the Leased Premises and to the remaining portions of UTSA campus and to public streets, and shall execute any instruments reasonably requested by LESSEE evidencing such easements and access.

## ARTICLE SIX

### ACCESS

LESSEE shall permit LESSOR'S agents, representatives, or employees to enter on the Leased Premises and the Facilities at reasonable times for the purposes of review and inspection as provided in this Lease, to determine whether LESSEE is in compliance with the terms of this Lease, or for other reasonable purposes. Subject to all rights to observe and enforce the applicable rules and policies of Lessor and UTSA, the LESSOR, its agents, representatives, and employees shall use their best efforts not to disturb construction on the Leased Premises and shall not disturb students residing in any Dormitory or tenants of subleased space.

ARTICLE SEVEN

CONSTRUCTION BY LESSEE

Section 7.01. *Local Conditions.* LESSEE declares he is familiar with local conditions with respect to the development and construction to be undertaken by LESSEE.

Section 7.02. *LESSEE to Pay Costs.* LESSEE will develop and construct the Facilities on the Leased Premises at his own cost and expense. LESSOR shall have no financial obligation or other obligation of any kind under this Lease except as specifically set forth herein.

- A. LESSEE shall furnish all supervision, tools, implements, machinery, labor, materials and accessories such as are necessary and proper for the construction of the Facilities, shall pay all permit and license fees, and shall construct, build, and complete in a good, substantial and workmanlike manner, the structures, work and improvements herein described to be constructed by LESSEE at his expense upon the Leased Premises, all in accordance with this Lease, the Plans and Specifications, and all documents executed pursuant hereto and thereto.
- B. Contingent upon the issuance of any required building permits and other governmental approvals, LESSEE shall have the right to and shall provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Leased Premises for the purpose of carrying out any of the activities provided for herein. LESSEE shall have sole control of the selection of construction professionals, construction design, means and methods and the final decision regarding operation of the Facilities. The Plans and Specifications for the construction of the Facilities and for landscaping shall be prepared by registered architects and engineers. The Plans and Specifications shall require the written approval of the OFPC Representative before any

construction or installation may be undertaken, which approval shall not be unreasonably withheld. All construction, alteration, renovation or additions to the Leased Premises undertaken by the LESSEE shall be in conformance with all applicable codes rules and regulations, including amendments thereto. LESSEE shall have the right to contest any such codes for reasonable grounds by ordinary and proper procedures.

- C. The OFPC Representative shall review the Plans and Specifications and note in writing any required changes or corrections thereto within twenty-five (25) business days after receipt of the Plans and Specifications. Minor changes in work or materials, not affecting the general character of the Facilities may be made in the Plans and Specifications at any time without the approval of the OFPC Representative, but a copy of the altered Plans and Specifications shall promptly be furnished to the OFPC Representative.
- D. At least 120 days prior to undertaking any additional construction for the renovation or remodeling of any of the buildings of the Facilities during the term of this Lease, LESSEE shall submit plans for such renovation or remodeling to the LESSOR and the OFPC Representative for approval, which approval shall not be unreasonably withheld.
- E. LESSEE covenants that, subject to Force Majeure, the Plans and Specifications for the Facilities, together with a copy of the building permit for the Phase I Dormitory and the Recreation Center shall be submitted to the OFPC Representative and the Commencement of Construction of such building shall be no later than six (6) months after the date hereof and that LESSEE shall complete its construction within twelve (12) months after the date of Commencement of Construction.

At the option of LESSOR, good faith extensions of time may be made pursuant to ARTICLE 32 hereof.

- F. Prior to Commencement of Construction, (1) LESSEE shall deliver to the LESSOR Representative a copy of the signed contract between the LESSEE and the general contractor for the construction of the Facilities to be erected upon the Leased Premises, and (2) LESSEE shall provide a performance bond or a performance guaranty, which may be from a financially responsible contractor or affiliate of such contractor, in favor of LESSOR for completion of construction in an amount adequate to provide for the substantial completion of the Facilities and a payment bond or payment guaranty.
- G. The LESSOR Representative shall have the right of review and approval of all payment bonds and performance bonds or guaranties and shall note in writing any required changes or corrections within ten (10) business days after receipt thereof.
- H. At the request of LESSEE, LESSOR will assist or cooperate with LESSEE in obtaining all city, state, or federal approvals necessary for the construction and development contemplated herein and in obtaining any funding, financing or grants that may be available. This provision shall in no way imply that LESSOR will provide LESSEE with legal, tax or financial advice nor will LESSOR incur any liability for any such assistance, cooperation or lack thereof.
- I. LESSEE shall, upon written request of LESSOR, make, in such detail as may reasonably be required, and forward to LESSOR, reports in writing as to the actual progress of the LESSEE with respect to such construction. During such period, the work of the LESSEE shall be subject to inspection by the OFPC Representative and by authorized personnel of UTSA in order to verify reports of construction, determine compliance with safety, fire, and building codes, determine compliance with approved construction plans, or such other inspections as may be necessary in the opinion of LESSOR.

- J. LESSOR and LESSEE will provide each other with such construction easements as may be reasonably required or desired to effect the construction of the Facilities.
- K. LESSEE shall have the right to prohibit access of the public onto the Leased Premises at such times as the Leased Premises are not open to the public.
- L. LESSEE agrees to comply with all state, federal and local laws and regulations with regard to all construction procedures and materials and the treatment of any archeological or historical properties.
- M. LESSEE agrees that it will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenances thereof; and that it will hold LESSOR free and harmless from any and all claims on account of the use of any machines, materials, methods or processes.

Section 7.03. *Personal Property.* All machinery, equipment and items of personal property of any kind owned by LESSEE and at any time placed or maintained by LESSEE on any part of the Leased Premises and all buildings erected and all alterations, additions, attached fixtures or improvements made upon the Leased Premises shall be and remain the property of LESSEE; provided, however, that all buildings erected and all alterations, additions, attached fixtures or improvements made upon the Leased Premises shall become the property of LESSOR upon the Expiration Date or upon termination of this Lease prior to the Expiration Date for any reason, as provided by Section 14.01.

## ARTICLE EIGHT

### ENCUMBRANCES

Section 8.01. *Mortgage of Leasehold.* LESSEE may with the prior approval of Lessor, which shall not be unreasonably withheld, at any time and from time to time mortgage the LESSEE'S leasehold estate in the Leased Premises by the creation or execution of contractual liens, deeds of trusts, mortgages, assignments or similar instruments (herein called "*Mortgages*"). Such prior approval is hereby given to Lessee for the granting of such Mortgages in connection with the financing of the construction costs of the Phase I Dormitory and the Recreation Center, whether such financing be through the issuance of industrial development bonds or by a financial institution.

Section 8.02. *LESSOR'S Agreements.* In the event any proposed mortgagee of a leasehold mortgage to be created pursuant to this Article 8 should so require, then LESSOR shall execute and deliver to such mortgagee a writing whereby LESSOR agrees in substance to the provisions set out below.

- A. LESSOR shall not terminate this Lease for any default of LESSEE hereunder without first advising the mortgagee, in writing, of such default and permitting the mortgagee to cure such default on behalf of such LESSEE within sixty (60) days after the giving of such notice. Further, if any default, other than a default in the payment of rent hereunder, is not cured within such sixty (60) day period, or any extension thereof agreed to by the mortgagee, (i) if the mortgagee has instituted foreclosure proceedings prior to the expiration of fifteen (15) days after the expiration of said sixty (60) day period (as the same may have been previously extended) and (ii) prosecutes such foreclosure diligently to conclusion, and (iii) the purchaser at the foreclosure sale fully cures the default within sixty (60) days after such foreclosure sale then LESSOR will not terminate this Lease until fifteen (15) days after the expiration of said sixty (60) day period provided that such foreclosure proceedings are diligently prosecuted.

- B. In the event the mortgagee should foreclose upon the LESSEE'S leasehold interest hereunder and should, as a result of such foreclosure, succeed to such leasehold interest, then the mortgagee shall be subject to all the terms and conditions of this Lease.
- C. LESSOR will not agree to a modification, alteration, amendment or the release or surrender of this Lease without the consent of the mortgagee.
- D. In the event of the termination of this Lease prior to the Expiration Date, except by eminent domain or condemnation pursuant to Article 19 hereof, LESSOR will serve upon the mortgagee written notice that the Lease has been terminated together with a statement of any and all sums which would have at that time been due under the Lease but for such termination and of all other defaults, if any, under the Lease then known to LESSOR whereupon the mortgagee shall have the option to obtain a new Lease of the premises by giving notice to LESSOR to such effect within thirty (30) days after receipt by the mortgagee of notice of such termination, which new Lease shall be entered into at the reasonable cost of the LESSEE thereunder, shall be effective as of the date of termination of this Lease and shall be for the remainder of the term of this Lease and for the rent and upon all of the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal. Such new Lease shall require the LESSEE to perform any unfulfilled obligation of LESSEE under this Lease which is reasonably susceptible of being performed by such LESSEE. Upon the execution of such new lease, the LESSEE named therein shall pay any and all sums which at the time of the execution thereof would be due under this Lease but for such termination and shall pay all expenses, including reasonable attorney's fees, court costs and disbursements incurred by LESSOR in connection with such defaults and termination, the recovery of possession of Leased Premises and the preparation, execution and delivery of such new Lease.

Section 8.03. *Modification.* LESSOR agrees to consider the execution of reasonable modification, agreements or amendments to this Lease as may reasonably be requested from time to time by a leasehold mortgagee, provided that such modifications shall not vary the rental to be paid by LESSEE, nor subject the LESSOR'S fee title to any such mortgage, nor be detrimental to the welfare of students, faculty or staff of UTSA.

## ARTICLE NINE

### MAINTENANCE AND REPAIR

Section 9.01. *Utilities.* LESSEE shall pay or cause to be paid any and all charges, including any connection fees, for water, heat, gas, electricity, sewers and any and all other utilities used on the Leased Premises throughout the term of this Lease and any extension thereof.

Section 9.02. *Repairs.* LESSEE at LESSEE'S sole cost and expense at all times during the term of this Lease agrees to keep and maintain, or cause to be kept and maintained, the Leased Premises and all buildings and improvements which may be erected on or become a part of the Leased Premises in a good state of appearance and repair, with reasonable wear and tear, damage caused by casualty or condemnation, temporary destruction for renovation and Force Majeure excepted.

Section 9.03. *Condition of Leased Premises.* LESSEE shall be strictly responsible for the condition of the Leased Premises and shall maintain the leased premises in a safe, clean, neat and sanitary condition, attractive in appearance, reasonable wear and tear, damage caused by casualty or condemnation, temporary destruction for renovation and force majeure excepted. LESSOR shall have the right at reasonable times to make reasonable inspections of the Leased Premises and make suggestions as to proper maintenance of the Leased Premises and to insure that fire, safety and sanitation regulations and other provisions contained in this Lease are adhered to by the LESSEE subject to the provisions in ARTICLE 13.

Section 9.04. *Inspection.* LESSOR, at LESSOR'S option, shall cause to be made an annual inspection of the Leased Premises and buildings to ascertain the quality of maintenance being observed by LESSEE, and shall notify LESSEE in writing of all items of repair or replacement deemed reasonably necessary to maintain the Leased Premises and buildings in a presentable and operating condition, with a copy of such notice being provided to each leasehold mortgagee entitled to notices under this Lease. Upon receipt of said notice, LESSEE shall undertake reasonable corrective maintenance or replacement of all items listed.

Section 9.05. *Renovation of Improvements.* LESSEE shall have the right at any time and from time to time to do such major or minor alterations, renovation or repair work to any building or portion of the Facilities as LESSEE determines is reasonably necessary in order to comply with the requirements of this Lease or the Operating Agreements, and in connection with such work close of one or more buildings of the Facilities for a consecutive period not to exceed twelve (12) months (subject to extension by Force Majeure) to accomplish such work, during which period LESSEE shall pay the rental due hereunder, or, if it is not necessary to close an entire building, LESSEE may close the portion thereof undergoing such alteration, renovation or repair provided that LESSEE shall use his best efforts to ensure that as few rooms of the Dormitory are closed at any time as may be practicable under the circumstances.

Section 9.06. *Damage to Improvements.* Subject to the other terms of this Lease, in the event any portion of the Facilities is damaged by fire or otherwise, regardless of the extent of such damage or destruction, LESSEE shall no later than 180 days following the date of such damage or destruction commence the work of repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the improvements shall, at the sole expense of LESSEE, be restored to substantially the same size, function and value as the improvements existing prior to the damage; provided, however, that if LESSEE'S leasehold mortgagee shall require that so much of the insurance proceeds be applied to such leasehold mortgagee's leasehold mortgage that the remaining proceeds are insufficient, in the reasonable judgment of LESSEE, to permit restoration in accordance with the terms of this Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, then the LESSOR shall grant an appropriate extension of the time for commencing repairs to allow LESSEE to obtain reasonable replacement financing or to obtain the insurance proceeds. If LESSEE shall in good faith be unable to obtain reasonable replacement financing or to obtain the insurance proceeds, then LESSEE may terminate this Lease by written notice to LESSOR. In the event of termination under this paragraph, this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the

date herein fixed for the expiration of the term, and the rent shall be apportioned and paid to the time of such termination.

Section 9.07. *Restoration and Replacement.* If, during the last ten years of the term of this Lease, the improvements then on the Leased Premises shall be so damaged by fire or otherwise that the cost of restoration shall exceed fifty percent (50%) of the replacement value thereof (exclusive of foundations) immediately prior to such damage, then within thirty (30) days after the date of such damage, LESSEE may terminate this Lease by written notice to LESSOR and this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the term, and the rent shall be apportioned and paid to the time of such termination. In such event LESSEE shall have no obligation to repair or rebuild, and the entire insurance proceeds, subject to the rights of any leasehold mortgage, shall be the property of LESSEE, provided, however, that at LESSOR'S request made in the manner provided in Section 11.09 above, and at LESSEE'S expense, LESSEE shall promptly demolish and clear any improvements (including foundations) remaining on the leased premises.

## ARTICLE TEN

### CERTAIN LIENS PROHIBITED

Section 10.01. *No Mechanics' Liens.* LESSEE shall not suffer or permit any mechanics' liens or other liens to be enforced against the fee interest of LESSOR in the Leased Premises nor against LESSEE'S leasehold interest in the land nor any buildings or improvements on the Leased Premises by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to LESSEE or to anyone holding the Leased Premises or any part thereof through or under LESSEE.

Section 10.02. *Release of Recorded Liens.* If any such mechanics' liens or materialmen's liens shall be recorded against the Leased Premises, or any improvements thereof, LESSEE shall cause the same to be released of record or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and released prior to the execution of such judgment. In the event LESSOR reasonably should consider itself endangered by any such liens and should so notify the LESSEE and the leasehold mortgagee and the LESSEE should fail to provide adequate security for the payment of such liens, in the form of a surety bond, cash deposit or cash equivalent, within thirty (30) days after such notice, then LESSOR, at LESSOR'S sole discretion, may discharge such liens and recover from LESSEE immediately as net rent under this Lease the amounts to be paid, with interest thereon from the date paid by LESSOR until repaid by LESSEE at the rate of ten percent (10%) per annum.

Section 10.03. *Memorandum Recitals.* The Memorandum of Lease to be filed pursuant to ARTICLE 31 of this Lease shall state that any third party entering into a contract with LESSEE for improvements to be located on the leased premises, or any other party under said third party, shall be on notice that LESSOR shall have no liability for satisfaction of any claims of any nature in any way arising out of a contract with LESSEE.

Section 10.04. LESSOR *Review of Bonds and Guaranties.* Upon request, LESSEE shall provide to LESSOR evidence of adequate compliance under the terms of this Lease of all payment bonds and performance bonds or guaranties and Lessor shall note in writing any required change or corrections within twenty-five (25) business days after receipt thereof.

#### ARTICLE ELEVEN

##### OPERATION OF FACILITIES

LESSEE shall be responsible for the operation of the Facilities. LESSEE and LESSOR shall enter into one or more Operating Agreements with one or more operators, who shall be approved by LESSOR. Each such Operating Agreement shall provide for the operation of the Facilities without cost or expense to LESSOR in conformity with all applicable law and with the rules, regulations and policies of LESSOR and UTSA. The Operating Agreements shall permit the Operator to contract with LESSOR and UTSA to provide certain services.

ARTICLE TWELVE

ADDITIONAL OBLIGATIONS OF LESSOR

Section 12.01. *Right of First Refusal for Additional Dormitories.* A. For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by the LESSEE to LESSOR, the receipt and sufficiency of which consideration are hereby confessed and acknowledged by LESSOR, LESSOR, for itself, its successors and assigns, does hereby covenant and agree with LESSEE, that if at any time and from time to time, prior to the expiration or earlier termination of this Lease, LESSOR desires to have one or more Additional Dormitories constructed, at the cost and expense of a lessee, on real property on the UTSA campus which shall be subject to a lease with such lessee similar to this Lease, LESSOR shall be obligated to give LESSEE written notice of such desire specifying therein the "Date of Opening" (which, in no event shall be less than eighteen (18) months after the date of such notice) required by LESSOR for such Additional Dormitory or Dormitories. Such notice shall offer to LESSEE the right to obtain a lease from LESSOR of the Additional Leased Premises on which such Additional Dormitory or Dormitories are to be constructed by LESSEE, which Lease shall be substantially on the same terms and subject to substantially the same provisions and requirements as this Lease, except as otherwise stated in this Section 12.01, with LESSOR agreeing to provide, or to authorize UTSA to provide, the same services with respect to each such Additional Dormitory as LESSOR is obligated to provide under the Operating Agreement with respect to the Phase I Dormitory. Following receipt of such written notice from LESSOR, LESSEE shall have one hundred eighty (180) days within which to accept LESSOR'S offer by giving written notice of its acceptance of such offer within such period of time. Thereafter, the lease of the Additional Leased Premises shall be closed as promptly as practicable after acceptance by LESSEE. If LESSEE fails to timely exercise such right to lease the Additional Leased Premises within the time period stated, LESSOR shall then have the right, at any time within one hundred eighty (180) days after expiration of such one hundred eighty (180) day period to lease such Additional Leased Premises to other persons; however, any leasing of such Additional Leased Premises after such date, as well as

the leasing of any other Additional Leased Premises for dormitory use while this Lease remains in effect must again be offered to LESSEE upon said terms and provisions as above stated.

B. Any lease of an Additional Leased Premises pursuant to this Section 12.01, the provisions of paragraph 12.01A. notwithstanding, (i) shall be for a term of years commencing no less than twelve (12) months (unless a shorter period shall have been agreed to by Lessee) prior to the Date of Opening for the Additional Dormitory or Dormitories constructed thereon and expiring on December 31, 2020; and (ii) the provisions of Section 15.02 shall be revised to provide LESSOR the right to purchase the Facilities constructed on such Additional Leased Premises for a purchase price determined in accordance with Section 15.02.

C. Attached hereto as Exhibit D and incorporated herein for all purposes, is the description of the Dormitory Facilities Area, being that 18.949 acre portion of the UTSA campus, which LESSOR currently contemplates as the location for dormitories and related facilities on such campus. The Leased Premises described on Exhibit A are included in this Dormitory Facilities Area. LESSOR and LESSEE currently contemplate that any Additional Dormitories will also be constructed on lands in the Dormitory Facilities Area; however, nothing in this Lease shall be deemed or construed to limit LESSOR in its designation of the location on the UTSA campus (as now or hereafter constituted) of where it may desire Additional Dormitories to be built, nor to limit the rights of LESSEE under this Section 12.02 to obtaining leases of Additional Leased Premises only with respect to the Dormitory Facilities Area described in said Exhibit D, if LESSOR desires to grant a lease or leases on other lands for the purpose of having Additional Dormitories constructed, developed, operated and maintained on such other lands.

Section 12.02. *Dormitories Constructed by Lessor.* Nothing in Section 12.01 or otherwise shall be construed to restrict or prohibit Lessor from undertaking at any time at its own cost and expense the construction of one or more dormitories on the UTSA campus.

Section 12.03. *Assistance for Tax Treatment.* LESSOR will assist, upon request by LESSEE, in obtaining any favorable tax treatment with respect to the Facilities that is allowable under then current law. LESSOR shall not be obligated to provide LESSEE with legal or tax advice or invoke any liability whatsoever.

Section 12.04. *Access.* In addition to construction easements and access as set forth elsewhere in this Lease, LESSOR shall provide reasonable access to and from the Leased Premises and public streets as well as convenient access between the Leased Premises and the portion of the UTSA campus not subject to this Lease.

Section 12.05. *Existence of UTSA.* LESSOR will maintain the existence and operation of UTSA on its present campus and will not take or permit any action that would result in the loss of any accreditation of UTSA by accrediting organizations which UTSA presently holds or would otherwise impair its operation as an institution of higher education during the term of this Lease.

ARTICLE THIRTEEN

INSURANCE AND INDEMNIFICATION

Section 13.01. *Indemnification by LESSEE.* Excluding gross negligence or willful misconduct on the part of LESSOR, its employees, agents or contractors, LESSEE shall and will indemnify and save harmless LESSOR, its agents, officers, and employees, from and against any and all liability claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with LESSEE'S use, occupancy, management, operation or control of the Leased Premises. This obligation to indemnify shall include the retention of outside legal counsel and third-party investigation costs and all other reasonable costs, expenses, and liabilities from the first notice that any claim or demand has been made.

It is expressly understood and agreed that LESSEE is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that LESSOR shall in no way be responsible therefor.

Section 13.02. *LESSOR Not Liable.* LESSOR shall not be liable for any damage to either persons or property sustained by LESSEE or other persons and caused by any act or omission of students or other occupants of the Facilities.

Section 13.03. *Insurance.* LESSEE shall at all appropriate times maintain, with respect to the Leased Premises, for the duration of this Lease and any extensions thereof, insurance issued by a company or companies qualified, permitted or admitted to do business in the State of Texas in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
(1) Comprehensive General (Public) Liability--to include coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury and Property Damage: \$ _____ or its equivalent
(A) Premises/ Operations (B) Independent Contractors (C) Products/Completed Operations (D) Personal Injury (E) Contractual Liability (F) Explosion, collapse and underground property damage	
(2) Property Insurance--for physical damage to the property of the LESSEE including improvements and betterments to the leased premises.	Coverage for a minimum of 80% of the actual cash value of the property.
(3) Builder's Risk Insurance -all risk of physical loss during term of the construction contract and until work is completed	Coverage for a minimum 80% of the replacement cost of the property.

Section 13.04. *LESSOR Additional Insured.* LESSEE agrees that with respect to the above required insurance, LESSOR shall:

- A. Be named on the Comprehensive General Liability policy as additional insured/or an insured, as its interest may appear. LESSOR agrees to promptly endorse insurance checks and/or otherwise release insurance proceeds.
- B. Be provided with sixty (60) days advance notice, in writing, of cancellation or material change in coverage. If any insurance policy provides that the insurer will give such notice, then LESSEE shall not be obligated to do so with respect to such policy.
- C. Be provided with Certificate of Insurance evidencing the above required insurance at the time the policies are required to be obtained

and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

Section 13.05. *Additional Insurance.* LESSOR shall review LESSEE'S required insurance as stated herein at the time of renewal of the said policies or at the time of a material change, and LESSOR reserves the right to require reasonable additional limits or coverages. LESSEE agrees to comply with any such request by LESSOR.

Section 13.06. *Blanket Policies.* If any blanket general insurance policy of LESSEE complies with these requirements, such insurance shall fulfill the requirements set forth herein. At the request of LESSEE, any leasehold mortgagee may be named as an insured or an additional insured on any policies as its interest may appear.

ARTICLE FOURTEEN

TERMINATION, DEFAULT AND REMEDIES

Section 14.01. *Events of Default.* The following events shall be deemed to be events of default by LESSEE under this agreement.

- A. The taking by execution of LESSEE'S leasehold interest set forth herein or of the improvements placed by LESSEE upon the Leased Premises for the benefit of any person other than the leasehold mortgagee.
- B. LESSEE shall fail to pay any sum required to be paid under the terms and provisions of this Lease and such failure shall not be cured within thirty (30) days after receipt of written notice from LESSOR of such failure.
- C. LESSEE shall fail to perform any other covenant or agreement, other than the payment of sums required to be paid, to be performed by LESSEE under the terms and provisions of this Lease and such failure shall not be cured within ninety (90) days after receipt of written notice from LESSOR of such failure; provided that if, during such ninety (90) day period, LESSEE takes action to cure such default but is unable, by reason of the nature of the work involved, to cure the same within such period and continues such work thereafter diligently and without unnecessary delays, LESSEE shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such default.
- D. The filing of a petition for relief against the LESSEE, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable Federal or State law of similar import, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for the LESSEE or any substantial part of the properties of the

LESSEE or ordering the winding up or liquidation of the affairs of the LESSEE, and the continuance of any such decree or order unstayed and in effect for a period of 45 consecutive days.

- E. The commencement by the LESSEE of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable Federal or State law of similar import, or the consent or acquiescence by the LESSEE to the commencement of a case under such Code or law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for the LESSEE or any substantial part of the properties of the LESSEE, or the making by the LESSEE of an assignment for the benefit of creditors, or the admission by the LESSEE in writing of its inability to pay its debts generally as they become due.

Section 14.02. *Completion by Mortgagee.* Subject to Force Majeure, if prior to the substantial completion of the improvements, the LESSEE ceases construction of the improvements for a period of thirty (30) consecutive days, LESSOR may by written notice to the leasehold mortgagee require said leasehold mortgagee to affirm by written notice to LESSOR within thirty (30) days of receipt by said leasehold mortgagee of such notice from LESSOR that such leasehold mortgagee intends to use its best efforts to pursue applicable remedies which will result in its causing the completion of the improvements. If said leasehold mortgagee fails to give such affirmation or thereafter by written notice abandons such intent, LESSOR may exercise its remedies under the Lease. This provision is in addition to the payment bond and performance bond or guaranty requirements set forth in this Lease.

Section 14.03. *Right to Expel.* The leasehold mortgagee or lender, who shall have been approved by Lessor pursuant to Section 8.01, shall have the right to expel LESSEE in the event of an uncured default and assume the position of LESSEE with all rights and duties under this Lease.

Section 14.04. *LESSOR'S Rights Upon Default.*  
Upon the occurrence of an event of default not cured as heretofore provided, LESSOR may at its option declare this Lease and all rights and interests created by it to be terminated, may seek any and all damages occasioned by LESSEE'S default hereunder, or may seek any other remedies available at law or in equity.

Section 14.05. *Right to Relet Leased Premises.*  
Upon LESSOR'S exercise of the election to terminate this Lease, LESSOR, its agent or attorney, may take possession of the Leased Premises and relet the same for the remainder of the term upon the best terms LESSOR, its agent or attorney, may obtain for the account of LESSEE, who shall make good any deficiency as such occurs. Any termination of this Lease as herein provided shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable to LESSOR hereunder, or any claim for damages then or theretofore accruing against LESSEE hereunder, and any such termination shall not prevent LESSOR from enforcing the payment of any such sum or sums or from claiming damages by any remedy provided for by law, or from recovering damages from LESSEE for any default hereunder.

ARTICLE FIFTEEN

IMPROVEMENTS

Section 15.01. *Title to Improvements Upon Expiration or Termination.* Upon the Expiration Date, or upon the earlier termination of this Lease pursuant to any provision of this lease, title to the Facilities shall vest completely in LESSOR, subject to LESSEE'S rights hereinafter set forth.

- A. Subject to subparagraph B hereof, all furniture, fixtures, equipment and furnishings permanently affixed to the Leased Premises shall become the property of LESSOR upon termination of this Lease whether such termination be by expiration of the term herein granted or an earlier termination under any provision of this Lease.
- B. LESSEE shall have the right, within thirty (30) days after the termination of this Lease, whether such termination be by the expiration of the term or an earlier termination under any provision of this Lease, to remove from the Leased Premises all of its furniture, fixtures, equipment and furnishings which are not permanently affixed to the Leased Premises and with respect to any damage caused thereby shall have the obligation to restore the Leased Premises to a clean and safe condition, and provided that, if any of LESSEE'S property remains in or on the Leased Premises after thirty (30) days following termination of this Lease and no renewal agreement has been executed, such thereof as so remains shall be deemed to have become the property of LESSOR, and may be disposed of as LESSOR sees fit, without liability to account to LESSEE for the proceeds of any sale or other disposition thereof.
- C. LESSOR agrees to subordinate any statutory or other lien or right herein it might have on LESSEE'S furniture, fixtures, equipment and furnishings to any mortgage or other security interest executed or granted by LESSEE on the furniture, fixtures, equipment or furnishings,

and LESSOR will execute such agreements as may be reasonably required by any mortgagee or holder of a security interest in the furniture, fixtures, equipment or furnishings with respect thereto.

Section 15.02. *LESSOR'S Option to Purchase Improvements.* At any time on or after December 31, 1994, LESSOR shall have the option to purchase the Facilities at the purchase price (the "*Purchase Price*") determined by appraisal in accordance with Section 17.06. Such purchase by Lessor shall be subject to approval of the Coordinating Board, Texas College and University System. Such option to purchase may be exercised by Lessor by providing written notice to the LESSEE not later than one hundred eighty (180) days prior to the closing date of such purchase. The LESSOR shall purchase all buildings of the Facilities, whether completed or under construction, at one time.

ARTICLE SIXTEEN

DEFAULT BY LESSOR

Section 16.01. *LESSEE'S Right to Cure.* Should LESSOR fail to perform any term or covenant of this Lease to be performed by LESSOR and such failure shall not be cured within ninety (90) days after receipt of written notice of said failure from LESSEE, in that event, LESSEE shall have the right to cure the default and offset the cost thereof against the next maturing rental installments under this Lease. Those costs will be limited only to those costs necessary and reasonably incurred by LESSEE to cure the default as presented to LESSOR by LESSEE in an itemized statement.

Section 16.02. *Rights of LESSEE Cumulative.* All rights and remedies of LESSEE provided for in this Lease shall be construed and held to be cumulative, and no single right or remedy shall be exclusive of any other which is consistent with the former. LESSEE shall have the right to pursue any or all of the rights or remedies set forth herein, as well as any other consistent remedy or relief which may be available at law or in equity, but which is not set forth herein. No waiver by LESSEE of a breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition or restriction herein contained. The failure of LESSEE to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future breaches of such covenant or option.

## ARTICLE SEVENTEEN

### CONDEMNATION

Section 17.01. *Condemnation of Entire Leased Premises.* In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and both LESSEE and LESSOR shall thereupon be released from any liability thereafter accruing hereunder.

Section 17.02.. *Partial Condemnation.* In case of taking of less than all of the Leased Premises and improvements thereon LESSOR and LESSEE mutually shall determine, within sixty (60) days after the date of taking, whether the remaining Leased Premises and improvements thereon after restoration can economically and feasibly be used by LESSEE. If LESSOR and LESSEE have not agreed upon such matter within said sixty (60) day period it shall be resolved by arbitration as provided herein.

If it is determined that the remaining Leased Premises and improvements thereon cannot be economically and feasibly used by LESSEE for the purposes stated in Article Four hereof, LESSEE, at his election, may terminate this Lease by giving LESSOR notice of his election to terminate at least sixty (60) days prior to the date of such termination. Upon any such termination, the rent accrued and unpaid hereunder shall be apportioned to the date of termination.

Section 17.03. *Temporary Taking.* Should a temporary taking occur which does not result in a termination of this Lease, then LESSEE shall remain in the Leased Premises upon the terms of this Lease without reduction or abatement in rent.

Section 17.04. *Division of Award.* The award in any condemnation proceeding shall be divided as follows:

- A. Provided LESSOR'S interest in the land is condemned, LESSOR first shall be entitled to an amount equal to the value, on the date of taking, of the land taken, such value and damages to be determined as if the land were

vacant and unimproved and available for its current use, but as encumbered by this Lease. LESSOR and LESSEE shall agree upon such value notwithstanding any separate allocation of such value in the condemnation award, and if they cannot agree it shall be resolved by the method of appraisal provided in Section 17.06 below.

- B. LESSEE shall be entitled to the remainder of the award after the payment has been made to LESSOR as provided above, and LESSEE'S entitlement thereto shall be subject to the rights of the holder of any mortgage or deed of trust on LESSEE'S leasehold interest hereunder.

Section 17.05. *Repair After Condemnation.* Should either a partial taking occur that does not result in termination as provided by Section 17.02 or a temporary taking occur, LESSEE, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the buildings and improvements to a complete architectural unit or units, including without limitation, temporary repairs, changes and installation required to accommodate space subtenants and all other work incidental to and in connection with all the foregoing.

Section 17.06. *Appraisal.* In the event that LESSOR and LESSEE are unable to agree upon any value, price of any of the Facilities or other matter subject to appraisal pursuant to the terms of this Lease within thirty (30) days after the dispute or failure to agree arises, then such value or other matter shall be established by appraisers chosen and who shall act in the following manner: LESSEE and LESSOR shall each nominate one person deemed by them, respectively, to be fit, reputable and impartial, to appraise and determine the unresolved matter. The nomination must be in writing and must be given by each party to the other within fifteen (15) days after the aforesaid thirty (30) day period. If only one party shall so nominate an appraiser within such fifteen (15) day period, the other party may then nominate an appraiser by written notice to the other party given within ten (10) days after its receipt of the nomination of the other party. If only one party shall nominate an appraiser within the periods

referred to above, then that appraiser shall have the power to act alone, and his decision as to value or such other matters made in accordance with the provisions hereof shall be binding on both parties. The two persons so nominated and appointed as appraisers by the parties shall be requested to appraise the Facilities or other matter submitted to them within thirty (30) days after the second of them shall be nominated. If the lower of the two values so determined by them is within ten percent (10%) of the amount of the higher value, then the value of the Facility or other matter shall be determined to be the average of the two. If such lower value is more than ten percent (10%) less than the higher value, then such two appraisers appoint a fit, reputable and impartial person to be umpire between them, if they can agree upon such person. However, if they cannot agree on an umpire within ten (10) days after the expiration of the aforesaid thirty (30) day period for agreement between them (as determined in accordance with the terms hereof), then either party may apply to the Chief District Judge of the United States District Court for the Western District of Texas (or successor judge exercising similar functions) to appoint a fit, reputable and impartial person, who shall then be umpire, but if such Chief Judge (or successor) shall fail or refuse to act, then either party may apply to any court having jurisdiction for the appointment of such umpire. The appraisers and the umpire shall be members of the American Institute of Real Estate Appraisers. The following written decisions shall be conclusive and binding on the parties: the decision of one appraiser if either party shall fail to appoint its appraiser as hereinabove provided; the decision of the two appraisers prior to appointment of the umpire; the decision of a majority of the two appraisers and the umpire. The two appraisers and umpire shall serve their written decision upon the parties within sixty (60) days after the selection of such umpire, provided the two appraisers may extend that period once up to sixty (60) days by joint notice to the parties. Each party shall bear the expense of its own appraiser, but the fees and expenses of the umpire shall be shared equally. In no event shall the appraisers have the right or power to vary the terms of this Lease.

ARTICLE EIGHTEEN

ASSIGNMENT AND SUBLETTING

Section 18.01. *Assignment by LESSEE.* LESSEE is hereby authorized to sell or assign LESSEE'S leasehold estate in its entirety or for any portion of the unexpired lease term thereof at any time. Any purchaser or assignee of LESSEE'S leasehold estate shall have like power of sale, assignment and transfer on the same conditions and subject to the same restrictions as those imposed herein on LESSEE and shall be subject to all terms and conditions of the Lease; provided however, that, subject to the provisions of Section 18.04, no sale or assignment under this ARTICLE shall relieve LESSEE of any liability under this Lease unless the assignment is made subsequent to the completion of the Dormitory Phase I and the Recreation Center and

- A. The assignee is either the original long-term first leasehold mortgagee or the construction lender leasehold mortgagee and is approved by the LESSOR, which approval shall not be unreasonably withheld, or such assignee is a purchaser at a foreclosure sale, or is the assignee of any of the foregoing, or
- B. The assignee is an Affiliated Entity, or
- C. The assignee has been approved by the LESSOR, which approval may not be unreasonably withheld.

The LESSOR'S decision as to approval will be based only upon the financial capabilities of the assignee and the managerial capabilities of the assignee or any person or entity with whom the assignee has contracted for the management of the Facilities. Any dispute of the parties as to the reasonableness of withholding approval of an assignee will, at the choice of either party, be submitted for expedited arbitration in San Antonio, Texas, in accordance with the procedure then obtaining of the American Arbitration Association.

Section 18.02. *Notice of Assignment.* Except for any assignment to an Affiliated Entity, for which notice and consent as provided in this Section shall not be required, LESSEE shall give LESSOR sixty (60) days prior

written notice that it proposes to enter into an assignment of this Lease, which notice shall include the identity of and reasonable financial history and data concerning the proposed assignee. LESSOR shall give LESSEE notice of his consent or refusal of consent within sixty (60) days after receipt of notice from LESSEE. If, however, the LESSOR should fail to give LESSEE notice of consent or refusal of consent within sixty (60) days after receipt of notice from LESSEE, such failure shall constitute approval of the assignment of this Lease provided that LESSEE shall give LESSOR written notice of the effective date of such assignment.

Section 18.03 *Subletting.*

- A. LESSEE is hereby authorized to sublet all or one or more portions of the Leased Premises for purposes consistent with the Lease and the Operating Agreements, including but not limited to, space in the Recreation Center which may be sublet to concessionaires, it being expressly understood and agreed that any such subletting shall have no effect on the obligations and covenants imposed hereunder upon LESSEE and shall not release LESSEE from any liability under this Lease.
- B. LESSEE is hereby expressly authorized to sublet to UTSA Phase I Dormitory Partnership (the "*Partnership*") a Texas general partnership having Clarence T. Bach as its managing general partner and an Affiliated Entity, that certain 4.623 acre portion (the "*Phase I Dormitory Tract*") of the Leased Premises, more particularly described on Exhibit E attached hereto and incorporated herein for all purposes, for the purpose of developing, constructing and operating the Phase I Dormitory.
- C. LESSOR agrees to execute any instruments reasonably required by LESSEE evidencing LESSEE'S right to sublet under subsection A or B of this Section 18.03.

Section 18.04. *Nondisturbances.* Upon the written request of LESSEE, LESSOR will enter into an appropriate agreement (hereinafter called a "nondisturbance

agreement") with any sublessee of a portion of the Leased Premises. Such nondisturbance agreement shall provide in substance that so long as the sublessee complies with all of the terms of its sublease, LESSOR, in the exercise of any of its rights or remedies under this Lease, shall not deprive the sublessee of possession, or the right of possession, of the property covered by the sublease during the term thereof, or join the sublessor as a party in any action or proceeding to obtain possession of the property leased pursuant to the sublease for any reason other than a breach by the sublessee of the terms of the sublease which would entitle the sublessor to dispossess the sublessee thereunder, provided that (a) the sublessee meets reasonable requirements of financial responsibility; (b) its business is of a character consistent with those in the Leased Premises; (c) such sublease does not cover any period beyond the term of this Lease; (d) concurrently with the execution of the nondisturbance agreement, the sublessee, at the request of LESSOR, will agree in writing that in the event of any termination of this Lease prior to the expiration of its term, the sublessee will attorn to LESSOR and will become a lessee of LESSOR under its sublease; and (e) the sublease shall be subject in all respects to the terms and conditions of this Lease (except to the extent that LESSOR and the sublessee may provide to the contrary in the nondisturbance agreement).

ARTICLE NINETEEN

COMPLIANCE CERTIFICATES

Section 19.01. *LESSEE Compliance.* LESSEE agrees, so far as permissible under the laws of the State of Texas, at any time and from time to time upon not less than ten (10) days prior written notice by LESSOR, to execute, acknowledge and deliver to LESSOR or to such other party as LESSOR shall request, certifying (1) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (2) whether or not there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of LESSEE to be performed (and if so specifying the same), and (3) the dates to which the rent and other charges have been paid, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective purchaser of the fee interest in the leased premises.

Section 19.02. *LESSOR Compliance.* LESSOR agrees, at any time and from time to time, upon not less than ten (10) days prior written notice by LESSEE, to execute, acknowledge and deliver to LESSEE a statement in writing, addressed to LESSEE or to such other party as LESSEE shall request, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the rent and other charges have been paid, and stating whether or not LESSEE is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default and stating whether any notice of default has been given under this Lease regarding a default which has not been remedied, and if so, stating the nature of said default and the date of the giving of said notice, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective assignee, sublessee or leasehold mortgagee or prospective assignee, sublessee or leasehold mortgagee of this Lease or by any assignee or prospective assignee of any such leasehold mortgage or by any undertenant or prospective undertenant of the whole or any part of the leased premises.

## ARTICLE TWENTY

### TAXES AND LICENSES

Section 20.01. *Payment of Taxes.* LESSEE shall pay, and, upon request by LESSOR, shall provide evidence of payment to the appropriate collecting authorities, all federal, State and local taxes and fees, which are now or may hereafter be levied upon the premises, or upon LESSEE, or upon the business conducted on the premises, or upon any of LESSEE'S property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by LESSEE. LESSEE may pay any of the above items in installments if payment may be so made without penalty other than the payment of interest.

Section 20.02. *Contested Tax Payments.* LESSEE shall not be required to pay, discharge or remove any such taxes or assessments so long as LESSEE is contesting the amount or validity thereof by appropriate proceeding which shall operate to prevent or stay the collection of the amount so contested. LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts, cause the same to be discharged and removed prior to the execution of such judgment. During such contest, LESSOR shall have no right to pay the amount contested. Upon the termination of such proceeding, LESSEE shall deliver to LESSOR proof of the amount due as finally determined and proof of payment thereof. LESSOR, at LESSEE'S expense, shall join in any such proceeding if any law shall so require.

## ARTICLE TWENTY-ONE

### NONDISCRIMINATION, EMPLOYMENT AND WAGES

Any discrimination by LESSEE or its agents or employees on account of race, color, sex, age, religion, national origin or handicap, in employment practices or in the use of or admission to the leased premises, is prohibited.

ARTICLE TWENTY-TWO

CONFLICT OF INTEREST

LESSEE acknowledges that it is informed that Texas law prohibits contracts between LESSOR and its officers, and that the prohibition extends to contracts with any partnership, corporation or other organization in which any such officer has an interest. LESSEE certifies (and this Lease is made in reliance thereon) that neither he nor any person having an interest in this Lease by, through or under LESSEE is an officer of LESSOR.

ARTICLE TWENTY-THREE

NOTICES

Notices or communications to LESSOR or LESSEE required or appropriate under this Lease shall be deemed sufficient if in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) registered or certified United States mail, postage prepaid, or (d) prepaid telegram or telex is confirmed by expedited delivery service or by mail in the manner previously described. Notices to LESSOR shall be addressed to \_\_\_\_\_ or to such other address as may have been designated in writing by the LESSOR, from time to time. Notice to LESSEE shall be addressed to LESSEE at \_\_\_\_\_ or to such other address or to the attention of such other person as hereafter shall be designated in writing by LESSEE. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram or telex, upon receipt.

## ARTICLE TWENTY-FOUR

### RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of lessor and lessee.

## ARTICLE TWENTY-FIVE

### QUIET ENJOYMENT

LESSOR represents and warrants that it is the owner of the Leased Premises in fee simple, that the Leased Premises are free from encumbrances, that it has the right and power to make this Lease and that it will execute or procure any further assurances of title that may reasonably be required for the protection of LESSEE or to effectuate the Lease granted to LESSEE hereby. LESSOR covenants and agrees, subject to the provisions of this Lease, that LESSEE, upon paying the rent and all other charges in this Lease provided for and observing and performing the covenants, agreements and conditions of this Lease on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term without hindrance or molestation of any kind whatsoever.

ARTICLE TWENTY-SIX

MEMORANDUM OF LEASE

Neither LESSOR nor LESSEE shall file this Lease for record in the Office of the County Clerk of Bexar County, Texas, or in any other public place without the written consent of the other. In lieu thereof, LESSOR and LESSEE agree to execute in recordable form a memorandum of this Lease stating the parties, the Leased Premises covered thereby, the term of this Lease, the renewal option of LESSEE, the rights of LESSEE under Article Twelve, the rights of LESSOR under Section 15.02, the warning described in Section 10.03, and such other matters on which LESSOR and LESSEE agree. Such memorandum shall be filed for record in the Office of the County Clerk of said County. At the request of either party, the other will execute a memorandum in recordable form acknowledging that any option to extend has been exercised.

ARTICLE TWENTY-SEVEN

FORCE MAJEURE

Section 27.01. *Discontinuance During Force Majeure.* Whenever a period of time is herein prescribed for action to be taken by LESSEE, LESSEE shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to war, civil commotion, strikes, riots, acts of God, shortages of labor or materials, war, laws, regulations or restrictions of the federal government, fire or other casualty or any other causes of any kind whatsoever which are beyond the reasonable control and without the fault or negligence of LESSEE (all of such matters herein called "*Force Majeure*"). LESSOR shall not be obligated to recognize any delay caused by Force Majeure unless LESSEE shall, within thirty (30) days after LESSEE is aware of the existence of an event of Force Majeure, notify LESSOR thereof in writing, certified mail, return receipt requested. One (1) notice shall be sufficient per occurrence. The

foregoing notwithstanding, if any such delay is caused by LESSOR there shall be no time limit on the period of enforced delay and LESSEE shall not be required to give notice to LESSOR hereunder.

Section 27.02. *Extension of Time.* In addition to the provisions of Section 27.01 above, the time periods herein provided to LESSEE shall be extended by LESSOR after the discontinuance of any Force Majeure if LESSEE is pursuing the development and construction of the Facilities in good faith, provided that each such good faith extension shall not exceed six (6) months and provided that each request for such extension shall be made in writing.

#### ARTICLE TWENTY-EIGHT

##### APPROVALS

Section 28.01. Whenever approvals are required of either party hereunder, if no objection is made to a written proposal or request for approval within the time period specified for response herein, such approval shall be deemed to have been given. If no time period is specified for a response to a proposal or request for approval, a reasonable time not to exceed twenty five (25) days from the date of such proposal or request shall apply unless the parties otherwise agree in writing.

#### ARTICLE TWENTY-NINE

##### TEXAS LAW TO APPLY

This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

ARTICLE THIRTY

MISCELLANEOUS

Section 30.01. *LESSOR'S Rights Cumulative.* All rights, options, and remedies of LESSOR contained in this Lease shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and LESSOR shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity whether or not stated in this Lease.

Section 30.02. *Nonwaiver by LESSOR.* No waiver by LESSOR of a breach of any of the covenants, conditions, or restrictions of this Lease. The failure of LESSOR to insist in any one or more cases upon the strict performance of any of the covenants of the Lease, or to exercise any option herein contained, shall not be construed as a waiver of relinquishment for the future of such covenant or option. A receipt by LESSOR or acceptance of payment by LESSOR of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by LESSOR of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

Section 30.03. *Gender.* Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other number, unless the context otherwise requires.

Section 30.04. *Captions.* The captions contained in this Lease are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Lease.

Section 30.05. *Counterparts.* This agreement may be executed in multiple counterparts, each of which shall be declared an original.

Section 30.06. *Severability.* If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event,

it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as may be possible and be legal, valid and enforceable.

Section 30.07. *Entire Agreement.* This Lease, together with the authorized resolution of LESSOR, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

Section 30.08. *Amendment.* No amendment, modification, or alteration of the terms of this Lease shall be binding unless the same be in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

Section 30.09. *Successors and Assignees.* All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns.

This Lease EXECUTED in \_\_\_\_\_, Texas  
this the \_\_\_\_\_ day of \_\_\_\_\_, 1985.

THE BOARD OF REGENTS OF THE  
THE UNIVERSITY OF TEXAS SYSTEM

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

"LESSOR"

\_\_\_\_\_  
Clarence T. Bach

"LESSEE"

Attachments:

- Exhibit A - Description of Leased Premises
- Exhibit B - Easements
- Exhibit C - Lease Payments
- Exhibit D - Description of Dormitory Facilities Area
- Exhibit E - Description of Phase I Dormitory Tract

939Q

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

FIELD NOTE DESCRIPTION  
6.013-ACRE TRACT

BEING a 6.013-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

Commencing from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 690.89 feet to Engineer's station 86+59.11. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 538.50 feet to the POINT OF BEGINNING of this tract, said point also being the most Northerly point on the most Easterly line of this tract;

THENCE S30°45'23"E, a distance of 120.89 feet to a point, said point being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 298.00 feet to a point;  
THENCE N30°45'23"W, a distance of 7.00 feet to a point;  
THENCE S59°14'37"W, a distance of 407.00 feet to a point;  
THENCE S30°45'23"E, a distance of 37.00 feet to a point;  
THENCE S59°14'37"W, a distance of 123.00 feet to a point;  
THENCE N30°45'23"W, a distance of 20.00 feet to a point;  
THENCE S59°14'37"W, a distance of 220.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 370.00 feet to a point, said point being the Northwest corner of this tract;

THENCE N59°14'37"E, a distance of 640.84 feet to a point, said point being the most Easterly point of the most Northerly line of this tract;

THENCE along the arc of a curve having a radius of 230.64 feet, a central angle of 03°11'08", a length of 12.82 feet and a chord which bears S84°54'34"E, a distance of 12.82 feet to a point;

THENCE S86°30'01"E, a distance of 111.02 feet to a point;  
THENCE S59°14'37"W, a distance of 504.99 feet to a point;  
THENCE S30°45'23"E, a distance of 132.00 feet to a point;  
THENCE N59°14'37"E, a distance of 512.00 feet to a point;  
THENCE N30°45'23"W, a distance of 60.00 feet to a point;  
THENCE N59°14'37"E, a distance of 40.68 feet to a point;  
THENCE N30°45'23"W, a distance of 39.53 feet to the P.C. of a curve;

THENCE along the arc of said curve having a radius of 208.28, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N85°31'01", a distance of 57.85 feet to a point;

THENCE N77°32'04"E, a distance of 97.70 feet to the P.C. of a curve to the right having a radius of 212.49 feet, a central angle of 26°27'19", a length of 98.11 and a chord which bears S89°14'17"E, a distance of 97.25 feet to a point;

THENCE S76°00'37"E, a distance of 41.95 feet to the POINT OF BEGINNING containing 6.013 acres (261,929.93 sq. ft.).

EXHIBIT B

EASEMENTS

B-1

969Q

EXHIBIT C

LEASE PAYMENTS

The Lease payments shall be \$1,000 per year, payable in advance, commencing on the date of execution hereof and thereafter on each anniversary of such execution date during the term hereof.

EXHIBIT D

DESCRIPTION OF DORMITORY FACILITIES AREA

FIELD NOTE DESCRIPTION  
18.949-ACRE TRACT

BEING a 18.949-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

Commencing from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 690.89 feet to Engineer's station 86+59.11. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 538.50 feet to the POINT OF BEGINNING of this tract, said point also being the most Northerly point on the most Easterly line of this tract;

THENCE S30°45'23"E, a distance of 633.89 feet to a point, said point being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 452.00 feet to the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 195.00 feet to a point;  
THENCE S83°49'09"W, a distance of 110.00 feet to a point;  
THENCE N74°04'08"W, a distance of 222.99 feet to a point;  
THENCE N30°45'23"E, a distance of 80.00 feet to a point;  
THENCE S59°14'37"W, a distance of 123.00 feet to a point;  
THENCE N30°45'23"W, a distance of 20.00 feet to a point;  
THENCE S59°14'37"W, a distance of 220.00 feet to a point, said point being the most Southerly point on the most Westerly line of this tract;

THENCE N30°45'23"W, a distance of 798.43 feet to the Northwest corner of this tract;

THENCE N59°14'37"E, a distance of 328.63 feet to to the P.C. of a curve to the right;

THENCE along the arc of a curve having a radius of 274.87 feet, a central angle of 56°33'15", a length of 271.32 feet and a chord which bears S81°28'45"E, a distance of 260.43 feet to a point;

THENCE S53°12'08"E, a distance of 114.47 feet to the P.C. of a curve to the left;

THENCE along the arc of said curve having a radius of 230.64 feet, a central angle of 33°17'53", a length of 134.04, and a chord which bears S69°51'04"E, a distance of 132.16 feet to a point;

THENCE S86°30'01"E, a distance of 168.71 feet to the P.C. of a curve to the left;

THENCE along the arc of a curve having a radius of 208.28 feet, a central angle of 15°57'55", a length of 58.04 feet and a chord which bears N85°31'01"E, a distance of 57.85 feet to a point;

THENCE N77°32'30"E, a distance of 97.70 feet to the P.C. of a curve to the right;

THENCE along the arc of said curve having a radius of 212.49, a central angle of 26°27'19", a length of 98.12 feet, and a chord which bears S89°14'17"E, a distance of 97.25 feet to a point;

THENCE S76°00'37"E, a distance of 41.95 feet to the POINT OF BEGINNING containing 18.949 acres (825,423.27 sq. ft.).

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EXHIBIT E

DESCRIPTION OF PHASE I DORMITORY TRACT

FIELD NOTE DESCRIPTION  
4.623-ACRE TRACT

BEING a 4.623-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 462.35 feet to Engineer's station 88+87.65. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 761.09 feet to the POINT OF BEGINNING of this tract, said point also being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 407.00 feet to a point;  
THENCE S30°45'23"E, a distance of 37.00 feet to a point;  
THENCE S59°14'37"W, a distance of 123.00 feet to a point;  
THENCE N30°45'23"W, a distance of 20.00 feet to a point;  
THENCE S59°14'37"W, a distance of 220.00 feet to a point being the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 370.00 feet to a point being the Northwest corner of this tract;

THENCE N59°14'37"E, a distance of 640.84 feet to the most Easterly point of the most Northerly line of this tract and also being the P.C. of a curve to the left;

THENCE along the arc of said curve, left of a tangent bearing S83°18'53"E, having a radius of 230.64 feet, a central angle of 3°11'08", a length of 12.82, and a chord which bears S84°54'34"E, a distance of 12.82 feet to a point;

THENCE S86°30'01"E, a distance of 111.12 feet to a point;  
THENCE S59°14'37"W, a distance of 504.99 feet to a point;  
THENCE S30°45'23"E, a distance of 132.00 feet to a point;  
THENCE N59°14'37"E, a distance of 512.00 feet to a point;  
THENCE S30°45'23"E, a distance of 151.00 feet to the  
POINT OF BEGINNING, containing 4.623 acres (201,370.63  
sq. ft.).

967Q

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MANAGEMENT AGREEMENT  
UTSA PHASE I DORMITORY

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By and Among

THE BOARD OF REGENTS  
OF THE  
UNIVERSITY OF TEXAS SYSTEM,

UTSA PHASE I DORMITORY PARTNERSHIP

and

SANDALWOOD MANAGEMENT, INC.

---

SAOF&J  
DRAFT 11/25/85  
11/26/85

  
- ATTACHMENT B

MANAGEMENT AGREEMENT  
(Dormitory)

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MANAGEMENT AGREEMENT  
UTSA PHASE I DORMITORY

THIS MANAGEMENT AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and among The Board of Regents of The University of Texas System, acting by and for the University of Texas at San Antonio (the "University"), UTSA Phase I Dormitory Partnership (the "Owner"), and Sandalwood Management, Inc. (the "Manager") under the terms and conditions hereinafter set forth.

W I T N E S S E T H

WHEREAS, the Owner intends to sublease a 4.6 acre parcel of real property located in San Antonio, Bexar County, Texas, more particularly described in Exhibit A attached hereto and made a part hereof (the "Leased Premises"), and to construct, maintain and operate thereon a four story dormitory to be known as UTSA Phase I Dormitory (the "Project"), as more particularly described in the Ground Lease attached as Exhibit B hereto and made a part hereof;

WHEREAS, the Leased Premises is subject to that certain Ground Lease Agreement (the "*Lease*"), dated as of \_\_\_\_\_, 1985, between the University as Lessor and Clarence T. Bach as Lessee, and is further subject to that certain Ground Sublease Agreement dated as of \_\_\_\_\_, 1985 between Clarence T. Bach as Sublessor and Owner as Sublessee;

WHEREAS, the costs of acquisition, construction and equipping of the Project is to be financed with the proceeds of \$7,300,000 City of San Antonio, Texas, Higher Education Authority, Inc. Educational Facilities Revenue Bonds (UTSA Phase I Dormitory Project) Series 1985 (the "Bonds");

WHEREAS, the Owner and the University desire to engage the services of Manager related to the management and operation of the Project on behalf of Owner, upon the terms and conditions set forth herein, subsequent to its completion; and

WHEREAS, the Manager represents and warrants to the Owner and the University that it is qualified to render the services required of it hereunder and desires

SAOF&J  
DRAFT of 11/25/85

to perform such services for the Owner in consideration of the compensation to be paid solely by Owner set forth herein;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, obligations and agreements contained herein, University, Owner and Manager do hereby covenant, stipulate and agree as follows:

ARTICLE 1  
PROPERTIES

1.1 Description of Project. The Project, shall be subject to the terms, provisions and conditions of this Agreement. No parcel of real property or improvements thereon shall be subject to the terms, provisions and conditions of this Agreement unless listed, described and identified in Schedule A attached hereto, which also sets forth the compensation payable (as provided in Section 13.1) to Manager with respect to the Project.

1.2 Termination of Ground Lease. This Management Agreement shall terminate automatically and immediately as to the Project upon termination of the Ground Lease on the Leased Premises. Owner shall furnish written notice of any such proposed termination to Manager not less than thirty (30) days prior to such termination.

ARTICLE 2  
TERM OF AGREEMENT

2.1 Commencement Date. The term of this Management Agreement shall commence on the date upon which the Owner notifies Manager, that construction of the Project has been completed and the Project is ready for operation (the "Commencement Date"). The term of this Management Agreement shall end at midnight on the day before the fifth (5th) anniversary of the Commencement Date.

2.2 Cancellation Privilege. Notwithstanding the foregoing, Owner shall have the right to cancel this Management Agreement without penalty and without liability to the Manager (except for any accrued and

unpaid Management Fee) as of midnight on the day before the second (2nd) and the fourth (4th) anniversary of the Commencement Date upon ninety (90) days prior written notice to the Manager and the Lessor. In the event of cancellation by Owner, the Manager agrees that it shall, upon the request of Owner, continue to manage the Project in accordance with the terms hereof on a month to month basis for a period not to exceed six (6) months until Owner has engaged a new manager for the Project.

2.3 Renewals. The Manager and Owner represent, warrant and agree that if any new operating agreement for the Project is negotiated between them, its term (including any renewal options provided for in such agreement) shall not exceed five (5) years and the Owner shall have the right to cancel the agreement without penalty as of the end of each two year period of the term of such agreement.

### ARTICLE 3 MANAGER'S RESPONSIBILITIES

3.1 Management. Manager shall manage, operate and maintain the Project in an efficient and satisfactory manner. Manager shall act in a fiduciary capacity with respect to the proper protections of and accounting for Owner's assets subject to Manager's control and management under this Agreement. In this capacity, Manager shall deal at arm's length with all third parties.

3.2 Standard of Care and Use of the Project. In the performance of its duties and obligations under this Agreement, Manager shall diligently and in good faith seek to promote the best interests of the University and the Owner with respect to the management, operation, maintenance, and repair of the Project. In operating the Project, except during periods of restoration, renovation, refurbishing, casualty, condemnation and temporary destruction for renovation Manager will at all times provide good, prompt and efficient services adequate to meet all reasonable demands for such services at the Project.

3.3 Trash Removal. Manager shall be responsible for the sanitary gathering, handling and disposal of all trash, litter, and refuse from the Project; provided, however, that this paragraph is not

intended to in any way limit Manager's right to obtain and use trash disposal services on the same terms and conditions as such services are made available by the University to similar users on the campus at the time.

Manager shall provide and use suitable covered receptacles for all garbage, trash and other refuse. The facility for garbage storage shall be such as to hide from public view all garbage receptacles and to prevent permeation of odor, and shall be kept in a clean and sanitary condition. Manager shall not permit piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Project. This Section is not intended to prohibit normal construction activities conducted in accordance with applicable municipal laws during any period of construction, renovation or similar activity.

Manager agrees not to use or allow the use of the Project or any part thereof, for any purpose in violation of any valid and applicable law, regulation, ordinance of the United States, the State of Texas, or the City of San Antonio or of any rule of the University.

Any material change in the use or operation of the Project must be approved by University. Such approval shall not be unreasonably withheld.

3.4 Employees; Independent Contractors. Subject to the provisions hereinafter, Manager shall have in its employ at all times a sufficient number of capable employees to enable it to properly and adequately manage, operate and maintain the Project, and Manager shall engage such independent contractors as are necessary to supplement and complement Manager's employees in order to properly and adequately manage, operate and maintain the Project.

Manager may contract with third parties and with the University for such services to be provided by them as are necessary and prudent to adequately manage, operate, and maintain the Project.

Manager shall be responsible to Owner for all such employees and independent contractors. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Manager's

employees and others engaged by Manager for the operation and maintenance of the Project shall be the responsibility of Manager. Manager and all personnel of Manager who handle or who are responsible for handling of Owner's moneys shall, without expense to Owner, be bonded in favor of Owner by a fidelity bond acceptable both to Manager and Owner, in an amount of not less than \$\_\_\_\_\_ for each employee and with a company acceptable to Manager and Owner, a copy of which fidelity bond shall be furnished to Owner.

All salaries, wages and other compensation of personnel employed by Manager hereunder, including payment of such fringe benefits as medical and health insurance, deferred compensation, social security, and workers' compensation insurance, shall be Manager's expenses, and Owner and University shall have no liability therefor. Manager may negotiate with any union lawfully entitled to represent such employees and may execute in its own name, and not as agent for Owner, collective bargaining agreements or labor contracts resulting therefrom. Manager shall fully comply with all applicable laws and regulations relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employment matters in connection with the Project. Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. Manager represents that it is and will continue to be an equal opportunity employer, and will advertise (to the extent Manager elects to advertise) as such.

This Agreement is not one of agency by Manager for University or Owner, but is a contract among Owner and University and a Manager which is engaged independently in the business of operating and managing properties on its own behalf, as an independent contractor. Manager understands and agrees that its relationship to Owner is that of independent contractor, and that Manager will not represent to anyone that its relationship to University and Owner is other than that of independent contractor.

3.5 Schedule of Employees. Manager shall provide a schedule of employees by employment category (substantially in the format of Exhibit C attached hereto) to be employed in the direct management of the

Project, including, but not limited to the Director of Housing, Hall Director, and Resident Assistants, who are to be selected by the University with the approval of the Owner and compensated by the Manager. Such schedule shall include the number of employees and their title and salary range, and shall also indicate which employees are bonded and are covered under Manager's comprehensive crime insurance policy. Exhibit C may be amended from time to time by mutual agreement of Owner, University and Manager.

3.6 Compliance with Laws and Legal Requirements. Manager shall be responsible for management, operation and maintenance of the Project in compliance with federal, state, county and municipal laws, ordinances, regulations and orders and with the Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, management, operation, repair and maintenance of the Project, and with the rules, regulations or orders of the local board of fire underwriters or other similar body.

Manager shall promptly remedy any violation of any such law, ordinance, rule, regulation or order that comes to its attention. Manager shall promptly, and in no event later than the close of the next business day following receipt, give notice to University and Owner by telephone, with confirmation in writing, of receipt by Manager of any information relating to violations of laws, ordinances, rules, regulations and orders.

Expenses incurred in remedying violations shall be paid from the Operating Account (defined below), provided such expenses do not exceed One Thousand and No/100 Dollars (\$1,000.00) in any one instance. When more than such amount is required or if the violation is one for which Owner might be subject to civil penalty or criminal liability, Manager shall notify Owner by the end of the next business day to the end that prompt arrangements may be made to remedy the violation.

Manager shall apply for, obtain, and maintain in the name of Owner, all licenses and permits required of Owner or Manager in connection with the management and operation of the Project.

Manager shall execute and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel and the operation of the Project. Notwithstanding anything to the contrary contained herein, Manager shall not be responsible for filing any tax returns for Owner.

Manager shall not knowingly commit any act or default under the terms and conditions contained in any ground lease, mortgage, deed of trust or other security instruments affecting the Project, and shall promptly, and in no event later than the close of the next business day following receipt, notify Owner by telephone, with confirmation in writing, of any such default or notice of default that comes to the attention and knowledge of Manager.

3.7 Approved Budgets. Manager shall prepare and submit to Owner and to University a proposed Operating Budget and a proposed Capital Budget for the operation, repair, improvement and maintenance of the Project for the forthcoming academic year. The proposed budgets for the forthcoming academic year shall be delivered to Owner and University no later than the March 1 prior to the beginning of each academic year.

The proposed budgets shall reflect the schedule of rents proposed for the forthcoming academic year and shall include income projections based upon anticipated occupancy levels and rentals. In addition, Manager shall provide supporting documentation, which shall be reasonably satisfactory to Owner and to University, for projections regarding expenditures for real property taxes, utility costs, repairs and maintenance, and anticipated capital expenditures, including, wherever reasonably practicable, a bid supporting the estimated budgeted costs for capital expenditures.

Owner and University will consider the proposed budgets and then will consult with Manager in the ensuing period prior to the commencement of the forthcoming academic year in order to mutually agree on an operating budget (the "Approved Operating Budget") and on a capital budget (the "Approved Capital Budget"). The Approved Operating Budget and the Approved Capital Budget are sometimes collectively referred to herein as the "Approved Budgets".

Manager agrees to use diligence and to employ all reasonable efforts to ensure that the actual costs of maintaining and operating the Project shall not exceed the Approved Budget pertaining thereto either in total or in any one accounting category. All expenses shall be charged to the proper account as specified in the Approved Budgets, and no expense may be classified or reclassified for the purpose of avoiding an excess in the annual budgeted amount of an accounting category. Manager shall secure Owner's prior approval for any expenditure that will result in an excess of 5% or more in any one accounting category in the Approved Budgets, however, if said expenditure is less than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), no such approval is necessary. Notwithstanding any provision contained herein to the contrary, for a period of one (1) year from and after the date hereof, in the event that the actual costs of maintaining and operating the Project shall exceed the Approved Budget pertaining thereto, then the amount of any such excess shall be offset and credited, on a cumulative aggregate basis, against the Management Fee to be paid by Owner to Manager in accordance with the compensation schedule set forth in Exhibit B attached hereto such that the amount of such Management Fee shall be automatically reduced by such excess.

During each academic year, Manager agrees to inform University and Owner of any major increases or decreases in costs and expenses that were not foreseen during the budget preparation period, and thus were not reflected in either Approved Budget, and shall submit to University and Owner for approval a revised budget based upon said unforeseen increase or reduction of costs and expenses.

3.8 Collection of Rents and Other Income. University shall use diligent efforts to collect and remit to Manager (or to such other person as Manager may direct) all rents that may become due Owner at any time from any resident. Manager shall identify and collect any income due Owner from miscellaneous services provided to residents including, but not limited to, any resident storage and coin operated machines of all types (e.g., vending machines, laundry machines and pay telephones). All monies so collected shall be deposited in the Operating Account. Manager cannot and may not terminate any residence hall contract which has been granted in consideration of payment of the fees and

rents as stipulated therein and upon the resident's acceptance for admission to The University of Texas at San Antonio ("UTSA"), lock out a resident, institute suit for use and occupancy, or proceedings for recovery of possession, without the prior written approval of Owner, or of an authorized representative of UTSA if such action involves a disciplinary proceeding against a resident. In connection with such suits or proceedings legal counsel designated by Owner shall be retained, and all such suits or proceedings shall be brought in the name of Owner and shall be handled in such manner as Owner directs. All legal expenses incurred in bringing such suits or proceedings shall be operating expenses.

3.9 Repairs. Manager shall attend to the making and supervision of all ordinary and extraordinary repairs, decorations and alterations to the Project; however, no single expenditure that is not included in the Approved Operating Budget or the Approved Capital Budget made for such purposes shall exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), without prior approval of the Owner and the University. Actual expenses for materials and labor for such purposes will be paid for from the Operating Account.

In case of emergency, Manager may make expenditures for repairs which exceed the aforementioned amount without prior written approval if Manager deems such expenditure to be necessary to prevent damage or injury. Manager will inform Owner and University of any such emergency expenditures before the end of the next business day.

3.10 Capital Expenditures. The Approved Capital Budget shall constitute an authorization for Manager to expend funds in accordance with such budget only for amounts equal to, or less than, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Any capital expenditure must be specifically authorized in writing by Owner if for: (i) items not included in the Approved Capital Budget; or, (ii) for amounts of more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

With respect to the purchase and installation of major items of new or replacement equipment (including, without limitation, heating or air-conditioning equipment, furniture and furnishings,

carpets or other floor coverings), Manager shall recommend that Owner purchase such major items when Manager believes such purchase to be necessary or desirable. Owner may arrange to purchase and install the same itself or may authorize Manager to do so subject to such supervision and specification requirements and conditions as Owner may prescribe in any such approval. Unless Owner specifically waives such requirements, either by memorandum or as an amendment to this Agreement, or approved in the Capital Budget, all new or replacement equipment exceeding One Thousand and No/100 Dollars (\$1,000.00) shall be awarded on the basis of competitive bidding, solicited in the following manner:

(a) A minimum of two written bids shall be obtained for each purchase in excess of One Thousand and No/100 Dollars (\$1,000.00). A minimum of three (3) written bids will be obtained for each purchase in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

(b) Each bid shall be solicited in a form approved by Owner so that uniformity will exist in the bid quotes.

(c) Manager shall provide Owner with all bid responses accompanied by Manager's recommendations as to the most acceptable bid. If Manager advises acceptance of other than the lowest bidder, Manager shall adequately support, in writing, its recommendations.

(d) Owner shall approve or disapprove any and all bids and will communicate to Manager its approval or disapproval of bids within five (5) business days. If Owner does not communicate any response to Manager within five (5) business days, such bids shall be construed by Manager to be disapproved by Owner.

Owner may pay for capital expenses from its own resources or may authorize payment by Manager out of the Operating Account. At the option of Owner, such contracts shall be entered in Manager's name, by Manager as agent for Owner, or submitted to Owner for Owner to enter such contracts in Owner's own name.

3.11 Service Contracts. Manager shall not enter into any contract for cleaning, maintaining, repairing, servicing and the providing of security services and utilities to the Project or any of the constituent parts of the Project, without the prior consent of Owner and University unless provided for in the Approved Operating Budget. As a condition to obtaining such consent, Manager shall supply Owner and University with a copy of the proposed contract and shall state to Owner and University the relationship, if any, between Manager (or the person or persons in control of Manager) and the party proposed to supply such goods or services, or both. Each such service contract shall: (a) be in the name of Manager, (b) be assignable, at Owner's option to Owner or Owner's nominee, (c) include a provision for cancellation thereof by Owner or Manager upon not less than 30 days' written notice, and (d) shall require that all contractors provide evidence of sufficient insurance. In the event of a termination of this Agreement, Owner shall be fully responsible for and shall thereupon assume all obligations of Manager under any approved contracts that were not terminated contemporaneously with the termination of this Agreement. If this Agreement is terminated pursuant to Article 14, Manager shall, at Owner's option and with the consent of the University, assign to Owner or Owner's nominee all service agreements pertaining to the Project.

Subject to the availability of funds in the Approved Operating Budget, Manager shall purchase all necessary equipment, tools, appliances, materials, and supplies required for the proper management, rental, maintenance, repair, and operating of the Project. Manager shall maintain, and provide to Owner upon request, an inventory of any such equipment, tools, appliances, materials, and supplies purchased by Manager for use at the Project. Manager shall be under a duty to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchases.

3.12 Available Funds. Notwithstanding the provisions of this Agreement, including the provisions relative to the making of repairs or maintenance of the Project, Manager shall not incur any expenses in any semester or summer session in excess of the income from the Project during such semester or summer session

except to the extent funds are made available specifically for such purpose by Owner through the Operating Account or otherwise. In any case in which the Manager anticipates a shortfall of funds, Manager shall inform Owner of the situation so that Owner may have the opportunity of determining what action should be taken under the circumstances, and Owner shall promptly advise Manager of the action to be taken.

3.13 Taxes, Mortgages. Manager shall, if requested by Owner to do so, obtain and verify statements for ad valorem taxes, improvement assessments and other like charges that are or may become liens against the Project, and Manager shall recommend payment or appeal of same. Manager shall forward such bills to Owner for payment by Owner in such time to permit Owner to avoid penalty for late payment or to permit Owner to take advantage of discounts. If such amounts are included in the Approved Operating Budget, Manager shall pay such items. Manager shall make payments on account of any ground lease, mortgage, deed of trust or other security instrument, if any, affecting the Project to the extent Owner directs that Manager make such payments, and accounts for such payments either in the Approved Budgets or otherwise.

3.14 Advertising. The University shall prepare student mailings and promotional materials to be used to promote among its students and prospective students the availability of student housing in the Project. Such plans and materials shall be subject to prior approval by Owner and Manager, and in conformance with such approval. UTSA shall not use Owner's name in any advertising or promotional material without Owner's express prior approval in each instance. Advertising and promotional materials shall be prepared in full compliance with federal, state and municipal laws, ordinances, regulations and orders and with the rules and regulations of the University.

3.15 Claims. Manager shall advise Owner and the University immediately by telephone, with confirmation in writing, of the service upon Manager of any summons, subpoenas, or other like legal document including any notices, letters, or other communications, setting out or claiming an actual or alleged potential liability of Owner or the Project.

3.16 Resident Complaints. Manager shall respond courteously and efficiently to service requests from residents. Routine service requests and complaints shall be received, entered in detail in a log book indicating the action taken with respect to each. Serious complaints shall, after thorough investigation, be reported to Owner and University with appropriate recommendations.

3.17 Inspection. Manager shall make regular inspections of the common areas of the Project, and, in addition, shall make such inspections of residents rooms as may be allowed by state and federal law and as may be necessary to perform its obligations under this Agreement and to confirm that the Project is being maintained as may be required or contemplated under residence hall contracts. Manager shall report its inspection findings in writing to Owner and University at the end of each semester or summer session, unless other reports may be required by Owner or University at other times because of disciplinary proceedings against any resident or because of other legal action or for other reasons.

#### ARTICLE 4 INSURANCE

4.1 Insurance. Upon written request by Owner and University, and specific written instructions as to the type and amount, Manager shall obtain and keep in effect such insurance coverage with respect to the Project as Owner shall so request and specify. All insurance required to be obtained and maintained by Manager under this Agreement shall be of types issued by such insurance companies, in such amounts, in such form, and having such content, as may be instructed by Owner. Manager shall furnish to Owner and University and each additional insured or co-insured copies of all current insurance policies with certificates or other evidence of insurance satisfactory to Owner evidencing the existence of such insurance, and with evidence satisfactory to Owner of the proper renewal of any policy of insurance prior to the expiration of any policy of insurance. All policies of insurance shall contain a provision stating that each such policy cannot be cancelled without at least thirty (30) days prior written notice to the insured, each additional insured, and each co-insured. Manager shall promptly investigate

and make a full written report as to all accidents of claims for damage relating to the ownership, operation, and maintenance of the Project, including any damage or destruction to the Project and the estimated cost of repair. All such reports shall be filed with Owner promptly, and in any event within one (1) day after the occurrence of any such accident, claim, damage or destruction. Manager shall cooperate with and make any and all reports required by any insurance company in connection therewith.

Manager shall furnish whatever information is requested by Owner and University for the purpose of establishing the placement of insurance coverages, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

4.2 Additional Insurance to be Maintained by Manager. Manager shall, at its expense, provide and maintain, so long as this Agreement is in force, workers' compensation insurance in full compliance with all applicable state and federal laws and regulations, covering all employees of Manager performing work in respect to the Project. Manager shall, at its expense, provide and maintain, so long as this Agreement is in force, a blanket employee dishonesty policy in the minimum amount of \$\_\_\_\_\_ per employee employed in connection with the Project and per authorized signatory (except Owner) of any bank accounts kept pursuant to the provisions hereof. Such insurance shall have attached thereto an endorsement that Owner will be given at least thirty (30) days prior written notice of cancellation of or any material change in policy. Additionally, Manager, at its expense, shall provide and maintain in force adequate insurance against physical damage and against liability for loss, damage or injury to property or persons that might arise out of the use, operation or maintenance of any and all personal property owned by Manager and used in connection with the Project, and Owner shall be identified and covered as an additional insured with respect to such insurance. Additionally, Manager at its expense, shall provide and maintain errors and omissions (or like) insurance coverage in an amount not less than \$\_\_\_\_\_ with respect to any claim by Owner and persons or entities having interests in or rights in respect of the Project, and third parties against

Manager arising out of the provision of services with respect to the services to be performed under or pursuant to this Agreement. Such insurance may provide for a reasonable deductible amount, not to exceed \$\_\_\_\_\_. The policies of such insurance shall be in form satisfactory to Owner and at all relevant times qualified to effect such insurance in the jurisdiction in which the Project is situated. Manager shall provide Owner with a signed copy of each policy and any renewal thereof or replacement therefor. Such policy shall be signed by the company issuing such insurance; provided that at the option of Manager such insurance may be provided by a certificate of insurance issued under a group or blanket policy providing for such insurance coverage in which event such certificate of insurance shall be signed by the company issuing such group or blanket policy. Such policy or certificate shall be endorsed with specific reference to the services to be provided by Manager in connection with the Project under this Agreement, and such policy shall not be cancelled except after at least thirty (30) days prior written notice to Owner and University. Owner will not reimburse Manager for Manager's cost of any of the foregoing insurance.

4.3 Subcontractor's Insurance. Manager shall require that any subcontractors brought onto the Project have insurance coverage, at the subcontractor's expense, in the following minimum amounts:

- (a) Worker's Compensation - Statutory Amount
- (b) Liability - \$100,000 (Minimum)
  - i. \$100,000 Bodily Injury  
\$100,000 Project Damage, and
  - ii. \$300,000 Combined Single Limit

Manager must obtain Owner's permission to waive any of the above requirements. Manager shall obtain and keep on file appropriate certificates of insurance that shows that all such subcontractors are so insured.

ARTICLE 5  
FINANCIAL REPORTING AND RECORDKEEPING

5.1 Books of Accounts. Manager, in the conduct of its responsibilities to Owner and University, shall maintain correct, true, complete and separate books and records reflecting the operation of the Project, the entries to which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded to the Project. Such books and records at all times shall be and remain the property of Owner and shall be maintained by Manager at Manager's address set forth herein, or at such other location as may be mutually agreed upon in writing. Upon the termination of this Agreement, Manager shall deliver all such records, books and accounts to Owner. Manager shall ensure such control over accounting and financial transactions as is required to protect Owner's assets from theft, error or fraudulent activity on the part of Manager's employees. Losses arising from such theft, error or fraudulent activity on the part of Manager's employees are to be borne by Manager and shall include, but not be limited to:

- (a) Theft of assets by Manager's employees,
- (b) Overpayment or duplicate payment of invoices arising from either fraud or error,
- (c) Overpayment of labor costs arising from either fraud or error,
- (d) Unauthorized use of facilities or space at the Project by Manager or Manager's employees,
- (e) Penalties, interest, or loss of vendor discounts due to delay in payment of invoices, bills or other like charges, excluding those that were beyond Manager's control,
- (f) Payments from purveyors to Manager's employees, or from Manager to any of its affiliates, arising from the purchase of goods or services for the Project, which have not been approved in advance in writing by Owner.

5.2 Account Classification. Manager and Owner shall mutually agree upon a system of classification of accounting entrees satisfactory to Owner.

5.3. Financial Reports. Manager shall furnish periodic reports of all transactions occurring from the 1st day of the prior semester or summer session to the last day of the prior semester or summer session. These reports are to be delivered to Owner no later than 15 days after the end of the above described accounting period and must include, at a minimum, the following information:

(a) An income schedule showing, for each resident, semester or summer session rental received, and details of all other payments or charges received.

(b) A schedule of expenses (including the Management Fee described herein) incurred during the semester or summer session and any outstanding payable as of the end of the semester or summer session.

(c) A comparison of income and expenses for the preceding semester or summer session to the income and expenses set out for such period in the Approved Budgets.

(d) A reconciliation of cash accompanied by bank statements and cancelled checks.

(e) An itemized list of all receivables representing amounts collectible under the installment payment plan provided for by residence hall contracts.

(f) A current rent roll.

(g) An itemized list of past due monies.

(h) A copy of the cash receipts journal, cash disbursements journal, and general journal.

(i) Any other detail of accounting-related items such as free rents given to Resident Assistants.

Without in any manner limiting the generality of the foregoing, the reports shall include the items listed on Exhibit C attached hereto, and also shall include a comparison of year-to-date actual income and expense with the Approved Budgets for the Project.

As of the last day of the reporting semester or summer session, Manager shall remit to Owner all unexpended funds in the Project's Operating Account except for a reserve for contingencies which shall remain in the Project's Operating Account in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), plus an amount for expenses that have been incurred but not paid. The remittance shall be net of the Management Fee. After two semesters of actual operating experience, Owner, at its sole option, may elect to change the amount of such contingency reserve.

Manager, shall, on or before June 1 of each academic year during the term hereof, at Manager's expense, furnish to Owner an unaudited statement of income and disbursements reflecting the operation of the Project for the prior academic year, which statement shall be in form acceptable to Owner. If requested by Owner, such statement of income and disbursements shall be certified by a firm of independent certified public accountants selected by Owner; provided, however, that the cost of having such statement of income and disbursements certified by such a firm of accountants shall be borne by Owner.

5.4 Supporting Documentation. As additional support to the semester or summer session and annual financial statements, Manager shall provide to Owner on request copies of the following:

- (a) Bank statements, bank deposit slips and bank reconciliations,
- (b) Detailed cash receipts and disbursement records,
- (c) Detailed trial balances,
- (d) Paid invoices,
- (e) Summaries of adjusting journal entries, and

(f) Supporting documentation for payroll, payroll taxes and employee benefits.

5.5 Accounting Principles. All semester or summer session and annual financial statements and reports required by Owner shall be prepared on the accrual basis in accordance with generally accepted accounting principles, consistently applied, unless otherwise directed or approved by Owner.

## ARTICLE 6 INSPECTION AND AUDIT

6.1 Right of Inspection and Audit. Owner and University, their accountants, attorneys, and agents, or any other designee, shall have the right to enter upon any part of the Project at any time during the term of this Agreement for the purpose of examining or inspecting the Project, examining or making extracts of or auditing the books and records of the Project, or for any other purpose. Owner reserves the right for Owner's accountants, attorneys, agents, employees or others appointed by Owner, to inspect, copy and audit, and conduct examinations, without notification, during reasonable business hours, of the books, records and accounts of the Project maintained for Owner by Manager no matter where such books and records are located. Owner also reserves the right to perform any and all additional audit tests relating to Manager's activities, either at the Project, or at any office of the Manager; provided that such audit tests are related to those activities performed by Manager for owner.

6.2 Corrections. Should Owner's employees or agents discover either weaknesses or discrepancies in internal control or errors in recordkeeping, Manager shall correct such weaknesses and discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing, of the action taken to correct such audit or control weaknesses and discrepancies.

6.3 Expenses. Such inspections or audits shall be at Owner's expense, unless such inspections or audits disclose a discrepancy caused by a single line item entry in excess of \$1,000 that has resulted in error by five percent (5%) or more, in which case the cost of such inspections or audits as well as the reimbursement of such error, shall be paid by Manager.

ARTICLE 7  
BANK ACCOUNTS

7.1 Operating Account. Manager shall deposit, on a daily basis, all rents and other funds collected from the operation of the Project, including any and all advance payments and residence hall deposits, in a bank approved by Owner in a special account or accounts (the "Operating Account(s)") for the Project. The Operating Account shall be separate from Manager's corporate account and any other bank accounts maintained by Manager. All funds in the Operating Account shall be and shall remain the property of Owner and shall be received, held, and disbursed by Manager as a trust fund in payment of obligations of Owner incurred in connection with the management, operation, maintenance and repair of the Project, or remitted to Owner as provided herein. In no event shall the funds of anyone but Owner be deposited by Manager in the Operating Account, and Manager shall not commingle Owner's funds with the funds of any other person in any manner whatsoever. The bank shall be informed in writing that the funds are held in trust for Owner. Out of the Operating Account, Manager shall pay the operating expenses of the Project provided for herein and any other payments relative to the Project as required by the terms of this Agreement.

At any time that the Operating Account contains inadequate funds to meet current expenses and reasonable reserves, including all times prior to the commencement of rental income from the Project, Owner shall provide the needed funds for the Operating Account.

7.2 Room Deposits. Manager shall maintain detailed records of all room deposits and any other refundable fees or deposits collected from residents of the Project, and such records will be open for inspection by Owner's employees or agents. All refundable fees or deposits collected from residents of the Project shall be deposited by Manager and held in a bank account (the "Room Deposit Account"), separate from Manager's corporate account, the account maintained under Section 7.1 above, and any other bank accounts maintained by Manager. The Room Deposit Account shall be in the name of Owner with an account name and at a bank designated by Owner. Manager and Owner shall comply with all applicable laws with respect to such

fees and deposits and, unless so instructed by Owner, Manager shall not withdraw any sums from such Room Deposit Account except as required to comply with the provisions of residence hall contracts regarding the refunding of such deposits.

7.3 Change of Banks. Owner may direct the Manager to change a depository bank or the depository arrangements.

7.4 Access to Account. Through the use of signature cards, authorized representatives of Owner, who initially shall be \_\_\_\_\_ and \_\_\_\_\_, shall be permitted access to any and all funds in the bank accounts described in Section 7.1 and 7.2. Owner agrees to promptly notify Manager of any withdrawals from such bank accounts. Manager's authority to draw against such accounts may be terminated at any time by Owner upon five (5) days notice to Manager or the Bank.

#### ARTICLE 8 PAYMENTS OF EXPENSES

8.1 Costs Eligible for Payment from Operating Account. Manager shall pay all costs for items in the Approved Operating Budget in the first instance out of the Operating Account. In addition, other expenses provided in this Agreement to be paid out of the Operating Account shall be paid directly from the Operating Account, and the following expenses shall also be paid directly from the Operating Account, subject to the conditions outlined in Article 3:

(a) Cost to correct any violation of federal, state, county and municipal laws, ordinances, regulations and orders, and Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, use, repair and maintenance of the Project, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of Manager's negligence.

(b) Costs incurred by Manager in connection with all service agreements entered by Manager in accordance with authorizations in this Agreement or approved by Owner.

(c) Legal fees of attorneys provided such attorneys have been approved of by Owner in writing in advance of retention.

(d) Cost of outside audit as may be requested by Owner in writing.

If funds are not available in the Operating Account, Manager shall have no obligation to make any such payments. All payments may be made by Manager from the Operating Account in such order as Manager elects, and Manager shall pay all penalties or other charges for late payment of such items from the Operating Account.

ARTICLE 9  
MANAGER'S COST NOT TO BE REIMBURSED

9.1 Non-reimbursable Costs. Except to the extent that such costs and expenses (i) are in the Approved Operating Budget, (ii) are otherwise approved for payment by Owner, or (iii) are expressly reimbursable as provided for in Exhibit C attached hereto, all expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Project shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner, including, specifically, without limitation, the following:

(a) Cost of gross salary and wages, payroll taxes, insurance, workers' compensation, and other benefits of Manager's employees.

(b) General account and reporting services that are considered to be within the reasonable scope of the Manager's responsibility to Owner.

(c) Cost of forms, papers, ledgers, and other supplies and equipment used in the Manager's office at any location off the Project.

(d) Cost of electronic data processing equipment, or any pro rata charge thereon, whether located at the Project or at Manager's office off the Project.

(e) Cost of electronic data processing, or any pro rata charge thereof, for data

processing provided by computer services companies.

(f) Cost attributable to losses arising from gross negligence or fraud on the part of Manager or Manager's employees. "Gross negligence" shall be deemed to include any and all monetary loss caused by the ordinary negligence of Manager or Manager's employees.

(g) Cost of all bonuses paid by Manager to Manager's employees unless such bonuses have prior written approval of Owner.

(h) Cost of comprehensive crime insurance, fidelity bonds, or other insurance purchased by Manager for its own account.

#### ARTICLE 10 INSUFFICIENT GROSS INCOME

10.1 Statement of Unpaid Items. After Manager has paid, to the extent of available funds in the Operating Account, all bills and charges that have been incurred with respect to the Project, Manager shall submit to Owner a statement of all remaining unpaid bills. Owner shall promptly provide sufficient monies to pay any unpaid expenses.

#### ARTICLE 11 SALE OF PROJECT

11.1 Cooperation with Sales Broker. If Owner, with approval of the University, executes a listing agreement with a broker for sale of the Project, Manager shall cooperate with such broker to the end that the respective activities of Manager and broker may be carried on without interference with residents. Manager will permit the broker to exhibit the Project during reasonable business hours provided the broker has secured Manager's permission in advance. Manager agrees that failure on its part to extend cooperation to a broker desiring to show the Project shall constitute a default on its part under this Agreement, and is a ground for termination of this Agreement upon seven (7) days notice to Manager.

ARTICLE 12  
COOPERATION

12.1 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner that arise out of any of the matters relating to this Agreement, Manager shall give Owner all pertinent information and reasonable assistance in the defense or other disposition thereof.

ARTICLE 13  
COMPENSATION

13.1 Compensation. Manager shall receive compensation (the "Management Fee") for its services in managing the Project pursuant to the terms and tenor of this Agreement in accordance with the compensation schedule set forth in Exhibit C attached hereto and made a part hereof for all purposes.

ARTICLE 14  
TERMINATION

14.1 Termination on 30-day Notice. In addition to the provisions of Section 1.1, either party may terminate this Agreement without cause by giving the other party and the University at least thirty (30) days notice in writing.

14.2 Immediate Termination With Notice. In addition to the provisions of Section 14.1, Owner may immediately terminate this Agreement by the service of a written notice to that effect on Manager and the Lessor. In such case, if Manager is entitled to a Management Fee pursuant to Article 13, Owner shall pay Manager the Management Fee that would normally have accrued to Manager on a pro rata basis during the ensuing thirty (30) days immediately following the termination date. The foregoing provisions for payment in lieu of actual Management Fee shall apply only in the case of the immediate termination pursuant to this Section 14.2.

14.3 Termination for Cause. This Agreement will terminate immediately without further action from Owner in the event Manager breaches any of its obligations to Owner under the terms of this Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

14.4 Authority to Execute Termination Notices. Notice of termination or default for the purposes of Section 14.1, 14.2 or 14.3 must be signed by persons authorized to so act on behalf of Owner or Manager, as the case may be.

14.5 Termination Without Notice. Dissolution or termination of the corporate or partnership existence of the Manager by merger, consolidation or otherwise; or death of the Manager, if an individual, or death of any general partner of Manager, if a partnership or cessation on the Manager's part to continue to do business; or bankruptcy, insolvency, or assignment for the benefit of the creditors of the Manager shall effect an immediate termination of the Agreement without notice. Action having for its purpose a reorganization or reconstitution of the Manager shall likewise effect an immediate termination of this Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

14.6 Final Accounting. Termination of this Agreement under any of the foregoing provisions shall not release Manager from liability for failure to perform any of the duties or obligations of Manager, as expressed herein and required to be performed prior to such termination. Upon termination of this Agreement for any reason, Manager shall deliver to Owner the following with respect to the Project:

(a) A final accounting, reflecting the balance of income and expenses on the Project as of the date of termination to be delivered within ten (10) days after such termination;

(b) Any balance or monies of Owner or room deposits, or both, held by Manager with respect to such Project, to be delivered immediately upon such termination;

(c) Any monies due Owner under this Agreement but received after such termination; and

(d) Checks, bank statements with cancelled checks, and other banking records; cash and all other property on hand, and all receipts and vouchers; all residence hall files, with original residence hall contracts and room

deposit information; all applicable contracts, agreements, and service contracts relating to the Project; all bills relating to the Project, both paid and unpaid; all financial records relating to the Project, including all books, journals, ledgers, and financial reports; all keys to the buildings and other component parts of the Project; all employee records relating to the Project; and all other books and records that pertain to the Project.

Manager shall assign such existing contracts relating to the operating and maintenance of the Project as Owner shall require, and Manager shall furnish all such information and take all such action as Owner shall require in order to effectuate an orderly and systematic ending of Manager's duties and activities hereunder.

ARTICLE 15  
SUBSIDIARIES AND AFFILIATES

15.1 List of Subsidiaries and Affiliates. On Exhibit F attached hereto, Manager has set forth all of its subsidiary corporations, if any, and all persons, corporations or other entities, if any, controlling Manager and all persons, corporations or other entities, if any, owned or controlled by such persons, corporations or other persons, if any, which control Manager. During the continuance of this Agreement, Manager shall promptly notify Owner of any changes or additions to the information required to be set forth on Exhibit F. Any contract or lease of any kind whatsoever between Manager and any persons, corporation or other entity listed or to be listed on Exhibit F shall be subject to the prior written approval of Owner, and, at Owner's sole discretion, such approval may be withheld.

ARTICLE 16  
NOTICES

16.1 Notices. Any notice, demand or request that may be permitted, requested or desired to be given in connection herewith shall be in writing and directed to Owner, Manager and the University by certified mail, return receipt requested, postage prepaid, at their respective addresses stated on the signature page of

this Agreement. In the event such notice or other communication is effected by personal delivery or by an overnight express delivery courier, the date and hour of actual delivery shall fix the time of notice. Absent a postal strike or other stoppage of the mails, in the event of delivery of notice by registered or certified United States Mail, the date and hour following forty-eight (48) hours after the date and hour at which the sealed envelope containing the notice is deposited in the United States mail, properly addressed and with postage prepaid, shall fix the time of notice.

ARTICLE 17  
MISCELLANEOUS

17.1 Consent and Approvals. Owner's consent or approval may be given only by representatives of Owner who will be designated in writing by Owner by notice pursuant to Section 17.1. All such consents or approvals shall be in writing to the extent set forth herein as requiring written approval.

17.2 Entire Agreement. This Agreement represents the entire agreement by and between the parties hereto, and supersedes any and all prior agreements by and between the parties hereto relating to the subject matter hereof, and it may not be changed except by written agreement duly executed by the parties hereto.

17.3 Captions. The headings in this Agreement have been used for administrative convenience only, and shall not be used in interpreting or construing the meaning of any provision in this Agreement.

17.4 Representations. Manager represents and warrants that Manager is fully qualified and licensed, to the extent required by law, to perform all obligations assumed by Manager hereunder.

17.5 Hold Harmless. Manager agrees to indemnify and defend Owner and University and hold Owner and University harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Manager of any provision of this Agreement or the negligent or improper performance by Manager of its

duties hereunder or any action taken by Manager beyond the scope of Manager's authority as set forth in this Agreement, and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Manager, including, without limitation, any condition of the Project, to the extent such condition should, in the diligent discharge of Manager's obligations of this Agreement, have been observed or detected and corrected by Manager, or Manager's agents, employees, or subcontractors, but not as to any such condition so observed and detected by Manager but not corrected by reason of Owner's or University's acts or omissions. Owner and University agree to indemnify and defend Manager and hold Manager harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Owner or University, as the case may be, of any provision of this Agreement binding on Owner or University and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Owner or University with respect to the Project.

17.6 Subordination. This Agreement and the rights of Manager hereunder are and shall be subordinate to the Ground Lease between University and Owner. Manager agrees that this Agreement and all of Manager's rights, duties, and liabilities hereunder will be terminated upon any event of termination of the Ground Lease as defined therein.

17.7 Time of the Essence. Owner and Manager agree and acknowledge that time is of the essence with respect to this Agreement, and the respective time periods and deadlines set forth in this Agreement. The time periods provided for herein are basic parts of this Agreement, and are not subject to extension unless upon written agreement of the parties hereto.

17.8 Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person.

17.9 Severability. If any provision of this Agreement shall, for any reason, be held by a court of competent jurisdiction violative of any applicable law, or is held by a court of competent jurisdiction to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

17.10 No Assignment by Manager. Manager shall not have the right to assign its right, title, and interest under the terms of this Agreement to any third party whatsoever without first obtaining prior written consent of Owner and University.

17.11 Parties Bound. Except as limited by Section 17.10 of this Agreement, the terms and provisions of this Agreement shall inure to, extend to and be for the benefit of the heirs, successors, assigns, and legal representatives of the respective parties hereto.

17.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

17.13 Governing Law. This Agreement shall be construed and interpreted under the laws of the state in which the Project is located.

17.14 Construction of Agreement. The terms and provisions of this Agreement represent the results of negotiations between Owner, University and Manager, each of which has been represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Owner and Manager hereby expressly waive and disclaim in connection with the interpretation and construction of this Agreement, any rule of law or procedure requiring otherwise, including without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the Agreement or any earlier draft of this Agreement.

17.15 Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement, or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition herein, nor shall any custom, practice, or course of dealings arising among the parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements, and conditions herein contained.

17.16 No Joint Venture or Partnership. Owner and Manager hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager and Owner joint venturers or partners.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

OWNER:

UTSA Phase I Dormitory  
Partnership

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

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

Name: \_\_\_\_\_

Managing General Partner

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

Mary Q. Kelly, Esquire  
Fulbright & Jaworski  
2200 InterFirst Plaza  
300 Convent Street  
San Antonio, Texas 78205

UNIVERSITY:

The Board of Regents of The  
University of Texas System

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

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

Name: \_\_\_\_\_

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

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

James Crowson, General Counsel  
Office of the General Counsel  
The University of Texas System  
201 W. Seventh Street  
Austin, Texas 78701

MANAGER:

Sandalwood Management, Inc.

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

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

Name: \_\_\_\_\_

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

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

Mary Q. Kelly, Esquire  
Fulbright & Jaworski  
2200 InterFirst Plaza  
300 Convent Street  
San Antonio, Texas 78205

537Z

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

FIELD NOTE DESCRIPTION  
4.623-ACRE TRACT

BEING a 4.623-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 462.35 feet to Engineer's station 88+87.65. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 761.09 feet to the POINT OF BEGINNING of this tract, said point also being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 407.00 feet to a point;  
THENCE S30°45'23"E, a distance of 37.00 feet to a point;  
THENCE S59°14'37"W, a distance of 123.00 feet to a point;  
THENCE N30°45'23"W, a distance of 20.00 feet to a point;  
THENCE S59°14'37"W, a distance of 220.00 feet to a point being the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 370.00 feet to a point being the Northwest corner of this tract;

THENCE N59°14'37"E, a distance of 640.84 feet to the most Easterly point of the most Northerly line of this tract and also being the P.C. of a curve to the left;

THENCE along the arc of said curve, left of a tangent bearing S83°18'53"E, having a radius of 230.64 feet, a

central angle of  $3^{\circ}11'08''$ , a length of 12.82, and a chord which bears  $S84^{\circ}54'34''E$ , a distance of 12.82 feet to a point;

THENCE  $S86^{\circ}30'01''E$ , a distance of 111.12 feet to a point;

THENCE  $S59^{\circ}14'37''W$ , a distance of 504.99 feet to a point;

THENCE  $S30^{\circ}45'23''E$ , a distance of 132.00 feet to a point;

THENCE  $N59^{\circ}14'37''E$ , a distance of 512.00 feet to a point;

THENCE  $S30^{\circ}45'23''E$ , a distance of 151.00 feet to the POINT OF BEGINNING, containing 4.623 acres (201,370.63 sq. ft.).

EXHIBIT B

DESCRIPTION OF PROJECT

---

The project is UTSA Phase I Dormitory, a 4-story dormitory having approximately 260 double rooms, and a total area of approximately 122,000 square feet, to be occupied by students of The University of Texas at San Antonio, San Antonio, Texas ("UTSA"). The project is to be located on a 4.623-acre tract of land owned by The University of Texas System in the Western portion of the campus of UTSA, which campus is at the southeastern corner of the intersection of FM 1604 and Babcock Road.

EXHIBIT C

COMPENSATION SCHEDULE

The sole compensation (the "Management Fee") which Manager shall be entitled to receive for all services performed under this Agreement shall be a fee equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the twelve month period beginning on the Commencement Date, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the next (second) twelve month period, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the next (third) twelve month period, and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each of the next two (fourth and fifth) twelve month periods. Unless otherwise expressly provided below, said fee shall include the reimbursement to Manager for the salary and fringe benefits of all persons employed by Manager to carry out its duties hereunder.

The Management Fee for the period from the commencement of this Agreement, and, in the event the term hereof expires or is terminated on any date other than the end of a semester or summer session, for such a period of less than a full semester or summer session, shall be prorated on a daily basis. Except as provided in this Exhibit, no commission, fee, or other compensation shall be due and payable to Manager by Owner for any of Manager's services hereunder.

EXHIBIT D

SCHEDULE OF EMPLOYEES

Project Name: UTSA Phase I Dormitory  
Street Address: The University of Texas at San Antonio  
City and State: San Antonio, Texas

<u>EMPLOYEE TITLE</u>	<u>NO. WITH TITLE</u>	<u>WAGE OR SALARY RANGE</u>	<u>FIDELITY BOND (YES OR NO)</u>
-----------------------	---------------------------	---------------------------------	--

ON SITE:

OFF SITE:

EXECUTED BY:

Manager: \_\_\_\_\_  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT E  
(UTSA PHASE I DORMITORY - PROJECT)  
STATEMENT OF OPERATIONS  
(Date)

EXHIBIT F

SUBSIDIARIES & AFFILIATES OF MANAGER

Project Name:

Street Address:

City and State:

EXECUTED BY:

Manager: \_\_\_\_\_

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

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

0537Z

---

MANAGEMENT AGREEMENT  
UTSA RECREATION CENTER

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By and Among

THE BOARD OF REGENTS  
OF THE  
UNIVERSITY OF TEXAS SYSTEM,

CLARENCE T. BACH

and

SANDALWOOD MANAGEMENT, INC.

---

SAOF&J  
DRAFT 11/26/85

  
- ATTACHMENT C

MANAGEMENT AGREEMENT

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MANAGEMENT AGREEMENT  
UTSA RECREATION CENTER

THIS MANAGEMENT AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and among The Board of Regents of The University of Texas System, acting by and for the University of Texas at San Antonio (the "University"), Clarence T. Bach (the "Owner"), and Sandalwood Management, Inc. (the "Manager") under the terms and conditions hereinafter set forth.

W I T N E S S E T H

WHEREAS, the Owner intends to lease a 6.013 acre parcel of real property (the "Leased Premises") located in San Antonio, Bexar County, Texas, more particularly described in Exhibit A attached hereto and made a part hereof, which Leased Premises subject to the terms and provisions of that certain Ground Lease Agreement (the "Lease"), dated as of \_\_\_\_\_, 1985, between the University as Lessor and the Owner as Lessee;

WHEREAS, Owner intends to construct, maintain and operate on a 1.390 acre tract within such Leased Premises (the "Project Site"), which tract is more particularly described in Exhibit B attached hereto and made a part hereof a Recreation Center to be known as UTSA Recreation Center (the "Project");

WHEREAS, Owner shall provide the costs of acquisition, construction and equipping of the Project from his own funds;

WHEREAS, the Owner and the University desire to engage the services of Manager for the management and operation of the Project on behalf of Owner, upon the terms and conditions set forth herein, subsequent to its completion; and

WHEREAS, the Manager represents and warrants to the Owner and the University that it is qualified to render the services required of it hereunder and desires

SAOF&J  
DRAFT of 11/26/85

to perform such services for the Owner in consideration of the compensation to be paid solely by Owner set forth herein;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, obligations and agreements contained herein, University, Owner and Manager do hereby covenant, stipulate and agree as follows:

#### ARTICLE 1 PROPERTIES

1.1 Description of Project. The Project, shall be subject to the terms, provisions and conditions of this Agreement. No parcel of real property or improvements thereon shall be subject to the terms, provisions and conditions of this Agreement unless listed, described and identified in Schedule B attached hereto.

1.2 Termination of Ground Lease. This Management Agreement shall terminate automatically and immediately as to the Project upon termination of the Ground Lease on the Leased Premises. Owner shall furnish written notice of any such proposed termination to Manager not less than thirty (30) days prior to such termination.

#### ARTICLE 2 TERM OF AGREEMENT

2.1 Commencement Date. The term of this Management Agreement shall commence on the date upon which the Owner notifies Manager that construction of the Project has been completed and the Project is ready for operation (the "Commencement Date"). The term of this Management Agreement shall end at midnight on the day before the fifth (5th) anniversary of the Commencement Date.

2.2 Cancellation Privilege. Notwithstanding the foregoing, Owner shall have the right to cancel this Management Agreement without penalty and without liability to the Manager (except for any accrued and unpaid Management Fee) as of midnight on the day before the second (2nd) and the fourth (4th) anniversary of the

Commencement Date upon ninety (90) days prior written notice to the Manager and the Lessor. In the event of cancellation by Owner, the Manager agrees that it shall, upon the request of Owner, continue to manage the Project in accordance with the terms hereof on a month to month basis for a period not to exceed six (6) months until Owner has engaged a new manager for the Project.

2.3 Renewals. The Manager and Owner represent, warrant and agree that if any new operating agreement for the Project is negotiated between them, its term (including any renewal options provided for in such agreement) shall not exceed five (5) years and the Owner shall have the right to cancel the agreement without penalty as of the end of each two year period of the term of such agreement.

### ARTICLE 3 MANAGER'S RESPONSIBILITIES

3.1 Management. Manager shall manage, operate and maintain the Project in an efficient and satisfactory manner. Manager shall act in a fiduciary capacity with respect to the proper protections of and accounting for Owner's assets subject to Manager's control and management under this Agreement. In this capacity, Manager shall deal at arm's length with all third parties.

3.2 Standard of Care and Use of the Project. In the performance of its duties and obligations under this Agreement, Manager shall diligently and in good faith seek to promote the best interests of the University and the Owner with respect to the management, operation, maintenance, and repair of the Project. In operating the Project, except during periods of restoration, renovation, refurbishing, casualty, condemnation and temporary destruction for renovation Manager will at all times provide good, prompt and efficient services adequate to meet all reasonable demands for such services at the Project.

3.3 Related Facilities. Owner shall have the exclusive right to construct, and Manager shall have the exclusive right to maintain, operate and rent on the Leased Premises as part of the Project, related facilities in order to provide services incidental to a university Recreation Center including, but not

restricted to, sundries and newsstands, bars, restaurants and other services which are now or which may hereafter become incidental to the operation of a university Recreation Center, including the obtaining of concessionaire and other tenant leases, with the approval of Owner and University; provided that any use or service which is not directly a part of those uses or services normally provided by a university Recreation Center shall also be permitted, except that if any such use or service shall not, in the reasonable judgment of University, be consistent with the standards of University, then University may require Owner to terminate such use or service.

3.4 Sale of Food and Beverages. Manager shall have the right to prepare and sell or cause to be prepared and sold, food, beverages (including beer and wine) in the Project, provided that any alcoholic beverages shall be available only for consumption in the Project and not for consumption elsewhere. Manager shall obtain and maintain current all state or city licenses required by any of Manager's operations under this Agreement.

3.5 Trash Removal. Manager shall be responsible for the sanitary gathering, handling and disposal of all trash, litter, and refuse from the Project; provided, however, that this paragraph is not intended to in any way limit Manager's right to obtain and use trash disposal services on the same terms and conditions as such services are made available by the University to similar users on the campus at the time.

Manager shall provide and use suitable covered receptacles for all garbage, trash and other refuse. The facility for garbage storage shall be such as to hide from public view all garbage receptacles and to prevent permeation of odor, and shall be kept in a clean and sanitary condition. Manager shall not permit piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Project. This Section is not intended to prohibit normal construction activities conducted in accordance with applicable municipal laws during any period of construction, renovation or similar activity.

Manager agrees not to use or allow the use of the Project or any part thereof for any purpose in

violation of any valid and applicable law, regulation, ordinance of the United States, the State of Texas, or the City of San Antonio or of any rule of the University.

Any material change in the use or operation of the Project must be approved by University. Such approval shall not be unreasonably withheld.

3.6 Employees; Independent Contractors. Subject to the provisions hereinafter, Manager shall have in its employ at all times a sufficient number of capable employees to enable it to properly and adequately manage, operate and maintain the Project, and Manager shall engage such independent contractors as are necessary to supplement and complement Manager's employees in order to properly and adequately manage, operate and maintain the Project.

Manager may contract with third parties and with the University for such services to be provided by them as are necessary and prudent to adequately manage, operate, and maintain the Project.

Manager shall be responsible to Owner for all such employees and independent contractors. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Manager's employees and others engaged by Manager for the operation and maintenance of the Project shall be the responsibility of Manager. Manager and all personnel of Manager who handle or who are responsible for handling of Owner's moneys shall, without expense to Owner, be bonded in favor of Owner by a fidelity bond acceptable both to Manager and Owner, in an amount of not less than \$\_\_\_\_\_ for each employee and with a company acceptable to Manager and Owner, a copy of which fidelity bond shall be furnished to Owner.

All salaries, wages and other compensation of personnel employed by Manager hereunder, including payment of such fringe benefits as medical and health insurance, deferred compensation, social security, and workers' compensation insurance, shall be Manager's expenses, and Owner and University shall have no liability therefor. Manager may negotiate with any union lawfully entitled to represent such employees and may execute in its own name, and not as agent for Owner,

collective bargaining agreements or labor contracts resulting therefrom. Manager shall fully comply with all applicable laws and regulations relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employment matters in connection with the Project. Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. Manager represents that it is and will continue to be an equal opportunity employer, and will advertise (to the extent Manager elects to advertise) as such.

This Agreement is not one of agency by Manager for University or Owner, but is a contract among Owner and University and a Manager which is engaged independently in the business of operating and managing properties on its own behalf, as an independent contractor. Manager understands and agrees that its relationship to Owner is that of independent contractor, and that Manager will not represent to anyone that its relationship to University and Owner is other than that of independent contractor.

3.7 Schedule of Employees. Manager shall provide a schedule of employees by employment category (substantially in the format of Exhibit E attached hereto) to be employed in the direct management of the Project. Such schedule shall include the number of employees and their title and salary range, and shall also indicate which employees are bonded and are covered under Manager's comprehensive crime insurance policy. Exhibit E may be amended from time to time by mutual agreement of Owner, University and Manager.

3.8 Compliance with Laws and Legal Requirements. Manager shall be responsible for management, operation and maintenance of the Project in compliance with federal, state, county and municipal laws, ordinances, regulations and orders and with the Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, management, operation, repair and maintenance of the Project, and with the rules, regulations or orders of the local board of fire underwriters or other similar body.

Manager shall promptly remedy any violation of any such law, ordinance, rule, regulation

or order that comes to its attention. Manager shall promptly, and in no event later than the close of the next business day following receipt, give notice to University and Owner by telephone, with confirmation in writing, of receipt by Manager of any information relating to violations of laws, ordinances, rules, regulations and orders.

Expenses incurred in remedying violations shall be paid from the Operating Account (defined below), provided such expenses do not exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) in any one instance. When more than such amount is required or if the violation is one for which Owner might be subject to civil penalty or criminal liability, Manager shall notify Owner by the end of the next business day to the end that prompt arrangements may be made to remedy the violation.

Manager shall apply for, obtain, and maintain in the name of Owner, all licenses and permits required of Owner or Manager in connection with the management and operation of the Project.

Manager shall execute and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel and the operation of the Project. Notwithstanding anything to the contrary contained herein, Manager shall not be responsible for filing any tax returns for Owner.

Manager shall not knowingly commit any act or default under the terms and conditions contained in any ground lease, mortgage, deed of trust or other security instruments affecting the Project, and shall promptly, and in no event later than the close of the next business day following receipt, notify Owner by telephone, with confirmation in writing, of any such default or notice of default that comes to the attention and knowledge of Manager.

3.9 Approved Budgets. Manager shall prepare and submit to Owner and to University a proposed Operating Budget and a proposed Capital Budget for the operation, repair, improvement and maintenance of the Project for the forthcoming academic year. The proposed budgets for the forthcoming academic year shall be

delivered to Owner and University no later than the March 1 prior to the beginning of each academic year.

The proposed budgets shall include, but not be limited to, income projections based upon anticipated Project fees, service fees, concessions income, and rentals. In addition, Manager shall provide supporting documentation, which shall be reasonably satisfactory to Owner and to University, for projections regarding expenditures for real property taxes, utility costs, repairs and maintenance, and anticipated capital expenditures, including, wherever reasonably practicable, a bid supporting the estimated budgeted costs for capital expenditures.

Owner and University will consider the proposed budgets and then will consult with Manager in the ensuing period prior to the commencement of the forthcoming academic year in order to mutually agree on an operating budget (the "Approved Operating Budget") and on a capital budget (the "Approved Capital Budget"). The Approved Operating Budget and the Approved Capital Budget are sometimes collectively referred to herein as the "Approved Budgets".

Manager agrees to use diligence and to employ all reasonable efforts to ensure that the actual costs of maintaining and operating the Project shall not exceed the Approved Budget pertaining thereto either in total or in any one accounting category. All expenses shall be charged to the proper account as specified in the Approved Budgets, and no expense may be classified or reclassified for the purpose of avoiding an excess in the annual budgeted amount of an accounting category. Manager shall secure Owner's prior approval for any expenditure that will result in an excess of 5% or more in any one accounting category in the Approved Budgets, however, if said expenditure is less than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), no such approval is necessary. Notwithstanding any provision contained herein to the contrary, for a period of one (1) year from and after the date hereof, in the event that the actual costs of maintaining and operating the Project shall exceed the Approved Budget pertaining thereto, then the amount of any such excess shall be offset and credited, on a cumulative aggregate basis, against the Management Fee to be paid by Owner to Manager in accordance with the compensation schedule set

forth in Exhibit D attached hereto such that the amount of such Management Fee shall be automatically reduced by such excess.

During each academic year, Manager agrees to inform University and Owner of any major increases or decreases in costs and expenses that were not foreseen during the budget preparation period, and thus were not reflected in either Approved Budget, and shall submit to University and Owner for approval a revised budget based upon said unforeseen increase or reduction of costs and expenses.

3.10 Collection of Project Fees and Other Income. University shall use diligent efforts to collect and remit to Manager all Project fees that may become due Owner at any time from any student, faculty member, or other Project participant. Manager shall identify and collect any income due Owner from miscellaneous services provided to Project participants including, but not limited to, any storage and coin operated machines of all types (e.g., vending machines and pay telephones). All monies so collected shall be deposited in the Operating Account. Manager cannot and may not terminate any leasehold contracts with concessionaires or other tenants, lock out a tenant, institute suit for use and occupancy, or proceedings for recovery of possession, without the prior written approval of Owner and University. In connection with such suits or proceedings legal counsel designated by Owner shall be retained, and all such suits or proceedings shall be brought in the name of Owner and shall be handled in such manner as Owner directs. All legal expenses incurred in bringing such suits or proceedings shall be operating expenses.

3.11 Repairs. Manager shall attend to the making and supervision of all ordinary and extraordinary repairs, decorations and alterations to the Project; however, no single expenditure that is not included in the Approved Operating Budget or the Approved Capital Budget made for such purposes shall exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), without prior approval of the Owner and the University. Actual expenses for materials and labor for such purposes will be paid for from the Operating Account.

In case of emergency, Manager may make expenditures for repairs which exceed the aforementioned amount without prior written approval if Manager deems such expenditure to be necessary to prevent damage or injury. Manager will inform Owner and University of any such emergency expenditures before the end of the next business day.

3.12 Capital Expenditures. The Approved Capital Budget shall constitute an authorization for Manager to expend funds in accordance with such budget only for amounts equal to, or less than, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Any capital expenditure must be specifically authorized in writing by Owner if for: (i) items not included in the Approved Capital Budget; or, (ii) for amounts of more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

With respect to the purchase and installation of major items of new or replacement equipment (including, without limitation, heating or air-conditioning equipment, furniture and furnishings, carpets or other floor coverings), Manager shall recommend that Owner purchase such major items when Manager believes such purchase to be necessary or desirable. Owner may arrange to purchase and install the same itself or may authorize Manager to do so subject to such supervision and specification requirements and conditions as Owner may prescribe in any such approval. Unless Owner specifically waives such requirements, either by memorandum or as an amendment to this Agreement, or approves such in the Capital Budget, all new or replacement equipment exceeding One Thousand and No/100 Dollars (\$1,000.00) shall be awarded on the basis of competitive bidding, solicited in the following manner:

(a) A minimum of two written bids shall be obtained for each purchase in excess of One Thousand and No/100 Dollars (\$1,000.00). A minimum of three (3) written bids will be obtained for each purchase in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

(b) Each bid shall be solicited in a form approved by Owner so that uniformity will exist in the bid quotes.

(c) Manager shall provide Owner with all bid responses accompanied by Manager's recommendations as to the most acceptable bid. If Manager advises acceptance of other than the lowest bidder, Manager shall adequately support, in writing, its recommendations.

(d) Owner shall approve or disapprove any and all bids and will communicate to Manager its approval or disapproval of bids within five (5) business days. If Owner does not communicate any response to Manager within five (5) business days, such bids shall be construed by Manager to be disapproved by Owner.

Owner may pay for capital expenses from its own resources or may authorize payment by Manager out of the Operating Account. At the option of Owner, such contracts shall be entered in Manager's name, by Manager as agent for Owner, or submitted to Owner for Owner to enter such contracts in Owner's own name.

3.13 Service Contracts. Manager shall not enter into any contract for cleaning, maintaining, repairing, servicing and the providing of security services and utilities to the Project or any of the constituent parts of the Project, without the prior consent of Owner and University unless provided for in the Approved Operating Budget. As a condition to obtaining such consent, Manager shall supply Owner and University with a copy of the proposed contract and shall state to Owner and University the relationship, if any, between Manager (or the person or persons in control of Manager) and the party proposed to supply such goods or services, or both. Each such service contract shall: (a) be in the name of Manager, (b) be assignable, at Owner's option to Owner or Owner's nominee, (c) include a provision for cancellation thereof by Owner or Manager upon not less than 30 days' written notice, and (d) shall require that all contractors provide evidence of sufficient insurance. In the event of a termination of this Agreement, Owner shall be fully responsible for and shall thereupon assume all obligations of Manager under any approved contracts that were not terminated contemporaneously with the termination of this Agreement. If this Agreement is terminated pursuant to Article 14, Manager shall, at Owner's option and with the consent of the

University, assign to Owner or Owner's nominee all service agreements pertaining to the Project.

Subject to the availability of funds in the Approved Operating Budget, Manager shall purchase all necessary equipment, tools, appliances, materials, and supplies required for the proper management, rental, maintenance, repair, and operating of the Project. Manager shall maintain, and provide to Owner upon request, an inventory of any such equipment, tools, appliances, materials, and supplies purchased by Manager for use at the Project. Manager shall be under a duty to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchases.

3.14 Available Funds. Notwithstanding the provisions of this Agreement, including the provisions relative to the making of repairs or maintenance of the Project, Project Manager shall not incur any expenses in any semester or summer session in excess of the income from the Project during such semester or summer session except to the extent funds are made available specifically for such purpose by Owner through the Operating Account or otherwise. In any case in which the Manager anticipates a shortfall of funds, Manager shall inform Owner of the situation so that Owner may have the opportunity of determining what action should be taken under the circumstances, and Owner shall promptly advise Manager of the action to be taken.

3.15 Taxes, Mortgages. Manager shall, if requested by Owner to do so, obtain and verify statements for ad valorem taxes, improvement assessments and other like charges that are or may become liens against the Project, and Manager shall recommend payment or appeal of same. Manager shall forward such bills to Owner for payment by Owner in such time to permit Owner to avoid penalty for late payment or to permit Owner to take advantage of discounts. If such amounts are included in the Approved Operating Budget, Manager shall pay such items. Manager shall make payments on account of any ground lease, mortgage, deed of trust or other security instrument, if any, affecting the Project to the extent Owner directs that Manager make such payments, and accounts for such payments either in the Approved Budgets or otherwise.

3.16 Advertising. The University shall prepare student mailings and promotional materials to be used to promote among its students and prospective students the availability of recreational facilities in the Project. Such plans and materials shall be subject to prior approval by Owner and Manager, and in conformance with such approval. UTSA shall not use Owner's name in any advertising or promotional material without Owner's express prior approval in each instance. Advertising and promotional materials shall be prepared in full compliance with federal, state and municipal laws, ordinances, regulations and orders and with the rules and regulations of the University.

3.17 Claims. Manager shall advise Owner and the University immediately by telephone, with confirmation in writing, of the service upon Manager of any summons, subpoenas, or other like legal document including any notices, letters, or other communications, setting out or claiming an actual or alleged potential liability of Owner or the Project.

3.18 Participant or Tenant Complaints. Manager shall respond courteously and efficiently to participant complaints and service requests from tenants. Routine service requests and complaints shall be received, entered in detail in a log book indicating the action taken with respect to each. Serious complaints shall, after thorough investigation, be reported to Owner and University with appropriate recommendations.

3.19 Inspection. Manager shall make regular inspections of the Project, as may be necessary to perform its obligations under this Agreement and to confirm that the Project is being maintained as may be required or contemplated under leasehold contracts. Manager shall report its inspection findings in writing to Owner and University at the end of each semester or summer session, unless other reports may be required at other times because of disciplinary proceedings against any Recreation Center participant or because of other legal action.

ARTICLE 4  
INSURANCE

4.1 Insurance. Upon written request by Owner and University, and specific written instructions as to the type and amount, Manager shall obtain and keep in effect such insurance coverage with respect to the Project as Owner shall so request and specify. All insurance required to be obtained and maintained by Manager under this Agreement shall be of types issued by such insurance companies, in such amounts, in such form, and having such content, as may be instructed by Owner. Manager shall furnish to Owner and University and each additional insured or co-insured copies of all current insurance policies with certificates or other evidence of insurance satisfactory to Owner evidencing the existence of such insurance, and with evidence satisfactory to Owner of the proper renewal of any policy of insurance prior to the expiration of any policy of insurance. All policies of insurance shall contain a provision stating that each such policy cannot be cancelled without at least thirty (30) days prior written notice to the insured, each additional insured, and each co-insured. Manager shall promptly investigate and make a full written report as to all accidents of claims for damage relating to the ownership, operation, and maintenance of the Project, including any damage or destruction to the Project and the estimated cost of repair. All such reports shall be filed with Owner promptly, and in any event within one (1) day after the occurrence of any such accident, claim, damage or destruction. Manager shall cooperate with and make any and all reports required by any insurance company in connection therewith.

Manager shall furnish whatever information is requested by Owner and University for the purpose of establishing the placement of insurance coverages, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

4.2 Additional Insurance to be Maintained by Manager. Manager shall, at its expense, provide and maintain, so long as this Agreement is in force, workers' compensation insurance in full compliance with all applicable state and federal laws and regulations, covering all employees of Manager performing work in

respect to the Project. Manager shall, at its expense, provide and maintain, so long as this Agreement is in force, a blanket employee dishonesty policy in the minimum amount of \$\_\_\_\_\_ per employee employed in connection with the Project and per authorized signatory (except Owner) of any bank accounts kept pursuant to the provisions hereof. Such insurance shall have attached thereto an endorsement that Owner will be given at least thirty (30) days prior written notice of cancellation of or any material change in policy. Additionally, Manager, at its expense, shall provide and maintain in force adequate insurance against physical damage and against liability for loss, damage or injury to property or persons that might arise out of the use, operation or maintenance of any and all personal property owned by Manager and used in connection with the Project, and Owner shall be identified and covered as an additional insured with respect to such insurance. Additionally, Manager at its expense, shall provide and maintain errors and omissions (or like) insurance coverage in an amount not less than \$\_\_\_\_\_ with respect to any claim by Owner and persons or entities having interests in or rights in respect of the Project, and third parties against Manager arising out of the provision of services with respect to the services to be performed under or pursuant to this Agreement. Such insurance may provide for a reasonable deductible amount, not to exceed \$\_\_\_\_\_. The policies of such insurance shall be in form satisfactory to Owner and at all relevant times qualified to effect such insurance in the jurisdiction in which the Project is situated. Manager shall provide Owner with a signed copy of each policy and any renewal thereof or replacement therefor. Such policy shall be signed by the company issuing such insurance; provided that at the option of Manager such insurance may be provided by a certificate of insurance issued under a group or blanket policy providing for such insurance coverage in which event such certificate of insurance shall be signed by the company issuing such group or blanket policy. Such policy or certificate shall be endorsed with specific reference to the services to be provided by Manager in connection with the Project under this Agreement, and such policy shall not be cancelled except after at least thirty (30) days prior written notice to Owner and University. Owner will not reimburse Manager for Manager's cost of any of the foregoing insurance.

4.3 Subcontractor's Insurance. Manager shall require that any subcontractors brought onto the Project have insurance coverage, at the subcontractor's expense, in the following minimum amounts:

- (a) Worker's Compensation - Statutory Amount
- (b) Liability - \$100,000 (Minimum)
  - i. \$100,000 Bodily Injury  
\$100,000 Project Damage, and
  - ii. \$300,000 Combined Single Limit

Manager must obtain Owner's permission to waive any of the above requirements. Manager shall obtain and keep on file appropriate certificates of insurance that shows that all such subcontractors are so insured.

ARTICLE 5  
FINANCIAL REPORTING AND RECORDKEEPING

5.1 Books of Accounts. Manager, in the conduct of its responsibilities to Owner and University, shall maintain correct, true, complete and separate books and records reflecting the operation of the Project, the entries to which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded to the Project. Such books and records at all times shall be and remain the property of Owner and shall be maintained by Manager at Manager's address set forth herein, or at such other location as may be mutually agreed upon in writing. Upon the termination of this Agreement, Manager shall deliver all such records, books and accounts to Owner. Manager shall ensure such control over accounting and financial transactions as is required to protect Owner's assets from theft, error or fraudulent activity on the part of Manager's employees. Losses arising from such theft, error or fraudulent activity on the part of Manager's employees are to be borne by Manager and shall include, but not be limited to:

- (a) Theft of assets by Manager's employees,
- (b) Overpayment or duplicate payment of invoices arising from either fraud or error,

(c) Overpayment of labor costs arising from either fraud or error,

(d) Unauthorized use of facilities or space at the Project by Manager or Manager's employees,

(e) Penalties, interest, or loss of vendor discounts due to delay in payment of invoices, bills or other like charges, excluding those that were beyond Manager's control,

(f) Payments from purveyors to Manager's employees, or from Manager to any of its affiliates, arising from the purchase of goods or services for the Project, which have not been approved in advance in writing by Owner.

5.2 Account Classification. Manager and Owner shall mutually agree upon a system of classification of accounting entrees satisfactory to Owner.

5.3. Financial Reports. Manager shall furnish periodic reports of all transactions occurring from the 1st day of the prior semester or summer session to the last day of the prior semester or summer session. These reports are to be delivered to Owner no later than 15 days after the end of the above described accounting period and must include, at a minimum, the following information:

(a) An income schedule showing, for each Recreation Center participant or tenant, semester or summer session fees or rental received, and details of all other payments or charges received.

(b) A schedule of expenses (including the Management Fee described herein) incurred during the semester or summer session and any outstanding payable as of the end of the semester or summer session.

(c) A comparison of income and expenses for the preceding semester or summer session to the income and expenses set out for such period in the Approved Budgets.

(d) A reconciliation of cash accompanied by bank statements and cancelled checks.

(e) An itemized list of all receivables representing amounts currently due and collectible for services provided to Recreation Center participants or the University, or as provided for by leasehold and other agreements with concessionaires or other tenants, if any, or from any other sources.

(f) A current rent roll.

(g) An itemized list of past due monies.

(h) A copy of the cash receipts journal, cash disbursements journal, and general journal.

(i) Any other detail of accounting-related items.

Without in any manner limiting the generality of the foregoing, the reports shall include the items listed on Exhibit D attached hereto, and also shall include a comparison of year-to-date actual income and expense with the Approved Budgets for the Project.

As of the last day of the reporting semester or summer session, Manager shall remit to Owner all unexpended funds in the Project's Operating Account except for a reserve for contingencies which shall remain in the Project's Operating Account in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), plus an amount for expenses that have been incurred but not paid. The remittance shall be net of the Management Fee. After two semesters of actual operating experience, Owner, at its sole option, may elect to change the amount of such contingency reserve.

Manager, shall, on or before June 1 of each academic year during the term hereof, at Manager's expense, furnish to Owner an unaudited statement of income and disbursements reflecting the operation of the Project for the prior academic year, which statement shall be in form acceptable to Owner. If requested by Owner, such statement of income and disbursements shall be certified by a firm of independent certified public accountants selected by Owner; provided, however, that

the cost of having such statement of income and disbursements certified by such a firm of accountants shall be borne by Owner.

5.4 Supporting Documentation. As additional support to the semester or summer session and annual financial statements, Manager shall provide to Owner on request copies of the following:

- (a) Bank statements, bank deposit slips and bank reconciliations,
- (b) Detailed cash receipts and disbursement records,
- (c) Detailed trial balances,
- (d) Paid invoices,
- (e) Summaries of adjusting journal entires, and
- (f) Supporting documentation for payroll, payroll taxes and employee benefits.

5.5 Accounting Principles. All semester or summer session and annual financial statements and reports required by Owner shall be prepared on the accrual basis in accordance with generally accepted accounting principles, consistently applied, unless otherwise directed or approved by Owner.

## ARTICLE 6 INSPECTION AND AUDIT

6.1 Right of Inspection and Audit. Owner and University, their accountants, attorneys, and agents, or any other designee, shall have the right to enter upon any part of the Project at any time during the term of this Agreement for the purpose of examining or inspecting the Project, examining or making extracts of or auditing the books and records of the Project, or for any other purpose. Owner reserves the right for Owner's accountants, attorneys, agents, employees or others appointed by Owner, to inspect, copy and audit, and conduct examinations, without notification, during reasonable business hours, of the books, records and accounts of the Project maintained for Owner by Manager

no matter where such books and records are located. Owner also reserves the right to perform any and all additional audit tests relating to Manager's activities, either at the Project, or at any office of the Manager; provided that such audit tests are related to those activities performed by Manager for owner.

6.2 Corrections. Should Owner's employees or agents discover either weaknesses or discrepancies in internal control or errors in recordkeeping, Manager shall correct such weaknesses and discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing, of the action taken to correct such audit or control weaknesses and discrepancies.

6.3 Expenses. Such inspections or audits shall be at Owner's expense, unless such inspections or audits disclose a discrepancy caused by a single line item entry in excess of \$1,000 that has resulted in error by five percent (5%) or more, in which case the cost of such inspections or audits as well as the reimbursement of such error, shall be paid by Manager.

#### ARTICLE 7 BANK ACCOUNTS

7.1 Operating Account. Manager shall deposit, on a daily basis, all fees, rents and other funds collected from the operation of the Project, including any and all advance payments in a bank approved by Owner in a special account or accounts (the "Operating Account(s)") for the Project. The Operating Account shall be separate from Manager's corporate account and any other bank accounts maintained by Manager. All funds in the Operating Account shall be and shall remain the property of Owner and shall be received, held, and disbursed by Manager as a trust fund in payment of obligations of Owner incurred in connection with the management, operation, maintenance and repair of the Project, or remitted to Owner as provided herein. In no event shall the funds of anyone but Owner be deposited by Manager in the Operating Account, and Manager shall not commingle Owner's funds with the funds of any other person in any manner whatsoever. The bank shall be informed in writing that the funds are held in trust for Owner. Out of the Operating Account, Manager shall pay the operating

expenses of the Project provided for herein and any other payments relative to the Project as required by the terms of this Agreement.

At any time that the Operating Account contains inadequate funds to meet current expenses and reasonable reserves, including all times prior to the commencement of fee and rental income from the Project, Owner shall provide the needed funds for the Operating Account.

7.2 Security Deposits. Manager shall maintain detailed records of all security deposits and any other refundable fees or deposits collected from Project participants or tenants, and such records will be open for inspection by Owner's employees or agents. Unless expressly waived in writing by Owner, all refundable fees or deposits collected from Project participants or tenants, other than deposits made for short-term rental of sports equipment subject to return of the equipment and refunding of the deposit within a 24 hour period, shall be deposited by Manager and held in a bank account (the "Security Deposit Account"), separate from Manager's corporate account, the account maintained under Section 7.1 above, and any other bank accounts maintained by Manager. The Security Deposit Account shall be in the name of Owner with an account name and at a bank designated by Owner. Manager and Owner shall comply with all applicable laws with respect to such fees and deposits and, unless so instructed by Owner, Manager shall not withdraw any sums from such Security Deposit Account except as required to comply with the provisions of tenant contracts regarding the refunding of such deposits.

7.3 Change of Banks. Owner may direct the Manager to change a depository bank or the depository arrangements.

7.4 Access to Account. Through the use of signature cards, authorized representatives of Owner, who initially shall be \_\_\_\_\_ and \_\_\_\_\_, shall be permitted access to any and all funds in the bank accounts described in Section 7.1 and 7.2. Owner agrees to promptly notify Manager of any withdrawals from such bank accounts. Manager's authority to draw against such accounts may be terminated at any time by Owner upon five (5) days notice to Manager or the Bank.

ARTICLE 8  
PAYMENTS OF EXPENSES

8.1 Costs Eligible for Payment from Operating Account. Manager shall pay all costs for items in the Approved Operating Budget in the first instance out of the Operating Account. In addition, other expenses provided in this Agreement to be paid out of the Operating Account shall be paid directly from the Operating Account, and the following expenses shall also be paid directly from the Operating Account, subject to the conditions outlined in Article 3:

(a) Cost to correct any violation of federal, state, county and municipal laws, ordinances, regulations and orders, and Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, use, repair and maintenance of the Project, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of Manager's negligence.

(b) Costs incurred by Manager in connection with all service agreements entered by Manager in accordance with authorizations in this Agreement or approved by Owner.

(c) Legal fees of attorneys provided such attorneys have been approved of by Owner in writing in advance of retention.

(d) Cost of outside audit as may be requested by Owner in writing.

If funds are not available in the Operating Account, Manager shall have no obligation to make any such payments. All payments may be made by Manager from the Operating Account in such order as Manager elects, and Manager shall pay all penalties or other charges for late payment of such items from the Operating Account.

ARTICLE 9  
MANAGER'S COST NOT TO BE REIMBURSED

9.1 Non-reimbursable Costs. Except to the extent that such costs and expenses (i) are in the Approved Operating Budget, (ii) are otherwise approved for payment by Owner, or (iii) are expressly reimbursable as provided for in Exhibit D attached hereto, all expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Project shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner, including, specifically, without limitation, the following:

- (a) Cost of gross salary and wages, payroll taxes, insurance, workers' compensation, and other benefits of Manager's employees.
- (b) General account and reporting services that are considered to be within the reasonable scope of the Manager's responsibility to Owner.
- (c) Cost of forms, papers, ledgers, and other supplies and equipment used in the Manager's office at any location off the Project.
- (d) Cost of electronic data processing equipment, or any pro rata charge thereon, whether located at the Project or at Manager's office off the Project.
- (e) Cost of electronic data processing, or any pro rata charge thereof, for data processing provided by computer services companies.
- (f) Cost attributable to losses arising from gross negligence or fraud on the part of Manager or Manager's employees. "Gross negligence" shall be deemed to include any and all monetary loss caused by the ordinary negligence of Manager or Manager's employees.
- (g) Cost of all bonuses paid by Manager to Manager's employees unless such bonuses have prior written approval of Owner.

(h) Cost of comprehensive crime insurance, fidelity bonds, or other insurance purchased by Manager for its own account.

ARTICLE 10  
INSUFFICIENT GROSS INCOME

10.1 Statement of Unpaid Items. After Manager has paid, to the extent of available funds in the Operating Account, all bills and charges that have been incurred with respect to the Project, Manager shall submit to Owner a statement of all remaining unpaid bills. Owner shall promptly provide sufficient monies to pay any unpaid expenses.

ARTICLE 11  
SALE OF PROJECT

11.1 Cooperation with Sales Broker. If Owner, with approval of the University, executes a listing agreement with a broker for sale of the Project, Manager shall cooperate with such broker to the end that the respective activities of Manager and broker may be carried on without interference with Recreation Center operations. Manager will permit the broker to exhibit the Project during reasonable business hours provided the broker has secured Manager's permission in advance. Manager agrees that failure on its part to extend cooperation to a broker desiring to show the Project shall constitute a default on its part under this Agreement, and is a ground for termination of this Agreement upon seven (7) days notice to Manager.

ARTICLE 12  
COOPERATION

12.1 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner that arise out of any of the matters relating to this Agreement, Manager shall give Owner all pertinent information and reasonable assistance in the defense or other disposition thereof.

ARTICLE 13  
COMPENSATION

13.1 Compensation. Manager shall receive compensation (the "Management Fee") for its services in

managing the Project pursuant to the terms and tenor of this Agreement in accordance with the compensation schedule set forth in Exhibit D attached hereto and made a part hereof for all purposes.

ARTICLE 14  
TERMINATION

14.1 Termination on 30-day Notice. In addition to the provisions of Section 1.1, either party may terminate this Agreement without cause by giving the other party and the University at least thirty (30) days notice in writing.

14.2 Immediate Termination With Notice. In addition to the provisions of Section 14.1, Owner may immediately terminate this Agreement by the service of a written notice to that effect on Manager and the University. In such case, if Manager is entitled to a Management Fee pursuant to Article 13, Owner shall pay Manager the Management Fee that would normally have accrued to Manager on a pro rata basis during the ensuing thirty (30) days immediately following the termination date. The foregoing provisions for payment in lieu of actual Management Fee shall apply only in the case of the immediate termination pursuant to this Section 14.2.

14.3 Termination for Cause. This Agreement will terminate immediately without further action from Owner in the event Manager breaches any of its obligations to Owner under the terms of this Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

14.4 Authority to Execute Termination Notices. Notice of termination or default for the purposes of Section 14.1, 14.2 or 14.3 must be signed by persons authorized to so act on behalf of Owner or Manager, as the case may be.

14.5 Termination Without Notice. Dissolution or termination of the corporate or partnership existence of the Manager by merger, consolidation or otherwise; or death of the Manager, if an individual, or death of any general partner of Manager, if a partnership or cessation on the Manager's part to continue to do business; or bankruptcy, insolvency, or assignment for

the benefit of the creditors of the Manager shall effect an immediate termination of the Agreement without notice. Action having for its purpose a reorganization or reconstitution of the Manager shall likewise effect an immediate termination of this Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

14.6 Final Accounting. Termination of this Agreement under any of the foregoing provisions shall not release Manager from liability for failure to perform any of the duties or obligations of Manager, as expressed herein and required to be performed prior to such termination. Upon termination of this Agreement for any reason, Manager shall deliver to Owner the following with respect to the Project:

(a) A final accounting, reflecting the balance of income and expenses on the Project as of the date of termination to be delivered within ten (10) days after such termination;

(b) Any balance or monies of Owner or room deposits, or both, held by Manager with respect to such Project, to be delivered immediately upon such termination;

(c) Any monies due Owner under this Agreement but received after such termination; and

(d) Checks, bank statements with cancelled checks, and other banking records; cash and all other property on hand, and all receipts and vouchers; all Recreation Center files, with original concessionaire and other leasehold contracts and Recreation Center participant rolls; all applicable contracts, agreements, and service contracts relating to the Project; all bills relating to the Project, both paid and unpaid; all financial records relating to the Project, including all books, journals, ledgers, and financial reports; all keys to the buildings and other component parts of the Project; all employee records relating to the Project; and all other books and records that pertain to the Project.

Manager shall assign such existing contracts relating to the operating and maintenance of the Project

as Owner shall require, and Manager shall furnish all such information and take all such action as Owner shall require in order to effectuate an orderly and systematic ending of Manager's duties and activities hereunder.

ARTICLE 15  
SUBSIDIARIES AND AFFILIATES

15.1 List of Subsidiaries and Affiliates. On Exhibit G attached hereto, Manager has set forth all of its subsidiary corporations, if any, and all persons, corporations or other entities, if any, controlling Manager and all persons, corporations or other entities, if any, owned or controlled by such persons, corporations or other persons, if any, which control Manager. During the continuance of this Agreement, Manager shall promptly notify Owner of any changes or additions to the information required to be set forth on Exhibit G. Any contract or lease of any kind whatsoever between Manager and any persons, corporation or other entity listed or to be listed on Exhibit G shall be subject to the prior written approval of Owner, and, at Owner's sole discretion, such approval may be withheld.

ARTICLE 16  
NOTICES

16.1 Notices. Any notice, demand or request that may be permitted, requested or desired to be given in connection herewith shall be in writing and directed to Owner, Manager and the University by certified mail, return receipt requested, postage prepaid, at their respective addresses stated on the signature page of this Agreement. In the event such notice or other communication is effected by personal delivery or by an overnight express delivery courier, the date and hour of actual delivery shall fix the time of notice. Absent a postal strike or other stoppage of the mails, in the event of delivery of notice by registered or certified United States Mail, the date and hour following forty-eight (48) hours after the date and hour at which the sealed envelope containing the notice is deposited in the United States mail, properly addressed and with postage prepaid, shall fix the time of notice.

ARTICLE 17  
MISCELLANEOUS

17.1 Consent and Approvals. Owner's consent or approval may be given only by representatives of Owner who will be designated in writing by Owner by notice pursuant to Section 17.1. All such consents or approvals shall be in writing to the extent set forth herein as requiring written approval.

17.2 Entire Agreement. This Agreement represents the entire agreement by and between the parties hereto, and supersedes any and all prior agreements by and between the parties hereto relating to the subject matter hereof, and it may not be changed except by written agreement duly executed by the parties hereto.

17.3 Captions. The headings in this Agreement have been used for administrative convenience only, and shall not be used in interpreting or construing the meaning of any provision in this Agreement.

17.4 Representations. Manager represents and warrants that Manager is fully qualified and licensed, to the extent required by law, to perform all obligations assumed by Manager hereunder.

17.5 Hold Harmless. Manager agrees to indemnify and defend Owner and University and hold Owner and University harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Manager of any provision of this Agreement or the negligent or improper performance by Manager of its duties hereunder or any action taken by Manager beyond the scope of Manager's authority as set forth in this Agreement, and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Manager, including, without limitation, any condition of the Project, to the extent such condition should, in the diligent discharge of Manager's obligations of this Agreement, have been observed or detected and corrected by Manager, or Manager's agents, employees, or subcontractors, but not as to any such condition so observed and detected by Manager but not corrected by reason of Owner's or

University's acts or omissions. Owner and University agree to indemnify and defend Manager and hold Manager harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Owner or University, as the case may be, of any provision of this Agreement binding on Owner or University and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Owner or University with respect to the Project.

17.6 Subordination. This Agreement and the rights of Manager hereunder are and shall be subordinate to the Ground Lease between University and Owner. Manager agrees that this Agreement and all of Manager's rights, duties, and liabilities hereunder will be terminated upon any event of termination of the Ground Lease as defined therein.

17.7 Time of the Essence. Owner and Manager agree and acknowledge that time is of the essence with respect to this Agreement, and the respective time periods and deadlines set forth in this Agreement. The time periods provided for herein are basic parts of this Agreement, and are not subject to extension unless upon written agreement of the parties hereto.

17.8 Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person.

17.9 Severability. If any provision of this Agreement shall, for any reason, be held by a court of competent jurisdiction violative of any applicable law, or is held by a court of competent jurisdiction to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

17.10 No Assignment by Manager. Manager shall not have the right to assign its right, title, and interest under the terms of this Agreement to any third

party whatsoever without first obtaining prior written consent of Owner and University.

17.11 Parties Bound. Except as limited by Section 17.10 of this Agreement, the terms and provisions of this Agreement shall inure to, extend to and be for the benefit of the heirs, successors, assigns, and legal representatives of the respective parties hereto.

17.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

17.13 Governing Law. This Agreement shall be construed and interpreted under the laws of the state in which the Project is located.

17.14 Construction of Agreement. The terms and provisions of this Agreement represent the results of negotiations between Owner, University and Manager, each of which has been represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Owner and Manager hereby expressly waive and disclaim in connection with the interpretation and construction of this Agreement, any rule of law or procedure requiring otherwise, including without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the Agreement or any earlier draft of this Agreement.

17.15 Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement, or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition herein, nor shall any custom, practice, or course of dealings arising among the parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements, and conditions herein contained.

17.16 No Joint Venture or Partnership. Owner and Manager hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager and Owner joint venturers or partners.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

OWNER:

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

\_\_\_\_\_  
Clarence T. Bach

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

Mary Q. Kelly, Esquire  
Fulbright & Jaworski  
2200 InterFirst Plaza  
300 Convent Street  
San Antonio, Texas 78205

UNIVERSITY:

The Board of Regents of The  
University of Texas System

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

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

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

James Crowson, General Counsel  
Office of the General Counsel  
The University of Texas System  
201 W. Seventh Street  
Austin, Texas 78701

MANAGER:

Sandalwood Management, Inc.

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

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

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

Mary Q. Kelly, Esquire  
Fulbright & Jaworski  
2200 InterFirst Plaza  
300 Convent Street  
San Antonio, Texas 78205

623Z

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

FIELD NOTE DESCRIPTION  
6.013-ACRE TRACT

BEING a 6.013-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

Commencing from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 690.89 feet to Engineer's station 86+59.11. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 538.50 feet to the POINT OF BEGINNING of this tract, said point also being the most Northerly point on the most Easterly line of this tract;

THENCE S30°45'23"E, a distance of 120.89 feet to a point, said point being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 298.00 feet to a point;  
THENCE N30°45'23"W, a distance of 7.00 feet to a point;  
THENCE S59°14'37"W, a distance of 407.00 feet to a point;  
THENCE S30°45'23"E, a distance of 37.00 feet to a point;  
THENCE S59°14'37"W, a distance of 123.00 feet to a point;  
THENCE N30°45'23"W, a distance of 20.00 feet to a point;  
THENCE S59°14'37"W, a distance of 220.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 370.00 feet to a point, said point being the Northwest corner of this tract;

THENCE N59°14'37"E, a distance of 640.84 feet to a point, said point being the most Easterly point of the most Northerly line of this tract;

THENCE along the arc of a curve having a radius of 230.64 feet, a central angle of 03°11'08", a length of 12.82 feet and a chord which bears S84°54'34"E, a distance of 12.82 feet to a point;

THENCE S86°30'01"E, a distance of 111.02 feet to a point;  
THENCE S59°14'37"W, a distance of 504.99 feet to a point;  
THENCE S30°45'23"E, a distance of 132.00 feet to a point;  
THENCE N59°14'37"E, a distance of 512.00 feet to a point;  
THENCE N30°45'23"W, a distance of 60.00 feet to a point;  
THENCE N59°14'37"E, a distance of 40.68 feet to a point;  
THENCE N30°45'23"W, a distance of 39.53 feet to the P.C. of a curve;

THENCE along the arc of said curve having a radius of 208.28, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N85°31'01", a distance of 57.85 feet to a point;

THENCE N77°32'04"E, a distance of 97.70 feet to the P.C. of a curve to the right having a radius of 212.49 feet, a central angle of 26°27'19", a length of 98.11 and a chord which bears S89°14'17"E, a distance of 97.25 feet to a point;

THENCE S76°00'37"E, a distance of 41.95 feet to the POINT OF BEGINNING containing 6.013 acres (261,929.93 sq. ft.).

EXHIBIT B

FIELD NOTE DESCRIPTION  
1.390-ACRE TRACT

BEING a 1.390-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

Commencing from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;  
S83°23'33"E, a distance of 103.08 feet;  
N82°34'17"E, a distance of 400.00 feet;  
N71°15'14"E, a distance of 356.93 feet;  
N82°34'17"E, a distance of 690.89 feet to Engineer's station 86+59.11. Then departing from South right-of-way of F.M. Road 1604, S07°25'43"E, a distance of 538.50 feet to the POINT OF BEGINNING of this tract, said point also being the most Northerly point on the most Easterly line of this tract;

THENCE S30°45'23"E, a distance of 120.89 feet to a point, said point being the Southeast corner of this tract;

THENCE S59°14'37"W, a distance of 298.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N30°45'23"W, a distance of 218.00 feet to a point;  
THENCE N59°14'37"E, a distance of 40.68 feet to a point;  
THENCE N30°45'23"W, a distance of 39.53 feet to the P.C. of a curve to the left, said point being the most Northerly corner of this tract;

THENCE along the arc of said curve, to the left of a tangent bearing S86°30'01"E, having a radius of 208.28 feet, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N85°31'01"E, a distance of 57.85 feet to a point;

THENCE N77°32'04"E, a distance of 97.70 feet to the P.C. of a curve;

THENCE, along the arc of said curve to the right having a radius of 212.49 feet, a central angle of 26°27'19", a length of 98.12 feet, and a chord which bears S89°14'17"E, a distance of 97.25 feet to a point;

THENCE S76°00'37"E, a distance of 41.95 feet to the POINT OF BEGINNING, containing 1.390 acres (60,559.33 sq. ft.).

1.390-ACRE TRACT

EXHIBIT C

DESCRIPTION OF PROJECT

---

The Project is UTSA Recreation Center to be constructed by Owner containing a swimming pool, a game room, dining facilities and other amenities, and occupying a total area of approximately \_\_\_\_\_ square feet, to be used by students, faculty, staff, and guests of The University of Texas at San Antonio, San Antonio, Texas ("UTSA"). The project is to be located on a 6.023-acre tract of land owned by The University of Texas System, and leased by the Owner, located in the Western portion of the campus of UTSA, which campus is at the southeastern corner of the intersection of FM 1604 and Babcock Road in San Antonio, Texas.

EXHIBIT D

COMPENSATION SCHEDULE

The sole compensation (the "Management Fee") which Manager shall be entitled to receive for all services performed under this Agreement shall be a fee equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the twelve month period beginning on the Commencement Date, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the next (second) twelve month period, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the next (third) twelve month period, and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each of the next two (fourth and fifth) twelve month periods. Unless otherwise expressly provided below, said fee shall include the reimbursement to Manager for the salary and fringe benefits of all persons employed by Manager to carry out its duties hereunder.

The Management Fee for the period from the commencement of this Agreement, and, in the event the term hereof expires or is terminated on any date other than the end of a semester or summer session, for such a period of less than a full semester or summer session, shall be prorated on a daily basis. Except as provided in this Exhibit, no commission, fee, or other compensation shall be due and payable to Manager by Owner for any of Manager's services hereunder.

EXHIBIT E

SCHEDULE OF EMPLOYEES

Project Name: UTSA Recreation Center  
Street Address: The University of Texas at San Antonio  
City and State: San Antonio, Texas

<u>EMPLOYEE TITLE</u>	<u>NO. WITH TITLE</u>	<u>WAGE OR SALARY RANGE</u>	<u>FIDELITY BOND (YES OR NO)</u>
-----------------------	---------------------------	---------------------------------	--

ON SITE:

OFF SITE:

EXECUTED BY:

Manager: \_\_\_\_\_  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT F  
(UTSA RECREATION CENTER - PROJECT)  
STATEMENT OF OPERATIONS  
(Date)

EXHIBIT G

SUBSIDIARIES & AFFILIATES OF MANAGER

Project Name:

Street Address:

City and State:

EXECUTED BY:

Manager: \_\_\_\_\_

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

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

[DRAFT]

To: Lloyds Bank International Limited

STATEMENT OF POLICY AND UNDERTAKING

Re: UTSA Dormitory Project.  
Financing by Lloyds Bank, International

The Board of Regents of The University of Texas System (the "Board"), acting for and on behalf of The University of Texas at San Antonio, hereby confirms that the Lessor has entered into a Ground Lease Agreement dated \_\_\_\_\_ (the "Lease Agreement") with Clarence T. Bach ("Lessee") pursuant to which the Lessor has leased to the Lessee certain property described in Exhibit A to the Lease Agreement as the Leased Premises, for a period of \_\_\_\_\_ years terminating on \_\_\_\_\_.

The Lessee has entered into the Lease Agreement for the purpose of constructing, developing, operating and maintaining, by himself or through one or more affiliated entities, Phase I Dormitory and Recreation Center and from time to time, at Lessee's option, the Additional Dormitories as defined in the Lease Agreement (collectively, the "Facilities"), all to be constructed in accordance with the plans and specifications and operated in accordance with the Operating Agreement described below.

The plans and specifications for the development and construction of the Facilities have been approved by the Board and meet the standards required by the Office of Facilities Planning and Construction of the University of Texas System.

The Facilities will be operated and maintained pursuant to an operating agreement dated \_\_\_\_\_ between an operator (the "Operator") and the Lessee and approved by the Board \_\_\_\_\_ (the "Operating Agreement"), pursuant to which the Operator shall be responsible for the maintenance and repair of the Leased Premises and the Facilities and the operation of the Facilities. The Operating Agreement in addition provides that the Operator, with the approval of the Board, shall have full right to make reasonable

DRAFT

NOVEMBER 7, 1985

\_\_\_\_\_  
ATTACHMENT D

adjustments to the rents payable by the students taking up residency in the Phase I Dormitory in order to ensure that sufficient revenues are generated so as to enable the Lessee to meet promptly and in full its obligations under the terms of a Reimbursement Agreement dated \_\_\_\_\_ (the "*Reimbursement Agreement*") between the Lessee and Lloyds Bank International Limited ("*LBI*"). Pursuant to the Reimbursement Agreement, LBI will provide an irrevocable direct pay letter of credit (the "*Letter of Credit*") on the Lessee's behalf, for the purpose of providing credit enhancement and liquidity support for a tax-exempt variable rate demand bond issue, the purpose of which is to finance the construction and development of the Phase I Dormitory.

In consideration for LBI issuing its Letter of Credit in this connection, the Board hereby acknowledges and consents to LBI securing a mortgage of the Lessee's leasehold estate in the Leased Premises pursuant to Article 9 of the agreement, which mortgage shall rank senior to the rights of the Board under the terms of the Lease Agreement.

The Board hereby agrees that upon written notification by LBI of an Event of Default as defined in the Reimbursement Agreement, or upon written notification by LBI that LBI, for whatever reason and in its sole discretion, shall have elected not to renew the Letter of Credit for a further period upon its Expiry Date as defined in the Reimbursement Agreement, the Board either (i) will exercise its option under the Lease Agreement to purchase the Phase I Dormitory or (ii) will cooperate with the Lessee and LBI to ensure that the Event of Default, if one has occurred, is remedied to the satisfaction of LBI, or will cooperate with this Lessee and LBI to secure suitable refinancing for the Lessee so that LBI may be released from its obligations under the Letter of Credit.

The Board further agrees that in the event of a default under the Lease Agreement, providing grounds for a termination of the Lease Agreement, the Board will not proceed to terminate without providing the Lessee with a reasonable period of time in which to cure the default, or in the event that the default could not be remedied within a reasonable period of time, as specified in the Lease Agreement, the Board will not terminate the lease without first recognizing all rights of LBI under the Reimbursement Agreement.

Should refinancing be required for whatever reason, it is the full intention of the Board to pursue one or both of the following courses of action:

- 1) Cooperate with LBI and the Lessee in securing alternative financing;
- 2) Exercise its option under the Lease Agreement to terminate the lease and to exercise its option to purchase the Phase I Dormitory.

The above undertakings shall subsist until revoked by mutual agreement in writing between LBI and the Board.

Signed for and on behalf of the Board of Regents of The University of Texas System, this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Authorized Officer

904Q

Preliminary analysis to evaluate the feasibility of this project and arrangements for financing the project are nearing completion by Sandalwood Properties. Negotiations between representatives of the Sandalwood Properties, U. T. San Antonio, and U. T. System Administration are also near completion in developing an acceptable Ground Lease and Dormitory Operating Agreement.

If final drafts of these documents can be agreed upon and if a firm recommendation can be formulated in a timely manner, such recommendation, along with appropriate documents and background material, will be mailed to the U. T. Board of Regents at the earliest possible date.

This item requires the concurrence of the Academic Affairs Committee.

13. U. T. Tyler - Space Completion and Renovation: Request for Project Authorization; Appointment of Project Architect to Prepare Final Plans; Submission to Coordinating Board; and Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Hamm that the U. T. Board of Regents:

- a. Authorize the construction of the Space Completion and Renovation project at U. T. Tyler at an estimated total project cost of \$3,800,000
- b. Appoint a Project Architect from the list on Page B&G - 22 to prepare final plans and a detailed cost estimate to be presented to the U. T. Board of Regents for consideration at a future meeting
- c. Appropriate \$250,000 from Permanent University Fund Bond Proceeds for fees and related project expenses through completion of final plans

#### BACKGROUND INFORMATION

At the October 1985 meeting of the U. T. Board of Regents approval in principle was given for the Space Completion and Renovation project at U. T. Tyler as part of the Capital Improvement Program.

In order for needed additional classroom space to be available for use beginning the fall semester of 1986, design and plan preparation must begin in December 1985. If additional classroom space is not available, it will be necessary to lease additional space off campus.

The project will provide for the completion and renovation of space in the Library, University Center, and Administration Buildings as well as the completion of the physical plant compound.

The work in the Library will convert an open, unfinished area into 17,427 gross square feet of general classroom space. The renovation in the University Center will convert a former library stack area into 18,468 gross square feet of classrooms and faculty offices.

The scope of work in the Administration Building will convert 7,180 gross square feet of inefficient "open plan classroom" area into effective, discreet classrooms and offices. The physical plant compound completion will provide an addition to house university general storage and to provide building maintenance and ground maintenance shops and general storage space.

List of Firms for Consideration

<u>Project Architect</u>	<u>Representative Projects</u>
Charles F. Potter, Jr., Architect Tyler, Texas	Henderson County Jr. College Athens, Texas: Administration Bldg. Addns.; Library; Liberal Arts Bldg. Remodel; AutoMech/ Welding Bldg. Panola Jr. College, Carthage, Texas: Administration Bldg.; Student Center; Band Hall Woodlands High School, Woodlands, Texas Robert E. Lee High School, Tyler, Texas: Addition & Remodel Gymnasium; Library
Sinclair & Wright Tyler, Texas	Tyler Junior College, Tyler, Texas: Health and Physical Education Building Tyler Public Library, Tyler, Texas Texas A&M Research & Extension Center Tyler ISD Elementary School
Burch Associates Architects Tyler, Texas	Tyler Junior College, Tyler, Texas: Administration Bldg.; Dormitory Texas A&M Extension Centers, Uvalde, Vernon and Overton, Texas Smith County Juvenile Center Texas Community Antenna, Corporate Headquarters

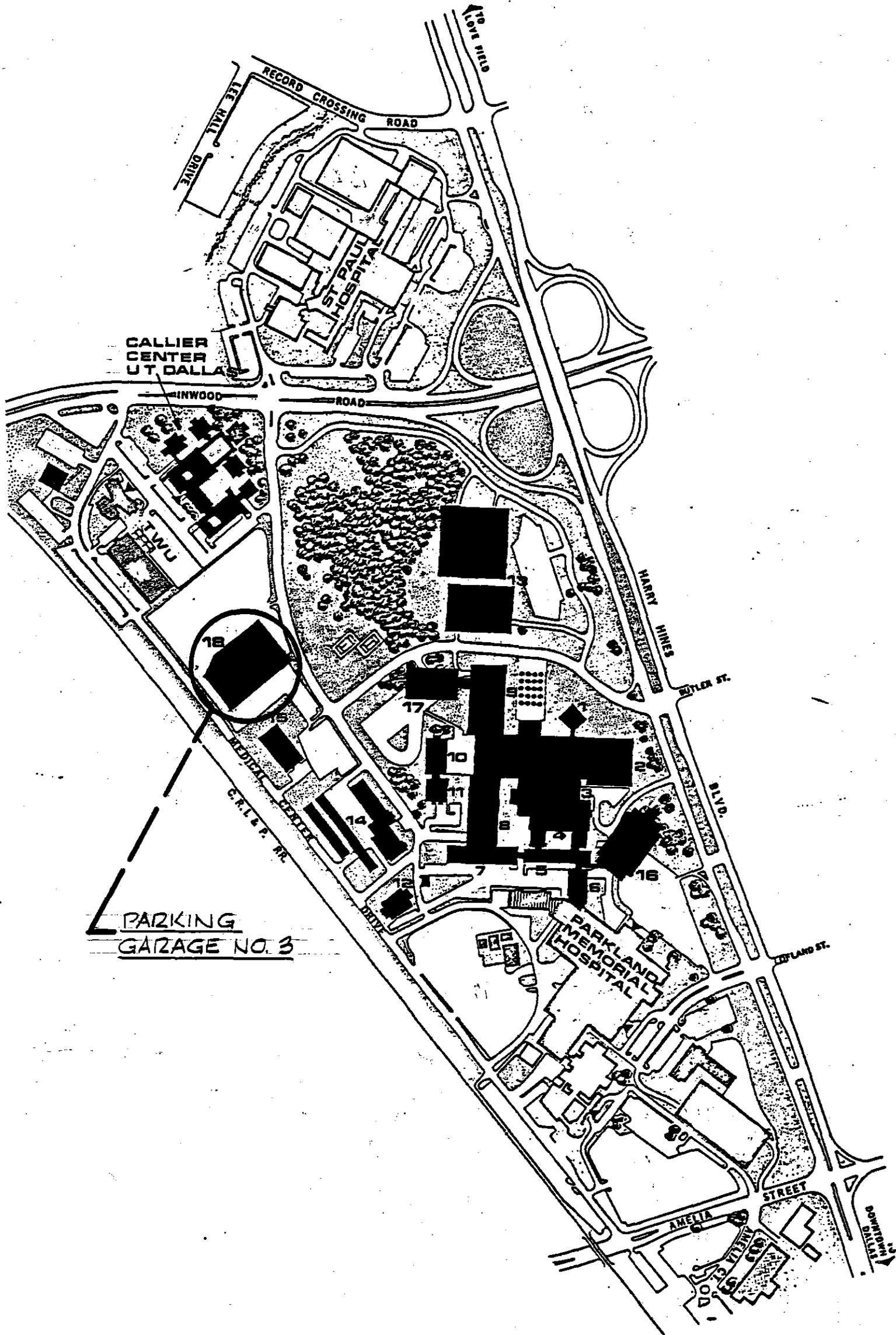
14. U. T. Health Science Center - Dallas: Appropriation of Permanent University Fund Bond Proceeds for the Fiscal Year 1986 Equipment Allocation for Regental Professors Michael Brown and Joseph Goldstein.--

RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Sprague that \$100,000 be appropriated from Permanent University Fund Bond Proceeds for equipment purchases in support of the research of Regental Professors Michael Brown and Joseph Goldstein.

# U.T. HEALTH SCIENCE CENTER AT DALLAS

BUILDING INDEX ON BACK



### BACKGROUND INFORMATION

At its October 24, 1985 special meeting, the U. T. Board of Regents awarded Nobel Laureates Dr. Michael Brown and Dr. Joseph Goldstein the title of Regental Professor and committed \$1 million over the next five years to assist their research, including \$100,000 per year in general programmatic research support and \$100,000 per year for equipment purchases. This \$100,000 appropriation is in fulfillment of the Fiscal Year 1986 commitment for equipment purchases.

15. U. T. Health Science Center - Dallas - Parking Garage No. 3 - Two-Level Addition: Request for Approval of Final Plans; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Additional Appropriation Therefor.--

### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Sprague that the U. T. Board of Regents:

- a. Approve the final plans and specifications for the Two-Level Addition to Parking Garage No. 3 at the U. T. Health Science Center - Dallas at an estimated total project cost of \$1,450,000
- b. Authorize the Office of Facilities Planning and Construction to advertise for bids upon completion of final review
- c. Authorize the Executive Committee to award all contracts associated with this project within the authorized total project cost
- d. Appropriate \$1,175,000 from Institutional Plant Fund Balances and \$200,000 from Parking Fund Balances for total project funding. Previous appropriations have been \$75,000 from Institutional Plant Fund Balances

This item requires the concurrence of the Finance and Audit Committee.

### BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in June 1985, final plans and specifications for the Two-Level Addition to Parking Garage No. 3 at the U. T. Health Science Center - Dallas have been prepared by the Project Architect, Kirk, Voich & Gist, Architects-Engineers, Fort Worth, Texas.



The 137,900 gross square foot two-level addition will provide approximately 400 additional parking spaces. The estimated construction cost is \$1,300,500 resulting in a cost of \$9.43 per gross square foot. The estimated total project cost is \$1,450,000.

This project was approved by the Coordinating Board, Texas College and University System in July 1985.

16. U. T. Health Science Center - San Antonio - Basic Science Building Fifth Level Completion: Request for Project Authorization; Appointment of Project Architect for Preliminary Plans; and Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Howe that the U. T. Board of Regents:

- a. Authorize a project for the Basic Science Building Fifth Level Completion at U. T. Health Science Center - San Antonio for an estimated total project cost of \$3,400,000
- b. Appoint a Project Architect from the list on Page B&G - 25 with authorization to prepare preliminary plans and a detailed cost estimate for consideration at a future meeting
- c. Appropriate \$100,000 from Permanent University Fund Bond Proceeds for fees and administrative expenses through completion of preliminary plans

#### BACKGROUND INFORMATION

This project will complete approximately 30,000 square feet of existing shell space at the fifth level of the Basic Science Building. This shell space was constructed in 1979-80, and it was anticipated that funding for completion of the space would be appropriated by the Legislature in 1981. Similar requests were presented in 1983 and in 1985 prior to passage of Proposition 2. This project has been needed for several years and was planned to provide space needs of the basic science departments when the medical school enrollment was expanded from 100 to 200 students per class. Completion of this space into laboratories and offices for basic science teaching and research space will complete this building project which was begun several years ago.

This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

List of Firms for Consideration

<u>Project Architect</u>	<u>Representative Projects</u>
Phelps Garza Bomberger San Antonio, Texas	U.T.H.S.C. - San Antonio: Medical School Building, Basic Science Teaching Expansion; Allied Health Laboratories; School of Nursing; Dental School; (work accomplished as part of joint venture)
Marmon, Barclay, Souter, Foster, Hays San Antonio, Texas	Medical Center Hospital, San Antonio, Texas: Five- Story Addition St. Luke's Lutheran Hospital, San Antonio, Texas: Five- Story Addition The Laboratory of Pathology, San Antonio, Texas
JonesKell San Antonio, Texas	U.T.H.S.C. - San Antonio: Medical School Building and Expansion Phases; Dental School Building and Expan- sion Phases; Library Build- ing (work accomplished as part of joint venture)

17. U. T. Health Science Center - San Antonio - Expansion of Clinical Science Teaching Space: Request for Project Authorization; Appointment of Project Architect to Prepare Preliminary Plans; and Appropriation Therefor.--

RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President Howe that the U. T. Board of Regents:

- a. Authorize the Expansion of Clinical Science Teaching Space at U. T. Health Science Center - San Antonio at an estimated total project cost of \$15,500,000
- b. Appoint a Project Architect from the list set forth on Page B&G - 26 with authorization to prepare preliminary plans and a detailed cost estimate for consideration at a future meeting
- c. Appropriate \$350,000 from Permanent University Fund Bond Proceeds for fees and administrative expenses through completion of preliminary plans

## BACKGROUND INFORMATION

Construction of approximately 88,000 square feet of new space at the fifth level of the Dental Clinic Building will provide offices, research laboratories and teaching space for medical school clinical departments.

Additional space is needed to accommodate the growing research programs and attract additional outside funding in several of the clinical departments. Reassignment of existing space to accommodate current needs has been exercised to the extent deemed practical.

This project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

### List of Firms for Consideration

<u>Project Architect</u>	<u>Representative Projects</u>
Chumney Urrutia San Antonio, Texas	U.T.H.S.C. - San Antonio: Medical School Building and Expansion Phases; Dental School Building and Expansion Phases; Library Building (work accomplished as part of joint venture)
Marmon, Barclay, Souter, Foster, Hays San Antonio, Texas	Medical Center Hospital, San Antonio, Texas: Five- Story Addition St. Luke's Lutheran Hospital, San Antonio, Texas: Five- Story Addition The Laboratory of Pathology, San Antonio, Texas
Phelps Garza Bomberger San Antonio, Texas	U.T.H.S.C. - San Antonio: Medical School Building, Basic Science Teaching Expansion; Allied Health Laboratories; School of Nursing; Dental School; (work accomplished as part of joint venture)

18. U. T. Cancer Center - Modification and Renovation of M. D. Anderson Hospital (Project No. 703-602): Approval of Final Plans for Phase I; Submission to Coordinating Board; and Authorization to Advertise for Bids and for Executive Committee to Award Contracts.--

## RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of President LeMaistre that the U. T. Board of Regents:

- a. Approve the final plans and specifications for the Modification and Renovation of M. D.

Anderson Hospital - Phase I for the U. T. Cancer Center at an estimated total project cost of \$5,000,000

- b. Authorize submission of the project to the Coordinating Board, Texas College and University System
- c. Subject to approval of the Coordinating Board, authorize the Office of Facilities Planning and Construction to advertise for bids and for the Executive Committee to award all contracts associated with this project within the authorized total project cost

#### BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in October 1984, final plans and specifications for the first phase of Modification and Renovation of M. D. Anderson Hospital have been prepared by the Project Architect, Kenneth Bentsen Associates, Houston, Texas. Phase I will involve demolition and renovation of approximately 45,200 square feet of space. The estimated construction cost is \$4,406,000 resulting in a cost of \$97.48 per square foot. The estimated total project cost of this phase is \$5,000,000.

Funds for this project have been previously appropriated from Plant Funds Unexpended Balances.

19. U. T. Health Center - Tyler - Ambulatory Care Facilities: Request for Project Analysis; Appointment of Consulting Architect; and Appropriation Therefor.--

#### RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of Director Hurst that the U. T. Board of Regents:

- a. Authorize a project analysis of the need for Ambulatory Care Facilities at the U. T. Health Center - Tyler
- b. Appoint Robert Douglass Associates, Houston, Texas, Consulting Architect for the project analysis
- c. Appropriate \$65,000 from Interest on Unexpended Plant Funds for fees and administrative expenses related to the project analysis

This item requires the concurrence of the Health Affairs Committee.

## BACKGROUND INFORMATION

The U. T. Health Center - Tyler is in need of expanding its ambulatory care facilities. The original clinical facility was designed to handle 10,000 outpatient visits annually. In 1984, the Health Center experienced 23,814 visits; and by the end of 1985, the number is projected to grow to more than 27,000 visits. Based on current growth patterns, it is forecast that clinical outpatient visits will exceed 50,000 by 1990.

Future growth will definitely be in the ambulatory care setting, partially because of federal legislation and a growing concern for cost containment by both provider and recipient.

It is recommended that a project analysis be authorized to program in detail future needs in the clinic areas. The project analysis will include the study of existing ambulatory and ancillary facilities, equipment and services; market analysis of new services or services proposed for expansion; the financial feasibility of these services; and the analysis of the resources required for each service including space, staff and equipment.

The funding for this study will come from Interest on Unexpended Plant Funds and is estimated not to exceed \$65,000.

20. U. T. Health Center - Tyler - Medical Resident Housing (Project No. 801-601): Presentation of Preliminary Plans; Request to Submit to Coordinating Board; Request for Completion of Final Plans; and Additional Appropriation Therefor.--

## RECOMMENDATIONS

The Office of the Chancellor concurs with the recommendations of Director Hurst that the U. T. Board of Regents:

- a. Approve the preliminary plans and specifications for the Medical Resident Housing at the U. T. Health Center - Tyler at an estimated total project cost of \$750,000
- b. Authorize submission of the project to the Coordinating Board, Texas College and University System
- c. Authorize the Project Architect to prepare final plans and specifications to be presented to the U. T. Board of Regents for consideration at a future meeting
- d. Appropriate \$15,000 from Gift Funds designated for this project for fees and administrative expenses through completion of final plans

## BACKGROUND INFORMATION

In accordance with authorization of the U. T. Board of Regents in October 1985, preliminary plans and a detailed cost estimate for the Medical Resident Housing at U. T. Health Center - Tyler have been prepared by the Project Architect, Simons-Clark Associates, Tyler, Texas.

The project will consist of a cluster of six one-story buildings to house four medical residents each, plus three two-bedroom units for married medical residents. The total gross area of all units is 9,522 square feet with an estimated construction cost of \$615,000 resulting in an average unit cost of \$63.33 per gross square foot. The estimated total project cost is \$750,000.

# Land and Investment Committee

LAND AND INVESTMENT COMMITTEE  
COMMITTEE CHAIRMAN MILBURN

Date: December 5, 1985  
Time: Following the meeting of the Buildings and  
Grounds Committee  
Place: Dining Room Area of Student Lounge, Classroom Building  
U. T. Permian Basin

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I. PERMANENT UNIVERSITY FUND

A. INVESTMENT MATTERS

1. Report on Clearance of Monies to Permanent University Fund for September and October, 1985, and Report on Oil and Gas Development as of October 31, 1985.--The following reports with respect to (a) certain monies cleared to the Permanent University Fund for September and October, 1985, and (b) Oil and Gas Development as of October 31, 1985, are submitted by the Executive Director for Investments and Trusts:

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<u>Permanent University Fund</u>	<u>September, 1985</u>	<u>October, 1985</u>	<u>Cumulative Through October of This Fiscal Year (1985-1986)</u>	<u>Cumulative Through October of Preceding Fiscal Year (1984-1985)</u>	<u>Per Cent Change</u>
Royalty					
Oil	\$ 7,333,518.33	\$ 8,366,851.41	\$15,700,369.74	\$17,753,939.91	(11.57%)
Gas	2,237,214.32	2,982,524.59	5,219,738.91	4,819,062.36	8.31%
Sulphur	87,854.14	20,329.41	108,183.55	20,000.00	
Water	84,511.45	49,102.00	133,613.45	131,196.14	
Brine	5,180.89	14,513.02	19,693.91	18,265.81	
Rental					
Oil and Gas Leases	123,285.76	160,535.28	283,821.04	251,582.45	
Other	200.00	100.00	300.00	900.00	
Sale of Sand, Gravel, Etc.	1,217.25	2,700.00	3,917.25	2,973.25	
Gain or (Loss) on Sale of Securities	19,226,397.24	16,051,312.49	35,277,709.73	1,110,311.74	
 Sub-Total	 <u>29,099,379.38</u>	 <u>27,647,968.20</u>	 <u>56,747,347.58</u>	 <u>24,108,231.66</u>	 <u>135.39%</u>
Bonuses					
Oil and Gas Lease Sales	-0-	5,913,600.00	5,913,600.00	-0-	
Amendments and Extensions to Mineral Leases	122,769.19	25,383.34	148,152.53	125,657.05	
Total Bonuses	<u>122,769.19</u>	<u>5,938,983.34</u>	<u>6,061,752.53</u>	<u>125,657.05</u>	<u>--</u>
 TOTAL CLEARANCES	 <u>\$29,222,148.57</u>	 <u>\$33,586,951.54</u>	 <u>\$62,809,100.11</u>	 <u>\$24,233,888.71</u>	 <u>159.18%</u>

Oil and Gas Development - October 31, 1985  
Acreage Under Lease - 840,977

Number of Producing Acres - 565,302

Number of Producing Leases - 2,270

2. Permanent University Fund: Report on Investments for the Fiscal Year Ended August 31, 1985.--

REPORT

Under separate bound cover, the Executive Director for Investments and Trusts presents a report on the Permanent University Fund investments for the fiscal year ended August 31, 1985. During the fiscal year, periodic reports of investment transactions made for the Fund were submitted to the U. T. Board of Regents for approval. The present report summarizes the investment transactions for the fiscal year and indicates the status of the Fund's portfolio as of August 31, 1985.

The Permanent University Fund book value of assets and earnings during the year is shown below:

	<u>Fiscal Year Ended 8/31</u>		<u>Increase</u>	
	<u>1984</u>	<u>1985</u>	<u>Amount</u>	<u>%</u>
Book Value	\$2,082,521,497	\$2,316,874,704	\$234,353,207	11.2
Investment				
Income	175,929,054	191,676,227	15,747,173	9.0

B. LAND MATTERS

1. Permanent University Fund: Recommendation to Establish an Endowment Fund for Conservation and Land Utilization Programs.--

RECOMMENDATION

The Office of the Chancellor concurs in the recommendation of the Manager of University Lands-Surface Interests to establish an endowment to be entitled the "Fund for Conservation and Land Utilization Programs." It is proposed that income earned through this endowment be administered by the Office of University Lands-Surface Interests upon approval by the U. T. Board of Regents through the regular budget approval process and utilized for the purposes of conducting research programs to increase the productivity and income from Permanent University Fund Lands.

In order to establish the initial endowment for the Fund for Conservation and Land Utilization Programs, it is further recommended that \$500,000 of the accumulated interest earned on the Damage Program Fund, established by the U. T. Board of Regents in October 1969, be transferred immediately to this endowment fund. In addition, it is recommended that beginning January 1, 1986, twenty percent (20%) of each payment to the Damage Program Fund be transferred to the corpus of the Fund for Conservation and Land Utilization Programs.

## BACKGROUND INFORMATION

In October 1969, the U. T. Board of Regents established the Damage Program for Permanent University Fund Lands. This Program permitted funds received from the oil and gas industry as compensation for surface damage to Permanent University Fund Lands to be used to reimburse lessees for improvements made at their expense to Permanent University Fund Lands. This Program has been successful in increasing the surface income generated by Permanent University Fund Lands. Indeed, the Program has generated income, the interest from which can be dedicated to the continuing need for research into ways to increase the productivity of the Permanent University Fund Lands through conservation and utilization programs. The proposed endowment fund will establish a financial basis for such a Program. Income expected to be generated by increased rate and damage schedules being proposed for Permanent University Fund Lands is expected to recapture for the Damage Program Fund the initial accrued interest contribution to the Fund for Conservation and Land Utilization Programs as well as the 20% from future Damage Program Fund collections. See Item 2 below.

2. Permanent University Fund: Recommendation for Approval of Amendments to the Damage Schedule, Damage Program, and Rate Increases for Easements, Leases, and Grants on Permanent University Fund Lands.--

## RECOMMENDATION

The Office of the Chancellor recommends that the U. T. Board of Regents approve (1) amendments to the Damage Schedule, (2) amendments to the Damage Program, and (3) amendments to the Rate Schedule for Easements, Leases, and Grants on Permanent University Fund Lands.

Specifically, the Office of the Chancellor recommends that the U. T. Board of Regents:

1. Adopt the following amendments to the Damage Schedule as set forth below in congressional style:

THE UNIVERSITY OF TEXAS LANDS  
DAMAGE SCHEDULE EFFECTIVE FEBRUARY 1, 1986  
[~~SEPTEMBER-17-1981~~]

All monies received by The University of Texas System for damage to Permanent University Fund Lands are to be used for the purposes of conservation, reclamation, and improvement of these lands; provided, however, that:

- a. Payment of the standard damage rates does not in any way limit the liability of a company or operator in an action at law for any damages caused by [~~reason-of~~] acts of negligence.
- b. Compensation for acts of negligence, such as loss or injury to livestock or excessive crop or grass damage, shall be paid directly to the grazing lessee.

c. Compensation will be required for loss of crop production and/or destruction of plants.

~~[All-damages-for-all-non-drilling-operations-on-revege-tated-areas-shall-be-twice-the-current-damage-rate schedule.--One-third-of-this-new-damage-rate-shall-be paid-directly-to-the-grazing-lessee-and-the-other two-thirds-to-The-University-of-Texas-System, acting as-agent-for-the-grazing-lessee.]~~

In the event of a disagreement between the grazing lessee and the company or operator, the Manager of University Lands - Surface Interests or his representative will arbitrate and set the [~~fix~~] damage payments.

All checks submitted to The University of Texas System for damages are to be made payable to "The University of Texas System." All damage payments should indicate county, section, block, and surface lease where damages were incurred.

All operators must notify both the Manager of University Lands - Surface Interests or his representative and the grazing lessee before any operation begins.

No fences shall be cut or cattle guards installed without permission of the Manager of University Lands - Surface Interests or his representative.

All [~~standard~~] damage payments or correspondence concerning this schedule or policies shall be mailed to:

Manager of University Lands -  
Surface Interests  
P. O. Box 553  
Midland, Texas 79702

RATES

A. WELL LOCATIONS (As permitted by Railroad Commission)

1.	15,000 feet or less (drilling depth)/location	<u>\$3,000.00</u>	<del>[\$2,000.00]</del>
2.	In excess of 15,000 feet (drilling depth)/location	<u>4,000.00</u>	[ <del>3,000.00</del> ]
3.	Re-entry (no charge until expiration or release of lease, then rates shown under 1 and 2 are to be followed)		

(THE ABOVE RATES INCLUDED SPACE FOR TANK BATTERIES, FUEL GAS, FLOW LINES, TEMPORARY WATER LINES, [AND] ELECTRIC LINES, SALT WATER DISPOSAL LINES, COMPRESSORS, AND ROADS ON YOUR OWN LEASE.)

4.	Skidding of rig/rod	<u>8.50</u>	[ <del>7.50</del> ]
5.	New road construction (except on own lease) or use of existing ranch road/rod ( <u>No charge on pre-existing oil field roads</u> )	<u>6.00</u>	[ <del>4.00</del> ]

B. PIPELINE CONSTRUCTION (OD diameters)

1.	<u>Temporary oil and gas line</u> <u>off lease/rod</u>	2.50	
	<del>[Line-relocation-per-rod]</del>		[2.00]
2.	Lines under 12"/rod		4.00
3.	Lines 12" and under 24"/rod		6.00
4.	Lines 24" and over/rod		Negotiated
5.	Removal or replacement of buried lines/rod	2.50	[2.00]

C. POWER AND TELEPHONE LINE CONSTRUCTION

1.	Single pole distribution/rod (33,000 volts maximum)	\$ .85	\$ [-.75]
2.	Single pole transmission/rod	<u>.95</u>	[-.85]
3.	Single pole telephone line construction/rod	.85	[-.75]
4.	Buried cables/rod	2.25	[2.00]
5.	H-frame/rod	<u>3.00</u>	[2.00]
6.	Steel tower/rod		4.00
7.	Removal or replacement of line/rod	1.50	[1.00]
8.	Removal of buried cable/rod	<u>2.00</u>	[1.50]

D. MATERIAL SOURCE PERMITS AND ROAD ACCESS  
~~[and-road-access]~~

1.	Per pit entry and use of access road (Before caliche can be removed, permission must be obtained from the Manager of University Lands - Surface Interests or his representative and at his request pits must be leveled in an accept- able manner.) <u>No charge</u> <u>for caliche if used on</u> <u>Permanent University Fund</u> <u>Lands.</u>		500.00 ( <u>1 site</u> )
2.	Opening of new pit and use of access road	<u>800.00</u>	[700.00]
3.	<u>One-half of damage money to</u> <u>go to The University of Texas</u> <u>System for reclamation of</u> <u>caliche pits and one-half</u> <u>to University's Lessee.</u>		

E. GEOPHYSICAL OPERATIONS

Damage payments for geophysical  
operations shall be as follows:  
~~[Double-through-revegetated-areas]~~

1.	Seismic weight-dropping, vibrators, dinoseis opera- tions per mile	<u>1,000.00</u>	[850.00]
2.	Shooting crews per mile	<u>1,100.00</u>	[900.00]
3.	Gravity meter and magneto- meter survey operations per crew per day	<u>250.00</u>	[200.00]
4.	single shot (reflection or refraction shooting) per shot hole	<u>200.00</u>	[150.00]

- |    |  |  |            |
|----|--|--|------------|
| 5. | Velocity survey<br>(when off pad)  |  | Negotiated |
| 6. | Experimental work  |  | Negotiated |
| 7. | <u>On revegetated land, the operator will pay an additional \$300 per mile in damages to the U. T. System.</u> |  |            |

F. CHARGES FOR CATHODIC PROTECTION UNIT

- |    |                                       |               |                       |
|----|---------------------------------------|---------------|-----------------------|
| 1. | On a pipeline                         | <u>250.00</u> | [ <del>200.00</del> ] |
| 2. | Any other type of cathodic protection |               | Negotiated            |

G. CROP DAMAGE

The Damage Schedule guidelines will be amended to provide compensation for loss of crop production and destruction of plants. Compensation is to be determined by the Manager of University Lands-Surface Interests, if the affected parties cannot reach an agreement.

2. Adopt the following amendment to the Damage Program as set out below in congressional style:

DAMAGE PROGRAM

All monies received by The University of Texas System for damage to University Lands are to be used for the purposes of conservation, reclamation, and improvement of these lands.

Providing the grazing lessee is under a flexible grazing lease, part of these monies may be used for repairs of existing improvements or as compensation for livestock and/or grass damages in a manner set out below.

In 1969, The University of Texas System started a damage program. In this program, The University of Texas System acts as agent for the grazing lessee and carries out the following functions:

1. collects damage payments for damages to each grazing lease
2. insures proper payment by matching damage checks with reports submitted by University Lands field representatives
3. maintains separate records for each grazing lessee of damage payments received for damage to each grazing lease
4. keeps all damage monies for each grazing lessee until approved ranch improvements and/or range conservation programs are made
5. reimburses each grazing lessee for such approved ranch improvements and/or range conservation programs for which receipts and cancelled checks have been furnished and damage monies are available for that lease and grazing lessee. The grazing lessee may use two-thirds of the damage income for ranch improvements and one-third for ranch repairs (PRIOR APPROVAL IS REQUIRED) [~~100% of damage monies for these purposes~~]

6. reimburses, at the option of The University of Texas System, a grazing lessee, under a flexible lease, up to one-fourth of damage monies collected for drilling operations as compensation for livestock and/or grass damages but not to exceed one-half of the combined hunting and grazing lease fees in effect for the year. This does not include damage monies collected for pipeline, seismograph, or any non-drilled operations [~~reimburses each grazing lessee, under a flexible grazing lease, up to one-third of the damage monies for approved ranch repairs, at the option of The University of Texas System~~]
- ~~[7. --- reimburses each grazing lessee, under a flexible grazing lease, up to one-fourth of the damage monies collected for drilling operations as compensation for livestock and/or grass damages, at the option of The University of Texas System. --- This does not include damage monies collected for pipeline, seismograph, or any non-drilling operations]~~
7. [8-] reserves the right to take all or part of any damage monies received during a single calendar year by a grazing lessee for livestock and/or grass damages [~~associated with drilling operations that are in excess of the combined hunting and grazing lease fees in effect for that year~~]
8. [9-] notifies quarterly, each grazing lessee the amount of damage money being held for each grazing lease
9. [10-] keeps records of ranch improvement and/or range conservation program expenses in excess of damage monies received for damage to a particular lease
10. [11-] pays for such expenses in the future should additional damage monies be received
11. On revegetated land only, geophysical operators working on University Lands will pay an additional \$300 per mile in damages to The University of Texas System
12. For each pit entry, one-half of all damage monies will be paid to The University of Texas System for reclamation of caliche pits.

The grazing lessee has the following responsibilities:

1. uses all damage monies received back on the land except for monies received as compensation for livestock and/or grass damages from drilling operations only
2. notifies the University Lands - Surface Interests office of any errors in the accounting of damage monies
3. uses approved Soil Conservation Service ranch improvements guidelines and/or range conservation programs or such improvements or programs that are approved by the Manager of University Lands - Surface Interests or his representative for which reimbursement with damage money is expected
4. provides receipts of expenditures for all ranch improvements, repairs and/or range conservation programs to the Manager of University Lands - Surface Interests or his representative for which reimbursement with damage monies is expected

Any earnings from the temporary investments of funds received for damage payments may be expended in connection with the University Lands conservation and land utilization programs as may be recommended by the Manager of University Lands - Surface Interest and approved by the Executive Vice Chancellor for Asset [Lands] Management.

3. Adopt the following rate increases for easements, leases, and grants on Permanent University Fund Lands as set out below in congressional style:

RATE SCHEDULE FOR EASEMENTS, LEASES, AND GRANTS ON PERMANENT UNIVERSITY FUND LANDS EFFECTIVE FEBRUARY 1, 1986

A. PIPE LINE EASEMENTS	<u>RATES</u>	
Standard rates for varying sizes of pipe line, OD diameters, the rates being per rod for a ten-year period, payable in advance:		
1. New Pipe Line Construction Rate/Rod		
a. Lines under 12"	\$ 5.00	\$ [4.50]
b. Lines 12" and under 24"	<u>11.00</u>	[9.50]
c. Lines 24" and over		Negotiated
2. Pipe Line Renewal Rate/Rod		
a. Lines under 12"	4.50	[4.00]
b. Lines 12" and under 24"	<u>6.50</u>	[5.50]
c. Lines 24" and over		Negotiated
3. MINIMUM for a pipe line easement	<u>400.00</u>	[300.00]
[4-----FILING-FEE-in-the-amount-of \$5.00-made-payable-to-the General-Land-Office-must-be submitted-with-all-easements.]		
B. POWER AND TELEPHONE LINE EASEMENTS		
Standard rates for varying types of lines, the rates being per rod for a ten-year period, payable in advance:		
1. New Single Pole Construction Rate/Rod		
a. Single pole distribution (33,000 volts maximum)	<u>2.00</u>	[1.75]
b. Single pole transmission	<u>2.75</u>	[2.50]
c. Single pole telephone lines	2.00	[1.75]
d. Buried telephone cable	<u>3.00</u>	[2.50]
e. H-frame pole construction	<u>6.00</u>	[5.00]
f. Steel tower construction	<u>11.00</u>	[9.00]

2.	Single Pole Renewal Rate/Rod		
	a. Single pole distribution (33,000 volts maximum)	<u>1.40</u>	[1-25]
	b. Single pole transmission	<u>2.25</u>	[2-00]
	c. Single pole telephone lines	<u>1.40</u>	[1-25]
	d. Buried telephone cable	<u>2.25</u>	[2-00]
	e. H-frame pole construction	<u>5.00</u>	[4-00]
	f. Steel tower construction	<u>8.00</u>	[7-00]
3.	MINIMUM for a power or telephone line easement	<u>400.00</u>	[300-00]
	[4- <del>---</del> FILING-FEE-in-the-amount-of \$5-00-made-payable-to-the General-Land-Office-must-be submitted-with-all-easements-]		
C.	SURFACE LEASES (other than grazing)		
1.	Standard rates for various leases:		
	a. Plant sites, booster stations, etc., per acre per year (payable in advance for a ten-year period; <u>minimum of \$4,000</u> )	\$ <u>60.00</u>	\$ [55-00]
	b. Tower sites/year (payable in advance for a ten-year period)	<u>500.00</u>	[400-00]
	c. Business sites, residen- tial sites and other mis- cellaneous leases (annual rental payment)		Negotiated
2.	MINIMUM for any type surface lease/year	<u>400.00</u>	[300-00]
	[3- <del>---</del> NO-FILING-FEE-required]		
D.	MATERIAL SOURCE PERMITS (Caliche, etc.)		
1.	Standard rate for one project:		
	a. Per cubic yard, under 20,000 cubic yards	<u>.90</u>	[.75]
	b. 20,000 cubic yards or over		Negotiated [(\$-40-min-)]
	c. Sale to highway construction ( <u>Caliche and "barrow"</u> )		Negotiated
2.	Caliche Pit Reclamation Surcharge		
	a. All caliche sales per yard under 20,000 cubic yards	<u>.60</u>	[.25]
	b. 20,000 cubic yards or over		Negotiated

- c. Sale to highway construction  
(Caliche and "barrow") Negotiated
- |    |   |               |                       |
|----|---|---------------|-----------------------|
| 3. | MINIMUM for each permit   | <u>400.00</u> | [ <del>300.00</del> ] |
| 4. | Separate check (made payable to The University of Texas System) must be submitted for State Sales Tax at the then current rate. |               |                       |
- [~~5.---NO-FILING-FEE-required-~~]
- E. ASSIGNMENTS, TRANSFER OR CORRECTION OF EASEMENTS, LEASES, ETC.
- |    |   |               |                       |
|----|---|---------------|-----------------------|
| 1. | The only exception will be if other consideration, in the amount of \$ <u>400</u> [ <del>200</del> ] or more, such as bonus for a grazing lease is paid to The University of Texas System | <u>400.00</u> | [ <del>300.00</del> ] |
|----|---|---------------|-----------------------|
- [~~2.----FILING-FEE-in-the-amount-of \$5.00-made-payable-to-the General-Land-Office-is required-for-assignments-~~]
- F. FILING FEES ON ALL EASEMENTS SHALL BE PAID AS REQUIRED BY LAW, RULE OR REGULATION.

#### BACKGROUND INFORMATION

Periodic reviews are made of the charges for the granting of easements, leases, and grants on Permanent University Fund Lands to insure that both the University's grazing lessees and the Permanent University Fund are receiving adequate compensation. The proposed amendments will protect the interests of the grazing lessees and will increase the income of the Permanent University Fund Lands. It should be noted that if the proposal to establish an Endowment Fund for Conservation and Land Utilization Programs set out on Pages L&I 7 - 8 is adopted, twenty percent (20%) of each payment made under the U. T. Lands Damage Schedule (Recommendation no. 1 above) will be transferred to that endowment fund.

#### II. COMMON TRUST FUND

U. T. System: Recommendation to Revise the Common Trust Fund Document and to Establish the Guideline Payout Return.--

#### RECOMMENDATION

The Office of the Chancellor recommends that The University of Texas System Common Trust Fund document as approved by the U. T. Board of Regents on March 11, 1967, be amended as set forth on Pages L&I 16 - 21

THE CHARTER OF  
THE UNIVERSITY OF TEXAS SYSTEM COMMON TRUST FUND  
(Originally Established as [~~Policy-as-Adeoted-for~~]  
"Funds Grouped for Investment" on June 27, 1932,  
Amended on February 27, 1948,  
[~~and-as-Edited-and~~] Amended on March 11, 1967,  
And Amended on December 5, 1985

ARTICLE I

Fund Name, Purpose, [~~Nature~~] and Eligibility  
for Participation [~~of Fund~~]

1. The common trust fund as herein established shall be known as "The University of Texas System Common Trust Fund" (originally designated as "Funds Grouped for Investment") and shall be under the control of the Board of Regents of The University of Texas System, as Trustee.
2. The purpose of the Common Trust Fund is to provide for the collective investment of various [~~trust-and~~] endowment and trust funds held by The University of Texas System or by the Board of Regents of The University of Texas System in a fiduciary capacity.
3. No endowment or trust fund shall be admitted unless it is under the sole control, with full discretion as to investments, of the Board of Regents of The University of Texas System and/or an official or officials of The University of Texas System in his official capacity [~~with-full discretion-as-to-investments~~]. However, no such official, other than the Board of Regents, the Executive Vice Chancellor for Asset Management, or the Executive Director for [~~of~~] Investments, and Trusts [~~and-funds~~], shall have any control over the management of the Common Trust Fund other than to request admittance or withdrawal of any endowment or trust fund under his control as designated trustee thereof. No endowment or trust [~~fund~~] shall be admitted which contains a specific provision against commingling or whose investment restrictions prohibit purchase of securities as stated in Article II hereof.
4. The fiscal year for the Common Trust Fund shall be from September 1 through August 31 of the succeeding year.

ARTICLE II

Investments

1. [~~The-title-to~~] A[a]ll assets of the Common Trust Fund shall at all times be vested in the Board of Regents of The University of Texas System, and such assets shall be deemed to be held by the Board as a fiduciary regardless of the name in which the securities may be registered.
2. The Common Trust Fund may be invested and reinvested in such securities and investments as are permitted by the laws of the State of Texas as legal investments for funds held by trustees. Where not otherwise in conflict with the provisions of this plan, investment and other powers established by the Texas Trust Code (Subtitle B, Title 9, Texas Property Code) [~~Act~~] shall prevail.

3. The Common Trust Fund shall be further limited to such investments as are eligible under T[~~t~~]he Common Trust Fund I[~~i~~]nvestment P[~~p~~]olicy as adopted by the Board of Regents, and as amended from time to time [~~for all trust and special funds held by the Board of Regents in a fiduciary capacity~~].

### ARTICLE III

#### Asset Valuation [Valuing Assets]

1. As of the first valuation date (March 1, 1948) following adoption of the original plans for a common trust fund, units of the F[~~f~~]und were issued for each \$1.00 invested therein, and thereafter additional units were issued and shall be issued from time to time only on the basis of an amount equal to the then per unit value as determined in accordance with Article III, Section 2, hereof. In order to permit complete investment of a given endowment or trust and to avoid fractional units, any donated amount will be assigned a whole number of units in the Fund based on the appropriate per unit value of the Fund. Any amount of the trust or endowment which exceeds the market value of the units assigned will [~~separate fund, any odd cents over the unit value shall~~] be transferred to the Common Trust Fund, but no unit shall be issued [~~therefor unless the amount is more than 50% of the per unit cost~~]. Each endowment or trust [~~fund~~] whose monies are invested in the Common Trust Fund shall have an undivided interest in such F[~~f~~]und in the proportion that the number of units invested therein bears to the total number of all units comprising the Common Trust Fund.
2. On or as of the last business day occurring in November, February, May, and August in each fiscal year (the quarterly evaluation date), [~~and on or as of such other day or days in each year as may be selected from time to time,~~] the net market value of all assets held for the Common Trust Fund and the per unit value of the Fund [~~participating funds therein~~] shall be determined. Valuations shall be given no effect on the general ledger and supporting ledgers of the University but shall be memorandum accounts only. Such valuations shall be determined in the following manner:
- a. Listed s[~~S~~]ecurities shall be valued at the closing price on the primary exchange on which the stock is traded or at the closing "composite price" as listed in the edition of "The Wall Street Journal" containing the valuation date's prices. [~~listed on the New York Stock Exchange or on the American Stock Exchange shall be evaluated by taking the closing price of each security on the day of such determination. If no closing price is reported for the day of such determination, the mean between the bid and asked prices reported shall be used. If there are no such bid and asked prices reported, then the value as determined by the Executive Director of Investments, Trusts and Bonds and the Staff Investment Committee from the best information then available shall be used.~~]
- b. For Over the Counter (OTC) stocks, the stocks shall be valued at the last bid price. [~~Nonlisted securities, other than mortgages and mortgage participations, shall be evaluated by using the mean between the bid and asked prices reported on the day of such determination. If~~

~~there are no such bid and asked prices reported, such securities shall be evaluated by taking the best price obtainable from or by a reputable broker, or if not obtainable from a broker, then by taking the value as determined by the Executive Director of Investments, Trusts and Lands and the Staff Investment Committee from the best information then available.]~~

Reletter current Paragraph c as Paragraph e and insert the following new Paragraph c:

c. If no sale or bid price is available for the last business day of the quarter, the security shall be valued as of the closest business day preceding the last business day of the quarter on which a sale or bid price is available.

Reletter current Paragraph d as Paragraph g and insert the following new Paragraph d:

d. Fixed income securities shall be valued at a price obtained from a recognized bond pricing service.

e[e]. Mortgages and mortgage participations shall be evaluated by taking the then face value unless there shall be an existing default in the payment of principal and/or income; in which event, the value as determined by the Executive Vice Chancellor for Asset Management in consultation with the Executive Director for [e#] Investments[7] and Trusts, ~~[and Lands and the Staff Investment Committee]~~ from the best information then available, shall be used.

Insert a new Paragraph f to read as follows:

f. Cash and cash equivalents, consisting of market instruments with a maximum term of 270 days, shall be valued at their book value on the general ledger.

g[d]. All other assets shall be valued [evaluated] by the Executive Vice Chancellor for Asset Management in consultation with the Executive Director for [e#] Investments[7] and Trusts ~~[and Lands and the Staff Investment Committee]~~ from the best information then available.

[e-] The amount determined as provided in (a) through (g) above, ~~[together with any principal cash balance in the Common Trust Fund,~~] after deducting therefrom all expenses ~~[and losses]~~ chargeable to principal, shall represent the net market value of the assets comprising such F[#]und; and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

#### ARTICLE IV

##### Admissions and Withdrawals

1. Admission [Entrance] to the Common Trust Fund may be made on any quarterly entrance date (September 1, December 1, March 1, and June 1 of each fiscal year) prior to approval of the Board of Regents upon deposit to the Common Trust Fund of cash or securities eligible under The Common Trust Fund Investment Policy [securities], valued according to the method described in Article III hereof[7-prior-to approval-of-the-Board-of-Regents]. Securities ineligible under The Common Trust Fund Investment Policy [to-be-eligible

~~for deposit to the Common Trust Fund must be on the list approved by the Board of Regents for purchase for trust and special funds of the University. Securities not on the list approved for purchase] require prior approval of the Board of Regents for deposit to the Common Trust Fund.~~

Renumber current Paragraph 4 as Paragraph 2 and amend as follows:

- 2[4]. All admissions ~~[and withdrawals]~~ made prior to approval of the Board of Regents shall be reported at the first subsequent meeting for ratification by the Board of Regents through the Regents' Land and Investment Committee.
- ~~[2- Cash available for addition to the Common Trust Fund may be added by the Executive Director of Investments, Trusts and Lands, after consultation with the Staff Investment Committee, on any quarterly entrance date prior to approval of the Board of Regents.]~~
3. Any withdrawals from the Fund require prior approval of the Board of Regents. Withdrawals shall be paid [may be made at the discretion of the Executive Director of Investments, Trusts and Lands after consultation with the Staff Investment Committee] in cash as soon as practicable after the quarterly evaluation date following the [or in kind or partly in cash and partly in kind on any quarterly withdrawal date (September 1, December 1, March 1, and June 1 of each fiscal year) prior to] approval of the Board of Regents at the market value of the units assigned to the endowment or trust.

## ARTICLE V

### Segregation of Investments

1. If any investment contained in the Common Trust Fund shall be subsequently determined [considered] by the Board of Regents to be an ineligible [as an original] investment [or as an investment to be held for the funds of the common trust], such investment may, prior to any further admissions to or withdrawals from such F[und], at the discretion of the Executive Vice Chancellor for Asset Management in consultation with the Executive Director for [of] Investments [7] and Trusts [and Lands, after consultation with the Staff Investment Committee], be sold or segregated and set apart in a liquidating account solely for the benefit of [7 or distributed in kind to,] those endowments or trusts participating in the Common Trust Fund at the time of such segregation. [The Board of Regents may at any time set apart in a liquidating account any investment contained in the Common Trust Fund even though it may be eligible as a new investment for such fund.]
2. Each such liquidating account shall be administered in such manner and the proceeds thereof distributed at such time or times as the Executive Vice Chancellor for Asset Management in consultation with the Executive Director for Investments and Trusts [Board of Regents] deems to be for the best interests of the participants in the Common Trust Fund [these trusts beneficially interested therein].

Renumber current Article VI as Article VII and insert the following new Article VI:

ARTICLE VI

Fund Accounting

1. Gross cash income shall consist of actual cash received as income payments on assets held in the Fund. Net cash income shall be gross cash income less external investment management fees and administrative processing and custodial fees. No charges for services rendered by The University of Texas System Staff shall be paid out of the Common Trust Fund or deducted from the calculation of net cash income.
2. Book value of the Fund shall be maintained on a cash receipts and disbursements basis except that bond premiums and discounts shall be amortized to the earlier of the final maturity date or first par call of the bonds held. Asset write-offs or write-downs shall be determined by the Executive Vice Chancellor for Asset Management in consultation with the Executive Director for Investments and Trusts.
3. Market value of the Fund shall be established as stated in Article III.
4. Any net cash income for a quarter which exceeds the distribution amount for the quarter shall be retained in the Income Reserve Account of the Fund. Such retained income shall not be assigned units in the Fund.

ARTICLE VII [V#]

Distribution of Income

1. Distribution shall be made quarterly as soon as practicable after the last calendar day of ~~[The net income actually received by the Common Trust Fund shall be distributed not less often than quarter annually~~ ~~(on)~~ November [30], February [28], May [31], and August [31] of each fiscal year[+] to the endowment and trust funds participating in the Fund during the respective quarter. The distribution amount shall be the lesser of:
  - (a) one-fourth of an annual guideline percentage established by the Board of Regents of a book value base (originally the book value of the Fund at August 31, 1985) and as redetermined from time to time by the Board of Regents, plus the net admissions and withdrawals to the Fund on each quarterly entrance date occurring after the last period included in the established base; or
  - (b) the net cash income for the quarter plus the Income Reserve Account of the Fund.

~~[2--Income shall be maintained on an actual cash receipts basis after amortization.]~~

~~[3--Bond premiums and discounts shall be amortized to the maturity dates of the bonds held.]~~

ARTICLE VIII [VII]

Management of Fund

1. Unless in conflict with specific provisions hereof, the management and investment of the Common Trust Fund shall be under the Executive Vice Chancellor for Asset Management and the Executive Director for [of] Investments [r] and Trusts [and-Lands], such management and investment thereof to be in accordance with the provisions of the Texas Trust Code (Subtitle B, Title 9, Texas Property Code) [Act] and T[he] Common Trust Fund Investment P[ol]icy approved by the Board of Regents [for-the-management-and-investment-of all-trust-and-special-funds-held-by-the-Board-of-Regents in-a-fiduciary-capacity].
2. ~~[Charges-against-and-deductions-from-the-principal-or income-of-the-Common-Trust-Fund-may-be-apportioned-between such-principal-and-income-for-expenses, except-regular administrative-expenses, incurred-in-the-administration-of the-Common-Trust-Fund.]~~
- 3-] As stated in Article VI, n[N]o charges for services rendered by The University of Texas System Staff shall be paid out of the Common Trust Fund as a fee or commission for the management thereof.

ARTICLE IX [VIII]

Amendment or Termination of Plan

1. The Board of Regents reserves the right to amend or terminate the Common Trust Fund as it deems necessary or advisable.

It is further recommended that the guideline payout return, referred to in The Charter for the Common Trust Fund in Article VII for fiscal year 1986 be 8.5%.

BACKGROUND INFORMATION

The proposed revision to the document established for the Common Trust Fund incorporates various changes including recognizing staffing changes in the Office of Asset Management and changing the method of calculating the amount to be paid each quarter to the beneficiaries of The Common Trust Fund. In prior years the amount of income received in cash plus the net amortization of bond discount and premiums was paid to beneficiaries each quarter. In an effort to stabilize the amount received by a beneficiary in a year, the revised "Charter" establishes an Income Reserve Account and states that the distribution would be the lesser of:

- (a) One-fourth of an annual guideline percentage established by the Board of Regents (for fiscal 1986, recommended to be 8.5%) of a book value base (originally the book value of the Fund at August 31, 1985) and as redetermined from time to time by the Board of Regents, plus the net admissions and withdrawals to the Fund on each quarterly entrance date occurring after the last period included in the established base; or
- (b) The net cash income for the quarter plus the Income Reserve Account of the Fund.

### III. TRUST AND SPECIAL FUNDS

#### GIFTS, BEQUESTS AND ESTATES

1. U. T. Arlington: Recommendation to Accept Bequest from the Estate of Mary Elizabeth Earle Aucutt to Establish the C. J. and Clara Earle Student Scholarship and/or Loan Fund.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Nedderman to accept a bequest, estimated to be in excess of \$200,000, from the Estate of Mary Elizabeth Earle Aucutt, Fort Worth, Texas, to establish the C. J. and Clara Earle Student Scholarship and/or Loan Fund at U. T. Arlington.

Income earned from the endowment will be used to award scholarships and/or loans to deserving students majoring in business in the School of Business.

#### BACKGROUND INFORMATION

Mrs. Aucutt, deceased June 6, 1985, received her B.A. degree in Accounting from U. T. Arlington in 1975. While a student at the University, she made her first donation of \$1000 to establish a scholarship fund.

2. U. T. Arlington: Recommendation to Accept Gift to Establish the Joe R. Martin Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Nedderman to accept a gift of \$50,000 from Martin Sprocket & Gear, Inc., Arlington, Texas, to establish the Joe R. Martin Scholars Program at U. T. Arlington.

Income earned from the endowment will be used to grant annual scholarships to undergraduate and graduate students majoring in mechanical engineering.

#### BACKGROUND INFORMATION

Mr. Joe R. Martin, Jr. is President and Chairman of the Board of Martin Sprocket & Gear, Inc., one of the largest sprocket and gear manufacturers in the United States. He is a member of the U. T. Arlington Development Board and is closely associated with the University.

3. U. T. Austin: Lloyd M. Bentsen, Jr. Chair in Government/  
Business Relations in the Lyndon B. Johnson School of  
Public Affairs - Recommendation to Accept Additional Gifts  
and Eligibility for Matching Funds Under The Regents'  
Endowed Teachers and Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept \$18,166.34 in gifts from various donors for addition to the Lloyd M. Bentsen, Jr. Chair in Government/Business Relations in the Lyndon B. Johnson School of Public Affairs at U. T. Austin for a total endowment of \$836,176.77.

It is further recommended that the gifts be matched under The Regents' Endowed Teachers and Scholars Program and used to increase the endowment of the chair.

#### BACKGROUND INFORMATION

The Lloyd M. Bentsen, Jr. Professorship in Public Affairs was established at the June 1973 meeting of the U. T. Board of Regents with \$100,000 in gifts from various donors. Additional funds of \$415,000 were accepted at subsequent meetings bringing the total endowment to over \$500,000. The professorship was redesignated as the Lloyd M. Bentsen, Jr. Chair in Government/Business Relations at the February 1980 U. T. Board of Regents' meeting.

Senator Lloyd M. Bentsen, Jr., Washington, D.C., received an L.L.B. from U. T. Austin in 1942 and is a member of The Chancellor's Council, The President's Associates, and the U. T. Austin Development Board. He has served in the U. S. Senate since 1971.

4. U. T. Austin: R. H. Bing Fellowship in Mathematics in the  
College of Natural Sciences - Recommendation to Accept  
Gifts and Pledges to Increase Funding of and Establish  
Five Additional R. H. Bing Fellowships in Mathematics and  
Eligibility for Matching Funds Under The Regents' Endowed  
Teachers and Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a \$137,500 challenge grant from an anonymous donor met by a \$20,000 gift from Mr. Malcolm Brachman, Dallas, Texas, a \$12,500 gift and a \$12,500 pledge for a total of \$25,000 from Dr. and Mrs. Roland K. Blumberg, Seguin, Texas, a \$62,500 pledge from the James M. Vaughn, Jr. Vaughn Foundation Fund, Austin, Texas, and a \$30,000 pledge from Dr. R. H. Bing, Austin, Texas, for a total of \$275,000 to increase the endowment of the R. H. Bing Fellowship in Mathematics in the College of Natural Sciences and to establish five additional R. H. Bing Fellowships in Mathematics in the College of Natural Sciences at U. T. Austin. All pledges are payable prior to August 31, 1989.

It is further recommended that the gifts and pledges, as received, be matched under The Regents' Endowed Teachers and Scholars Program and used to serially increase or establish the endowments of the six fellowships to \$100,000 each.

#### BACKGROUND INFORMATION

The first R. H. Bing Fellowship in Mathematics was established at the February 1985 meeting of the U. T. Board of Regents with a \$10,000 gift and a \$40,000 pledge for a total of \$50,000 from the Vaughn Foundation Fund, Houston, Texas. As of August 31, 1985, \$20,000 of the pledged funds have been received. Matching funds from The Regents' Endowed Teachers and Scholars Program were reserved pending designation at a later time.

Dr. R. H. Bing, the Mildred Caldwell and Baine Perkins Kerr Centennial Professor of Mathematics, received a M.Ed. in 1938 and a Ph.D. in 1945 from U. T. Austin. He joined the faculty in 1942 as an instructor of mathematics and served as chairman of the Department of Mathematics from 1975 to 1977. Dr. Bing retired August 31, 1985.

5. U. T. Austin: Priscilla Pond Flawn Regents Professorship in Child Development in the College of Natural Sciences - Recommendation to Accept Additional Gifts and Establish the Priscilla Pond Flawn Regents Professorship in Organ or Piano Performance in the College of Fine Arts and the Priscilla Pond Flawn Fellowship in Early Childhood Education in the College of Education with Previously Approved and Current Matching Funds Under The Regents' Endowed Teachers and Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept \$30,550 in gifts from various donors for addition to the Priscilla Pond Flawn Regents Professorship in Child Development in the College of Natural Sciences at U. T. Austin for a total endowment of \$281,181.50.

It is further recommended that these gifts of \$30,550 be matched under The Regents' Endowed Teachers and Scholars Program and added to \$250,631.50 of previously approved matching funds for a total of \$281,181.50 to establish the Priscilla Pond Flawn Regents Professorship in Organ or Piano Performance in the College of Fine Arts with \$200,000 and the Priscilla Pond Flawn Fellowship in Early Childhood Education in the College of Education with \$81,181.50.

#### BACKGROUND INFORMATION

The Priscilla Pond Flawn Regents Professorship in Child Development was established at the August 1985 meeting of the U. T. Board of Regents with \$97,456.50 in gifts and \$153,175 in pledges for a total of \$250,631.50 from various donors.

Mrs. Priscilla Flawn, Austin, Texas, received her B.A. in English and Organ from Oberlin College, Oberlin, Ohio, in 1946. She is the wife of Dr. Peter Tyrrell Flawn, former President of U. T. Austin and U. T. San Antonio.

6. U. T. Austin: Shell Companies Foundation Distinguished Chair in Geophysics in the College of Natural Sciences - Recommendation to Carry Forward Reserved Funds from The Centennial Teachers and Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham that funds reserved for the biennium ending August 31, 1985, under The Centennial Teachers and Scholars Program to match a \$450,000 pledge, payable over the next three years, from the Shell Companies Foundation, Inc., Houston, Texas, be carried forward to the biennium ending August 31, 1989, to meet the remaining matching obligations under terms of acceptance of the gift and pledge. These funds are designated for the Shell Companies Foundation Distinguished Chair in Geophysics in the Department of Geological Sciences, College of Natural Sciences at U. T. Austin.

#### BACKGROUND INFORMATION

The Shell Companies Foundation Distinguished Chair in Geophysics was established at the June 1983 meeting of the U. T. Board of Regents with a \$750,000 pledge from the Shell Companies Foundation, Inc. Under the terms of the acceptance of this gift, the pledge is being paid in installments of \$150,000 per fiscal year ending with the 1987-1988 fiscal year. As of August 31, 1985, \$300,000 of the pledged funds have been received leaving a balance of \$450,000 to be received over the next three years, thereby necessitating this request to carry forward the already reserved funds.

Matching funds from The Centennial Teachers and Scholars Program were reserved and used to establish the Shell Companies Foundation Centennial Chair in Geophysics in the Department of Geological Sciences, College of Natural Sciences.

7. U. T. Austin: W. St. John Garwood Centennial Professorship in Law in the School of Law - Recommendation to Accept Pledge and Matching Funds and Redesignate as the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept a \$200,000 pledge, payable prior to August 31, 1989, from The Clayton Fund, Houston, Texas, and \$200,000 in matching funds from the Sheffield Challenge Fund Endowment Program for a total of \$400,000 for addition to the W. St. John Garwood Centennial Professorship

in Law in the School of Law at U. T. Austin and redesignate as the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law.

#### BACKGROUND INFORMATION

The W. St. John Garwood Centennial Professorship in Law was established at the February 1982 meeting of the U. T. Board of Regents with \$95,000 in gifts and a \$5,000 pledge for a total of \$100,000 from Mr. W. St. John Garwood, Jr., William L. Garwood, the McAshan Educational and Charitable Trust, and The Clayton Fund. The pledge has been paid in full. The current pledge and matching funds of \$200,000 each bring the total endowment to \$500,000 with \$100,000 being held by The University of Texas Law School Foundation (an external foundation).

Mr. Garwood attended U. T. Austin between 1918 and 1919 and received his L.L.B. from Harvard University in 1922. He served on the Texas Supreme Court from 1948 through 1958 and on the Texas Judicial Council from 1961 through 1978.

Mr. Garwood was on the faculty of The University of Texas School of Law as a visiting professor in 1960 and as a professor in 1961. Mr. W. St. John Garwood, Jr., received his L.L.B. from U. T. Austin in 1953 and was a trustee of The Clayton Fund and the McAshan Educational and Charitable Trust.

8. U. T. Austin: Frank Thomas Patillo Centennial Fellowship in the College of Fine Arts, Jane Marie Tacquard Patillo Centennial Fellowship in the College of Natural Sciences, Alice Mackie Scott Tacquard Centennial Fellowship in the College of Fine Arts, and Alice Mackie Scott Tacquard Centennial Fellowship in the College of Liberal Arts - Recommendation to Redesignate as Lectureships (No Publicity).--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendations of President Cunningham to redesignate the following at U. T. Austin:

- a. Frank Thomas Patillo Centennial Fellowship in the College of Fine Arts as the Frank Thomas Patillo Centennial Lectureship
- b. Jane Marie Tacquard Patillo Centennial Fellowship in the College of Natural Sciences as the Jane Marie Tacquard Patillo Centennial Lectureship
- c. Alice Mackie Scott Tacquard Centennial Fellowship in the College of Fine Arts as the Alice Mackie Scott Tacquard Centennial Lectureship
- d. Alice Mackie Scott Tacquard Centennial Fellowship in the College of Liberal Arts as the Alice Mackie Scott Tacquard Centennial Lectureship

## BACKGROUND INFORMATION

The Frank Thomas Patillo Centennial Fellowship was established at the August 1983 U. T. Board of Regents' meeting with a \$50,000 pledge and matching funds from The Centennial Teachers and Scholars Program were used to establish the Jane Marie Tacquard Patillo Centennial Fellowship.

The Alice Mackie Scott Tacquard Centennial Teaching Fellowship was established at the February 1983 U. T. Board of Regents' meeting with a \$20,000 gift and a \$30,000 pledge. Centennial Teachers and Scholars Program matching funds were used to establish a second Alice Mackie Scott Tacquard Centennial Teaching Fellowship. The two teaching fellowships were redesignated in August 1983 as the Alice Mackie Scott Tacquard Centennial Fellowships, one in the College of Fine Arts and one in the College of Liberal Arts.

Based on nonpayment of outstanding pledges, this request to redesignate the fellowships as lectureships is necessitated.

### NO PUBLICITY

9. U. T. Austin: Recommendation to Accept a Cash Gift and Gift of Securities to Establish the Department of Computer Sciences Administrative Endowment in the College of Natural Sciences.--

### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a cash gift of \$600,000 and a gift of \$1,000,000 par value U. S. Treasury 13 3/4% notes due August 15, 1987, with a current market value of \$1,079,375 for a total of \$1,678,375 from an anonymous donor to establish the Department of Computer Sciences Administrative Endowment in the College of Natural Sciences at U. T. Austin.

Income earned from the endowment will be used to fund the salaries of full-time, senior-level administrative positions in the Department of Computer Sciences in the areas of equipment and facilities, research administration and external affairs, and undergraduate student affairs.

10. U. T. Austin: Recommendation to Accept Gifts to Establish the Royal B. Embree, Jr. Scholarship in the College of Education.--

### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept \$10,723.00 in gifts from family, friends, former students, and colleagues of the late Dr. Royal B. Embree, Jr. to establish the Royal B. Embree, Jr. Scholarship in the Department of Educational Psychology, College of Education, at U. T. Austin.

Income earned from the endowment will be used to grant scholarships to graduate students in the Department of Educational Psychology who are interested in the areas of guidance and counseling.

#### BACKGROUND INFORMATION

Dr. Royal B. Embree, Jr., deceased, joined the U. T. Austin faculty in 1947 as an associate professor of educational psychology and became a professor in 1970. He was designated Professor Emeritus in 1978. Dr. Embree supervised over forty doctoral dissertations and more than 150 Master's theses and research reports.

11. U. T. Austin: Recommendation to Accept Gift, Pledge, and Transfer of Funds to Establish the W. H. Espey Memorial Endowed Presidential Scholarship for Civil Engineers in Environmental and Water Resources Engineering in the College of Engineering.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept a \$3,500 transfer of previously reported gifts and accumulated interest of \$1,050 from current restricted funds to be combined with a current gift of \$12,500 and a \$7,950 pledge, payable prior to December 31, 1985, for a total of \$25,000 from Espey, Huston & Associates, Inc. and/or Dr. and Mrs. W. H. Espey, Jr., Austin, Texas, to establish the W. H. Espey Memorial Endowed Presidential Scholarship for Civil Engineers in Environmental and Water Resources Engineering in the College of Engineering at U. T. Austin.

Income earned from the endowment will be used to grant scholarships to outstanding and worthy graduate students in the Department of Civil Engineering who are interested in environmental and water resources engineering.

#### BACKGROUND INFORMATION

Dr. W. H. Espey, Jr., president of Espey, Huston & Associates, Inc., received his Ph.D. in civil engineering from U. T. Austin in 1965. He was on the U. T. Austin faculty as an instructor/research engineer from 1960 to 1961 and as a visiting professor in 1978 and 1980. Dr. Espey is funding this scholarship in honor of his father, W. H. Espey, who died in 1966.

12. U. T. Austin: Recommendation to Accept Gifts to Establish The Good Right Arm Advertising Scholarship for Women Athletes in Intercollegiate Athletics for Women.--

RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a \$5,000 gift from Mr. Forrest F. Preece and Linda S. Ball and a \$5,000 gift from Good Right Arm, Inc., all of Austin, Texas, for a total of \$10,000 to establish The Good Right Arm Advertising Scholarship for Women Athletes in Intercollegiate Athletics for Women at U. T. Austin.

Income earned from the endowment will be used to grant an annual scholarship to a woman athlete currently participating in an official varsity sport at U. T. Austin with an outstanding academic record as an advertising major.

BACKGROUND INFORMATION

Mr. Forrest F. Preece, Jr. received his B.A. in 1968 from U. T. Austin under the College of Liberal Arts Plan II Honors Program. Mr. Preece is the owner and president of Good Right Arm, Inc., an advertising agency, and his wife, Linda Ball, is co-owner and vice president of the company.

13. U. T. Austin: Recommendation to Accept Gift to Establish the Hal H. Ramsey III Memorial Fund in the College of Natural Sciences.--

RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a \$10,000 gift from the Research Corporation, Tuscon, Arizona, to establish the Hal H. Ramsey III Memorial Fund in the Department of Microbiology, College of Natural Sciences, at U. T. Austin.

Income earned from the endowment will be for the discretionary use of the Department of Microbiology.

BACKGROUND INFORMATION

The purpose of the Research Corporation is to advance science and technology by furthering the transfer of useful inventions from universities and other nonprofit institutions to industry. The corporation is establishing this endowment in memory of their long-time employee, Dr. Hal H. Ramsey, who died in August 1985. Dr. Ramsey received his Ph.D. in Microbiology from U. T. Austin in 1953 and served on the Microbiology Departmental Visiting Committee.

14. U. T. Austin: Recommendation to Accept Gifts to Establish the Kenneth Sims Endowed Scholarship for Women's Athletics in Intercollegiate Athletics for Women.--

RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept \$23,485.98 in gifts from various donors to establish the Kenneth Sims Endowed Scholarship for Women's Athletics in Intercollegiate Athletics for Women at U. T. Austin.

Income earned from the endowment will be used to grant a scholarship to women athletes in honor of Mr. Kenneth Sims.

BACKGROUND INFORMATION

Mr. Kenneth Sims, Groesbeck, Texas, attended U. T. Austin from 1978 through 1981 and lettered three years in intercollegiate football as a defensive tackle. He is a professional football player for the New England Patriots.

15. U. T. Austin: Recommendation to Accept Transfer of Funds to Establish the Bettie Margaret Smith Endowment for Professional Development of Engineering Faculty in the College of Engineering.--

RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a \$43,426.92 transfer from the Estate of Bettie Margaret Smith to establish the Bettie Margaret Smith Endowment for Professional Development of Engineering Faculty in the College of Engineering at U. T. Austin.

Income earned from the endowment will be used for professional development activities of the College of Engineering faculty.

BACKGROUND INFORMATION

At its October 1979 meeting, the U. T. Board of Regents accepted the benefits under Miss Bettie Margaret Smith's Will and granted permission for Dean Earnest F. Gloyna of the College of Engineering to serve as executor of the estate as prescribed by the Will.

Miss Smith received her B.A. in English from U. T. Austin in 1953.

16. U. T. Austin: Jack G. Taylor Endowment Fund - Recommendation to Accept Transfer of Funds to Establish the Jack G. Taylor Endowed Presidential Scholarship in the College of Business Administration and the Graduate School of Business.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Cunningham's recommendation to accept a \$25,000 transfer from the Jack G. Taylor Endowment Fund to establish the Jack G. Taylor Endowed Presidential Scholarship in the College of Business Administration and the Graduate School of Business at U. T. Austin.

Income earned from the endowment will be used to grant scholarships to students in the College of Business Administration and the Graduate School of Business who demonstrate financial need and academic achievement as well as future potential.

#### BACKGROUND INFORMATION

The Jack G. Taylor Endowment Fund was established at the March 1971 meeting of the U. T. Board of Regents with a \$60,000 gift from Mr. Jack G. Taylor, Austin, Texas. The Jack G. Taylor Endowment Fund now has a balance in excess of \$111,000.

Mr. Taylor received a B.B.A. from the University in 1936 and is a member of the U. T. Austin Development Board, The President's Associates, The Chancellor's Council, and the Colleges of Fine Arts and Business Administration Advisory Councils.

17. U. T. Austin: Recommendation to Accept Transfer of Funds and Pledge to Establish the R. Earle Wright Endowed Presidential Scholarship in Engineering in the College of Engineering.--

#### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept a \$12,484 transfer of previously reported gifts and earned income from U. T. Austin restricted funds and a pledge of \$12,516, payable prior to January 31, 1990, from Mr. R. Earle Wright, Houston, Texas, for a total of \$25,000 to establish the R. Earle Wright Endowed Presidential Scholarship in Engineering in the College of Engineering at U. T. Austin.

Income earned from the endowment will be used to grant scholarships to deserving undergraduate or graduate students of U. S. citizenship who are pursuing a degree in the College of Engineering.

### BACKGROUND INFORMATION

Mr. R. Earle Wright received a B.S. in Petroleum Engineering from U. T. Austin in 1942 and is a member of The Chancellor's Council and an honorary member of the College of Engineering Foundation Advisory Council. He retired from Texaco, Inc. in 1982 where he was assistant to the president.

18. U. T. Austin: Recommendation to Accept Gift of Real Property in Austin, Travis County, Texas (No Publicity).--

### RECOMMENDATION

The Office of the Chancellor concurs with the recommendation of President Cunningham to accept a gift of real property being described as Lots 11 and 12, Block 3, Pemberton Heights Addition to the City of Austin, Travis County, Texas, with an appraised value of \$630,000 at the time of the donation from Dr. and Mrs. Clarence L. Cline, who have retained the right to full possession, benefit and use of the property for their joint lives. A recommendation for use of the funds at U. T. Austin will be made to the U. T. Board of Regents at a later date.

### BACKGROUND INFORMATION

Dr. Clarence L. Cline joined the U. T. Austin faculty in 1938 after receiving his Ph.D. in English from U. T. Austin that same year. He became a professor of English in 1952 and was designated Ashbel Smith Professor Emeritus in 1975. Dr. Cline is a former chairman of the Department of English and is a member of The Chancellor's Council and The President's Associates.

### NO PUBLICITY

19. U. T. El Paso: Recommendation to Accept Gifts to Establish the Dr. Thomas G. Barnes Physics Fund.--

### RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendation to accept gifts of \$10,214.79 from alumni and friends of U. T. El Paso to establish the Dr. Thomas G. Barnes Physics Fund at U. T. El Paso.

Income earned from the endowment will be used to provide scholarships to graduate and undergraduate students majoring in physics, purchase equipment and supplies, support the preparation of laboratory manuals, and accelerate the learning process.

### BACKGROUND INFORMATION

Dr. Thomas G. Barnes retired from U. T. El Paso in 1981 as Professor Emeritus in Physics. He was, at one time, Director of the Shellenger Foundation for Research at the University.

20. U. T. El Paso: Recommendation to Accept a Bequest from the Estate of Marion J. Purdy to Establish the Richard M. Dudley and Frances M. Dudley Memorial Professorship Fund and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--

### RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendation to accept a bequest estimated to be in excess of \$100,000 from the Estate of Marion J. Purdy, Mount Kisco, New York, to establish the Richard M. Dudley and Frances M. Dudley Memorial Professorship Fund at U. T. El Paso. Distributions received to-date total \$96,645.47 and a final report will be made upon receipt of the final distribution.

It is further recommended that the actual income which will be earned on the \$96,645.47 be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code, when matching funds are made available under that act.

### BACKGROUND INFORMATION

Miss Marion J. Purdy, niece of Mr. and Mrs. Richard M. Dudley, died on July 1, 1983, bequeathing her estate to U. T. El Paso in memory of her aunt and uncle and their outstanding community service to El Paso and the University. Mr. Dudley served two terms in the Texas Legislature and was then elected to the State Senate. He resigned during his second term as senator when he was elected the twenty-sixth mayor of El Paso, the position he held at the time of his death. The Dudley's former home, Hoover House, became the residence of the president of U. T. El Paso.

21. U. T. El Paso: Recommendation to Accept Gifts to Establish the El Paso Centennial Museum Fund.--

### RECOMMENDATION

The Office of the Chancellor concurs with President Monroe's recommendation to accept gifts of \$10,355.85 from alumni and friends of the U. T. El Paso Centennial Museum to establish the El Paso Centennial Museum Fund at U. T. El Paso.

Income earned from this endowment will be used for the operation and acquisition of new materials for the El Paso Centennial Museum.

#### BACKGROUND INFORMATION

The El Paso Centennial Museum was built in 1936 with funds allocated from the Commission of Control for the Texas Centennial Celebration as part of the U. T. El Paso campus and as El Paso's first museum. The museum supports the conservation of objects of natural history from the El Paso del Norte region.

22. U. T. Tyler: Recommendation to Accept Gifts to Establish the F. M. and Fannie Burke Fellowship of Excellence and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Hamm's recommendation to accept a \$30,000 gift from Mr. Frank M. Burke, Jr., Dallas, Texas, and a \$20,000 corporate matching gift from Murphy Oil Corporation, El Dorado, Arkansas, for a total of \$50,000 to establish the F. M. and Fannie Burke Fellowship of Excellence at U. T. Tyler.

It is further recommended that the actual income which will be earned on the \$50,000 be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code, when matching funds are made available under that act.

#### BACKGROUND INFORMATION

Mr. Frank M. Burke, Jr., is chairman, chief executive officer, and managing general partner of Burke, Mayborn Company, Ltd., an investment company that provides strategic financial planning for selected individuals and corporations. He is also a member of the Board of Directors for Murphy Oil Corporation. Mr. Burke has published several books and articles during his professional career and is involved in many community and social organizations in Dallas.

23. U. T. Tyler: Robert R. Muntz Memorial Fund - Request to Revise the Designated Uses of Fund.--

#### RECOMMENDATION

The Office of the Chancellor requests a revision to reflect that the Robert R. Muntz Memorial Fund (principal as well as income earned) may be used at the discretion of the President of U. T. Tyler.

The language "for the purpose of promoting academic excellence" was used in the U. T. Board of Regents' formal acceptance of these gift funds in February 1982. In strict audit and legal terms this language is more restrictive than the intent and wishes of the donor as reflected in correspondence conveying the gift and subsequent clarifying correspondence. This request is now being made to correct the official record to meet auditing requirements.

#### BACKGROUND INFORMATION

The Robert R. Muntz Memorial Fund was created in February 1982 when the U. T. Board of Regents accepted a gift of \$200,000 and a pledge of \$1,300,000 to be paid over eight years from the family of Robert R. Muntz for the establishment of a memorial fund at U. T. Tyler. Funds have been expended consistent with the original terms of acceptance and every institutional effort is and will be made to expend only earnings from this gift to the extent possible. However, rapid institutional growth and lagging formula appropriations with corresponding needs to expand program offerings and to upgrade facilities have necessitated the expenditure of some principal as well as earnings from this unrestricted gift. Examples of previous uses of the fund include student scholarships; faculty salaries to fund course and program expansion, particularly summer salaries; purchase of teaching equipment for academic units; research start-up grants and/or to generate external research funding; financing of a Strategic Planning Study; funding of an alumni relations program; and funding of a campus Distinguished Lecture Series.

The late Robert R. (Bob) Muntz was a native of Sylvania, Ohio. He was an honor graduate from the University of Toledo and later served as secretary-treasurer of Roosth & Genecov Production Company in Tyler.

24. U. T. Health Science Center - Dallas (U. T. Southwestern Medical School - Dallas): Recommendation to Accept Gift of Bonds to Establish the Core Nutrition Laboratory Endowment Fund in the Center for Human Nutrition (No Publicity).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Sprague's recommendation to accept a gift of \$800,000 par value Inter-First Corporation 7 3/4 convertible debentures due August 15, 2005, with a current market value of \$592,000.

This gift was received from an anonymous donor to establish the Core Nutrition Laboratory Endowment Fund in the Center for Human Nutrition at the U. T. Southwestern Medical School - Dallas of the U. T. Health Science Center - Dallas.

Income earned from the endowment will be used to support research in the field of nutrition.

NO PUBLICITY

25. U. T. Health Science Center - Dallas (U. T. Southwestern Medical School - Dallas): Robert W. Lackey Visiting Professorship - Recommendation to Accept Additional Gifts and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--

RECOMMENDATION

The Office of the Chancellor concurs with President Sprague's recommendation to accept recent additional gifts totaling \$2,875 from various donors, \$2,025 from gifts received prior to September 1, 1983, and a \$31.79 distribution from the Texas Eminent Scholars Program for addition to the Robert W. Lackey Visiting Professorship for a total endowment of \$69,289.14 at the U. T. Southwestern Medical School - Dallas of the U. T. Health Science Center - Dallas.

It is further recommended that the actual income which will be earned on the gifts of \$2,875 be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code, when matching funds are made available under that act.

BACKGROUND INFORMATION

The Robert W. Lackey Visiting Professorship was established at the December 1984 meeting of the U. T. Board of Regents with gifts totaling \$56,892.35 from various donors. Additional gifts of \$7,465 from various donors were accepted at the April and June 1985 meetings of the U. T. Board of Regents. The current gifts and distribution of \$4,931.79 brings the total endowment to \$69,289.14.

Dr. Robert W. Lackey, deceased, was one of the original faculty members of Southwestern Medical College in 1943. He was also the first chairman of the Department of Physiology and was honored as Professor Emeritus of Physiology at the U. T. Health Science Center - Dallas.

26. U. T. Health Science Center - Dallas (U. T. Southwestern Medical School - Dallas): Robert L. Moore Professorship in Pediatrics - Recommendation to Accept Additional Gifts and Redesignate as the Robert L. Moore Chair in Pediatrics and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Sprague's recommendation to accept gifts totaling \$20,395.83 from various donors for addition to the Robert L. Moore Professorship in Pediatrics at the U. T. Southwestern Medical School - Dallas of the U. T. Health Science Center - Dallas for a total endowment of \$500,000 and to redesignate as the Robert L. Moore Chair in Pediatrics.

It is further recommended that the actual income which will be earned on the gifts of \$20,395.83 be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code, when matching funds are made available under that act.

#### BACKGROUND INFORMATION

At the October 1984 meeting of the U. T. Board of Regents, the Robert L. Moore Professorship in Pediatrics was established with gifts of \$302,908.08 from various donors. Additional funds of \$146,297.57 were accepted at subsequent meetings along with interim earnings of \$30,398.52. The current gifts of \$20,395.83 bring the total endowment to \$500,000.

Robert L. Moore, M.D., practiced medicine in Dallas, Texas, for fifty years and was chief of pediatrics at the Baylor University Medical Center from 1946 until 1967. He also served as president of the Texas and the Dallas Pediatric Societies.

27. U. T. Health Science Center - San Antonio (U. T. Medical School - San Antonio): Dale H. Dorn Professorship in Surgery - Recommendation to Accept Additional Gift and Eligibility for Matching Funds Under the Texas Eminent Scholars Program (No Publicity).--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Howe's recommendation to accept a \$187,500 cash gift from the Forest Oil Corporation, Denver, Colorado, for addition to the Dale H. Dorn Professorship in Surgery at the U. T. Medical School - San Antonio of the U. T. Health Science Center - San Antonio for a total endowment of \$375,000.

It is further recommended that the actual income which will be earned on the \$187,500 cash gift be certified to the appropriate State authorities for matching under the Texas Eminent Scholars

Program as set out in Chapter 51, Subchapter I, of the Texas Education Code, when matching funds are made available under that act.

#### BACKGROUND INFORMATION

The Dale H. Dorn Professorship in Surgery was established at the December 1984 meeting of the U. T. Board of Regents with a \$187,500 gift from the Forest Oil Corporation.

Mr. Dale H. Dorn, deceased, was the senior member of the Dorn family and controlled the Forest Oil Corporation. The Dorn family is still deeply involved in the Forest Oil Corporation with several family members in executive positions.

#### NO PUBLICITY

28. U. T. Health Science Center - San Antonio: Recommendation to Accept a Bequest from the Estate of Dorothy McClure, Kerrville, Texas.--

#### RECOMMENDATION

The Office of the Chancellor concurs with President Howe's recommendation to accept a bequest in the amount of \$107,422.91 from the Estate of Dorothy McClure, Kerrville, Texas. This gift will be used for cardiovascular research at the U. T. Health Science Center - San Antonio.

#### BACKGROUND INFORMATION

The Charles Schreiner Bank of Kerrville, Texas, was named executor of the Estate of Dorothy McClure whose Will requested that a medical institution receive twenty-five percent of the Estate for cardiovascular research. The American Heart Association recommended the U. T. Health Science Center - San Antonio as a suitable recipient.

#### IV. OTHER MATTERS

U. T. System: Recommendation for Approval of Policy Statements, Guidelines, and Amendments to Part Two, Chapter V, Section 2.4 (Patent Policy) of the Regents' Rules and Regulations with Regard to the Management of Intellectual Property.--

#### RECOMMENDATION

The Office of the Chancellor recommends that the U. T. Board of Regents adopt (1) a policy statement and guidelines for agreements licensing U. T. System intellectual property, (2) a policy statement and guidelines relating to sponsored research agreements entered into by component institutions, (3) a policy

statement and guidelines for management and marketing of intellectual property, and (4) amendments to Part Two, Chapter V, Section 2.4 (Patent Policy) of the Regents' Rules and Regulations as set forth below.

It is further recommended that the Executive Secretary to the Board, in consultation with the Office of General Counsel, be authorized to make appropriate editorial changes in the remainder of the Regents' Rules and Regulations that may be necessary in order to conform to these policies, guidelines and amendments.

Specifically, the Office of the Chancellor recommends that the U. T. Board of Regents:

1. Adopt the following policy and guidelines for licensing intellectual property:

POLICY AND GUIDELINES RELATING TO INTELLECTUAL  
PROPERTY LICENSE AGREEMENTS WITH PRIVATE  
ENTITIES, INCLUDING THOSE FORMED PRIMARILY FOR  
THE DEVELOPMENT AND/OR COMMERCIALIZATION OF  
INTELLECTUAL PROPERTY CREATED AT A COMPONENT  
INSTITUTION OF THE U. T. SYSTEM

It is the policy of the U. T. Board of Regents that state law concerning conflict of interest and Attorney General's Opinions interpreting and defining such laws (A.G.'s Opinion H-1309 [December 1978], in particular, raises and discusses most issues surrounding such conflict of interest) be observed by all officers and employees of the U. T. System and component institutions in their relationships with an entity that is the licensee of U. T. System intellectual property, including one formed primarily for the development and/or commercialization of intellectual property created at a component institution of the U. T. System. Questions in this regard should be referred to the Office of General Counsel of the U. T. System for consideration. Officers or employees are not prohibited from rendering services to such entities as consultants under negotiated contracts. On behalf of any component institution, the U. T. Board of Regents and the Center for Technology Development and Transfer at The University of Texas at Austin, acting pursuant to Section 65.45, Texas Education Code, may participate in the formation, ownership and operation of corporations, partnerships, joint ventures and other activities authorized by such Section for the purpose of developing, manufacturing or marketing intellectual property.

The Office of General Counsel shall develop a model license agreement for U. T. System intellectual property which agreement shall include, as a minimum, the guidelines set forth below. The model agreement shall be submitted to all potential licensees for U. T. System intellectual property and individuals involved in negotiation of license agreements shall endeavor to achieve utilization of the significant aspects of the model agreement for all licenses of intellectual property rights.

The following guidelines shall be applicable to license agreements with private entities including those formed primarily for the purpose of developing and/or commercializing intellectual property created at a U. T. System component institution:

- a. No entity shall be granted the exclusive right to the development and/or commercialization of all intellectual property created at a U. T.

System component institution. Agreements should grant rights only on a specific project basis.

- b. If an entity is granted the exclusive rights with respect to a particular invention, product, process or other item of intellectual property, the agreement should provide that such rights will revert to the U. T. Board of Regents in the event the entity fails to diligently develop and commercialize the property within a specified period of time that is appropriate to the particular circumstances.
- c. An entity that is granted exclusive rights to develop or commercialize intellectual property that is patentable should be required to reimburse the Board for all expenses incurred by the Board in obtaining a patent or, if a patent has not been obtained, should be required to prosecute and bear the expense of obtaining patent protection for the benefit of the Board and, in either event, the entity should be required to take all actions necessary, including litigation, to protect and preserve such patented rights from infringement.
- d. The U. T. System, the component institution, and the officers and employees of each should be protected and indemnified from all liability arising from the development, marketing, or use of the particular intellectual property.
- e. Restrictions on use by the component institution for research and teaching purposes and the publication rights of researchers should be minimized.
- f. If the entity fails to develop and commercialize the property, any additional technology or know-how discovered by the entity should be granted back to the U. T. Board of Regents so that another entity may be offered the right to develop and commercialize the entire technology package.
- g. The entity should be required to comply with all applicable federal, state, and local laws and regulations, particularly those concerning biological materials and necessary testing and approval by the Federal Drug Administration.
- h. The entity should be required to maintain confidentiality with regard to any unpatented technology or know-how.
- i. An entity that grants a license or sublicense to some other entity for property or technology that is in whole or in part derived from or based on that which is licensed to the entity by the Board, should be required to share with the U. T. System: 50% of any royalty received by the entity and 50% of any equity position to which the entity may be entitled.

- j. License agreements should contain such other provisions as may be determined to be in the best interest of the U. T. System by the Office of Asset Management and the Office of General Counsel.
  - k. License agreements are subject to the approval of the Board and normally shall be submitted as docket items.
2. Adopt the following policy and guidelines relating to sponsored research:

POLICY AND GUIDELINES FOR THE NEGOTIATION,  
REVIEW AND APPROVAL OF SPONSORED RESEARCH  
PROJECTS WITH NONPROFIT AND FOR PROFIT NON-  
GOVERNMENTAL ENTITIES

U. T. System component institutions and individual faculty are encouraged to use their best efforts to obtain sponsored funding for research projects from governmental agencies as well as nonprofit and for profit non-governmental entities. Each component institution should establish an appropriate organizational structure to solicit sponsors for research projects and to negotiate appropriate agreements with such sponsors with the assistance of the Office of Asset Management and the Office of General Counsel as provided below.

While it is recognized that sponsored research agreements with governmental entities and some nonprofit entities are not normally subject to change through negotiation, the Office of General Counsel shall develop a model sponsored research agreement that the component institution shall submit to all other potential sponsors for research projects.

Additionally, in its Handbook of Operating Procedures, each U. T. System component institution shall devise a system for early identification of proposed sponsored research projects with entities that: (a) have potential for significant research results that may be marketable; and (b) that are being developed by sponsors who are unwilling to utilize the significant aspects of the model agreement. Review currently conducted by the Office of the Chancellor and the Office of the U. T. System Comptroller with regard to the appropriateness of any financial obligations on the part of the U. T. System or its component institutions will be continued and, in addition, all sponsored research agreements evolving from the early identification procedure shall be reviewed and approved by the Office of Asset Management and the Office of General Counsel prior to submission to the Board for approval in the institutional docket. In order to facilitate such review and approval, the Office of Asset Management and the Office of General Counsel should be consulted at an early stage with regard to the negotiation of the terms that deviate from the model agreement. The Office of the Chancellor, the Office of Asset Management, and the Office of General Counsel shall adopt procedures that insure prompt review and response so that important research projects are not delayed by U. T. System Administration involvement.

It is particularly important that the following guidelines be adhered to if at all possible in sponsored research agreements with nonprofit and for profit non-governmental entities:

- a. The U. T. Board of Regents should own the rights to all patentable discoveries, unpatentable technology, technical know-how, and other intellectual property that results from the research project.
  - b. The sponsoring entity may have an option for either an exclusive or non-exclusive right to a license to develop and commercialize any intellectual property resulting from the project for a royalty in an amount to be negotiated.
  - c. In the event the sponsor exercises the option for a license, it should be required to reimburse the Board for all expenses incurred with respect to a patent that has been secured on any patentable discovery or, in the event a patent has not been obtained, the sponsor should be required to bear the expense of securing patent protection for the benefit of the Board.
  - d. The rights of researchers to publish scholarly work with respect to the research project should be restricted only to the extent necessary to protect the potential value of any discovery resulting from the research.
  - e. The agreement should contain appropriate indemnification from the sponsor for all damage or liability that may result when a research project involves the use of materials, processes, or procedures that are furnished by or required by the sponsor to be used in such project and such damage or liability is not due to negligence of the persons performing the research.
  - f. License agreements that result from the exercise of options in the sponsored research contracts are subject to the approval of the Board through the docket and should contain provisions for the reversion to the Board of all rights to the intellectual property if it is not developed and marketed in a timely manner.
3. Adopt the following policy and guidelines regarding management and marketing of intellectual property:

POLICY AND GUIDELINES FOR MANAGEMENT AND  
MARKETING OF INTELLECTUAL PROPERTY

The U. T. Board of Regents finds that intellectual property and technology created at the component institutions are valuable assets with potential for commercialization for the benefit of the citizens of the State, state government, the component institutions, and the U. T. System.

As a part of its Handbook of Operating Procedures, each component institution of the U. T. System shall adopt procedures for identifying, evaluating, and marketing intellectual property and technology created at the component institution:

- a. that are not already subject to an option or license pursuant to a sponsored research agreement;
- b. that have not been committed to an entity, including those formed for the primary purpose of development and commercialization of intellectual property created at the component institution; or
- c. the control of which has been regained by the U. T. System through reversion provisions contained in license agreements.

The intellectual property management and marketing procedures that are to be included in institutional Handbooks of Operating Procedures shall contain provisions that recognize and provide the opportunity for the creator and other knowledgeable institutional personnel to play a major role in marketing while making provision for appropriate involvement of the Offices of Asset Management and General Counsel in the management and marketing of the assets of the Board.

In developing handbook procedures, consideration should be given to the utilization of the Center for Technology Development and Transfer at The University of Texas at Austin (established by Section 65.45, Texas Education Code) as a means of developing and marketing available intellectual property created at component institutions.

The Office of General Counsel shall continue to assist in marketing efforts through its activities, such as submitting available intellectual property and technology to appropriate computer data listing services, and to publications that reach prospective licensees.

The Office of Asset Management shall develop appropriate expertise in the area of marketing of technology to complement the efforts of the component institutions and the Office of General Counsel.

On a selective basis, the Office of General Counsel and the Office of Asset Management with the concurrence of the component institution, may utilize the services of intellectual property marketing agencies pursuant to contractual agreements that have been approved by the Board.

4. Amend the Regents' Rules and Regulations, Part Two, Chapter V, Section 2.4 to read as follows:

2.4 Intellectual Property [~~Patent~~] Policy.

- 2.41 Statement of Basic Philosophy and Objectives.-- While the discovery of patentable processes or inventions and the creation of other intellectual property is not the primary objective of the System, for any such discoveries or creations [~~made~~], it is the objective of the Board to provide an intellectual property [~~a patent~~] policy which will encourage the development of [~~such~~] inventions and other intellectual creations for the best interest of the

public, the creator [~~inventor~~], and the research sponsor, if any [~~whenever-an invention occurs~~], and that will permit the timely protection and disclosure of such intellectual property [~~any-patentable discoveries~~] whether by development and commercialization after securing available protection for the creation [~~patent~~], by publication or both. The policy is further intended to protect the respective interest of all concerned by ensuring that the benefits of such property [~~patents~~] accrue to the public, to the inventor, to the System and to sponsors of specific research in varying degrees of protection, monetary return and recognition, as circumstances justify or require.

2.411 Each component institution may develop in its Handbook of Operating Procedures additional policies and rules covering the subject matter of this section not inconsistent with this section or other policies or procedures adopted by the Board.

#### 2.42 General Policy.

2.421 The intellectual property [~~patent~~] policy as adopted shall apply to all persons employed by the component institutions of the System, to anyone using System facilities under the supervision of System personnel, and to postdoctoral and predoctoral fellows.

2.422 This policy shall apply to intellectual property creations of all types, regardless of whether patentable, except for faculty or staff authored written work that is not produced either as work for hire or as a part of the regular work responsibilities of the author.

2.423 [~~2-422~~] It is the intent of this policy to permit the creator of intellectual property [~~staff-members~~] maximum freedom in respect to their creations [~~findings~~], consistent with their obligations to the System. Any person affected by this policy who as a result of his or her activities creates intellectual property [~~researches-makes-a-discovery~~] other than on certain government or other sponsored research projects, where individual grant agreements provide otherwise, should have a major role in [~~retain~~] the ultimate determination of [~~right-to-decide~~] how it is to be made public -- by publication, by development and commercialization after securing available protection for the creation [~~patenting~~], or both.

2.424 [~~2-423~~] Property rights in intellectual property [~~inventions~~] will be based on the degree of System support, as herein-after specified.

- 2.425 [2-424] The System, with the cooperation of the component institution, will provide [patent] review and management services for patentable inventions as well as other intellectual property either by its own staff, through a related Foundation, or by other means.
- 2.426 [2-425] It is a basic policy of the System that intellectual property [patents] be developed primarily to serve the public interest. This objective usually will require [patent] development and commercialization by nonexclusive licensing but the public interest may best be promoted by the granting of a limited exclusive license or even an exclusive license for the period of the patent. These determinations will be recommended and made in accordance with the administrative procedures hereinafter set out and with the approval of the Board.
- 2.43 Institutional Patent Committees and System Intellectual Property [Patent] Office.
- 2.431 Patent Committees: To help administer the intellectual property [patent] policy at each component institution and to make recommendations to chief administrative officers for further referral to the Office of the Chancellor and the Board (in those cases when action by the Office of the Chancellor and/or the Board is required), Institutional Patent Committees shall be established as directed by the Office of the Chancellor. Each institution at its option may use the term "Intellectual Property Committee" in lieu of "Patent Committee."
- 2.432 System Intellectual Property [Patent] Office: To assist the Institutional Patent Committees to provide [technical] advice to individual faculty and staff members in intellectual property [patent] matters and to coordinate details in respect to [patent] procedures for protecting and marketing intellectual property, a System Intellectual Property [Patent] Office shall be established.
- 2.44 Classification of Discoveries by Source of Research Support.
- 2.441 The intellectual property is unrelated to the individual's employment responsibility, [patentable-idea] has been developed as a result of the individual's efforts on his or her own time, with no [direct] System support or use of System's facilities.
- 2.442 The intellectual property is related to the individual's employment responsibility, [patentable-idea] has resulted from activities [research] performed by

the individual on System time, with support by State funds, or using System facilities.

2.443 The intellectual property [patentable idea] has resulted from research supported by a grant or contract with the Federal Government or an agency thereof, [or-with] a nonprofit or for profit non-governmental entity [foundation], or by a private gift to the System.

~~[2.444 The patentable idea has resulted from research supported by commercial concerns or industry.]~~

## 2.45 Property Rights and Obligations.

2.451 Intellectual property unrelated to the individual's employment responsibility that is [Patentable-ideas] developed on an individual's own time and without [direct] System support or use of System facilities (see 2.441) is [are] the exclusive property of the creator [inventor], and the System has no interest in any such property [patent obtained], and no claim to any profits resulting therefrom. Should the creator [inventor] choose to offer the creation [his-invention] to the System, the Institutional Patent Committee shall recommend as to whether the System should support and finance a [the] patent application or other available protective measures and manage the [patent] development and commercialization of the property. If the creator [inventor] makes the [his] offer after obtaining a [the] patent or other protection, the Institutional Patent Committee shall recommend as to whether the System should reimburse the creator [inventor] for [his] expenses in obtaining such protection [the-patent]. If the Patent Committee recommends and the creation [invention] is accepted for [patent] management by the System, the procedures to be followed and the rights of the parties shall be those set out in Subsection 2.4523 [2-4524] following.

2.452 Intellectual property related to the individual's employment responsibility, [Patentable-ideas] resulting from activities [research] performed on System time, with support by State funds, or using System facilities. (See 2.442.)

~~[2.4521-The inventor may choose to publish the details of his research and not to patent.]~~

2.4521 [2-4522] Before [or-after] publishing, a creator of intellectual property that (a) relates to the individual's employment

responsibility, [~~if-the-inventor~~  
~~decides-to-patent-ideas]~~ (b)  
results [~~resulting]~~ from  
activities [~~research]~~ done on  
System time, (c) is created with  
support by State funds, or (d)  
is created using System facili-  
ties, [~~he]~~ shall submit such  
creations [~~ideas]~~ to the Insti-  
tutional Patent Committee for  
determination of the System's  
interest. In those instances,  
however, where delay would  
jeopardize obtaining the  
appropriate protection for the  
property [~~patent]~~, the creator  
~~[inventor]~~ may, with the approval  
of the Chairman of the Institu-  
tional Patent Committee and the  
chief administrative officer,  
file a [~~the]~~ patent application  
or take other steps to obtain  
available protection prior to  
the Committee and administrative  
review provided in the following  
two subsections. If the request  
is granted, the creator  
~~[inventor]~~ may proceed with the  
filing of a [~~his]~~ patent applica-  
tion or other available protec-  
tive measures pending the deter-  
mination of the System's interest  
~~[as-provided-therein]~~; provided,  
however, that the creator  
~~[inventor]~~ shall be reimbursed  
for [~~his]~~ expenses in filing the  
patent application or taking  
other steps to obtain protection  
if the decision of the System is  
to assert and exploit its inter-  
ests. The Chairman of the  
Institutional Patent Committee  
shall notify the System  
Intellectual Property [~~Patent]~~  
Office of any such application.

2.4522 [~~2.4523~~] If the Institutional  
Patent Committee recommends that  
the System not assert and exploit  
its interest, and that recommen-  
dation is approved by the System  
Intellectual Property Office  
[~~Patent Office]~~ and the Office  
of the Chancellor, the creator  
[~~inventor]~~ shall be notified  
within ninety (90) days of the  
date of submission that he or  
she is free to obtain and exploit  
a patent or other intellectual  
property in his or her own right  
and the System shall not have any  
further rights, obligations or  
duties thereto. (In some  
instances, the Committee may  
elect to impose certain limita-  
tions or obliga-tions, dependent  
upon the degree of System  
support.)

2.4523 [~~2-4524~~] If the System decides to patent or seek other available protection for intellectual property in which it decides to ~~[and]~~ assert and exploit its interest, it shall proceed either through its own efforts or those of an appropriate private firm or attorney [~~a-patent-agent~~] to obtain protection and manage the intellectual property [~~patent~~]. Under appropriate circumstances, and with the consent of the General Counsel and the approval of the Attorney General, component institutions may arrange to have services to obtain protection for intellectual property performed by a local outside attorney on a case-by-case basis. It shall be mandatory for all employees, academic and nonacademic, to assign the rights to intellectual property [~~inventions~~] and patents to the Board [~~System~~] when such creations [~~the-patentable inventions~~] fall within Section 2.452. The division of royalties or other income, after cost of licensing and obtaining a patent or other protection for the property [~~patenting-and licensing-costs~~] have first been [~~being~~] recaptured, shall be as follows:

- [~~0-\$5,000/75%-to-Inventor~~]
- [~~25%-to-System~~]
- 5,000-10,000/50%-to-Inventor]
- 50% to [System
- above-10,000/25%-to] creator
- [Inventor]
- 50% [75%] to System

With the prior approval of the Board as an agenda item, a component institution may include provisions in its Handbook of Operating Procedures to adjust the allocation of royalties set forth herein, but in no event shall the creator receive more than 50% or less than 25% of such proceeds. The division of royalties and other income from patents or other intellectual property managed by an intellectual property management concern [~~a patent agent~~] will be controlled by the terms of the System's agreement with such concern [~~agent~~], as approved by the Board. Any other deviation from this rule requires the prior approval of the Board.

2.453 Intellectual property [~~Patentable-ideas~~] resulting from research supported by a grant or contract with the Federal Government, or an agency thereof, [~~or~~]

with a nonprofit or for profit non-governmental entity, [~~foundation~~] or by a private gift to the System.  
(See 2.443.)

2.4531 Administrative approval of application requests to, and acceptance of grants or contracts with, the Federal Government, or any agency thereof, [~~e~~] with a nonprofit or for profit non-governmental entity, [~~foundation~~] or a private donor that contain provisions that are not consistent with this policy, or other policies and guidelines adopted by the Board from time to time implies a definite decision that the value to the System of receiving the grant or performing the contract outweighs the impact of any non-conforming provisions of the grant or contract on [~~resulting change in~~] the basic intellectual property policies and guidelines [~~patent policy~~] of the System.

2.4532 The intellectual property policies and guidelines [~~patent policy~~] of the System are [~~is~~] subject to, and thus amended and superseded by, the specific terms pertaining to intellectual property [~~patent~~] rights included in Federal grants and contracts, or grants and contracts with nonprofit and for profit non-governmental entities [~~foundations~~] or private donors, to the extent of any conflict.

2.4533 In those instances where it is possible to negotiate System-wide intellectual property [~~patent~~] agreements with the Federal agencies or nonprofit and for profit non-governmental entities, [~~foundations~~] or private donors and thereby obtain more favorable treatment for the creator [~~inventor~~] and the System, every effort will be made to do so with the cooperation and concurrence of the Office of Asset Management and the Intellectual Property Office after consultation with the Institutional Patent Committee and the chief administrative officer.

2.4534 Employees of the System whose intellectual property creations [~~patentable ideas~~] result from a grant or contract with the Federal Government, or

any agency thereof, [or] with a nonprofit or for profit non-governmental entity, [foundation] or by private gift to the System shall make such assignment of such creations [inventions-or-patents] as is necessary in each case in order that the system may discharge its obligation, expressed or implied, under the particular agreement.

[2-454-Patentable-ideas-resulting-from-research supported-by-a-grant-or-contract-with commercial-concerns-and-industry--(See 2-444-)]

[2-4541-The-System-recognizes-the academic-advantages-which-can come-from-close-scientific cooperation-between-the-research staffs-of-the-System-and-the research-staffs-of-industry-]

[2-4542-The-provisions-of-joint-research arrangements-with-industry-shall take-into-account-(a)-the-extent of-the-industrial-participant's contribution-of-funds-and-other services,-including-unique knowledge,-(b)-the-import-of-the joint-effort-of-the-research-and educational-program-of-the System,-(c)-the-protection-of-the personal-achievements-of-the System-participant-or-participants,-and-(d)-most-importantly, the-interest-of-the-State-and-its citizens-who-provide-basic-fiscal support-]

[2-4543-Balancing-the-equities-between these-different-interests-may require-the-joint-arrangement-to contain-provisions-for-(a)-non-exclusive-licensing,-(b)-granting exclusive-information-prior-to publication-or-patent-application,-(c)-royalty-free-non-exclusive-license,-(d)-exclusive-license-for-some-limited period-of-time,-(e)-exclusive license-for-the-life-of-the patent,-or-(f)-such-other-provisions-as-will-properly-equate the-equities-involved,-including the-right-of-the-System-to-terminate-an-exclusive-license-upon failure-of-the-industrial-participant-to-develop-or-exploit-the invention-in-a-manner-which-will enhance-the-interest-of-the public-]

[2-4544-All-such-arrangements-or-contracts-with-industrial-participants-shall-be-approved-in advance-by-the-Institutional

~~Patent-Committee-and-recommended  
and-approved-by-the-chief-admin-  
istrative-officer,-the-Office-of  
the-Chancellor,-and-the-Board.~~

~~[2.4545-Employees-of-the-System-whose  
patentable-ideas-result-from-re-  
search-supported-by-a-grant-or  
contract-with-commercial-concerns  
or-industry-shall-make-such  
assignment-of-inventions-or  
patents-as-is-necessary-in-each  
case-in-order-that-the-System-may  
discharge-its-obligations,  
expressed-or-implied,-under-the  
particular-agreement.]~~

- 2.46 Any agreement altering substantially the basic intellectual property [patent] policy of the System as set out in the preceding sections and other policies and guidelines that may be adopted by the Board shall have the advance approval of [the Patent Committee,] the chief administrative officer, the Office of the Chancellor, and the Board as an agenda item.
- 2.47 [~~University~~] Income from Intellectual Property [Patents]. The portion of the net income the System retains from royalty or other intellectual property [patent]-related income shall be used first to defray the expenses, if any, of the System Intellectual Property [Patent] Office[,-if-any,] and thereafter, as approved by the Board, for research purposes at the component institutions where the income providing creation [invention] originated. At the option of a component institution, such income may be accumulated in an endowment fund administered by the Office of Asset Management with the income to be distributed to the component institution for such purposes as may be approved by the Board.
- 2.48 Implementation of Intellectual Property [Revised Patent] Policy. The Office of Asset Management and the Office of General Counsel through the System Intellectual Property Office shall prepare and distribute to the component institutions such Model Agreements and recommended procedures as may be considered appropriate for the implementation of the [A-Patent-Procedures Manual-shall-be-developed-to-provide-more-detail-as-to-procedures-to-be-be-followed-under-the various] provisions of this policy as well as other policies and guidelines adopted by the Board.
5. Authorize the Executive Secretary to the Board, in consultation with the Office of General Counsel, to make appropriate editorial changes in the remainder of the Regents' Rules and Regulations that may be necessary in order to conform to the foregoing policies, guidelines, and amendments related to intellectual property.

## BACKGROUND INFORMATION

In recent years there has been a significant decline in funding from federal agencies for research that bridges the gap between academic results and practical applications. During the same period, because of the increase in cost of conducting research in-house, non-governmental entities have turned to institutions of higher education to perform specific research projects through sponsored research agreements. More recently, venture capitalists have exhibited high interest in forming corporations for the specific purpose of developing and commercializing intellectual property and technology that results from research efforts at institutions of higher education. The 69th Texas Legislature, through study committees established by the 68th Legislature and legislation that was introduced, evidenced a significant interest in the utilization of the research capabilities of institutions of higher education in the promotion of high technology industries for the State of Texas. Significant among the legislation that passed are bills that:

- a. direct state institutions of higher education to develop an intellectual property management plan and file it with the Coordinating Board, Texas College and University System by January 1, 1986 (The Coordinating Board has no regulatory or approval authority with respect to the plans, but is simply a repository.);
- b. authorize the Board of Regents of The University of Texas System to establish a Center for Technology Development and Transfer at The University of Texas at Austin (The U. T. Board of Regents and the Center are given broad authority to enter into various types of entrepreneurial business arrangements for the purpose of developing and commercializing intellectual property on behalf of all component institutions of the U. T. System.);
- c. seek to induce the federal government to select the State of Texas for the location of the Super-conducting Super Collider Accelerator research project by authorizing the U. T. Board of Regents to either select a site for the project on Permanent University Fund land or to condemn land in West Texas to be used in conjunction with Permanent University Fund land for such site;
- d. create a state agency for the purpose of persuading the federal government to locate federally funded research projects in the State of Texas;
- e. simplify state purchasing procedures for research equipment at state institutions of higher education;
- f. create a \$35,000,000.00 high technology fund to be used for research projects at state institutions of higher education; and
- g. remove uncertainty as to the ability of institutions of higher education to protect proprietary information in response to requests for information under the Texas Open Records Act.

The Land and Investment Committee of the U. T. Board of Regents has also recognized the potential for the development and commercialization of intellectual property created at component institutions. In 1984 the chairman of the Land and Investment Committee authorized a study to be conducted by an advisory committee composed of persons who were directors of intellectual property programs at several large universities, the head of the patent department of a large industrial corporation, the president of a large engineering firm, an organizer of venture capital groups for investment in intellectual property projects, and a prominent patent attorney. It was the consensus of the committee that the U. T. System should have an active centralized intellectual property management program that also permits the component institutions to have autonomy in the solicitation of funded research projects and to have a major role in the identification and marketing of intellectual property with commercial potential.

The foregoing policies, guidelines and amendments to the Regents' Rules and Regulations are recommended as appropriate steps for the development and implementation of a comprehensive intellectual property program for the U. T. System and its component institutions. They are the next logical step in the ongoing efforts of the U. T. System and its component institutions to develop a viable intellectual property management program.

They also reflect the knowledge gained as a result of the Chancellor's December 21, 1984 request that each component draft its own intellectual property plan. The responses to that inquiry revealed the exceptionally heterogeneous needs of the components, which are recognized and reconciled in the foregoing.

The recommended policies, guidelines and amendments to the Regents' Rules and Regulations gives U. T. System Administration and the component institutions the flexibility to develop license agreements, sponsored research contracts and procedures related thereto that meet the specific needs of an individual component institution. They are also an appropriate response to the interest expressed in such a program by the 69th Texas Legislature and to the recommendations of the advisory committee authorized by the Land and Investment Committee.

## Executive Session of the Board

BOARD OF REGENTS  
EXECUTIVE SESSION  
Pursuant to Vernon's Texas Civil Statutes  
Article 6252-17, Sections 2(e), (f) and (g)

Date: December 6, 1985

Time: The Board will recess to Executive Session, if time permits, on Thursday afternoon and continue at 9:00 a.m. on Friday morning. If the regular agenda on Thursday does not permit sufficient time to begin the Executive Session, it will convene at 9:00 a.m. on Friday.

Place: Falcon Room, Classroom Building, U. T. Permian Basin

1. Pending and/or Contemplated Litigation - Section 2(e)
  - a. U. T. Health Science Center - Houston: Proposed Settlement of Medical Malpractice Litigation
  - b. U. T. Health Science Center - San Antonio: Proposed Settlement of Medical Malpractice Litigation
2. Land Acquisition, Purchase, Exchange, Lease or Value of Real Property and Negotiated Contracts for Prospective Gifts or Donations - Section 2(f)
  - a. U. T. Austin: Consideration of Negotiated Gift/Acquisition of Library Collection
  - b. U. T. Austin: Consideration of Negotiated Contract with Regard to Drainage Easement/Lease of Real Estate
  - c. U. T. Permian Basin: Consideration of Negotiated Contract for the Acquisition/Gift of Real Property
  - d. U. T. Health Science Center - Houston and U. T. Cancer Center: Consideration of a Negotiated Contract for Land Acquisition in the Vicinity of the Texas Medical Center, Houston, Texas
3. Personnel Matters [Section 2(g)] Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees

EXECUTIVE SESSION  
SUPPLEMENTAL MATERIAL  
December 5 - 6, 1985

2c. U. T. Permian Basin: Consideration of Negotiated Contract for the Acquisition/Gift of Real Property.--

Attached is a concept paper for the Proposed Permian Basin Center to be discussed by President Leach and Executive Vice Chancellor Duncan in Executive Session at the December meeting. As noted on Page Ex.S - 7 and assuming current negotiations progress as planned, the Board will be asked to:

- a) agree in principle with the concept for a Permian Basin Center for Energy and Economic Diversification to be established at U. T. Permian Basin,
- b) authorize the Executive Committee of the Board in association with Executive Vice Chancellor Duncan, President Leach, and General Counsel Crowson to continue negotiations with Permian Basin representatives related to acquisition and/or gift of real property for use and benefit of the proposed Center, and
- c) accept the \$500,000 planning grant from the Odessa Industrial Development Corporation.

Proposed Permian Basin Center for Energy and Economic Diversification

Purpose:

The proposed Permian Basin Center for Energy and Economic Diversification, hereinafter called the Center, is to assist the Permian Basin region to diversify its economy by the application of research results, commercialization of technological developments, introduction of new technologies and various entrepreneurial activities.

Conditions or Assumptions:

- ° The Permian Basin and its rich mineral resources are a primary source of wealth to The University of Texas System, other institutions of higher education, and the State of Texas.
- ° The economy of the Permian Basin is highly dependent upon the oil extraction industry; and with recent economic fluctuations in the industry, there is need for addressing economic diversification of the area.
- ° There is strong community, governmental, and industrial support for a regional economic development and diversification effort as evidenced by a) the availability of risk capital and b) a strong entrepreneurial spirit exemplified by large numbers of locally owned and controlled businesses.
- ° The University of Texas System has the largest research base in the State, a source of knowledge that can lead to new commercial enterprises, and is dedicated by general policy to committing these resources to the economic development and diversification efforts of the State and particularly to the regions in which the System has institutions of higher education.
- ° As a part of a larger international community of scholars, The University of Texas System can provide a connection between local entrepreneurs and the originators of commercially useful new ideas outside the University System.
- ° U. T. Permian Basin, a component of the U. T. System, is a strategically located public institution which can identify and mobilize resources in the region, the U. T. System and the larger higher education community, the State, and the Nation and provide the necessary host role, through leadership, facilities, and support services, required to initiate a broad based initiative of economic diversification for the region.

### Operational Concept:

To achieve the purposes of economic diversification, the Center will bring together research scientists and producers of new knowledge with entrepreneurs from the region who will improve existing businesses and products and develop new products and commercial enterprises based upon this new knowledge and information. Primary emphasis will be given to products and business ventures related to the oil industry and to existing business in the region. Specifically, the proposed center will:

- a) Provide an information base, especially, information about the oil industry, which may be of value to the developers of new or improved products and services;
- b) Identify potential projects based upon an ongoing review of research in progress within the U. T. System and elsewhere;
- c) Provide physical space for joint use by commercial developers and university personnel to use in product or business development (i.e. serve as a business incubator);
- d) Identify potential licensees and assist in the formulation of new venture capital companies;
- e) Develop, refine, field test and market test new products prior to seeking a licensee or other organization to develop the product;
- f) Enter into contracts and accept grants for applied research which has the potential of leading to or supporting new products or businesses (This applied research may be conducted by the staff of the Center and/or the faculty and staff of U. T. Permian Basin, other components of the U. T. System, or other institutions of higher education, industrial research groups, or some combination of these);
- g) Invite other U. T. System operations with specific interests or likely contributions to the Permian Basin to establish field stations and/or research units in Center facilities and provide the necessary host support. Organizations and units for potential consideration include but are not limited to:
  - Bureau of Economic Geology -- U. T. Austin
  - Petroleum Technology Extension Service (PTEX)
  - Engineering Technology Venture Center -- U. T. Austin
  - Advanced Robotics Research Institute -- U. T. Arlington
  - U. T. System Land Office (Land Management Demonstration Projects)
  - Bureau of Business Research -- U. T. Austin

Organization and Location:

- The Center will be located on a site approximately equidistant between the cities of Midland and Odessa.
- The Center will be administered by U. T. Permian Basin but will draw upon the resources of other component institutions of the U. T. System as appropriate.
- A policy advisory committee consisting of representatives from the region and from component institutions will recommend to the president of the University and to the Executive Vice Chancellor for Academic Affairs policies and procedures to be followed by the Center.
- As appropriate, the Center will serve as a host to a variety of other university centers, institutes, bureaus, laboratories and special units.
- The Center Director will report to the President of U. T. Permian Basin.

Financing Concept:

- ° Initial development of the Center is to be financed through a planning grant of \$500,000 (payable at \$8,000 per month for 5 years) from the Odessa Industrial Development Corporation (OIDC). This grant is already committed, is unrestricted and will cover initial development and operational expenses to include employment of a Director and minimal support staff.
- ° The initial capitalization of the Center will come from a gift of land and other gifts and grants designed to endow the basic maintenance and operations of the Center. Specific prospects to date include:
  - a. Land consisting of between 140 and 320 acres and located approximately midway between Midland and Odessa, in close proximity to the airport, to be donated by a Midland family.
  - b. Prospects now being negotiated include three large cash gifts totaling an estimated \$5.5 million to provide for the initial building and equipment\*, to underwrite initial operating costs (first 36 months), and to defray and/or endow ongoing operating costs.
    - \*First building anticipated is a general purpose facility of approximately 30,000 square feet for administrative offices, laboratories, a library, computer facilities, and workspace. Estimated cost is \$1,250,000 to include site preparation, utilities and landscaping.
- ° Building rental income will be retained to help amortize the cost of initial construction, provide funds for future expansion, and cover operational expenses.
- ° Local entrepreneurs and venture capitalists will be sought to fund specific projects with identified commercial potential.
- ° Licensing fees, royalty income, or other earnings, will be retained in the Center for further development of the Center's activities.
- ° Cost of identifying potential projects and carrying them from laboratory concept to the stage where they may be attractive to outside developers will be funded from a combination of gifts and grants, any special appropriations which may be made for that purpose, and earnings from earlier ventures.
- ° Original research throughout the System and at other universities will be financed in the usual manner and will not normally be supported through the Center.

Projected Timetable and Development Plan:

- Immediate actions:  
Ask Board of Regents a) to agree in principle with the concept for a Permian Basin Center for Energy and Economic Diversification to be established at U. T. Permian Basin, b) to authorize the Executive Committee of the Board in association with Executive Vice Chancellor Duncan, President Leach, and General Counsel Crowson to continue negotiations with Permian Basin representatives related to acquisition and/or gift of real property for use and benefit of the proposed Center, and c) to accept the \$500,000 planning grant from the Odessa Industrial Development Corporation.
- Near term actions: Employ initial Center Director to begin development of the Center to include identification of potential projects and participants, to lead the physical development of the Center, and to lead fund raising and other development activities.
- Future actions:
  - Develop detailed financial plan including a fundraising program and a request for appropriations.
  - Prepare detailed operating plan
  - Design and construct initial facilities